LEGISLATIVE COUNCIL

Wednesday 13 November 1996

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.D. LAWSON: I bring up the fourth report of the committee and move:

That the report be read.

Motion carried.

The Hon. R.D. LAWSON: I bring up the fifth report of the Legislative Review Committee.

QUESTION TIME

SCHOOLS, SPECIAL

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 special needs restrictions.

Leave granted.

The Hon. CAROLYN PICKLES: I understand that it has been accepted practice in the past that students with special needs in special schools and in special classes receive swimming tuition paid for by the department. The department has now introduced two criteria that students with special needs must meet to receive this free tuition. They are, first, students must be unable to function independently; and secondly, students must be unable to access a physical education lesson.

As a result of these two new rules, at the Elizabeth Special School only 24 children with severe multiple disabilities will be able to access this tuition. Another 58 students will miss out. This seems to be unfair to a very disadvantaged group of students who have special needs already determined by existing criteria. It is essential that these children learn to swim, and it is difficult for them to gain these skills through the normal Learn to Swim campaigns, which are also no longer free. My questions to the Minister are:

1. Why were the new criteria introduced?
2. How much will this save the Government?
3. Did the Minister approve these changes and, if not, will he reverse them?

The Hon. R.I. LUCAS: I will take advice on that and bring back a reply.

QUARANTINE PRACTICES

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about quarantine practices.

Leave granted.

An honourable member interjecting:

The Hon. L.H. Davis: What is your portfolio, Ron, can you remember?

The Hon. R.R. ROBERTS: We will get onto the worm farms later and you will get your name mentioned. Until such time, you are out of order. I have been contacted by Mr Frank Perre of Warruga Farms at Loxton. Warruga Farms grow potatoes and up until 1992 was the only South Australian potato grower exporting to Western Australia. In 1992 a property called Sparnon, three kilometres from Mr Perre's, was infected with an outbreak of the disease bacterial wilt. During a trial on new potato types being conducted under the auspices of the—

The Hon. K.T. GRIFFIN: On a point of order, Mr President, if it refers to a matter to which I think it refers according to the name, it is *sub judice* and I take the point of order. There is a case in the Supreme Court dealing with this.

The PRESIDENT: Is this matter being dealt with in court?

The Hon. R.R. ROBERTS: This matter has nothing to do with a case between the Federal Court and the Department of Primary Industries about negligence in supplying a variety of potatoes at the Sparnon farm which is a matter of litigation. This is a matter concerning neighbouring properties which have been affected by bans imposed by Western Australia. It has nothing to do with the litigation.

The PRESIDENT: There is no point of order at this stage. However, I will ask the honourable member to stop if I believe it does.

The Hon. R.R. ROBERTS: This outbreak caused the Western Australian Government to ban the import of potatoes grown within a 20 kilometre radius of the outbreak for a period of five years. This meant that Warruga Farms could not export their potatoes to Western Australia. This ban came into force in 1992. The Western Australian Government's ban can only be lifted if the local authority, in this case Primary Industries South Australia, certifies that the affected land has been kept free of solanaceous crops for a period of five years and the infected property or properties have been inspected every year by the relevant authority. Mr Perre informs me that no inspections of the affected property have been undertaken by Primary Industries South Australia or its predecessor since 1993.

The Western Australian Department of Agriculture's Chief Quarantine Officer, Mr R. Gwynne, noted in a letter dated 30 April 1996 to Primary Industries South Australia that the affected property had been visited by Dr A.C. Hayward, a world expert in bacterial wilt in 1995, and he observed a regrowth of potatoes generated from the original unharvested crop and the presence of the blackberry nightshade, a solanaceous crop in which the infection was probably still present. According to Mr Gwynne—and this is this in a letter dated 30 April this year—the five year ban on the import of potatoes into Western Australia from any source within a 20 kilometre radius of the affected property would not begin until the regrowth of potatoes, the blackberry nightshade and any other host weeds were cleared from the affected property. Mr Perre thought that the ban would expire in 1997, but now he finds it may extend until the year 2001 due to the fact that Primary Industries South Australia has taken no action since 1993 to inspect the affected potatoes or to have the property cleared of potatoes or other solanaceous growth. Given that Primary Industries SA was originally involved in the trial planting at Sparnon, my questions are:

1. Has Primary Industries SA maintained a regular inspection regime at the Sparnon property since the outbreak of bacterial wilt in 1992; what were the dates and the outcome of the inspections; and, if there have been no inspections, why not?

2. Why has the land at Sparnon not been cleared of the old potato crop, the regrowth potatoes and solanaceous plants in line with Western Australian regulations?

3. When will Primary Industries SA provide the Western Australian Department of Agriculture with certification that potatoes grown at Warruga Farms meet Western Australian regulatory standards?

The Hon. K.T. GRIFFIN: Part of that question related to property which I understand is part of the litigation. If so—and I will have it checked—there will not be an answer in relation to that part of it which impinges upon the litigation. The matter will be properly assessed before determining whether it is appropriate to reply.

COPPER CHROME ARSENATE

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about the CCA spill in Mount Gambier.

Leave granted.

The Hon. T.G. ROBERTS: An investigation has been carried out by the EPA into the copper chrome arsenate spill at the CSR plant in Mount Gambier. The investigation has been going on for some time now. The spill caused concern in the Mount Gambier region for some time because of the unknowns associated with the chemical CCA. There has been a subsequent spill across the border at Dartmoor, which has brought into play a ban on the pumping and use of underground water in that area for drinking purposes. Although there was no such ban for the Mount Gambier spill, because it was not in an area that was going to contaminate the Blue Lake (the source of the Mount Gambier drinking supply) and the volume was not large enough to cause anxiety at that time, there was concern that the direction and flow of the spill may potentially contaminate other bores in the area from which people may unwittingly drink or that it may move towards the lake. My questions are:

1. What are the results of the investigation into the reason and circumstances of the spill, because I understand that perhaps prosecutions are pending?

2. Were any tests done for contamination of surrounding groundwater and the potential for health problems in the future?

The Hon. DIANA LAIDLAW: I will refer those questions to my colleague in another place and bring back a reply.

BARTON ROAD

The Hon. DIANA LAIDLAW: I seek leave to make a personal explanation on the subject of Barton Road.

Leave granted.

The Hon. DIANA LAIDLAW: I note that on 7 November, speaking on the Road Traffic Act regulations, the member for Spence (Mr Atkinson) in another place said:

> That is why the Minister [referring to me] had the parkland reclassified to road reserve; she alienated our parkland for the private purposes of her brother-in-law. This reclassification was not because of some gradual encroachment: it was because an unlawful act had been committed, and, retrospectively, on behalf of the Liberal Party, this Liberal Government acted administratively in an irregular way to cover up an unlawful act of the Adelaide City Council.

The member for Spence—

The Hon. A.J. Redford: The would-be Attorney-General.

The Hon. DIANA LAIDLAW: The would-be Attorney-General—gets more alarmist and blatantly wrong in the law. Even if I did not take exception to his remarks on that basis, I certainly do on the personal affront that he has levelled at me. Therefore, it is worth noting on the record the following facts: In 1987, a period of a Labor Government, not Liberal Government, the Adelaide City Council constructed the new curved section of road connecting Mildred Road and Barton Road.

The Hon. A.J. Redford: What year was that?

The Hon. DIANA LAIDLAW: In 1987, with a Labor Minister for Transport.

The Hon. A.J. Redford: Was the member for Spence in Parliament at the time?

The Hon. DIANA LAIDLAW: No, he was not. A portion of the new section of the road and also a portion of the new busway only lane connecting Barton Terrace and Mills Terrace to a new section of road were located on parklands, section 1629, hundred of Yatala. As I say, that was during the Labor years. In a process that was started in late 1994 and completed in early 1995, the City Council transferred an area of land consisting of 2 104 square metres of parklands from section 1629 to road reserve under the Roads (Opening and Closing) Act to accommodate the new connection between Mildred Road and Barton Road and the new bus only lane.

The member for Spence seems to have taken exception to my words that 'the road alignment in this section had been altered over time to the point where a small section of the existing road pavement encroached onto parklands'. I want to refute the accusations of the member for Spence. This initiative started under the Labor Government, before the current member from Adelaide was in Parliament. There was no private gain, other than, I suspect, for the then local Labor member, Mr Mike Duigan. It seems to have been inferred that the current member is the one who is gaining from this initiative, and from my being Minister for Transport and that I am seeking to support him. I have not acted on this matter other than when it has been on the recommendation of the Adelaide City Council through the Department of Transport. At no time have I initiated any action in terms of Barton Road, and this matter, as the honourable member knows but refuses to accept, is one that has been legally undertaken by the Adelaide City Council.

WINE AND TOURISM COUNCIL

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Tourism, a question about the South Australian Wine Tourism Council.

Leave granted.

The Hon. M.J. ELLIOTT: I understand that the position of Manager of the South Australian Wine Tourism Council was advertised earlier this year and interviews carried out on the basis of a salary level of about $46 000. I further understand that a former member of the Tourism Minister's own staff was appointed to this position at the higher salary level of $62 000. My questions are:

1. Was the position ever publicly advertised at this higher salary level?

2. If not, does the Minister agree that the difference in salary is such that suitably qualified persons may not have applied for the position?

3. Was the normal selection process followed in filling this position?

4. What was the attitude of the South Australian Tourism Board in relation to the appointment?

The Hon. K.T. GRIFFIN: I will refer the question to my colleague in another place and bring back a reply.

LIBERAL PARLIAMENTARY PARTY

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Leader of the Government a question about the State Liberal Parliamentary Party leadership.

Leave granted.

The Hon. T.G. CAMERON: This morning's *Advertiser* reports that a group of Federal—

The Hon. K.T. Griffin: This is not a matter of public interest.

The Hon. T.G. CAMERON: This is a matter of public interest! This morning's *Advertiser* reports that a group of Federal Liberal politicians and influential businessmen within the Liberal Party organisation who allegedly support the Minister for Industry, Manufacturing, Small Business and Regional Development held a secret meeting last night to plan the early removal of the Premier.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. CAMERON: Mr President, thank you for your protection from the Hon. Angus Redford: there are times when I need it. My question to the Minister is as follows: at yesterday's Liberal Party room meeting did the Minister for Industry, Manufacturing, Small Business and Regional Development give the Premier an unconditional undertaking of his support and preparedness to serve in his present position to the next election and for the next full parliamentary term, or has the question of who will be Premier of South Australia been handed over to a car dealer and others who have not been elected to this Parliament?

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: When the Hon. Terry Cameron confides in me details of the private discussions he has in the Party room and Caucus about removing the Hon. Ron Roberts from the position of Deputy Leader or undermining the Hon. Carolyn Pickles as Leader of the Opposition in this Chamber—

The Hon. T.G. Cameron: Good try.

The Hon. R.I. LUCAS: Good try from you, too. Until the Hon. Mr Cameron confides in me the confidential discussions in which he participates in his Party room and Caucus and in the other smoky rooms, then I will not consider his question. The discussions that go on in Party or Cabinet rooms are not discussions shared in Parliament, whether it be the Labor Caucus or the Liberal Caucus.

Members interjecting:

The Hon. R.I. LUCAS: It was made quite clear yesterday that there was an agreement between the Premier, the Deputy Premier, the Minister concerned and all members of the parliamentary Party in relation to the proposal that the Premier put to the Party room yesterday. Not that I am aware of the precise nature of the drinks celebration that was reported in the *Advertiser*, but I understand that the *Advertiser* reported that it was drinks organised for Mr Adrien Brien, or some such person, and had nothing to do with the sorts of matters that the Hon. Mr Cameron asserts.

BASIC SKILLS TEST

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the basic skills test.

Members interjecting:

The PRESIDENT: Order! If the Hon. Ron Roberts and the Hon. Terry Cameron want to have a conversation, I would like to be in on it. I would like them to tell me about it. I suggest that they put all their remarks through the Chair.

The Hon. T.G. Cameron: What about—

The PRESIDENT: Order!

Leave granted.

The Hon. BERNICE PFITZNER: I note that in today's newspaper the basic skills test has identified a significant number—20 per cent—of students needing help in the area of literacy and numeracy.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BERNICE PFITZNER: These tests were based on year 3 students. National figures show that 30 per cent of Australian year 9 students lack basic skills. We also note that there was an improvement of .2 points in the State average score for year 3 literacy and that for year 5 students there was an improved score of .6 points. Other findings were that Aboriginal student literacy levels were 11 to 14 per cent below average; and that girls outperformed boys with an average score for year 3 students of a girl-boy ratio of 50:47.6, and for year 5 students a ratio of 56.3:54.1. The literacy results for students from a non-English speaking background were about the same as the overall average.

I congratulate the Minister on implementing this screening test, the basic skills test, especially since I, myself, have devised and implemented a screening test to identify children in the nought to four-year age group (which is the pre-school age group) with developmental disabilities. As members know, world research has always found that the earlier a defect is identified and addressed, the better will be the outcome. I also note that $3 million will be set aside to address this identified disability.

I also received community comment that the SAIT President has again knocked this screening test, which has been excellent in identifying learning problems, and I note that she said:

> We do not need these tests to show us which kids need help . . . our members have come up with similar figures.

My questions to the Minister are:

1. As we all know, gut feeling and general suspicion of a child's learning difficulty is not sufficient, so I ask the Minister if he could investigate on what basis the President of SAIT made the comment that her members have come up with a similar figure of one in five students needing extra help?

2. Does SAIT have figures comparable with the basic skills test that identify in detail the different areas of learning difficulty, and has SAIT has monitored the long-term progress of these children?

3. Do they know, without such a tool as a basic skills test, which particular child needs help and in what area?

4. Why is the President of SAIT knocking the basic skills test when with great validity it identifies learning difficulties early, so that help can be given to that particular child?

The Hon. R.I. LUCAS: I thank the honourable member for her question and acknowledge her interest in this area. She is correct in indicating that most—

Members interjecting:

The Hon. R.I. LUCAS: Exactly. our members are capable of independent thought, can actually construct questions for themselves, and that is healthy and to be encouraged.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I am delighted at the response from the South Australian community and from parents, in particular, to the second basic skills test. Our research in relation to the first test has indicated that there is very strong parent and community support for the introduction of basic skills testing; some 80 per cent of parents in the community support this important educational reform that the Government has introduced. Sadly, the only remaining shags on the rock, if I can use that colloquial expression, in terms of opposition remain the Labor Party, the Australian Democrats, of course, and the leader of the Institute of Teachers and her followers.

The 1996 test results have highlighted a significant number of issues. In literacy, girls are outperforming boys but, interestingly, in numeracy the scores are much closer at year 3 and year 5 levels. It has confirmed, again, the big task ahead of Governments, both State and Federal, in relation to basic skills for Aboriginal students. Today, on behalf of the Government, I have indicated a need for us, as a community, to review the effectiveness of our Aboriginal education programs. Over the past 10 or 20 years, Commonwealth and State Governments have spent hundreds of millions of dollars on Aboriginal education programs and, clearly, we need to ensure a better targeting of some of those resources into areas of early intervention and into areas of literacy and numeracy.

I know that there are some within the broader education community who oppose, and will oppose, that particular reprioritising of Aboriginal educational funding, but I give an indication that these figures have confirmed some of our concerns in this area and the fact that we must evaluate the effectiveness of programs. Those that are not being effective in what is a critical area for Aboriginal students in terms of early acquisition of literacy and numeracy may have to be either reduced—

The Hon. T. Crothers: All students.

The Hon. R.I. LUCAS: All students, as the Hon. Mr Crothers interjects, but in particular Aboriginal students, because their percentage scores are some 11 per cent to 14 per cent below the average scores for the whole of the State. It is an important issue for Aboriginal students and the Aboriginal community. If we cannot get right the early years for Aboriginal students then the prospects of retrieving ground in upper primary, junior secondary and secondary will count for nought. You can tackle everything you want in secondary schools in catch-up programs and bandaid remedial programs but if we do not get the early years right for all students, and in particular for Aboriginal students, in terms of specific programs then the catch-up later on will count for nought.

I am delighted to see that students from non-English speaking backgrounds are performing at the same level as the State mean for all students. I think that that is an indication that past priority given by past Governments and continued by this Government in terms of multicultural education programs within our schools is having some effect on the performance of students from non-English speaking backgrounds. We now need to devote that same attention to retarget the very significant resources that we have for Aboriginal education into this critical and important area.

The honourable member asked about the attitude of the Institute of Teachers. I remain extraordinarily disappointed at the attitude of the union, and that attitude means that slavishly the Labor Party and the Democrats have to follow and parrot their opposition to the basic skills test. If we could only change the attitude of the Institute of Teachers' leadership we might be able to change the attitude of the Democrats and the Australian Labor Party in South Australia in relation to these tests.

Members interjecting:

The Hon. R.I. LUCAS: Well, it might take a few years for the Australian Democrats and some members of the Australian Labor Party. If we could change the attitude of the union leadership, because the Democrats and the Labor Party have to do what the union says in relation to these issues, hopefully we would be able to see, with the passage of time, a changed attitude from the Democrats and they might then move into the 1990s in relation to the importance of skills testing and accountability for education.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Elliott knows that he is on a loser in relation to this one, and he struggles—but let us leave the problems of the Hon. Mr Elliott to himself.

The Hon. Diana Laidlaw: He promised never to come back!

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Hon. Mr Elliott did promise that he would not come back to this Chamber, but I will not enter into further discussion on that commitment.

Members interjecting:

The Hon. R.I. LUCAS: Yes, to suggest that the Hon. Mr Elliott did not keep his word would be out of order. I have had a number of discussions with the leadership of the Institute of Teachers about this issue and its claims that it knows the precise number of students with learning difficulties within schools. After three years of discussion with the Institute of Teachers I have still not received—and there has been many an invitation—any detailed response from the institute documenting the precise number of students within our schools and the level of difficulty that those students are confronting.

What I do know—and what I have indicated on a number of previous occasions—is the number of parents over the past 10 years or so who have spoken to me and other members about their frustration with their children in upper primary and junior secondary who have slipped through our net, who have slipped through the system, and their difficulty has not been identified by the existing system.

I am the first to acknowledge that a good majority of our young people with learning difficulties are picked up by our excellent teachers and staff within schools, but to say that teachers and staff are able to pick up every one of our students with learning difficulties, as suggested by the Institute of Teachers, is a nonsense. There are children who slip through the net. The basic skills test provides parents with an independent second opinion (a safety net) to try to ensure that we minimise the number of young children who slip through the junior primary and middle primary years without having their learning difficulty identified.

So, the answer to the honourable member's question is that the issue remains with the Institute of Teachers. If it wants to produce for me a different set of figures relating to the number of students with problems with learning difficulties in our schools, I still await that sort of information, and I would certainly welcome it, but the Government has provided $2 million this year and will provide $3 million next year (a 50 per cent increase) for targeted assistance for children in the early years of education and extra assistance for students with learning difficulties that are identified by the

basic skills test. In conclusion, the only people in South Australia who oppose the giving to schools of an extra $3 million are, again, Janet Giles, the Hon. Michael Elliott and the Hon. Caroline Pickles. Everyone else is delighted.

The Hon. T.G. ROBERTS: I ask a supplementary question. Will the Government assess and compare the social background and circumstances of the students who have produced the results of the recently publicised so-called basic skills test?

The Hon. R.I. LUCAS: We have already been doing that, and I have just been talking about it for 10 minutes with respect to Aboriginality, people of a non-English speaking background, sex or gender—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: If the Hon. Mr Roberts is suggesting that I undertake a survey of the income levels of all families and their circumstances—whether parents are separated, the subject of a court order or a variety of other similar issues—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Well, if he is not suggesting that, perhaps he can tell me what he is suggesting. He could give me a bit more detail. In terms of broad categories, as I have indicated, the Government is looking at that matter, and the only broad category on which it has available current information relates to families who receive the school card. However, as I have indicated, almost 50 per cent of families are in receipt of the school card, so from my viewpoint as Minister that does not identify the sorts of social issues and problems to which the Hon. Mr Roberts probably refers in terms of family dysfunction, stress and pressures within the community. However, it is the only current broad descriptive that we have, and I will seek further information on that. If the Hon. Mr Roberts wants to go further than that, I ask him to state precisely what he is suggesting. Perhaps he would like to ask another question.

The Hon. L.H. Davis: I don't think he is sure himself.

The Hon. R.I. LUCAS: Perhaps he's not sure, because it was a supplementary question. He might like to think about that. I await his suggestions with interest, and I will have further discussions and correspondence with him.

LANGUAGES OTHER THAN ENGLISH

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Minister representing the Minister for Multicultural and Ethnic Affairs a question about languages other than English in the Public Service.

Leave granted.

The Hon. P. NOCELLA: The expectations of many people were raised at the end of 1993 when the incoming Administration promised, amongst other things, to encourage the recruitment of public servants capable of speaking languages other than English. That was to be done so that counter staff, especially, fluent in languages other than English would be better equipped to deliver services to people who are not fluent in English. Another recommendation was that senior public servants, particularly chief executive officers, or officers at executive level, especially those who operate and work in areas of economic development, would be expected to become proficient in a language other than English. Unfortunately, those expectations have not been realised, and those who had them have been greatly disappointed that to this date nothing much seems to have happened. My questions to the Minister are:

1. How many additional public servants have been either identified or recruited within the Public Service who are fluent in a language other than English for the financial years 1994-95 and 1995-96?

2. How many CEOs or senior public servants at executive level classification have become fluent in languages other than English as a result of programs aimed precisely at achieving such a result?

3. How many public servants were in receipt of a language allowance for the years 1993-94, 1994-95 and 1995-96?

I ask these questions because I have not received an answer to similar questions that I posed on 11 April 1996.

The Hon. R.I. LUCAS: I will refer those questions to the Minister and bring back a reply. Two of the most recent senior appointments that I can recall are of officers who speak languages other than English. That is a positive indication of the direction in which the Premier, the Minister and the Government are heading in terms of hiring and employment policies and the sorts of broad directions to which the honourable member refers.

ELECTORAL, ELECTRONIC VOTING

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Attorney-General a question about the Electoral Commissioner.

Leave granted.

The Hon. R.D. LAWSON: In the annual report of the State Electoral Office for 1995-96, which was tabled yesterday by the Attorney, a number of statements about information technology are made. On page 1 it is said that the Electoral Office is moving towards a fully integrated information technology environment. The report states:

> That environment will include electronic counting of ballots (and most probably, in some areas of our operations, electronic voting) before the end of this decade. The State roll will be available on CD-Rom within the next two months. . .

The report goes on to mention a number of matters including on page 19 the joint State-Commonwealth electoral system. Reference is there made to the cost of providing an automatic link between the roll maintenance systems for South Australia (EGAL) and the system maintained by the Australian Electoral Commission (RMANS). The report notes that the cost of providing that automatic link was considered to be excessive, and the Australian Electoral Commission put further development on hold.

Finally, on page 22 the report refers to the possible implementation of the Australian Electoral Commission's computerised vote counting system (Easycount) for the Legislative Council ballot at the next State elections. My questions to the Attorney are:

1. Does the Government support the development of electronic counting of ballots?

2. With regard to the availability of the State roll on CD-Rom, is he able to report whether that project will be delivered within the next couple of months; and, if so, what will be the likely cost of putting the roll on CD-Rom, and will it be widely available?

3. In relation to the joint Commonwealth electoral system, I ask the Attorney whether he has given consideration to the State not keeping a separate roll, but relying solely upon the roll maintained by the Australian Electoral Commission, as is I think the case in some States?

4. Does the Attorney see any advantages in the computerised vote counting system for the forthcoming Legislative Council ballot?

The Hon. K.T. GRIFFIN: South Australia has been regarded as a leader not only in information technology across Government, but in other areas, particularly in the electoral area, and it has been regarded as a leader in relation to other processes and practices in the electoral system. We have maintained an address—based roll, as I recollect, and that is superior in many respects to the roll kept by the Australian Electoral Commission; however, there is an interface between the two. I know there is some discussion between the State Electoral Commissioner and the Australian Electoral Commission about some measure of integration of the two.

In terms of the electronic counting, this is an issue which the Electoral Commissioner has been keen to pursue for quite some time. It is, I gather, available in at least some other overseas jurisdictions. It would, naturally, make the counting in the Legislative Council much easier than it is at the present time, where it frequently takes many weeks to have the vote counted and the preferences distributed. I cannot say that this will be up and running for the next State election. It may be that there will be a trial program available. It will depend to some extent as to when that election may be and the degree of development which has been undertaken in relation to this.

Electronic voting and counting has been in operation in some overseas jurisdictions; it may be that it will be appropriate to use it here. Ultimately, it is a matter for the electoral commissioner to make recommendations to me, as the Minister responsible for the Electoral Act, as to whether or not that may ultimately occur. One can see that there are significant benefits in dealing with the Legislative Council vote in a way which is more efficient than the manual counting at the present stage. In relation to the other matters raised by the honourable member, I will see whether any aspect needs further clarification and most probably bring back an appropriate reply.

TEMPLATE LEGISLATION

In reply to **Hon. A.J. REDFORD** (24 October).

The Hon. K.T. GRIFFIN:

1. The honourable member has raised the question of template legislation and in particular the National Uniform Consumer Credit Code.

The National Uniform Consumer Credit Code is the result of an agreement between all State and Territory Governments and relies upon the substantive Code enacted in Queensland.

The uniform Consumer Credit Code came into operation on 1 November 1996.

The States and Territories have made a pragmatic decision in principle to allow the code to be printed, published and sold in each jurisdiction.

StatePrint has been in communication with its counterpart in Queensland (GoPrint) about publication of the legislation. I have been informed that any problem StatePrint is having with publication of the code relates solely to a problem with the software note being compatible with the system used in South Australia. However, the code is now available for purchase from the State Information Centre.

Copies of the code are also available from GoPrint in Queensland for $30.00. The Queensland code is published in a bound copy. The code in South Australia will be published in line with other South Australian legislation and will cost less than the Queensland publication.

2. See 1 above.

3. Yes, although wherever possible and practicable the South Australia Government endeavours to use consistent or uniform legislation rather than application of laws or template legislation to achieve the goal of consistent legislation.

PRISONS, PRIVATISATION

In reply to **Hon. SANDRA KANCK** (23 October).

The Hon. K.T. GRIFFIN: The Minister for Correctional Services has provided the following response:

1. A final decision has not yet been made in relation to the site for a new prison in South Australia.

2. No evidence has been put to the Government that would necessitate exclusion of Australasian Correctional Management (ACM), from a tendering process.

3. Yes.

COMMON LAW RULE

In reply to **Hon. M.J. ELLIOTT** (2 October).

The Hon. K.T. GRIFFIN: The issues raised by the Auditor General concerning the holding of incompatible offices are complex. My advice is that Finn (quoted by the Auditor-General) and, consequently, the Auditor-General express the doctrine of incompatible public offices too broadly in suggesting that it necessarily arises where the public servant Board member is an employee in the Ministerial department that has responsibility for the statutory authority. It is true that there is a potential for the doctrine to operate in these circumstances but only where the following further factors are present:

1. The authority is not subject to Ministerial direction and control;
2. An actual (not potential) conflict of duty has arisen;
3. The conflict of duty is not appropriately handled.

I have directed the Crown Solicitor to carry out a review of the matter with a view to recommending a strategy for regularising any problems that may have arisen in the past, and dealing with the issue appropriately in the future. The Crown Solicitor has been asked to have regard to the recommendations of the Auditor General at page 147 of the Audit Overview.

CRIMINAL CODE

The Hon. ANNE LEVY: I seek leave to make an explanation before asking the Attorney-General a question about the model criminal code.

Leave granted.

The Hon. ANNE LEVY: A committee established by the Standing Committee of Attorneys-General is drawing up a model criminal code, as I understand it, to be used as a template for reform of the criminal law throughout Australia, attempting to obtain uniformity. It has fairly recently circulated chapter 5, dealing with non-fatal offences against the person, and this covers the topic of abortion. The only two legislatures which have amended their law relating to abortion in the twentieth century are South Australia and the Northern Territory, the Northern Territory law being based on the South Australian law which was passed by this Parliament in 1969. The other States follow common law rulings made by judges in determining the application of law relating to abortion in those States.

The model criminal code suggestions which are put forward for consideration by the Attorneys are based on the South Australian legislation, or what is the current South Australian law. The commentary claims that it merely updates the language, removes some regulatory provisions and also removes the residency requirement, which has always been judged to be unconstitutional, anyway. However, various people have put to me that the model code is in fact far more restrictive than the current South Australian law. I will not go into the details of this at the moment, although I would be very happy to discuss this matter with the Attorney. It appears that unintentionally the committee has put forward as a model, supposedly based on the South Australian law, a law which is in fact far more restrictive than the current law is in South Australia. I realise that this matter is to be

discussed by the Attorneys-General at a future meeting, but I would ask the Attorney:

1. Would he support a model criminal code which is more restrictive than the current South Australian law relating to abortion?

2. Can he reassure those who fear that the suggested model code is more restrictive than the current South Australian law that he will not contemplate a model code which is in fact more restrictive than the current law?

The Hon. K.T. GRIFFIN: It needs to be recognised what the role of the Model Criminal Code Officers Committee and the role of the Standing Committee of Attorneys-General may be. I have made the observation on a number of occasions that the committee is attempting to pull together a draft code from which jurisdictions may be able to draw parts which they wish to adopt if they are better than their law may be at the present time. I have indicated, in relation to theft, for example, that the Government has taken a decision that our laws relating to theft need to be significantly upgraded because some offences in the Criminal Law Consolidation Act and the common law go back to the eighteenth century or even earlier. That is in the process of being drafted and will not be introduced before Christmas. In relation to other areas, we do not intend to adopt the model code—I think, for example, the first chapter, which deals with principles.

In relation to non-fatal offences, my recollection is that this is out for discussion and that there was a period of about six months set from when it was released within which citizens have an opportunity to make a response to the Model Criminal Code Officers Committee on any matters about which they may have concern. I do not know whether the honourable member has done that, but I invite her to do so. The various submissions will be considered by the Model Criminal Code Officers Committee, and the final proposal will go to the Standing Committee of Attorneys-General some time next year. We may then agree to its release as a proper basis upon which jurisdictions may determine to adopt or not adopt, as the case may be, the provisions of that part of the draft code.

I have made no decision in relation to abortion. I had no intention of modifying the present law in South Australia, and the Government certainly has not considered it.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: There is no reason for the Government to move in that direction. As regards the model criminal code, in the light of the submissions which are made, it may be that the committee will come up with alternative propositions. It may come up with a proposition which does not contain the more limiting factors which the honourable member suggests are in the present draft. No-one really knows what ultimately will happen. However, there is nothing on my agenda or on the Government's agenda to change the provisions in the Criminal Law Consolidation Act as they relate to abortion.

EDUCATION, ENGINEERING

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

Leave granted.

The Hon. P. HOLLOWAY: An article in the *Advertiser* yesterday, entitled 'Brain void hits high-tech plant,' stated:

> Growth in South Australia's technology industry is being crippled by a lack of qualified engineers and technicians.

The article then quoted the head of Motorola's software development centre, Mr Shrikant Inamdar, as saying:

> . . . we'd like to increase our employment base to 1 000 engineers, but we don't seem to be getting sufficiently educated people.

Mr Inamdar was also reported as saying:

> Australia doesn't seem to be supporting high-technology education, or encouraging it at all—definitely not in technology. I come from India, which is a very poor country, but even there almost all the higher education is paid for by the Government, but here it can cost tens of thousands of dollars to get a PhD or Master's degree.

In view of those comments, which also follow similar comments made by the former Vice-Chancellor of the University of Adelaide, Professor Gavin Brown, 12 months ago, I ask the following questions:

1. What action has the Government taken to address the shortage of engineering graduates and qualified technicians?

2. What are the trends in the numbers of year 12 students who have studied mathematics and physics, which are prerequisites for engineering courses; and will the Minister provide the relevant statistics for the past few years?

3. What action is the Government taking to increase the numbers of students taking mathematics and science subjects at high school?

4. Will the Government investigate the feasibility of providing scholarships or some other form of assistance to encourage students to complete higher degrees in these sought after areas?

The Hon. R.I. LUCAS: The senior officer from Motorola has identified a problem and potentially a medium-term problem as well in relation to the supply of postgraduate degree students for the information technology industry and engineering industries more generally. There is no doubt that some of the information technology companies are at the moment having to import significant numbers of their employees, particularly PhD students, from overseas countries. That is an issue of some concern for all of us in the community. It is an indication of the error of education policies of five and 10 years ago, because the people who come out of PhD programs cannot be churned out overnight. PhD students are six to 10 years in the making from when they leave—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: It is not just a question of supply and demand; they are six to 10 years in the making. The shortages that we are experiencing now are the result of the problems and perhaps the errors of education policy of six to 10 years ago. The Hon. Mr Holloway has accurately nailed—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: As I was being reminded by members unnamed behind me, the Hon. Mr Holloway missed the State Bank, and I am not surprised he missed these particular issues. The dilemmas that the Hon. Mr Holloway is rightly identifying now are the natural byproduct of the problems of education policy of six to 10 years ago. I do not need to remind the Hon. Mr Holloway which Government was in power, both State and Federal, six to 10 years ago—Labor. The Hon. Mr Holloway has identified a current problem—

The Hon. L.H. Davis: A crafty question.

The Hon. R.I. LUCAS: A very crafty question. I am not sure who he is trying to shaft here. I think he is trying to even the score with some previous Ministers.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: Greg Crafter or Susan Lenehan or one of the Federal Ministers. The new State Government is concerned about and is looking to address these issues. We cannot compel young people beyond the compulsion that already exists. Mathematics, in particular, is a compulsory part of the curriculum to year 10, and students must undertake studies at year 11. It is not compulsory at year 12 in relation to their studies.

I am not sure whether the Hon. Mr Holloway would support a policy of prescription which set out that it should be compulsory for all year 12 students to undertake maths, as some maths supporters have urged. The Government does not believe that is the appropriate path to follow. However, we believe that we must look at the problems within mathematics at senior secondary years and at the potential problems in the mathematics curriculum at university level as well.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Increasingly women are taking part in some of the engineering faculties. One of the great attractions for information technology and software engineering is that there should be no reason why women, in the same degree as men, should not be encouraged to go into the information technology industry. It should not have any factors that inhibit young women from being attracted to information technology and software engineering occupations in which there will be many jobs over the coming years.

In order to address these issues, some time last year I established a reference group or working party—a committee of some description—which brought together our leading maths educators in the universities, who have the sort of views put forward by the Hon. Mr Holloway, leading maths people in the department and other experts to consider what we can do within our school system to encourage—

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: —to correct the neglect of previous Labor Ministers, as my colleague has indicated. A range of initiatives has been suggested.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: That's your nickname. We are already taking some action in a number of areas to encourage young people to continue their mathematics studies, because that will broaden their options not only in this area, but in other areas. We are working with the universities on what changes, if any, need to be made to our curriculum and what changes might need to be made in university areas as well.

My final point is that we cannot compel young people to study maths 2 and physics at year 12. We must encourage them through the prospect of significant employment opportunities—and the State Government is doing that—and what we hope are the attractive remuneration packages which are increasingly being offered to postgraduate employees from overseas.

We need to highlight the significant remuneration packages being offered to those people from overseas, and emphasise that, if they stick with it in year 12 in relation to maths I and II, and also physics and chemistry, because of the significant policies of the State Government in encouraging significant new jobs in information technology, the job prospects in the coming years will be rosy for them.

MATTERS OF INTEREST

DEMOCRACY

The Hon. T. CROTHERS: Today I thought I would devote my five minutes to talking about democracy, in particular democracy as it currently exists in this State and between the two Chambers of the Parliament. I want to canvass a bit of historical backdrop in respect of Upper Houses in the Parliaments of the Westminster system.

Queensland, as we know, by virtue of the then Labor Government in the early 1920s stacking the House, is the only non—bicameral system throughout the length and breadth of the States and Federal Government of this nation. In fact, the Upper House, when I first became active in the Labor Party here, was made up by and large from a restricted franchise of the wealthy and land-owning classes of this State. I well recall participating in that drive for democracy, under the leadership of Dunstan and others, in respect of enrolling people onto the electoral roll of the Legislative Council, when first of all the property franchise was diminished and then removed. Even then it was difficult because, although the property franchise was removed, you still had to enrol separately to vote in the Legislative Council. In fact, if your name on the electoral roll on voting day did not have LC opposite it, you simply did not get a vote in the Upper House in this State.

But Upper Houses, as I have said, by and large, in all the English speaking democracies that use the Westminster system, until fairly recently have been the property of the few—of the wealthy, of the rich and of the land-owning classes in our society. Of course, that suited those people because it meant that they could look after their own vested interests properly if, in fact, they controlled one of the two Houses of the Parliament in the Westminster bicameral system, in respect of what Parliament could and could not do relative to legislation.

It is interesting that at that time there was a split within the then governing Liberal Party in respect of voting and voting methods, and as to how they should be interpreted as to the future political wellbeing of the Liberal Party. I do not want to comment today as to whether the wets and dries of the governing Party of this State are simply an extension onward of that Liberal-Liberal Movement split that occurred under what I thought was the fairly dynamic leadership of the Premier of the day, Steele Hall, later to become Senator Steele Hall, who some would say is still tied up very much in Liberal Party strategy today.

However, significantly, when one looks at the history of the Upper House in the Parliament of New South Wales, a member of the Wentworth clan in the 1850s determined that he was going to introduce legislation into the Australian Parliament so that Australia could have its own aristocracy. This certainly brought a number of rebuffs and launched to fame an Irish-Australian called Foley who, in an address he gave at the Sydney Domain, where many thousands were in attendance, coined the never to be forgotten phrase, 'the Bunyip aristocracy'.

Who shall ever forget the Bunyip aristocracy? How can we forget them? They are still around today. The rump remnant hangs on in respect of whether or not Australia should be a republic or a nation governed by a monarch who sits some 12 000 miles away and who cannot, for the life of

her, keep her former daughters-in-law under control in respect of the fiscal shenanigans in which they have been involved, whilst tens of thousands of the poor and underprivileged have had to sleep in six feet of snow out in the streets in the middle of one of the most severe winters on record. I do not have much time left.

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: Spud Murphy again! Or Spud Davis. I do not want to sully the name of the Irish. I will continue this contribution at some other appropriate time.

The PRESIDENT: Order! The honourable member's time has expired.

PATRIARCH BARTHOLOMEOS I

The Hon. J.F. STEFANI: Today I wish to speak about the recent visit to South Australia by His All Holiness, the Ecumenical Patriarch Bartholomeos I. As a close friend of the Greek Australian community, it was a great honour for me to be amongst the many guests who welcomed His All Holiness to our State, and to participate in a number of special events celebrating his visit. We were all deeply honoured to have His All Holiness visit Australia and South Australia for the first time, and only five years after his election to the most senior position of all patriarchs of the world.

It is appropriate for me to acknowledge that His All Holiness, the Ecumenical Patriarch Bartholomeos I, was elected Archbishop of Constantinople-New Rome and Ecumenical Patriarch on 2 November 1991. His All Holiness speaks Greek and is fluent in Turkish, Italian, English, French and German. He served as a member of the Faith and Order Commission of the World Council of Churches for 18 years, and was elected as a member of the central committee and executive committee of the World Council of Churches in 1991.

The visit by His All Holiness is testimony to the commitment he has to the Greek Orthodox faithful in Australia. I believe that the members of the Greek Orthodox archdiocese in South Australia are truly worthy of his esteem. His All Holiness is the world spiritual leader of more than 250 million Orthodox faithful and almost one million Australian Orthodox.

His All Holiness was greeted by a large number of South Australian Greek Orthodox faithful during the special divine liturgy that was held last Sunday morning at the Clipsal Powerhouse, which more than 5 000 people attended. In the afternoon, His All Holiness blessed the Aegean Village and, with the Premier of South Australia, the Hon. Dean Brown, jointly performed the official opening of the St. Basil's Homes for the Aged nursing home complex at Christie Downs.

On Sunday evening I was privileged to be among the many invited guests who attended the official community dinner, which was a splendid occasion, with almost 1 000 people from the Orthodox parishes honouring the Ecumenical Patriarch. On Monday I was once again privileged to be amongst the invited guests to attend the conferral ceremony at Flinders University where His All Holiness was presented with an honorary degree of Doctor of Theology *honoris causa*.

The ceremony was attended by the Governor of South Australia, Sir Eric Neal and Lady Neal, as well as the Most Reverend Leonard Faulkner, Archbishop of Adelaide, who delivered the occasional address. His Eminence Archbishop Stylianos, Primate of the Greek Orthodox Church in Australia and His Grace, Bishop Joseph of Arianzos, were also in attendance. The Chancellor of the Flinders University, Sister Deirdre Jordan, opened the conferral ceremony, and the Vice-Chancellor, Professor Ian Chubb, responded to the occasional address.

On Monday evening the State Government honoured His All Holiness the Patriarch at a farewell dinner, which was attended by more than 350 people. At the farewell dinner the Hon. Dean Brown, Premier of South Australia, on behalf of the Greek community and the people of the State expressed sincere thanks to His All Holiness for the great honour of his visit to South Australia. On behalf of my many friends within the South Australian Greek community I wish to express sincere congratulations to the organising committee for its contribution in making the visit of His All Holiness a truly memorable occasion.

TARIFFS

The Hon. M.J. ELLIOTT: Having read in the *Advertiser* of 23 October this year an article entitled 'Tariff cut threat to 15 000 car jobs' I thought it appropriate to make some comments about the flat earth economics that has been dominating the thinking in Australia at a national and State level for far too long. This push originated with the National Farmers Federation and people like Ian McLachlan etc., who have suggested that we need to lead the way in cutting tariffs and the rest of the world will follow. We have found that industry after industry has collapsed as tariffs have gone down. The one reason the car industry has survived so far is that it is one of the few industries where at least there was some sort of a plan. Without arguing the detail of the Button plan, at least there was an industry plan and, rather than cutting tariffs in great hunks overnight, there was a planned reduction, which is quite different from what most other industries suffered.

Nevertheless, the plan always envisaged tariffs going, and they are going at a rapid rate. I find it interesting now that there are at least some members of the Liberal Party in South Australia who are starting to recognise that flat earth economics is exactly that—it does not work—and, if we take tariffs down much further or any faster, we will lose the car industry. We will not simply lose the manufacturers in South Australia: we would have to lose only one of the two manufacturers to put other industries at risk as well. Not only will we lose component manufacturers but the many other industries that rely indirectly on the car industry, such as manufacturers of moulds and various other products. They would also perhaps close up shop because they would lose that critical mass. That would then have an impact on the white goods industry, as it survives in South Australia. There is no doubt that it would be an absolutely unmitigated disaster for that to happen.

We are now told that the State Government is talking with the Federal Government, but this matter is so crucial that Party loyalty should count for absolutely nothing. The future of South Australia is very much connected to tariff levels in the car industry, because any further drop or decline will be putting back this State for probably 30 years.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: It might be damage that we never recover from. The Government may be prepared to do more than simply have talks with Mr Howard. As I said, Party loyalty should count for nothing, because the whole

future of the State is very much linked to this issue. It is about time that we heard the Government speaking up in terms of other industries as well. For a long time the Democrats have argued that we should be having an industry plan on an industry by industry basis. Interestingly, the car industry has survived with a plan, albeit not a perfect one. Another industry that has had a plan for a long time is the dairy industry, which has gone through astronomical growth Australia-wide, and much of its success goes back to the Kerin plan. Once again, it recognised a need for change, but it was managed change and not simply pulling the plug and saying, 'You have to become world competitive overnight', or anything else.The industry in South Australia and other States has still maintained a gate price for dairy producers. Despite the fact that there has been red tape within the industry, the red tape has been put there for a purpose and has achieved stability and allowed significant overseas growth.

The dairy industry hit the magical $1 000 million in exports five or six years ago—a decade before the wine industry claimed that it would achieve such exports—and I doubt the wine industry will reach $1 000 million of wine exports. The Government needs to recognise that the growth in dairy of 10 per cent a year, which has been achieved for well over a decade, has occurred under a regulated regime. It has been happening under a plan. Therefore, not just in relation to the car industry, I call for a more rational industry by industry approach in deciding what appropriate levels of regulation should be put in place rather than the abandonment of regulation, which seems to be the current policy.

The PRESIDENT: Order! The honourable member's time has expired.

UNIVERSITY CUTS

The Hon. ANNE LEVY: I wish to make a few remarks about the highly detrimental effects on Australian universities that the current Federal Minister, Amanda Vanstone, is inflicting. In fact, the universities now have a new verb to play with: 'to Vanstone'. Their previous complaints about John Dawkins have changed considerably and many now wish that John Dawkins could come back to save them from what Amanda Vanstone is doing. The cuts being imposed on the universities are horrific. In a country that depends on intellectual achievement, with the cry of the 'clever country', what is being done to Australia's intellectual future is appalling. As a member of the Council of the University of Adelaide, I am particularly familiar with some of the economies having to be made at that university, but these are not unique and will be echoed in universities around the country.

It is particularly tragic that the University of Adelaide has found it necessary to remove entirely its drama and dance courses so that the Faculty of Performing Arts will become a faculty of music only. Drama will be eliminated entirely from the university. Admittedly, there is an excellent drama course at Flinders University, but this devastates the performing arts at Adelaide. The abolition of the dance course is particularly tragic. It is the only tertiary dance course available anywhere in Australia and, while there is discussion as to how dance can be articulated with the dance course at TAFE, we will see the abolition of a completely academic approach to the study of dance anywhere in Australia.

Another area being particularly hit is labour studies and women's studies, which have been prime courses in easy access to the university for many people who have returned to tertiary study at a later stage in their lives, where relevant life experiences are considered as qualifications for entry. A vast number of people who missed opportunities for higher education when they left school have taken advantage of these courses and benefited enormously.

A university is a repository of knowledge, experience and our culture. It is appalling that access and cultural programs are being particularly hit. It seems a strange set of priorities that devalues cultural and intellectual ones. Amanda Vanstone is causing untold damage to our intellectual life, our cultural aspirations and the civilised values of our communities.

The Minister for the Arts should be most concerned at this decimation of future experience in vital areas of the arts which is occurring and its effect on the future of the Helpmann Academy. I hope that she is taking appropriate action with her counterpart in Canberra and doing what she can to reverse these tragic and appalling steps which the universities are being forced to take because they have been so thoroughly 'vanstoned' in recent times.

INFORMATION TECHNOLOGY

The Hon. R.D. LAWSON: One of the first acts of the Brown Liberal Government was to commission the IT 2000 Task Force which produced the IT 2000 Vision. There have been many achievements in consequence of the adoption by the Government of some of the strategies laid down in that report. Widespread publicity has been given, for example, to the establishment in this State of the Motorola Software Development Centre, the Tandem Asia Pacific Advance Development Centre and the EDS Asia Pacific Resource Centre, but there are many other success stories in the field of information technology and I want to mention a couple of them, not all as grand, many on a lesser scale, but nonetheless important.

For example, it was announced recently that the Australian Information Technology Engineering Centre (AITEC) had signed its third major export contract. This announcement, made at the end of September, related to a contract that AITEC had entered into with an Indonesian human resources company to provide training for telecommunications engineers from PT Telecom in Indonesia. The contract is worth $10 million over time and will involve the training of a large number of engineers and management personnel. As I said, this is the third contract that AITEC has secured in the past 12 months.

AITEC was established by the three South Australian universities and the South Australian Department of Employment, Technical and Further Education to train a new breed of information technology and telecommunications professionals. The company offers a number of innovative education and training programs—about which the Hon. Terry Roberts might be interested, bearing in mind the question he asked—including the Masters of Engineering and Information Technology and Telecommunications and a two year graduate diploma in mobile communication systems. AITEC is one of the many success stories in the South Australian IT field.

Another is the South Australian Academic Research and Development Network (SAARDNet) which is the regional network and which links, by broadband microwave and fibre links, a number of expanding areas of research and industry collaboration in and around the City of Adelaide. SAARDNet provides a high-speed, microwave backbone network enabling greater data, voice and video communications

between the institutions of higher education and research institutes in this State. To the north of Adelaide, it encompasses the Defence Science and Technology Organisation, The Levels campus of the University of South Australia at Technology Park and, within the city, University of Adelaide, University of South Australia, CSIRO Division of Human Nutrition, Royal Adelaide Hospital and others. That network was launched in September of this year.

Earlier this week, I had the honour to be present at the conference being conducted by Stowe Computing Australia, a small company which developed a local government package called TCS and also a library package called Book Plus. This company employs 90 people in South Australia in information technology, up by 70 people over the past year, whilst it is redeveloping its products which have already enjoyed considerable success in Australia amongst a large number of local government authorities and also in the United Kingdom, South Africa, France and Switzerland. The company is to be congratulated.

TRANSPORT, COMPETITIVE TENDERING

The Hon. T.G. CAMERON: The competitive tendering process that is currently being carried out by the Passenger Transport Board is in crisis. It is a process in which not enough effort has been placed into attracting bids for the operation of bus services from competent operators. It is a process which relies on squeezing drivers' wages to gain higher profits and lower costs. It is a process which has replaced a transport monopoly with a duopoly. It is a process that has been severely criticised for its lack of planning which has led to major problems in bus route linking.

The Brown Government's competitive tendering strategy is entirely based on the ideological belief that economic growth is primarily the role of the private sector. It clearly believes that the private sector is more efficient and effective than the public sector and, therefore, any transfer of functions to the private sector will automatically lead to an improved economic performance. The PTB argued that competition would lead to a more efficient and customer-friendly service. It argued benefits to the public would include improved services, lower user costs and charges and improvement in the Government's budgetary position.

There is very little evidence available that shows competitive tendering has improved competition, reversed the decline in passenger numbers, improved services, produced any real savings or led to an improvement in the budget position. In fact, evidence points to the opposite. Let us look at the results. First, rather than competitive tendering leading to a more efficient system through competition it has led to a situation where a monopoly has been replaced by a duopoly. Just two companies—Serco and TransAdelaide—currently provide services in metropolitan Adelaide, not including Hills Transit.

In his 1996 annual report (at page 405), the Auditor-General said that to enhance the tender evaluation process the PTB should:

> . . . re-examine the manner in which the whole-of-Government financial evaluation tests are applied. . . and the Passenger Transport Board should become more pro-active in soliciting bids from operators.

Under a fragmented system operated by a variety of different companies, it will become increasingly difficult to coordinate the bus services in Adelaide's metropolitan area. Already there is evidence of problems occurring with bus route linking. A recent submission paper by the Passenger Transport Board on metropolitan bus service contracts and city bus routes states that should TransAdelaide fail to win future tenders for inner suburban service contract areas and these are instead won by contractors, it will no longer be possible to maintain through-city bus route linking.

The paper argued that this will result in a number of serious problems including: increased bus requirements and increased costs; greater volume of buses on central city streets and, therefore, increased chances of congestion; a requirement for additional bus stop kerb space on central city streets; and a requirement for increased bus layover space at terminal points.

Secondly, the 1996 Parliamentary Program Estimates show that the annual public transport patronage in Adelaide has continued to fall from 49.1 million in 1992-93 to 44 million in 1995-96, a reduction of 10.4 per cent over three years. Thirdly, while the Public Transport Union has made it clear that it is not opposed to the process of competitive tendering, it believes savings should not be made at the expense of drivers' wages. A promised mid-process review into the tendering process is yet to be released but, incredibly, the Minister has decided to accelerate the restructuring of public transport. The *Advertiser* recently reported that TransAdelaide is being given just three months to reach a deal with the Government to operate the half of the bus system not already managed by contractors.

The competitive tendering process is in crisis. It is just not good enough for the Minister to sit in this Chamber and say that there are no problems with the tendering process when it is painfully obvious to all concerned that there are. Instead of washing her hands of the competitive tendering process, the Minister should be acting decisively to ensure that the PTB gets its act together, listens to the advice of the Auditor-General and sorts out the tendering process mess.

Under the Brown Government, the State's public transport system is in decline as private transport increasingly becomes the normal mode. This can be reversed only by improving the relative attractiveness of the public services, and there are good reasons to believe that this will improve the outcome. Environmental concerns, problems with congestion and urban planning issues are all amenable to public sector solutions. The Labor Party is committed to public transport not only because it is fair and just that all South Australians have access to it but because many of the solutions to the public transport problems cannot be solved by reliance on the private sector and self-interest alone.

The PRESIDENT: Order! The honourable member's time has expired.

CONSTITUTION ADVISORY COUNCIL

The Hon. J.C. IRWIN: It is my intention to refer briefly to the South Australian Constitution Advisory Council's first report, which was tabled earlier this month by the Premier. Some people in this Chamber influenced the Government to establish the process that was set up to have a South Australian Constitution Advisory Council, so it is my intention the week after next to move a motion to note the report. I realise that it is a very big report of some 350 pages and that I have no hope of getting through a very quick precis of that in the time available to me today, but I would like to make a start. Its first report addressed only half its terms of reference and there will be another report in due course which will cover the second part of its terms of reference (C and D).

The Constitution Advisory Council was established by the Governor-in-Council in September 1995 and has met at least once a month since that time. I understand that it has met all over Australia, in regional, country, metropolitan and Aboriginal areas, and that any group which wanted to make a submission to the council had a chance to do so.

The council is chaired by Associate Professor Peter Howell and comprises the following members: Mrs Fran Awcock, who is the State Librarian; Ms Joy Battilana, who is a Senior Panel Review Officer with the Public Service; Ms Vickie Chapman, Barrister and Solicitor; Mr Patrick Conlon, Barrister and Solicitor; Mrs Rosemary Craddock, Solicitor and Mayor of Walkerville; Ms Michelle den Dekker (or Fielke, as we would know her), an international sportsperson; the Hon. A.J. Forbes, former Federal Minister; Ms Audrey Kinnear, Policy Adviser, Housing Infrastructure and Health Branch, Aboriginal and Torres Strait Islander Commission; Mr Michael Manetta, Barrister; Mr Matthew Mitchell, Barrister and Solicitor (and I think Mayor of Prospect); and Mr Brad Selway, Solicitor-General, South Australia.

That is a very comprehensive group of people, some very well known in their professional areas and some perhaps not so well known. Much care was taken to make sure that this group represented as many views as possible within the South Australian community—male, female, Aboriginal, non-Aboriginal, Labor, Liberal, Democrat, trade union, academic, or whatever. No-one has commented to me nor have I heard any public comment that it is a biased council. Anyone who has a chance to read the recommendations will find that most of them are unanimous. That was not the case with the constitutional committee which was set up in Western Australia a few years ago and which presented odd recommendations that were not unanimous.

The council's principal task has been to investigate and, after extensive consultation with the people of South Australia, report on the constitutional arrangements which will best sustain national unity and regional diversity into the twenty-first century. The constitutional question which has been most in the spotlight since 1992 is the fact that Australia shares a monarch with the United Kingdom, New Zealand, Canada, Papua New Guinea and a dozen other nations. This came to the fore because the last Prime Minister, the Hon. Paul Keating, had made it very plain that, if re-elected, he planned to hold a referendum on whether Australia should become a republic.

Two successive Leaders of the Opposition in the Federal Parliament, Mr Alexander Downer (now the Hon. Alexander Downer) and the Hon. John Howard, had responded that, if the Coalition won Government in 1996, it would summon a 'people's convention' to review Australia's constitutional arrangements. These commitments possess the potential to have important consequences for the States. I will leave my speech at this stage, and when I move the motion to note the report I will cover this more fully.

TRANSPORT STRIKE

The Hon. A.J. REDFORD: I move:

That this Council deplores the actions of the Australian Workers Union and affiliated metals unions for their unnecessary bans and pickets on Tuesday, 12 November 1996, which caused so much inconvenience and distress to public transport users, especially year 12 students at their exam time.

I understand that in the afternoon of Remembrance Day (last Monday) the leadership of the AWU hatched a plot to disrupt the exams of year 12 students.

The Hon. K.T. Griffin: They thought it would be good publicity, did they?

The Hon. A.J. REDFORD: Given their actions in this matter, it is hardly surprising that they would make such a big misjudgment. In fact, I understand that they notified the Minister's office at 5.30 p.m. on 11 November 1996 of the strike and picketing action that was to take place on Tuesday, 12 November 1996. It is important to note that 5.30 is beyond the deadline for any of the television news media to bring a story to the attention of the many hundreds of thousands of commuters that buses would not be available the following morning.

That is to be contrasted with the public utterances of the Public Transport Union issued on 11 November 1996. For those who are not familiar with how this complex and convoluted union structure works, the Public Transport Union is responsible for those members who work on trams, buses and railways and who are responsible for their driving; whereas the AWU is responsible for those who work in the repair and metalwork shops and who are responsible for the maintenance of buses, trains and trams under the control of TransAdelaide.

The Public Transport Union issued a notice to TransAdelaide PTU members. I will read parts of that because I think it is important to contrast the attitude of the leadership of the AWU with the attitude of the Public Transport Union with regard to industrial relations matters. As members ought to know, industrial relations negotiations are always conducted in the context of the environment, both economic and social, and in terms of the economy that exists from time to time. I want members to contrast what the Public Transport Union said to its members with the outrageous conduct of the AWU. The notice states:

> Members would by now know that TransAdelaide and the Passenger Transport Board will enter contract negotiations for the remaining 50 per cent of Adelaide's metropolitan bus services. . . It is interesting to note that the General Manager, Kevin Benger, in his special staff briefing of 8 November 1996, states:
>
> > We have improved our services, altered our work practices, lifted productivity and saved taxpayers millions of dollars. These achievements are possible because of the workplace agreements. . . as well as the changes implemented in servicing and administration. . . We have had many disagreements within the workplace, faced difficult decisions and made difficult choices.

Commenting on that, Mr Crossing, the Branch Secretary of the Public Transport Union, said that the success to date in achieving outcomes has been underscored by the willingness of PTU officers and members to acknowledge the political climate in which that industry operates and to embrace, albeit with some degree of reluctance, those changes necessary to maintain TransAdelaide as a major provider of bus services in metropolitan Adelaide. He goes on to say that the union and the management of TransAdelaide have had a difficult two-year period and that, whilst the future in the long term is uncertain, there is a light at the end of the tunnel. What we saw yesterday was the AWU completely and utterly without remorse turning off that light at the end of the tunnel for the Public Transport Union. In fact, the contrast of the conduct of the AWU with the responsible industrial approach taken by the Public Transport Union is quite stark.

By way of background, passenger transport services in metropolitan Adelaide have been progressively contracted out in accordance with the Passenger Transport Act, which enabled the Minister to outsource to the private sector up to 50 per cent of the activities of the TransAdelaide public transport system as it existed in December 1993. A briefing sheet that I have received indicates that the contracting out of bus services in metropolitan Adelaide has delivered a number of significant benefits including: service improvements, improvements in work practices and productivity, and savings from which the taxpayers benefit. Contracting out of services is now used extensively by Government. Indeed, this practice was initiated by previous Labor State and Federal Governments. It enables the Government to benchmark its operations against the private sector, and it ensures that Governments get good value for money. However, it does not assume that services can always be provided more efficiently by the private sector.

Contracting out of bus services began in 1995 when tenders for the outer south and outer north areas were called. The outer south contract was won by TransAdelaide and the outer north contract by Serco, a private company, and they began operating under contract in January this year. An earlier contracting out process was negotiated with Hills Transit, and services commenced in September 1995. Some of the benefits which have been achieved in relation to this contracting out and which I think are important to note are as follows: first, there are encouraging signs in reversing the Australia-wide patronage decline. Secondly, a customer survey at Lonsdale is showing a positive response. (I might add that TransAdelaide is currently operating that service.) Thirdly, there has been a sustained productivity improvement by bus operators. Fourthly, substantial savings in operating costs have been achieved by new work site agreements and the reduction by 40 per cent of head office staff in over two years.

It would be unfair if I did not acknowledge the very important role played by the Public Transport Union in allowing and enabling the Government to achieve those objectives. To that end, I have no hesitation in congratulating the union on its attitude. But what did we get from the AWU? We got a notice on Remembrance Day at 5.30 p.m. saying to the Minister that it would not provide this very important public service to the community. It is important also to note that generally people who use our public transport system at the moment are those who are disadvantaged: students, the elderly, those who are the subject of a family breakdown, young people, housewives going shopping, and a range of people who have suffered or do not do as well in our society.

The AWU, having made the decision at some time in the afternoon of Remembrance Day and having given notice that it would withdraw its services, went on strike and picketed from 4.30 a.m. until 9 a.m. It picketed rail, bus and tram depots to prevent operators leaving the depots to run normal transport services. The reason it gave was that it was seeking a pay increase, and it claimed that negotiations had broken down. That was despite the immutable fact that the TransAdelaide single enterprise bargaining centre was scheduled to meet at 2 p.m. today. The single enterprise bargaining centre included representatives of all TransAdelaide unions, such as: the Public Transport Union; the Australian Services Union; the Association of Professional Engineers, Scientists and Managers, Australia; the Australian Workers Union; the Australian Rail Professional Officers Association; the Communication Electrical and Plumbing Union; and the Australian Metalworkers Union.

Of those seven unions, only the AWU felt that negotiations had broken down, and it was only the AWU that decided to inflict upon the South Australian public the disruption that was caused yesterday. Not only did it strike or picket notwithstanding the fact that a meeting was to take place at 2 p.m. today and not only did it break ranks with other unions, but it gave virtually no opportunity for people to be warned of the impending disruption. Its actions were taken despite a recommendation by the Industrial Commissioner to postpone any action. This disruptive action was taken despite the offer by TransAdelaide and the Industrial Commission to hold an out-of-hours meeting. This disruptive action was taken despite the imminent meeting of the TransAdelaide single enterprise bargaining centre and despite the position of TransAdelaide that talks had not broken down.

This action caused undue distress to all commuters, particularly year 12 students who are currently engaged in exams. It is important to note that the Public Transport Union, which covers by far the majority of public transport workers, is not in dispute with TransAdelaide. It is my view that the action of the Australian Workers Union and the associated Metalworkers Union which caused so much distress to so many travellers ought to be condemned and deplored. There are 210 metalworkers in a TransAdelaide work force of 2 000. So, a little over 10 per cent of the work force caused tens of thousands of public transport users to be inconvenienced by their actions. Early yesterday, the Minister for Transport (Hon. Diana Laidlaw) issued a media release in which she pointed out that the action would cause anxiety and stress for all year 12 students who rely on public transport to get to exams. She said:

> They already face one of the most important days of their life. These students and their families have enough on their mind without having to worry about actually getting to the exam because of this selfish action, and it will cause hardship to tens of thousands of other passengers.

It is interesting to note that the services of the privates—those organisations such as Serco and Hills Transit, which have been the subject of opposition from various union quarters—were not affected. So, not only has this action been precipitous, from any analysis—and I am sure the Hon. Ron Roberts would agree with this prospect—but it is appallingly stupid action, because it puts its very own members, the public sector workers, at a disadvantage compared to those workers who work for the privates. But notwithstanding that, that union decided to go ahead.

It is interesting to note that after I gave notice of this motion yesterday I had a rather pleasant meal last night with a year 12 teacher at Adelaide High School. The topic, obviously at this time of the year, led to exams and I asked him what the effect of the public transport strike was. He told me that there were three main effects: first, that some students did not make it; secondly, that some students got there late; and thirdly, that many of those who got there were so distressed and concerned that it was his view that they were unable to settle, and certainly a substantial number of teachers felt that it was doubtful that those students could do justice to all the hard work and study that they had put in over a 12 month period. Quite frankly, having shared a house with a year 12 student last year, I believe that for the enormous distress and hard work that they are put through to get a good exam result to be dashed in the manner that was caused by the

Australian Workers Union yesterday was an absolute disgrace.

The Hon. G. Weatherill interjecting:

The Hon. A.J. REDFORD: The Hon. George Weatherill says I am a union basher, and he has just come in late.

The Hon. G. Weatherill: I have been listening.

The Hon. A.J. REDFORD: I draw his attention to the fact that I have been nothing but fulsome in my praise of the Public Transport Union and the way in which it has approached this issue. I would invite the Hon. George Weatherill to explain to this place why it was that the Australian Workers Union felt it had to take that action yesterday, but that the Public Transport Union, the Australian Services Union, the Association of Professional Engineers, Scientists and Managers, Australia, the Australian Rail Professional Officers Association, the Communications Electrical Plumbing Union and the Australian Metal Workers Union all chose not to join in that action.

The Hon. G. Weatherill interjecting:

The Hon. A.J. REDFORD: Why have they taken a separate attitude? Again, the Hon. George Weatherill interjects and asks whether I have rung the unions to find out why? I will be honest and say that I have not.

The Hon. G. Weatherill: I will give them a ring.

The Hon. A.J. REDFORD: I am sure that the honourable member will make his contribution at the correct time. What I did was pick up the paper, and it is obvious, from the article this morning by Michael Foster, that the union was given a fairly good opportunity to explain why it took the action. There was nothing in that article to justify why that union took that action despite the fact that other unions did not see fit to do so. I cannot understand why in a circumstance such as this the union could not have at least given the public a minimum of 24 to 48 hours' notice before it took its industrial action.

Just in case I am misquoted, I have to say that I am not a person who thinks that unions do not have a place in our society. In fact, they play a very important and significant role in our society and our society would be very much the poorer without them. I am not a person who would suggest that unions do not, in some circumstances, have the right—

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: John Howard has said exactly the same thing. I would not suggest that workers do not have the right to withdraw their labour, both singularly and collectively. However, what I am concerned about in this case is the way in which this union behaved. Certainly, Mr Acting President—and I know of your impressive record in the area of industrial relations—I am sure that most responsible union leaders would not support action taken in the manner in which this union took it.

John Braithwaite, the organiser of electricity and public transport, also said that there would be further industrial disruption. One would hope that if there is going to be further—

An honourable member interjecting:

The Hon. A.J. REDFORD: That is what he said in the paper this morning.

Members interjecting:

The Hon. A.J. REDFORD: I am sorry, I stand to be corrected.

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: The AWU file?

The Hon. R.R. Roberts: Yes.

The Hon. A.J. REDFORD: I just hope that Mr Braithwaite—and I stand corrected—will in future in taking this sort of action give people some warning. It was not beyond the wit of Mr Braithwaite to give people notice, because I will tell you what he did. He rang channel 10 in relation to a picket that he put on later in the morning.

The Hon. R.R. Roberts: He rang?

The Hon. A.J. REDFORD: That is what I am told: he rang channel 10 and organised channel 10 to be there. As I understand it—

An honourable member interjecting:

The ACTING PRESIDENT (Hon. T. Crothers): Order!

The Hon. A.J. REDFORD: As I understand it, what got up Mr Braithwaite's nose is that the Port Adelaide drivers changed their shift in response to this proposed industrial action and decided that they would commence their shift earlier than the time within which the AWU said that it would have its pickets: in other words, they got their drivers out earlier. Even the Hon. Ron Roberts would have to concede that the workers in doing that did not cross a picket line. They went to work having changed their shift, having discussed it responsibly with their employers and commenced driving those buses. And they did not cross a picket line.

So, what did Mr Braithwaite do? He rang channel 10 and said that a bus was going to be put out at Port Adelaide to stop them getting back to work. I would invite the Hon. Ron Roberts, if he is game enough to make a contribution on this topic, to call those drivers from the Port Adelaide depot scabs, those members of the Public Transport Union who put the public before the short—term industrial interest, and I will ensure that they get a full transcript of anything he says in that regard. I take note of what the honourable member has said on many occasions by way of interjection. I am told that there will be future rolling bans. I am also told that there will be a refusal on the part of Mr Braithwaite's band of merry men to attend breakdowns. No apology to the public appeared in the paper this morning, and no regrets were expressed in relation to the enormous heartache caused to those commuters who were affected. And I note that there was plenty of opportunity for that to be done.

Finally, in closing, I commend the Minister. As I understand from the paper this morning, she went out and personally tried to warn as many commuters as possible. I have to say—

The Hon. R.R. Roberts: Did she ring up channel 10?

The Hon. A.J. REDFORD: The honourable member—

The Hon. R.R. Roberts: Or the *Advertiser* to have a press release issued?

The Hon. A.J. REDFORD: She did. I went through that part of the speech. In any event, she went out and warned as many people as she could. There were some bus drivers that, notwithstanding this action, managed to get through, and I have to say in response to a comment made under his breath yesterday by the Hon. Ron Roberts that in fact yesterday morning I did catch a bus to work and I was one of the fortunate commuters.

Finally, I invite members opposite to support this motion to condemn and deplore the industrial action that took place yesterday. I invite them to do so on the basis not that I reject workers' right to strike, but that it was done irresponsibly and callously without any regard for those who might be affected. I commend the motion to the Council.

The Hon. R.R. ROBERTS: This motion should not be worded, 'That this Council deplores the actions of the

Australian Workers Union and affiliated metals unions'; it should read, 'That this Council deplores the juvenile, unprofessional way in which industrial relations negotiations between the Minister for Transport and those unions involved in legitimate enterprise bargaining, a system of negotiation that was introduced, supported and legislated for by this Government, have been conducted.'

This problem should not be sheeted home to the Australian Workers Union and Mr John Braithwaite, and at this stage I would make a disclaimer. Mr John Braithwaite is an excellent organiser. He is one of the most thoughtful and professional organisers whom I have come across in 25 years of service to the trade union movement. This man goes to extreme lengths to ensure that he knows the Act and the protocol. He has always been a man of great honour and integrity. He is not only loyal but he is learned to the point that he goes over the hill with caution. I can say without any fear of contradiction that, if John Braithwaite has been involved in any of this action, there would be a sound basis for it and there would be directions from his membership to act as a loyal servant to his members.

This motion is juvenile to the extent that we have the Hon. Angus Redford jumping up at the beck and call of the Minister, whose history in industrial relations is appalling. Her ministry is in tatters. Listening to the thoughtful contribution by the Hon. Terry Cameron about contracting out in his five-minute speech today, we get some slight idea of the inappropriateness of this Minister to handle industrial relations.

The Minister and the Hon. Angus Redford use emotive language, such as, 'At 5.30 on Monday morning the Australian Workers Union hatched the plot to disrupt the examinations of year 12 students.' It is as stupid a statement as for me to say that I know what happened in the Liberal Party room yesterday. I do not know what happened in the Liberal Party room. All I know is that none of the faces has changed, but the public is being expected to believe that everything is fixed. It is a stupid, emotive comment to try to draw the flak away from the Minister's inability to conduct industrial negotiations in a proper and professional way. She does not resort to the process of enterprise bargaining, which her Government has introduced and legislated—

The Hon. A.J. Redford: That is palpable nonsense.

The Hon. R.R. ROBERTS: She will not address herself to the enterprise bargaining system. I will outline the history of what has occurred with these negotiations over the past 12 months. This Minister has resorted to breaking the first principle of negotiation: not to conduct negotiations between parties to an agreement or award through the pages of the press or any other forum. The first principle of negotiation is to conduct negotiations with the parties opposite and not to use third parties, tricks and stunts to try to put a point of view across and disregard the facts of the matter by saying that a plot was hatched to disrupt the examinations of year 12 students. That is palpable nonsense, it is a lie, and the Hon. Angus Redford and the Minister would not be game to walk outside and say it, because they would have to prove it.

The Hon. A.J. REDFORD: I rise on a point of order, Mr Acting President. The honourable member said that what I said was a lie. I ask him to withdraw that.

The ACTING PRESIDENT: That is unparliamentary.

The Hon. R.R. ROBERTS: What the Hon. Angus Redford has asserted is inaccurate.

The ACTING PRESIDENT: Are you going to withdraw the word 'lie'?

The Hon. R.R. ROBERTS: I did, Mr Acting President. I said that it was inaccurate. It was certainly inaccurate, and I still make the challenge to the Hon. Angus Redford—

The ACTING PRESIDENT: You withdraw the word 'lie'?

The Hon. R.R. ROBERTS: Yes. It is inaccurate and does not reflect the true situation. Once again, I extend the invitation to the Hon. Angus Redford, who has some minor training in the law, to step outside and make those assertions, but he knows that the statements that he made are not accurate. He has no evidence to suggest that any motions were moved or decisions taken on the basis that he asserts. This was hatched in the PR section of the Minister for Transport to try to create a diversion and take the public's attention away from her failure to handle industrial negotiations in a proper and professional manner.

The Minister has attacked the integrity of the Australian Workers Union and put all the blame on that union. The Hon. Angus Redford has joined the song and dance band by saying that it was only the Australian Workers Union. I will come to that point and say who was on the picket line and who supported it. The Minister and the Hon. Angus Redford, by referring to the AWU and affiliated metals unions, have shown a fundamental lack of understanding of the industrial relations structure. There were three separate unions involved in the disputation and on the picket lines yesterday: the Australian Workers Union, the AMWU and the CEPU. Therefore, it was not a unilateral action by the Australian Workers Union; it was an action taken by those people who responded to the appropriate enterprise bargaining.

The Hon. Angus Redford talked about the difference between the actions of one union and another. One union, for the edification of the Hon. Angus Redford, is involved in one lot of negotiations and another is involved in other negotiations: there are two separate enterprise agreements. The Hon. Diana Laidlaw obviously has not explained that, but I am happy to attempt to complete her education. By condemning the Australian Workers Union, the Minister and the Hon. Angus Redford are therefore condemning those employees for whom the Minister is responsible and the 16 000 other members of the AWU throughout this State who have had no involvement whatsoever in this dispute.

The Australian Workers Union has negotiated more enterprise bargaining agreements than any other union in the State. It has negotiated with the private sector and the Federal Government. The only place where there has been any trouble has been at the State level. I do not think that will reflect on the AWU and the other unions involved. We have to ask ourselves: if it can deal with private industry—companies such as Gerard Industries, Mitsubishi, Holden, Penrice, Adelaide Brighton Cement, Perry Engineering, a vast majority of local government councils, BHAS, BHP, Western Mining Corporation, CSR and so on—why should its only problem with enterprise bargaining be with the State Government, and this Minister in particular?

I do not think that we should be pointing the finger at the Australian Workers Union with its proud record in enterprise bargaining. I reiterate that it was not the desire of the AWU to introduce the enterprise bargaining system; it was the Government's proposal. The Government wanted this system, but it does not even know how to work it. When we were all under the old award system, we did not have this problem. We would go to the Industrial Commission, put our case, and public amenity was not disrupted. This Government wanted the new world of industrial relations.

If they want a new world, they ought to find out how it works before they go around criticising the system, before they come into this coward's castle attacking individual people, people of high integrity with a great record in industrial relations and the settling of disputes. They come into this coward's castle and name people without any fear whatsoever of retribution.

I need to put on the record a statement that outlines the facts in relation to the transport strike, as opposed to the emotive and union-bashing contribution made here yesterday by the Hon. Diana Laidlaw. An enterprise agreement was certified in the Australian Industrial Relations Commission on 17 February 1993 between TransAdelaide and the relevant unions—the Australian Workers Union, the Australian Manufacturing Workers Union and the Communications, Electrical, Electronics, Plumbing and Allied Services Union—three respondents to that enterprise agreement.

This agreement had a life of six months and therefore expired in July 1993. The agreement contained a provision that negotiations for a new enterprise agreement would commence three months prior to the expiration of this agreement. The reality is that, despite the continual efforts of the union representatives to negotiate a new agreement, the intransigence of TransAdelaide has meant that no enterprise agreement has been forthcoming for the past three years. For three years the Australian Workers Union has been trying to get on with the task set for it by this Government.

On this basis the Australian Workers Union served a notice of initiation of a bargaining period on 29 May 1996 and, subsequently, on 21 October 1996, lodged with TransAdelaide a notice of intended industrial action, which clearly gave 72 hours notice of intended industrial action. This is in line with the requirements under the Act. Both procedures followed by the Australian Workers Union were strictly in accordance with the Industrial Relations Act 1988—hardly a wildcat organisation. It has adhered precisely to the requirements. After lodgment of the 72 hours notice, TransAdelaide sought a conciliation conference before Senior Deputy President Hancock on Thursday 24 October 1996. The commission recommended that:

(a) the parties meet over the next week or two in an attempt to address some of the issues that the parties can agree;
(b) that TransAdelaide was to respond in detail to the union's 14 point claim at the first meeting;
(c) a further meeting was to be held on Tuesday 29 October 1996;
(d) the unions defer industrial action for a reasonable period of time.

The unions, unlike TransAdelaide, followed those recommendations. The unions met with TransAdelaide on Tuesday 29 October 1996. However, TransAdelaide did not give a detailed response to the 14 point claim—instead, they only gave vague, verbal comments on each of the points. Here is the recommendation and order from the independent umpire that says that TransAdelaide ought to do some things. The unions complied, but TransAdelaide failed. When TransAdelaide fails, the Minister fails. Further, the unions did not initiate any industrial action.

Despite an agreement that the parties would meet again on Friday 1 November 1996, this did not occur, because of the cancellation of the meeting by TransAdelaide. It was not cancelled by the unions but by TransAdelaide. Following this cancellation, CEPU members from the signal section corresponded with TransAdelaide on Friday 1 November 1996 (in accordance with the provisions of the award) indicating that they would be taking industrial action. Also in response to this cancellation by TransAdelaide, a mass meeting of all union members was convened for Wednesday 6 November 1996 at 12.30 p.m.

The resolutions passed at that meeting were as follows:

1. That the TransAdelaide enterprise bargaining proposal be rejected;
2. That a campaign of industrial action commence from 3 p.m. on that day, 6 November 1996; and
3. Industrial action to include pickets, bans and limitations and any action deemed necessary.

These resolutions were carried unanimously. So, it was not the mild-mannered John Braithwaite standing over them but a unanimous decision of a mass meeting of the workers involved.

On Thursday 7 November 1996, a further conciliation conference was convened at 10.30 before Senior Deputy President Hancock, where debate continued on the outstanding issues, with further discussions in relation to the options available to the parties, including arbitration of the dispute, via termination of the bargaining period. At that point, TransAdelaide sought an adjournment until 4 p.m. on that day, 7 November 1996. Upon reconvening, TransAdelaide advised that it was not prepared to change its position. It was intransigent.

The parties discussed further options open to them, including the possibility of both sides agreeing to consent arbitration. The union's attitude was to get some consent, not the wildcat strike that members opposite would have us believe was the way of the Australian Workers Union. At the conclusion of the conference, there were a number of outcomes, as follows:

1. The commissioner was not prepared to make a further recommendation as the unions had complied with his previous recommendations. He did not have to make any more recommendations because the unions had complied, but TransAdelaide had not.
2. TransAdelaide was given a copy of the mass meeting resolution dated 6 November 1996.
3. The parties were to consider whether they would agree to the consent arbitration on the matter.
4. The union sought authorisation to meet with delegates on Friday 8 November 1996 to discuss the commission's outcomes.
5. A further conciliation conference was to be held on Monday 11 November before Commissioner Palmer.

On Friday 8 November 1996, unions met with delegates at 1.30 p.m. to discuss the commission's outcome and decided to continue pursuing their enterprise bargaining claim—as is their right.

On Monday 11 November 1996, TransAdelaide staff received correspondence from the Minister for Transport and the General Manager of TransAdelaide, Mr Kevin Benger, in relation to the contracting of bus and rail services, with the first paragraph of this correspondence stating as follows:

I wish to inform you that the State Government has given approval to the Passenger Transport Board to begin negotiating service contracts for the remaining 50 per cent of the bus service areas which are not already operating under contract. Copy attached.

These were the people involved in negotiations—supposedly legitimate enterprise bargaining negotiations—not keeping their end of the bargain, and threatening the unions that they would sell off their facility.

In light of this correspondence, the AWU contacted TransAdelaide, requesting a further meeting between union representatives and job delegates to discuss the implications of this correspondence and to ascertain whether the membership had changed its mind. This is hardly the process outlined by the Hon. Angus Redford that they had this secret meeting

in a smoke-filled room and hatched a plot. Here they were on the same day that he made his allegations, going through all the steps to try to reach a sensible outcome.

The outcome of this meeting was that the membership wished to continue to pursue their industrial campaign. Here we have consultation with their membership, as they are required to do under the 50 per cent rule, pursuant to the South Australian Industrial Relations Act. At 2.15 p.m. on 11 November 1996 a further conference was convened before Commissioner Palmer, at which TransAdelaide advised the unions that they would not agree to consent arbitration.

Here is the union making every attempt through the process to act with absolute integrity, but the Minister, through her representatives—and I will give her that much but she cannot escape the responsibility under the Westminster system—had not complied with the process. On the eleventh hour of the eleventh day in an attempt to settle the dispute without any strike action or disputation the union said, 'Lets go to the independent umpire. We will agree. Commissioner Palmer said, "You ought to do it." We will agree.' But TransAdelaide said, 'Up your nose with a rubber hose.' That is what it said. As no progress was being made, TransAdelaide requested the opportunity to speak to Commissioner Palmer without union representatives being present. The unions made no objection to this request: the unions were trying to fix the problem. Commissioner Palmer then conferred with the union representative and at this stage it was clear to all concerned that industrial action was highly likely.

Pursuant to the discussion with Commissioner Palmer the union officials again contacted the job representatives to ascertain whether they were adamant about continuing their push for a decent enterprise agreement. The response from the delegates was that they had given TransAdelaide every opportunity to resolve the dispute and that the campaign would continue. Mr President, could you blame them after having gone through months of this rubbish and being frustrated in their genuine attempts to reach an enterprise bargaining agreement under the terms of the Act and in compliance with all the requirements of the Act? After three years without a wage rise and despite constant attempts by the unions to negotiate amicably a new enterprise bargaining agreement, despite TransAdelaide's failure to follow the Australian Industrial Relations Commission's recommendation, after TransAdelaide's cancellation of an important meeting which may have resolved the dispute and after TransAdelaide's refusal to let the umpire to determine the issue, the events of Tuesday 12 November 1996 unfolded as follows:

1. Pickets were applied at various sites from approximately 6 a.m. This may have varied from site to site.

2. All metal unions participated, that is, the Australian Workers Union, the AMWU and the CEPU, despite the Minister's assertions that it was only John Braithwaite and 'faceless men from the Australian Workers Union'. Let me address the question of the faceless men from the AWU. The AWU representatives are quite happy to stand before the glare of public scrutiny and say, 'Yes, I was there or I was not.' The truth of the matter is that they were not there. It was the AMWU, John Braithwaite and the CEPU.

3. There were buses and trams in the system which the unions understood would be used for school runs. I am advised that there were approximately 60 of them.

4. The pickets were lifted at various times from 8.15 a.m. onwards. I understand that the exams started at 10 o'clock, one hour and 45 minutes later because they started lifting the pickets at 8.15 a.m.

5. Due to the undue pressure exerted by management at the Port Adelaide depot a further picket was put in place at approximately 2 p.m. and lifted at approximately 2.25 p.m. This is hardly a plot against year 12 kids who were either still doing their exams or had finished them.

The picket was applied at the Port Adelaide depot for specific reasons. On Tuesday morning Mr Braithwaite contacted TransAdelaide, speaking initially to Mr S. Moir and then to Mr Webster to ascertain whether TransAdelaide was prepared to negotiate the award. It was not and it simply advised Mr Braithwaite that there was a further meeting with the unions on 13 November 1996. Confirmation of this meeting was received by the union on the afternoon of 12 November—yesterday. While the Minister and her little sidekick, the Hon. Angus Redford, were in here berating the unions, this was going on. I wish to make the following points:

1. In response to the Minister's statement to the Council that the union gave no notice of industrial action, the facts are as follows:

(a) On 21 October 1995 the union served on TransAdelaide a notice of intended industrial action.

(b) On 7 November 1996 TransAdelaide was given a copy of the mass meeting resolution.

(c) The signals group faxed TransAdelaide advising it that industrial action would commence on 6 November 1996.

(d) In the commission on 7 November the unions advised that they were on a collision course with TransAdelaide. Mr President, you will remember at that point that they had agreed to independent conciliation by an independent umpire.

The Hon. A.J. Redford interjecting:

The Hon. R.R. ROBERTS: Let him prattle on, Mr President, it does not worry me.

2. The Hon. Diana Laidlaw further stated:

> I understand that today TransAdelaide has left at least five calls with the AWU and not one has been answered.

The facts in this instance are that the AWU has no record of any telephone calls made from TransAdelaide and, in fact, Mr Braithwaite made two calls to TransAdelaide. It was the other way around: the hand grenades went back. The AWU receptionist is prepared to sign a statutory declaration to the effect that absolutely no calls were received from TransAdelaide on that day.

The Hon. Diana Laidlaw: We have two very differing opinions.

The Hon. R.R. ROBERTS: The AWU receptionist is prepared to sign a statutory declaration to the effect that absolutely no calls were received from TransAdelaide on that day.

3. The Hon. Diana Laidlaw further stated:

> John Braithwaite and two of his heavies, his unaccountable individuals who are normally behind the scenes, picked on Port Adelaide. . .

In fact, these alleged heavies are the CEPU and the Amalgamated Workers Union officials who represent their members at TransAdelaide, who are part of the enterprise bargaining and who have been involved in the dispute. The persons referred to are not AWU members and, as already stated, are in fact officials of the CEPU and AMWU who quite legiti-

mately needed to be involved in the dispute. I have been forced to speak to the motion today because of the unprincipled, juvenile and unprofessional action of the Minister and the Hon. Angus Redford in bringing their industrial relations procedures into this place.

Obviously, the plan was to rise today and once more abuse *bona fide* union officials going about their business in a professional and proper manner, safe in the hope that they could hide for another fortnight when the glare of the publicity has gone away. They have tried to slip the motion into the Council because they know that these matters are normally decided by Caucus. As I intend to move an amendment to the motion, I need time to discuss this matter with my Caucus colleagues and I seek leave to conclude my remarks.

Leave granted; debate adjourned.

NOBEL PEACE PRIZE

Adjourned debate on motion of Hon. T.G. Roberts.

That this Council congratulates the joint recipients of the 1996 Nobel Peace Prize, Bishop Carlos Belo and Jose Ramos Horta, recognising the work done to establish a just and lasting peace for East Timor.

(Continued from 6 November. Page 341.)

The Hon. BERNICE PFITZNER: I speak in support of the motion that this Council congratulates the joint recipients of the 1996 Nobel Peace Prize, Bishop Carlos Belo and Jose Ramos Horta, recognising the work done to establish just and lasting peace for East Timor. These two prominent East Timorese have worked, and are still working incessantly, to obtain peace and self determination for East Timor. They, indeed, deserve the Nobel Peace Prize for this year.

It is interesting to note that Mr Alfred Bernhard Nobel (1833-1896)—now 100 years since his death—was a Swedish chemist, entrepreneur and philanthropist. He invented dynamite and developed nitroglycerine as a high explosive. He was so appalled at the use of explosives in war that he bequeathed a considerable fortune to institute the Nobel prizes. One of these prizes is for the promotion of world peace. Therefore, it seems fitting that, 100 years after his death, these two eminent East Timorese people have won the peace prize out of an ongoing troubled and war torn island that is East Timor.

Bishop Carlos Belo remains in Dili, East Timor, to tend to the suffering. Mr Jose Ramos Horta is unable to return to his homeland and travels the world as the external representative of the East Timor Resistance. A third person to be remembered is the resistance fighter, Mr Xanna Gusmao. I remember when Mr Gusmao was captured some five years ago. It was a sad time. At that time, I moved in Parliament a motion for East Timor to be allowed the right to self determination. I recall that that motion passed unanimously at that time.

Recently, I noted that the Senate has passed a motion through Senator Bob Brown of the Green Party which reads:

That the Senate—

(a) congratulates Bishop Carlos Belo and Mr Jose Ramos Horta on their unremitting work in support of independence for East Timor and the recognition of their contribution by the award of the Nobel Peace Prize;

(b) it notes that a report by the Indonesian Commission on Human Rights accuses the Indonesian Government and security forces of deliberately provoking violence in Jakarta in July 1996 following the ousting of the leader of the Indonesian Democratic Party, Mrs Megawati Sukarnoputri; and

(c) calls on the Australian Government to support self determination for East Timor and to represent forcefully to the Indonesian Government Australia's support for democracy and the rule of law in Indonesia.

The Australian Senate must be congratulated for having passed this motion. Only this week, we became aware of the incident in Malaysia with regard to a conference on East Timor. It was reported that the conference was banned and as a result the participants were arrested. There is, however, some doubt as to whether the banning of the conference in Malaysia was confirmed.

Yesterday, there was a commemoration ceremony on the steps of Parliament and I and my colleagues the Hon. Sandra Kanck and Hon. Terry Roberts took part. It was, indeed, a deeply moving event, an event that identified and focused on the atrocities, torture and sufferings of our East Timorese friends, friends who helped us Australians in the Second World War.

I would now like to read the moving articles that were contributed at yesterday's East Timor commemoration function by the nine invited speakers, which included the three of us from the Legislative Council, and researched by Dr Julie-Ann Ellis who is the chairperson of the Campaign for Independent East Timor. The first is entitled 'Death at the Balibo massacre 1975'. On 16 October 1975, five Australian and British newsmen were killed in Balibo, East Timor. This account of their death is by Leong, a Chinese Timorese, and I quote:

Three men I know saw what happened when they killed the Australian journalists in Balibo. Balibo was bombed first and the people ran away. My friends came back to Balibo with Indonesian soldiers. The journalists screamed 'Australian, Australian'. An Indonesian leader told others to tie the journalists up. Then he told them to use the knife and kill them. Afterwards they were burnt. They were killed inside a house with knives and afterwards burnt with petrol.

The second contribution related to the massacre at the Dili jetty. Mr and Mrs Siong, Chinese Timorese residents, recall this massacre as follows:

The bodies were just lying where they fell on the wharf; they had been shot. There were a lot of iron pipes on the wharf and we must tie the dead bodies on to them with parachute rope and throw them into the sea. We tie the rope through the hole in the pipe and tie the body on to that. After we threw in those dead bodies, some Chinese Timorese from Colmera came, 17 or 18. I knew all of these people, they were friends and neighbours. All were too frightened to speak, there was no crying, no noise. People came in groups of two or three or four, stood on the wharf and were shot. One group after the other coming and coming, killed and thrown in the sea. We were trembling, we were nearly gone mad, but we do not know what to do, just do whatever the Indonesians want. One killed with those Colmera people was an Australian man. The soldiers pushed him. He was talking to them, saying, 'Not Fretilin, Australian.' He spoke English. I understood it. They pushed him, tell him to face the sea. He refuses to do this and the Indonesians just fired at him. He falls straight into the sea.

The third contribution related to a flight to the mountains in 1976. Fatima Gusmao fled to the mountains with her husband, Jose, when the Indonesians invaded. Here is Fatima's story:

In 1976 we went to a small village outside Ainaro in the mountains. In one house there was a pregnant woman and some children, and those people did not want to come with us. The man says they have not guns, why would the Indonesians harm them? We go further up the mountains but we can see the house and the road. We hear a big helicopter flying overhead. Along the road we see 20 Indonesian soldiers coming. We hear screaming. The helicopter goes down and lands there. Out of it they bring things, stretchers,

yes. The soldiers come out and throw, it looks like material on those. They get into the helicopter and go. A figure comes out and it looks like it is carrying something. It walks slowly, not steady, then sits down. Some of us go to see how those people are. When we get closer to see, it is the pregnant woman outside. She is naked. She holds herself, all her stomach is cut open, the baby and everything coming out. The blood has started to dry black. Tears run from her eyes all over her face. We can do nothing for her. We try to take the baby out but it is dead, cut by the knife.

The other people inside the house are all dead, cut completely in pieces with very sharp knives. The small children are broken, torn apart by their legs, like you tear paper. . . Those of us who had not seen them before understand then that the Indonesians come just to kill us all.

The fourth contribution concerned napalm used in the countryside during 1978. The use of napalm was confirmed by a US Defence Department official in Washington. It was used extensively for a period of three months. Lourenco described his experience of napalm bombing in 1978 as follows:

We knew by radio from the south zone that the Indonesians had dropped four napalm bombs there. Then they dropped two of these on us. I saw all the flames and heard people shouting and screaming. I was on another mountain but I could see well; there was a close view of it, straight across. Some of us set out straight away to help those people. By foot it took half an hour to go down and up again, and by the time we got there everything was completely burnt. We saw a whole area about 50 metres square all burnt, no grass, nothing except ash.

On the rocks it was a brown reddish colour and on the ground ash, too, not ordinary grey ash, a sort of yellow ash, like beach sand. You couldn't see where bodies had been. There was nothing except ash and burnt rocks on the whole area, but we had heard those people screaming. The whole population were very upset—no bodies of those people left to bury. My cousin said, 'If this is what they can do there is no hope for the world.'

Contribution five concerned starvation in the rural areas. The quote is as follows:

In October 1979, the Jakarta correspondent of the *Sydney Morning Herald* dispatched pictures of East Timorese suffering from severe malnutrition in the camps of Laga and Hatiola. Ruby and Olinda went out from Dili to try to help the Red Cross. In 1979, a Timorese family we knew were helping the Indonesian Red Cross. Some of us volunteered to work with them, and this is their story: Every morning we went to the Red Cross centre and boiled milk and poured it into plastic buckets to distribute. Only once we went outside Dili, to Dare, near the mountain. Many Timorese came to us there, old men, women and children. Some of them didn't look like human beings—very skinny, some with very big stomachs, thin arms and legs and very bony. Some had their skin gone strange colours.

We had never seen anything like it. You push the flesh and it doesn't come back out again. They had terrible sores; the skin would come off because the flesh had gone rotten. We could not do very much for them—clean the sores with tweezers and cotton wool, wash with antiseptic. We were very shocked. Mothers gave their babies the cup of milk we brought and this would be all they had. We could never go again though. We were told there were no supplies. But we saw clothes and good canned food come in. After about one year they closed our Red Cross group. They said there was nothing to distribute and no work to do.

Contribution six concerns 'The Fence of Legs, 1981'. This is Christiano Da Costa's account of the action known as the Fence of Legs, which went on from July until September 1981 and entailed the forced recruitment of males from the age of eight to 50 to form a human chain across the island from north to south. These chains then marched eastwards and westwards respectively, converging on the plains of Manatuto. This is their story:

The front line was Timorese, forced to take part. When the circle was small enough, the army bombarded the area, then soldiers went in to finish off any people left there. One week later I was forced to go with a group of soldiers to do a final clean-up. . . We smelt the bodies before we found them. The heads had been cut off the first bodies, one woman and four men. . . The bodies were swollen and the clothes split. The heads were still on the other bodies I saw. We found three men tied by the feet hanging upside down in the trees. . .

Contribution seven concerned a place called Lacluta in 1981. Many refugees have described an incident in Lacluta, south-east of Dili, in September 1981, in which at least 400 people were killed, mostly women and children. An eye witness to this event stated:

Indonesian soldiers took hold of the legs of small children and threw them around in the air a number of times and smashed their heads against a rock. There was a woman who asked that one of the children be given to her after the mother had been killed. . . a few minutes later he [the soldier] grabbed the child and killed him. The poor woman who asked for the child was then killed. There was one other woman who asked for one of the children to be given to her. . . the army person destroyed the body of this small child, who had done no wrong. And then this soldier opened his mouth, showing his teeth with a smile and said, 'When you clean your field, don't you kill all the snakes, the small and large alike?'

Contribution eight was with regard to the Kraras massacres in 1983. Celestino dos Anjos trained as a commando in Australia during the Second World War. A smuggled letter from Celestino's son, Virgilio, dated 2 March 1984 tells of Celestino's death as follows:

On 27 September 1983 they called my father and my wife and not far from the camp they told my father to dig his own grave, and when they saw it was deep enough to receive him they machine gunned him into the grave. They next told my pregnant wife to dig her own grave, but she insisted she preferred to share my father's grave. They then pushed her into the grave and killed her in the same manner as my father.

Celestino's death was just one among many in September 1983 during the weeks of what became known as the Kraras massacres, where over 1 000 people died in the area, mainly civilians. Virgilio tells how forces looted, burnt and devastated everything and massacred over 200 people inside their huts, including old people, the sick and babies.

Finally we hear of the infamous Dili massacre. On 28 October 1991, Sebastiao Gomes was killed by Indonesian soldiers. On 12 November 1991, 2 000 people joined a procession in his memory to Santa Cruz cemetery. About 10 minutes after the procession reached Santa Cruz many armed soldiers arrived, marching to the cemetery entrance. Without warning they fired on the crowd, killing many trapped by the cemetery's high walls and shooting in the back others attempting to escape. Wounded people lying on the ground were beaten with truncheons and gun butts and slashed and stabbed with knives.

Bodies of the dead were loaded on to army trucks and buried in unmarked graves or dropped at sea. Many wounded were taken to military hospitals where most were 'finished off' by being driven over by trucks, having their heads smashed by large rocks or being given injections of acid. An estimated 300 people were arrested in the following weeks. Military authorities prevented relatives, the United Nation's Special Rapporteur on Torture and the Red Cross from visiting those in prison and hospital.

On 15 November, about two weeks later, a further 60 to 80 people were taken from prisons to the outskirts of Dili, stripped, blindfolded, tied up and pushed into large unmarked graves and shot with machine guns. Although we remember the Santa Cruz massacre on 12 November, the killing went on for weeks, and Amnesty International estimates the number killed to be 270.

These events are harrowing and unacceptable by our standards or that of, I believe, anyone. They tell of the great suffering of these people. It is therefore fitting that the Nobel Peace Prize has been awarded to these persons from East

Timor, as it not only honours them but all the people of East Timor. More importantly, it is an indication of strong international support for the long suffering and courageous people of East Timor. In this day and age we should cease such practices. I support the motion.

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

VOLUNTARY EUTHANASIA BILL

Adjourned debate on second reading.
(Continued from 6 November. Page 344.)

The Hon. P. NOCELLA: I rise to add my contribution to the debate on the Voluntary Euthanasia Bill introduced last week in the Council by the Hon. Anne Levy. I do so in full knowledge of the difficulty that this subject creates. It is a difficult subject because it forces us to confront our own fragility and the finality of life and because it raises fundamental questions about the worth of human life and, in some cases, the sacrality of life. As such, it is a subject which, to some extent, is uncomfortable for many of us, but it is one that we need to face, because the Bill is before the Council and we will be asked to vote on it, to search our conscience and decide whether we wish to support it.

I support the Bill, and I do so for a variety of reasons. I support the Bill because it is about human dignity, freedom of choice and civil liberties. This Bill seeks to allow those members of our community who wish to terminate their life because they are suffering intolerable pain to do so without incurring criminal sanctions, as is the case now. For many members of our community, it will be a surprise to learn that euthanasia already exists and has been in existence for a long time, practically since the advent of conventional medicine. Various surveys have revealed that medical doctors are often asked to assist patients to terminate their life, and that a proportion of them have done so and do so regularly. A quote from the former Chief Minister in the Northern Territory (Mr Marshall Perron) may be relevant. He said:

> It is surely preferable to have voluntary euthanasia tolerated in specific circumstances with stringent safeguards and a degree of transparency than to continue to prohibit it officially while allowing it to be carried out in secret beyond any form of control.

So, euthanasia has been in existence and continues to be.

The Bill seeks to regulate this matter and to allow people in our community who wish to do so to put an end to their life in cases where they are hopelessly ill and have expressed a desire for the introduction of procedures to terminate their life subject to appropriate safeguards. We all understand that the supporters of voluntary euthanasia insist on stringent safeguards, and quite rightly so. I have read the Bill, and I am sure that the safeguards contained in it are stringent. In fact, I counted in excess of 10 different steps that need to be taken in order to arrive at the completion of the process. Clause 10 entitled 'Revocation of request' seems to me to be the final safety valve. It provides:

> (2) A written, oral, or other indication of withdrawal of consent to euthanasia is sufficient to revoke the request even though the person may not be mentally competent when the indication is given.

It seems to me that that offers the ultimate safeguard.

Having satisfied those legitimate concerns, I now ask: what is the feeling of the community? Most surveys seem to indicate that the community at large is showing a higher and higher degree of approval of voluntary euthanasia. Surveys taken over 10 years ago show that 70 per cent of the community were in favour of voluntary euthanasia with approximately 15 per cent against. The latest polls confirm this attitude. A Newspoll survey in July this year shows that 75 per cent of the community is in favour and 18 per cent against. A Morgan poll last month shows 76 per cent in favour, 17 per cent against and 7 per cent undecided. So, the community is expressing a view in very unequivocal terms about how it feels about voluntary euthanasia.

Vis a vis the community, how does the medical profession feel about euthanasia? The Bill contains a conscientious objection provision which ensures that no medical practitioner or other person need in any way take part in the provision of voluntary euthanasia if they do not wish to, and that no detriment can result to them from such refusal.

Similarly, any hospital, hospice, nursing home or other institution may refuse to permit euthanasia on its premises. So, we have those safeguards for the profession, a profession which, as we know, has practised and continues to practise euthanasia and which has expressed, in 1994, by means of a postal survey of almost 1 300 registered doctors in New South Wales and the ACT, that a majority of 58 per cent of respondents believe that the law should be changed to allow active voluntary euthanasia. This is a recent view from the profession, so that also helps us to understand the general feeling in the community and in the profession.

Some strong opposition has been voiced and continues to be voiced by religious leaders who attach almost a sacred value to life. For them it is a matter of realising that this Bill does not seek in any way to alter the way they feel or behave, but simply seeks to allow those members of our community who now are not adequately catered for to proceed with practices that will allow them to put an end to a life of intolerable pain. People who hold dear strong beliefs about the religious interpretation of the values of life are not affected in any way. They can continue to hold their beliefs in exactly the same way as they have in the past. The Bill is not for them. If they disagree with voluntary euthanasia, they will not use it. However, they should not deny others the right to use it if and when they want to.

In conclusion, the Bill ultimately does not seek to impose anything on anyone. In the end, it will be left to our individual consciences to decide whether to support this Bill or oppose it. I hope that after interrogating our consciences we will not decide to deny others the right to exercise their conscience to put an end to a life of intolerable pain. I support the Bill.

EQUAL OPPORTUNITY (APPLICATION OF SEXUAL HARASSMENT PROVISIONS) AMENDMENT BILL

In Committee.
(Continued from 6 November. Page 362.)

Clause 2—'Sexual harassment.'

The Hon. CAROLYN PICKLES: I move:

> Page 1, after line 17—Insert new subsection as follows:
> (6ab) Subsection (6a) does not apply in relation to anything said or done by a judicial officer in court or in Chambers in the exercise, or purported exercise, of judicial powers or functions or in the discharge, or purported discharge, of judicial duties.

This is one of two amendments that I have placed on file in order to answer the concerns expressed by the Attorney and also by the Chief Justice, who wrote to me in respect of the

application of the sexual harassment provisions to judicial officers.

I agree that it is important to leave judges unfettered in the exercise of their judicial functions, whether that be in Chambers or in open court. That is not to say that improper comments could theoretically be made by judges to their associates in court, but this is a delicate area where there are important constitutional considerations to be balanced against the interests of individuals who might suffer in these circumstances. The fact is that there would be practical difficulties if litigation could be instigated based on a judge's behaviour during the exercise of his or her judicial functions; for example, in terms of dragging in witnesses to the alleged impropriety, that might involve parties to other litigation, their barristers, possibly a jury that was in the courtroom at the time, and so on. Equally importantly, one would not want any case of charges against a judge to subvert the judicial activities of the judge. So there are some problems there, and I have addressed these with the amendments. If the Attorney believes that there should be further refinement in respect of the procedure to be applied for judges, I will be happy to consider any suggestions.

I would like to point out that in his correspondence to me the Chief Justice said that he would support the Bill if I put in these amendments. I hope that the amendments satisfy the concerns of the Chief Justice.

The Hon. K.T. GRIFFIN: I have already indicated the Government's position on this Bill. We support the principle, but there are matters that need further attention, as I outlined last week. I do not intend to oppose the passage of the Bill, as the Hon. Carolyn Pickles is anxious that it be passed. However, the Government will be introducing a Bill of its own into the Legislative Council which more comprehensively deals with some of the issues that I think still need to be addressed in relation to the principal issues relating to judicial independence and also the relationship between the Equal Opportunity Commissioner and tribunal to the Parliament in the context of parliamentary privilege. Hopefully, that will be introduced before the end of this part of the session prior to Christmas so that members can consider the development of those matters to which I have referred. They do not impinge on the principle that members of the judiciary, the magistracy, members of Parliament and local councillors ought to be the subject of the constraints imposed by the Act relating to sexual harassment.

There is no disagreement about the principle, but there is disagreement as to how that principle is best reflected and what processes should be in place to deal with the interface between the Executive arm of Government and the Parliament and the Executive arm of Government and the judiciary. My officers are presently directing their attention to those issues with a view to having a Bill available in the not too distant future.

Amendment carried.

The Hon. CAROLYN PICKLES: I move:

Page 1, after line 18—Insert new paragraph as follows:
(aa) a member of his or her staff; or

Upon close consideration of the drafting of the new subclause (6b) it became apparent that we had not dealt with the situation where a member of Parliament might be harassing a member of his or her staff in the member's electorate office. The problem arises because the worker will probably not be an employee of the MP legally; the worker is more likely to be an employee of the Department of Industrial Affairs. Thus, there would not be coverage under the existing provisions of the Equal Opportunity Act.

It would be pointless to extend coverage to MPs if we were talking only about their behaviour in Parliament House. A case has come to light recently that was not dealt with by the Equal Opportunity Tribunal. I believe that the Hon. Sandra Kanck has also alluded to a case of which she is aware which has recently come to light and which highlights the difficulties. However, the case referred to by the Hon. Sandra Kanck did not involve an MP in an electorate office. I believe this will make the issue clearer.

Amendment carried; clause as amended passed.

New clause 3—'Investigations.'

The Hon. CAROLYN PICKLES: I move:

Page 2, after line 4—Insert new clause as follows:
Amendment of s.94—Investigations
3. Section 94 of the principal Act is amended by inserting after subsection (6) the following subsection:
(7) This section does not empower the commissioner to require the production of any books, papers or documents relating to the exercise, or purported exercise, of judicial powers or functions, or the discharge, or purported discharge, of judicial duties by a judicial officer in court or in chambers.

As I have previously outlined in relation to clause 2, I would not want the operation of the sexual harassment provisions to impinge upon the exercise of judicial functions by judicial officers. The purpose of the new clause is to limit the Equal Opportunity Commissioner's power when it comes to requiring the production of documents, and so on, which might be involved in a judicial officer's carrying out his or her duties.

New clause inserted.

Title passed.

The Hon. CAROLYN PICKLES: I move:

That this Bill be now read a third time.

I thank the Attorney-General and the Australian Democrats for facilitating the passage of this Bill today. I realise that the Hon. Sandra Kanck, who had the carriage of this Bill on behalf of the Australian Democrats, is not here today, but we have contacted her by telephone and she is keen for it to go through today, because we have delayed on this issue for a very long time.

The Attorney-General has indicated that he will be bringing in his own Bill. I think that it should have been possible to amend the Bill that I have introduced, although I understand that the Attorney-General is amending other sections of the Equal Opportunity Act. I will await his Bill with interest. However, I indicate now that I will not be satisfied with anything less than members of Parliament being treated in the same way or with the same fairness as members of the public. I believe that if we try to deal with issues relating to parliamentary privilege and in any way give members of Parliament extra protection, we are not doing our job.

I believe that we must be very careful to set a public image—a public image which is often tainted by the press—and any suggestions of sexual or other harassment which are not dealt with appropriately and properly under the law will leave us open to allegations of impropriety. All of us are affected by those allegations, especially when names are covered up. Whenever there are public discussions about sexual harassment, almost every male member of Parliament in this place is often considered guilty by implication. That is an unfortunate set of circumstances, but I believe that this serious issue should be dealt with appropriately. I await the Attorney-General's Bill with interest.

Bill read a third time and passed.

SOCIAL DEVELOPMENT COMMITTEE: PROSTITUTION

Adjourned debate on motion of Hon. Bernice Pfitzner:

That the report of the Social Development Committee on an inquiry into prostitution be noted.

(Continued from 23 October. Page 248.)

The Hon. A.J. REDFORD: I support the motion. At the outset I must express my disappointment at the length of time that the Social Development Committee took to report to Parliament on this difficult and vexed topic. I remind members of the timetable that has led to the tabling of this report in October, to indicate the very slow, lethargic and convoluted process a proper debate of this topic has taken.

First, a Bill was introduced in August 1991 by the Hon. Ian Gilfillan, then member of this place and Leader of the Australian Democrats. The Bill was debated until April 1992, a period of some eight months. Late in April 1992, it was referred to the Social Development Committee. That was some 20 months before the last State election. In February 1995, the member for Unley, Mark Brindal MP, introduced a Bill on this topic, which Bill was defeated in July 1995 by some 28 votes to 16. Indeed, his Bill was not even allowed to go into Committee in the other place. One of the arguments put in defeating the Brindal Bill was that this Parliament ought to await the result of the inquiry that had been referred to it back in April 1992, some three years earlier. The evidence on the issue, I note from the report, finished in January 1996, nearly one year after the Brindal Bill was first introduced into the other place.

An interim report was tabled earlier this year, and the final report was released in August 1996. In fact, it was nearly five years to the day that this report was released from the date that the Bill which led to the reference to the Social Development Committee was initiated. I have to say that a finger cannot be pointed at any particular individual about this extraordinary delay because so many people have been involved, but it indicates to me that Standing Committees perhaps lack resources to be able to deal with some of these issues in a timely fashion.

One of the great difficulties in dealing with issues of this nature—issues of social conscience, euthanasia and the like—is that it is important that they be dealt with or initiated early in the parliamentary cycle. In fact, it is extremely difficult when members are facing preselection or elections to deal with issues of such social importance objectively and dispassionately when either a preselection or an election is in the wind. Much of the work done by the committee is probably likely to come to nought because there is no doubt that, sometime within the next 12 to 14 months, there will be a State election, and there is no doubt that members will be less reluctant to be open and frank in dealing with this important issue.

I will make some very brief comments about the report. I commence by saying that I find prostitution not only distasteful and immoral but also, to a large extent, an exploitative industry in its worst sense. I also note that, whilst this is an issue which I personally and morally am against, I approach it more from a pragmatic point of view than from a position of morality. I do not think that gambling is approved by many members in either this or the other place but a number of members, if one can assume from the state of gambling laws in South Australia, have approached the topic on a practical basis rather than seeking to impose their moral viewpoint on the rest of the community.

Basically, there are three different reports in this lengthy and extensive document. The majority report was signed by the Hon. Terry Cameron, whom I notice is in the Chamber, the Hon. Bernice Pfitzner and the Hon. Sandra Kanck and supports what I would describe as a regulated model. The second report recommended by Michael Atkinson MP and Joe Scalzi MP recommends decriminalisation of prostitution and a reduction and change in the nature of offences. The third report by Mr Leggett MP recommends stronger penalties and increased police powers. That was his approach in best dealing with this difficult social issue.

As I have had a lot of experience in this area I have to say that I doubt very much whether Mr Leggett's recommendations, even if they were fully implemented, would succeed. In fact, all they would do would change the nature and method under which this sort of activity is conducted and it would lead to great social problems being delivered to the people—the prostitutes—who are least able to protect themselves or get themselves out of the mire. The approach of the Festival of Light and the various churches in their abolitionist approach to this area, from what I can see, has not led to any diminution in the practice of prostitution. All it has done has been to push it underground and lead to women being prosecuted for offences, women from the group at the bottom end of the socioeconomic structure.

Where do I sit? I do not pretend to be in a position to commit myself completely on this topic, but I have some reservations with the majority report, which effectively says that illicit prostitution should remain an offence, that there be a system of registration and that prostitution conducted within this system of registration be exempt from prosecution. There are some quite severe penalties to be visited on people engaged in illicit prostitution according to the recommendations. There are provisions in relation to increased police powers of entry and quite extensive provisions in regard to locations of brothels; there are provisions in relation to prostitutes being paid 50 per cent of fees, in other words, non prostitutes not exploiting prostitutes; and there are special provisions in relation to children, and the like.

I do not propose to go into detail on this, but it seems to me that this system of registration recommended by the majority will lead to the worst of both worlds. We will have a system where people will operate outside the law so that all the problems we currently have will still be there for those people who operate outside the registration system. I will explain this in more detail in a moment. The incentive to register is less than the incentive not to register because of the extraordinary degree of regulation that is envisaged in the Bill and also the problems of attracting attention to people who register themselves as brothels becoming involved in a business because people will be reluctant to do so. I will explain why in a minute and give a couple of examples. I am inclined to be more attracted to the Atkinson/Scalzi method, not for many of the reasons they advance because I think many of the reasons they put can be easily discredited. My reasons can be summed up by what they say at page 151 of the report:

> We hope that our changes might reduce the supply of escorts, which can be dangerous work but commands 75 per cent of the Adelaide market, and redirect them to comparatively safer work in brothels.

That is a very compelling reason. As I said previously when speaking on this topic, the bulk of prostitution in South Australia today is conducted through escort agencies, which clearly fall within any definition of 'organised crime'. To my knowledge many of the escort agencies are owned and operated by men who live interstate who are of dubious character and almost invariably have poor criminal records.

The Hon. M.J. Elliott: It's very dangerous work.

The Hon. A.J. REDFORD: I could not agree with the honourable member more.

The Hon. T.G. Cameron: It's dangerous for the prostitutes.

The Hon. A.J. REDFORD: Yes, and the level of protection afforded to people working in escort agencies is just non existent as they are exploited by customers and owners. They are exploited everywhere they go. They are in no position to fight back. If we start from the point that the prostitute is in grave danger because of the law—and by that I mean it forces them into escort agencies—we need to deal with that, which is one of the reasons why I accept the Atkinson/Scalzi approach. Without going into a great dissertation, I believe the registration model is quite flawed and flawed for a number of reasons. One is that I do not trust local councils to apply any reasoned approach to allowing brothels to be established in local government areas. It will put enormous pressure on individual councillors to say 'No' to applications and I cannot ever see them saying 'Yes.' So the very problem I spoke of about escort agencies will not be resolved by this process of registration.

I now turn to clauses in the Bill annexed to the report and I commend the committee for setting out a Bill that gives us a much better idea of precisely what it has recommended. Clause 11 provides:

> (1) A brothel or escort agency is eligible for registration or renewal of registration if—
>
> (a) all persons who are involved or are to be involved in the business of the brothel or escort agency are fit and proper persons to be so involved;

As a matter of law I know the concept of a 'fit and proper person' changes depending on the sort of job someone is going for. You need to be fit and proper to be a lawyer, which carries substantial privileges: the standard is exceedingly high, whereas, to be a fit and proper person perhaps as a carpenter involves a different standard. I am not trying to sound snobby in that regard but it relates to the nature of the occupation.

I will give an example. You need to be a person who is honest, a person of good character and a person without any criminal record to be thought of as a person fit and proper to be a solicitor or a barrister in a court because you are dealing with public moneys and you have a responsibility in that regard. I would suspect that most courts would not apply the same standard in relation to being registered, say, as a carpenter because you are not dealing with other people's money but only your own; you are not required to the same extent to be as honest—and I am not denigrating that profession—but the standards and requirements of being a carpenter are different from those required to be a solicitor.

I find it hard to understand precisely what is meant by the term 'fit and proper person to be involved in this industry'. Clause 11(2) provides:

> A person is not a fit and proper person to be involved in the business of a brothel or escort agency if the person has been convicted of—
>
> (c) an offence involving the sale or possession of drugs.

To insert a provision such as that completely misunderstands the nature of prostitutes and the reason why many of them get into this unsavoury industry. I have seen figures which show that a very substantial proportion of women who get involved in prostitution do so in order to support a drug habit. Quite a substantial proportion of them have been convicted of drug offences. The bulk of those prostitutes for whom I have acted have had previous convictions for possession of drugs.

It seems to me that, if that hurdle is included in terms of a fit and proper person, very few people will be able to jump the hurdle to be in a position where they can be registered. It seems to me that those people will continue to undertake prostitution, but will do so outside of the law. My philosophical view that there should be a minimum amount of regulation (which I think would be held by most Liberals) is also impinged against by this proposed legislation. I will give an example. The Bill provides that a prostitute is entitled to at least 50 per cent of the consideration paid for sexual services and further prescribes that specific amount. I am not convinced by the reports that 50 per cent is an appropriate amount, nor would I be convinced that 10 per cent or 90 per cent is an appropriate amount. I am not sure precisely why 50 per cent was the figure that was picked. Quite frankly, my view is that if a clause to that effect is inserted it is simply a matter of over regulation. If this is to be treated as commercial business, it would be far better if the prostitutes either affiliated with an existing union or joined their own union which was allowed to protect the interests of the prostitutes.

An honourable member: Perhaps the AWU.

The Hon. A.J. REDFORD: The honourable member interjects about the AWU. I think that is one of the better unions but it mucked up yesterday and, when it apologises to the public, that apology will be accepted. My concern is that the regulation will be such that people will find it more commercially beneficial to not register and we will finish up with the worst of both worlds: we will still have a substantial sized industry operating outside the law and all the consequent problems associated with that, and we will also have the bureaucracy and all the problems associated with that in relation to registration. Quite frankly, we will have the worst of two worlds. If we could have a less-regulated system but one which, first, seeks to protect the public and, secondly, in certain circumstances can protect the prostitute that would be preferable. I thank all members of the committee for the time that they put into this report. I certainly remain to be convinced, although I am sure the Hon. Terry Cameron will tell me in very clear terms where I have it wrong. I would hope that perhaps we, as a Parliament, can deal with this issue within the next couple of years because it simply will not go away.

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

[Sitting suspended from 6.2 to 7.45 p.m.]

SECOND-HAND DEALERS AND PAWNBROKERS BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to regulate second-hand dealers and pawnbrokers; to amend the Magistrates Court Act

1991 and the Summary Offences Act 1953; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

The laws relating to second-hand dealing and pawnbroking are currently contained in the Summary Offences Act. These provisions impose record-keeping obligations on those who deal in second-hand goods so that description of goods, serial number, date of receiving or buying goods, full name and address of person from whom goods are purchased, etc., must be recorded and kept. In addition, there are obligations on second-hand dealers where goods are suspected of being stolen. The police have powers of entry and inspection under this legislation.

The provisions in the Summary Offences Act have been in place since 1988 in relation to second-hand dealers and since 1990 in relation to pawnbrokers. There has been increasing community and police concern over pawnbrokers and second-hand dealers and their possible role in the receipt, distribution and disposal of stolen goods. In response to this concern, the Government considered it appropriate to review the efficacy, the relevance and efficiency of the existing legislation governing second-hand dealers and pawnbrokers.

The review of the legislation took place against a background of considerable legislative change and proposals for change in many other Australian States. It is of note that nearly every State is in the process of examining laws in this area. Tasmania, Western Australia, New South Wales, Victoria and Northern Territory have reviewed their legislation in the past two years. A draft Bill incorporating the Government's preliminary views on the direction of legislative reform was widely circulated to a variety of interest groups and individuals. Approximately 30 written submissions were received and, as a result of consideration of those submissions, a revised draft Bill was prepared and circulated. Further comments were received on this second draft and this Bill takes account of those further comments.

The Bill has a number of features not contained in the present rules:

- a person or a body corporate may not commence or carry on business as a second-hand dealer (which for the purposes of the Bill includes the term 'pawnbroker'), if convicted of an offence of dishonesty or other prescribed offence, or if the person is an undischarged bankrupt. This is a negative licensing provision.
- if a second-hand dealer has been in possession of stolen goods on at least three occasions during the past 12 months and did not notify the police in respect of the goods, the Commissioner of Police may give the dealer a notice disqualifying the dealer from carrying on business as a second-hand dealer. The disqualification will take place from a date not less than two months after the notice is given and the dealer will be able to apply to the Administrative and Disciplinary Division of the District Court for an order removing the disqualification.
- persons commencing business as second-hand dealers will be required to give notice to the Commissioner of Police at least one month before commencing business.
- persons already in the business of second-hand dealing at the commencement of the Act will need to give the Commissioner notice of details of matters such as their name, trading name, operating address, and address at which records required to be kept are available for inspection. These matters will be detailed in the regulations.
- records of second-hand goods will need to be more detailed than at present. At present the requirement is that an accurate description of the goods be recorded. The new requirement is that type, size, colour, brand also be recorded in a register.
- the identity of the person from whom the goods were bought or received will need to be kept as at present, but this information will need to be verified in the manner required by regulations. At this stage it is envisaged that a system similar to that used by banks to verify customers opening accounts will be utilised. This is the system which is now operating in Western Australia.
- second-hand dealers will be required to label second-hand goods so that particular goods can be identified in the register required to be kept.
- a holding period of 10 days will be introduced (there is currently no holding period in South Australia—this has been a matter of particular concern to the police). As is the case interstate, there will be a range of goods which will not need to be held for this duration. The range of goods which will be exempted from the holding period will be determined after further industry consultation.
- goods required to be held may be sold before the expiry of the holding period only if they are held for a minimum of three days and the full details of the purchaser are recorded (including the manner in which identity is verified). This is the only situation where details of the identity of the purchaser are required to be kept.
- requirements to notify the police of suspected stolen goods are maintained.
- specific provisions for persons claiming ownership of goods in a dealer's possession are made, together with a right for the person to apply to the Magistrates Court for return of the goods, and an obligation on the part of the dealer to hold goods until the issue of ownership is determined. The Magistrates Court will hear these matters informally as minor statutory proceedings.
- police powers of entry and inspection are strengthened to allow the police access to computer information and to require copies of records.
- specific provisions in relation to pawnbroking are reintroduced. 'Buy-back' arrangements will be considered to be a contract of pawn, a minimum redemption period of one month is set, a pawn ticket must be provided and will need to comply with requirements set by regulation. There will be no ability to contract out of the provisions of the Act. In relation to issues of harsh and unconscionable contracts of pawn, members are advised that the new Credit Code, while not applying to the provision of credit by a pawnbroker, does provide that unjust transactions including unjust pawnbroking transactions may be reopened. The courts are given, under the Credit Code, wide power to reopen unjust transactions. The courts must have regard to the public interest and all the circumstances of the case and have wide powers to vary and set aside contracts.
- persons operating second-hand markets will be required to notify the police of their operations, keep records (as required by the regulations) of persons who are stallholders and the verified identity of those persons.

It is recognised that the success of this Bill will depend largely on operational policing. To this end, the Commissioner of Police has undertaken that the policing of second-hand dealers and pawnbrokers as well as second-hand markets will remain a priority for the Command Response Divisions in the metropolitan area, while in country areas uniform police and

non-uniform police will be directed to pay attention to second-hand dealers and related matters.

Operation Pendulum conducted by the South Australian Police related to, amongst other things, the retrieval of stolen property. Strategies were implemented to increase the likelihood of catching housebreaking and robbery offenders and to increase the rate of recovery and return of stolen property. The main strategy used during the operation to identify offenders was to track the sale of stolen goods. Suspects were identified by locating stolen goods in places such as second-hand dealers shops, pawnbrokers shops, second-hand markets and garage sales. A review of Operation Pendulum found that:

- second-hand dealers and pawnbrokers were a channel for much stolen property;
- some stalls in second-hand markets in the city handle stolen goods.

Operation Pendulum was effective in containing property offences in that there were significant deceases in the number of break and enter offences reports during the period of the operation and stolen property to the value of $615 044 was recovered, which represented over 43 per cent of stolen property associated with offences cleared during the operation.

Following the success of Operation Pendulum, Command Response Divisions were established in both the northern and southern commands to, among other things, investigate thefts and to ascertain who is receiving stolen property, and to implement strategies for the recovery of stolen property and its return to rightful owners. An evaluation of the Command Response Divisions concluded that the divisions have improved on the efficiency and effectiveness of previous operations and systems. During the months of January to May 1995, the Northern Command Response Division's tasks included the monitoring and investigation of second-hand dealers' targets. Dealers were identified, liaison initiated and records obtained. Several dealers were reported for failing to maintain records.

Data obtained during Operation Pendulum and the experience of the Command Response Divisions suggested several constraints on police when dealing with second-hand dealers and related areas. These constraints included lack of identification of dealers, pawnbrokers and persons operating stalls at second-hand markets, no holding period before re-sale of goods and lack of standardised records keeping, especially identification of the person or business from whom goods are purchased.

These constraints are addressed in the Bill, as well as concerns police hold about the 'character' of people in the business of dealing in second-hand goods and pawning goods. The Bill, in large part, builds upon the provisions already in place in South Australia dealing with second-hand goods. It represents, in the view of the Government, a sensible balance between the needs of those who conduct business and the needs of the law enforcement authorities to have an increased ability to deal with traffic in stolen goods. I commend this Bill to members. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

PART 1 PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

The main definitions are similar to those currently contained in section 49 of the *Summary Offences Act 1953*.

The concept of a second-hand dealer continues to include a pawnbroker.

A definition of pawnbroker is inserted to ensure that the expression includes a person who carries on the business of receiving goods under a contract for sale where the seller has a right to buy back the goods.

The definition of second-hand market has been modified to ensure that genuine auctions are not caught.

Clause 4: Application of Act

This clause contemplates regulations modifying or excluding the application of the Act in relation to persons, goods or transactions of a specified class. Charitable fetes and the sale of second-hand vehicles and vehicle parts are examples where special exemptions or modifications may be appropriate.

It also allows the Minister to grant individual exemptions from the Act.

Clause 5: Non-derogation

This clause makes it clear that the provisions of the Bill do not derogate from other laws.

PART 2 SECOND-HAND DEALERS

Clause 6: Disqualification from carrying on business as second-hand dealer

A person may not commence carrying on business as a second-hand dealer if—

- the person has been convicted of an offence of dishonesty or an offence of a prescribed kind; or
- the person is, in general terms, bankrupt or been involved in a body corporate wound up for the benefit of creditors.

(Similar restrictions apply in relation to directors of bodies corporate.)

A person must stop carrying on business as a second-hand dealer if—

- after the commencement of the Act, the person is convicted of an offence of dishonesty or an offence of a prescribed kind or, in general terms, becomes bankrupt; or
- the Commissioner of Police issues a written notice of disqualification on the basis that the person has been in possession of stolen goods on at least 3 occasions in the last year without notifying the police as required by the Act.

In the latter case the dealer must be given at least 2 months notice of the disqualification.

Application may be made to the Administrative and Disciplinary Division of the District Court for an order removing the disqualification.

In addition, the applicant may seek an order from the Court allowing the person to carry on business as a dealer pending determination of the application.

This clause builds on current section 49D of the *Summary Offences Act 1953* which allows a court to prohibit a dealer who is convicted of an offence against the relevant provisions of the Act from carrying on business as a second-hand dealer.

Clause 7: Notification by dealers or proposed dealers

A person must give one months notice to the Commissioner of Police before commencing business as a second-hand dealer.

Current dealers are allowed 6 months after commencement of the section within which to give the requisite notice to the Commissioner of Police.

Clause 8: Records of second-hand goods

This clause is comparable to current section 49A of the *Summary Offences Act 1953*.

It requires dealers to keep records of all second-hand goods bought or received by the dealer and in general to keep those records at the same place of business as the goods. The records must be retained for 5 years.

The information required to be recorded is more extensive than the current requirements and the identity of the person from whom the goods are bought must be verified in accordance with the regulations.

Clause 9: Labelling of second-hand goods

This clause introduces a new requirement for all second-hand goods bought or received by a dealer to be labelled or marked with an identification code.

Clause 10: Retention of second-hand goods before sale

This clause imposes requirements designed to facilitate tracing of stolen goods.

Dealers are required to retain second-hand goods for 10 days at a place of business. The goods are not to be moved from place to

place and they must be retained in the form in which they are received.

The goods can be sold after 3 days if the identity of the purchaser is verified and recorded.

The requirement does not apply to pawned goods, second-hand vehicles received by a second-hand vehicle dealer, goods below a prescribed value and goods sold by an auctioneer for another if the auctioneer complies with the regulations.

Clause 11: Where second-hand goods suspected of being stolen

This clause is comparable to current section 49B of the *Summary Offences Act 1953*.

It imposes a positive obligation on dealers to check goods against police lists of stolen goods.

The clause introduces a new process for owners of stolen goods to claim the goods back from a second-hand dealer. If a person claims to own stolen goods in the possession of a dealer, the dealer is required to give the claimant a notice in the prescribed form. The claimant and dealer are to complete the notice and the claimant is to receive a copy. A copy of the notice must also be sent to the police as required by regulation and a copy kept at the place at which the goods are kept.

The goods, like any other goods suspected of being stolen, must be retained by the dealer subject to a written authorisation from a member of the police force.

If the goods are not returned to the claimant, the claimant may apply to the Magistrates Court for an order for their return, or for the value of the goods if the dealer has sold them in contravention of the clause. If the goods have been damaged, the Court may also order the dealer to pay compensation to the owner. The Magistrates Court proceedings will be as for a small claim.

Clause 12: Powers of entry and inspection in relation to second-hand goods

This clause is comparable to current section 49C(1)-(3) of the *Summary Offences Act 1953*. It allows police to enter places or vehicles used in connection with a dealer's business and to inspect goods and records.

Ancillary powers to remove, retain and copy records have been included.

The clause requires that a warrant is generally required for entry to residential premises.

PART 3 PROVISIONS OF SPECIAL APPLICATION TO PAWNBROKERS

Clause 13: Pawn tickets

This provision requires pawn tickets complying with the regulations to be given to persons who pawn goods and for copies of the tickets to be retained by the pawnbroker.

Clause 14: Redemption period and sale of pawned goods at end of redemption period

This clause is a new provision requiring pawned goods to be retained for a minimum of 1 month. The redemption period can be extended, from time to time, by agreement between the pawnbroker and the person entitled to redeem the goods.

If pawned goods are not redeemed, they must be sold as soon as reasonably practicable in a manner conducive to receiving the best price reasonably obtainable. The onus of proving compliance with that requirement is to be on the pawnbroker.

Records of the sale must be kept. Any surplus resulting from the sale belongs to the person who would have been entitled to redeem the goods if not sold and can be recovered from the pawnbroker as a debt.

PART 4 SECOND-HAND MARKETS

Clause 15: Notification by operator of second-hand market

A person must give one months notice to the Commissioner of Police before commencing to operate a second-hand market.

Current operators of markets are allowed 1 month after commencement of the section within which to give the requisite notice to the Commissioner of Police.

Clause 16: Records to be kept by operator of second-hand market

This clause requires the operator of a second-hand market to keep records in accordance with details set out in regulations.

Clause 17: Powers of entry and inspection in relation to second-hand market

This clause is comparable to current section 49C(4) of the *Summary Offences Act 1953*. It allows police to enter places used for or in connection with a second-hand market. The police are given power to inspect goods stored in connection with the market and goods in the possession of vendors.

Powers to inspect records and to remove, retain and copy records are included.

PART 5 MISCELLANEOUS

Clause 18: No contracting out

This clause prevents a person contracting out of the Act.

Clause 19: Offence to purchase goods or accept pawn from child

This clause makes it an offence for a dealer to purchase second-hand goods or to accept second-hand goods as a pawn, from a person under 16 years of age.

Clause 20: False or misleading information

This clause makes it an offence to provide false or misleading information under the Act. It also makes it an offence for a person to provide false or misleading information to a second-hand dealer under the Act.

Clause 21: General defence

This clause provides the standard general defence that the offence was not committed intentionally and did not result from any failure to take reasonable care to avoid the commission of the offence. In relation to the requirement to keep records, this clause takes the place of current section 49A(7) of the *Summary Offences Act 1953*.

Clause 22: Liability for act or default of officer, employee or agent

This is a standard provision making the person carrying on a business responsible for the acts of his or her officers, employees and agents.

Clause 23: Service of documents

This is a standard provision setting out the means by which notices may be given under the Act.

Clause 24: Evidentiary provision

This provision is similar to current section 49E of the *Summary Offences Act 1953*.

A person is to be presumed to be a second-hand dealer if within one year the person—

- sells or advertises for sale different second-hand goods for sale on 6 separate days;
- sells or advertises for sale 4 or more second-hand vehicles;
- conducts 6 or more auctions.

Clause 25: Continuing offence

This is a standard provision imposing additional penalties for continuing offences.

Clause 26: Offences by directors of bodies corporate

This is a standard provision making directors of a body corporate (as defined) criminally liable for offences of the body corporate.

Clause 27: Regulations

This clause provides general regulation making power.

SCHEDULE Related Amendments

The schedule amends the *Magistrates Court Act 1991* to provide that proceedings by an owner of stolen goods for recovery of the goods from a second-hand dealer are to be minor statutory proceedings and so proceed as for a small claim.

The schedule also amends the *Summary Offences Act 1953* to remove the current provisions relating to second-hand dealers.

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

STATE RECORDS BILL

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

The administration of public records in South Australia is presently covered by the Libraries Act and several administrative and policy directives which are issued by various authorities to Government agencies.

This legislation is necessary to secure consistent and co-ordinated records management and archiving across Government agencies by enabling the establishment of common systems and standards. Efficiencies achieved through economies of scale and a whole of government approach will allow substantial financial savings in such areas as storage, accommodation, training, access to information and software purchases.

The legislation gives the Office of State Records the responsibility of establishing a standard records management environment

across Government which is based on best practice and the efficient use of resources.

Previous administrative arrangements and directives have not fostered a controlled or whole of Government approach to records management. This has led to a situation which allows:

- the fragmentation of records collections,
- multiple methodologies and approaches which are incompatible,
- a deficiency of records accountability,
- the absence of designated responsibility for the establishment of records management standards and practices.

The Libraries Board of South Australia currently administers certain archival responsibilities under the Libraries Act. The Government believes that it is appropriate that these functions, along with those proposed in the Bill, be given to an agency which carries the core function of records management. This is consistent with arrangements in most other States and the Commonwealth Government where there is specific legislation relating to the management and control of official records.

Current arrangements in South Australia are fragmented and deficient in several areas. The proposed legislation will embrace the principles of sound records management including archival requirements, access considerations, storage/disposal controls (and the use of latest technology) and issues of Government and public interest and efficiency.

The legislation is consistent with the whole of Government approach to records management and recent initiatives such as the phased introduction of standard records management software to State Government agencies.

The legislation has been developed over many years and has involved substantial debate and consultation with professional groups, users and organisations.

The Bill formally supports the application of best practice principles to the management and control of official records.

The proposed legislation underpins these standards by:

- recognising the office of State Records.
- ensuring that official records of enduring evidential and information value are preserved for future reference.
- promoting the observance of best practices by agencies in their management of official records.
- ensuring that appropriate access is available to official records in the custody of State Records.
- establishing the process by which determinations on the disposition of records can be made.

Although confirming traditional archival responsibilities it also promotes records management in its widest sense and includes provision for the management of electronic and other forms of records.

Proper management of official records is an essential role of Government. Records of enduring value must be preserved and accessible; those with short term significance must be properly managed and controlled and disposed of at the end of their useful life.

Professional, efficient, practical and consistent standards should apply to the management of official records including electronic records.

The legislation is aimed at the management of official records and therefore applies to:

- the Governor;
- a Minister of the Crown;
- a court or tribunal;
- a person who holds office established by an Act;
- an incorporated or unincorporated body—
  - (i) established for a public purpose by or under an Act;
  - (ii) established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown;
- a department or other administrative unit of the public service;
- the police force;
- a municipal or district council;
- a person or body declared by the regulations to be an agency.

The legislation will not apply to Parliament, Parliamentary committees, members of Parliament or parliamentary officers or staff.

Under the legislation, the Manager State Records and the Office of State Records are charged with the following responsibilities and functions:

- to receive official records into the custody of State Records in accordance with the legislation;
- to ensure the organisation, retention, conservation and repair of official records in the custody of State Records;
- to make determinations (with approval of the Council) as to the disposal of official records under the legislation;
- to publish indexes of, and other guides to, the official records in the custody of State Records;
- to provide for public and agency access to the official records in the custody of State Records in accordance with the legislation;
- to assist in identifying official records in the custody of State Records the disclosure of which might constitute a contravention of aboriginal tradition;
- to provide advice and assistance to agencies with respect to their record management practices;
- to issue standards relating to record management and assist in ensuring that agencies observe the best record management practices;
- to promote awareness of State Records and its functions;

State Records is a unit in the Department for State Government Services comprising a staff of approximately 25 people and currently located on two sites, one repository and reading room at Netley with the main office and repository at Gepps Cross. Staffing includes a number of archivists and records management professionals. The position of Manager, State Records has recently been created and filled by a person with relevant professional qualifications.

The Bill provides for the formation of a State Records Council with the function of approving determinations of the Manager as to the disposal or retention of official records. The professional input of State Records staff plus the proposed approval mechanism via the State Records Council will ensure the preservation of the State's public heritage and the permanent retention of appropriate official records.

The Council membership covers a wide range of interest groups and expertise and should be able to make balanced and informed decisions and provide advice to the Minister as necessary.

Membership comprises an academic historian, qualified professionals nominated by the Australian Society of Archivists and the Records Management Association of Australia, a Chief Executive Officer (or delegate) of a Government agency, a local government representative, a business person and a legal practitioner.

Part 5 of the legislation emphasises the need for care and management of official records and outlines responsibilities of the Manager relating to the issuing of standards and the review of records management practices of agencies.

It also makes the unauthorised disposal of an official record an offence.

Part 6 of the Bill relates to the custody of official records and specifies the arrangements for the voluntary or mandatory transfer of records into the custody of State Records. Mandatory transfers will apply where access is no longer required for current administrative purposes or the record is 15 years old.

Exemptions to mandatory transfers may be provided by the Manager where agencies have sufficient and adequate storage facilities. Similarly, on the recommendation of the Manager, the Minister may approve the keeping of official records on premises other than an agency. For example, records could be stored in premises owned or managed by the Commonwealth or another State or private enterprise, provided that appropriate standards and conditions are met.

Part 6 also provides for the recovery of official records in private hands. Depending on the circumstances, the recovery can be pursued through the Magistrates Court and could result in compensation.

Part 7 deals with the disposal of official records which is only to occur in accordance with a determination of the Manager made with the approval of the Council.

Parts 8 and 9 of the Bill relate to access conditions and miscellaneous provisions including the acceptance of non-official records, evidentiary provisions and a provision for charging for services. The Manager is required under Part 9 to produce an annual report which the Minister must table in both Houses of Parliament.

Explanation of Clauses

PART 1

PRELIMINARY

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure is to be brought into operation by proclamation.

Clause 3: Interpretation

This clause sets out definitions of terms used in the measure.

"Agency" is defined so that the term will encompass courts and tribunals, the police force and municipal and district councils as well as State Government administrative units, statutory bodies and officers. The term does not include the Houses of Parliament, Parliamentary committees, members of Parliament or parliamentary officers and staff.

"Official record" is defined as any record made or received by an agency in the conduct of its business, but not including—

(a) a record made or received by an agency for delivery or transmission to another person or body (other than an agency) and so delivered or transmitted; or

(b) a record made by an agency as a draft only and not for further use or reference; or

(c) a Commonwealth record as defined by the *Archives Act 1983* of the Commonwealth, as amended from time to time, or an Act of the Commonwealth enacted in substitution for that Act; or

(d) a record that has been transferred to the Commonwealth.

"Record" will mean any written, graphic or pictorial matter or a disk, tape, film or other object that contains information or from which information may be reproduced (with or without the aid of another object or device).

Clause 4: Application of Act

This clause allows regulations to be made to exclude or modify the application of the measure to agencies or official records.

PART 2

OBJECTS OF ACT

Clause 5: Objects of Act

The objects of the measure are—

(a) to establish the office of *State Records*—

(i) as the principal repository for official records that are no longer required for current administrative purposes; and

(ii) with general responsibility under the Minister for the administration of this measure; and

(b) to ensure that official records of enduring evidential or informational value are preserved for future reference; and

(c) to promote the observance of best practices by agencies in their management of official records; and

(d) to ensure that each agency is afforded prompt and efficient access to official records in the custody of State Records for which the agency is responsible; and

(e) to ensure that members of the public have ready access to official records in the custody of State Records subject only to exceptions or restrictions that—

(i) would be authorised under the *Freedom of Information Act 1991* or Part 5A of the *Local Government Act 1934*; and

(ii) are required—

· for protection of the right to privacy of private individuals or on other grounds that have continued relevance despite the passage of time since the records came into existence; or

· for the preservation of the records or necessary administrative purposes.

Subclause (2) requires that the measure be administered and standards formulated and determinations and decisions made so as to give effect to the objects set out above.

PART 3

OFFICE AND MANAGER OF STATE RECORDS

Clause 6: Office and Manager of State Records

This clause provides that there is to be an office of *State Records*. The office is to consist of Public Service employees headed by a Manager of State Records.

Clause 7: Functions

Under this clause State Records is to have the following functions:

(a) receipt of official records into its custody;

(b) the organisation, retention, conservation and repair of official records in its custody;

(c) the making of determinations (with the approval of the Council) as to the disposal of official records;

(d) publishing or assisting in the publication of indexes of, and other guides to, the official records in its custody;

(e) providing for public and agency access to the official records in its custody;

(f) assisting in identifying official records in its custody the disclosure of which might constitute a contravention of aboriginal tradition;

(g) providing advice and assistance to agencies with respect to their record management practices;

(h) issuing standards relating to record management and assisting agencies to observe the best record management practices;

(i) promoting awareness of State Records and its functions;

(j) any other functions assigned to it by statute or by the Minister.

Clause 8: Delegation

A delegation power is conferred on the Manager of State Records.

PART 4

STATE RECORDS COUNCIL

Clause 9: Establishment of Council

This clause requires the establishment of a State Records Council with a membership with expertise in relevant fields and representatives of State and local government.

Clause 10: Functions

The Council is to have the functions of approving determinations relating to the disposal of official records under Part 7 and providing advice to the Minister or the Manager with respect to policies relating to record management or access to official records.

Clause 11: Terms and conditions of office

This clause regulates the terms and conditions of office of members of the council.

Clause 12: Procedures of Council

This clause regulates the procedures to be followed by the Council at meetings.

PART 5

CARE AND MANAGEMENT OF OFFICIAL RECORDS

Clause 13: Maintenance of official records

A duty is imposed on every agency to ensure that the official records in its custody are maintained in good order and condition. This is subject to provisions allowing for the transfer of records to State Records' custody and the proper disposal of records.

Clause 14: Standards relating to record management practices

Under this clause, the Manager may, with the approval of the Minister, issue standards relating to the record management practices of agencies. Observance of the standards is, however, mandatory only in relation to administrative units of the Public Service and agencies or instrumentalities of the Crown (other than an agency or instrumentality excluded by regulation).

Clause 15: Surveys of official records and record management

The Manager may conduct surveys of the official records and record management practices of agencies. Reasonable cooperation and assistance in required from agencies in the conduct of such surveys.

Clause 16: Inadequate record management practices to be reported

The Manager is required to report to the Minister any inadequacies found in the record management practices of agencies.

Clause 17: Damaging, etc., of official records

This clause makes it an offence if a person, knowing that he or she does not have proper authority to do so, intentionally damages or alters an official record or disposes of an official record or removes it from official custody. A maximum penalty of $10 000 or imprisonment for 2 years is fixed for such an offence.

Subclause (2) makes it clear that the disposal of official records (that is, destruction, transfer from official custody, etc.) will only be authorised by a determination under Part 7 or other authority conferred by or under an Act.

A court convicting a person of an offence under the provision is empowered to order the payment of compensation.

PART 6

CUSTODY OF OFFICIAL RECORDS

Clause 18: Voluntary transfer to State Records' custody

This clause spells out that agencies may deliver any of their records into State Records' custody subject to the power of the Manager to decline to receive records for some practical or other proper reason.

Clause 19: Mandatory transfer to State Records' custody

Mandatory transfer of an agency's official records into State Records' custody is required—

(a) when the agency ceases to require access to the records for current administrative purposes; or

(b) during the year occurring 15 years after the record came into existence,

whichever first occurs.

The clause makes provision for the arrangements for such delivery and for postponements or exemptions from the requirement for delivery.

Clause 20: Restriction under other Acts on disclosure of information

The clause requires an agency delivering records into State Records' custody to advise of any legal restriction on the disclosure of their contents.

Clause 21: Recovery of official records in private hands

The Manager is empowered to require a person who the Manager believes has custody or possession of an official record otherwise than in an official capacity (and whether or not ownership of the record has passed to that person) to deliver the record into State Records' custody.

If a person fails to comply with such a requirement the Magistrates Court may, on the application of the Manager, order the person to deliver the record into State Records' custody.

The clause makes provision for discretionary payment of compensation for deprivation of a record.

Clause 22: Keeping of official records in premises other than State Records' premises

On the recommendation of the Manager, the Minister may, make arrangements with the Commonwealth, another State, or any other person for the keeping and use of records in premises other than premises under the control of the Manager or in premises jointly controlled by the Manager and the Commonwealth, the other State or other person.

PART 7
DISPOSAL OF OFFICIAL RECORDS

Clause 23: Disposal of official records by agency

An agency is not to dispose of official records except in accordance with a determination made by the Manager with the approval of the Council. A determination or approval may be general and relate to classes of official records. If there is a dispute as to a determination relating to disposal, the Minister may, on application, determine the matter.

Clause 24: Disposal of official records by Manager

The Manager may, with the approval of the Council, dispose of records that are not worthy of preservation. A determination or approval again may be general and relate to classes of official records. The Manager must, before disposing of a record, obtain the consent of the agency responsible for the record and consult with any other person who has, in the opinion of the Manager, a proper interest in the record.

PART 8
ACCESS TO RECORDS IN CUSTODY OF STATE RECORDS

Clause 25: Agency's access to records in custody of State Records

The agency responsible for an official record in the custody of State Records is to have such access to, and may make or direct such use of, the record as it requires. However, an agency will not be entitled to resume possession of an official record that has been in existence for 15 years or more for longer than is reasonably necessary for the proper performance of the functions of the agency. If there is a dispute as to access by an agency, the Minister may, on application, determine the matter.

Clause 26: Public access to records in custody of State Records

Public access to official records in State Records' custody is to be governed by determinations made by the agencies responsible for the records in consultation with the Manager. The Manager may also determine conditions as to access that the Manager considers necessary for the preservation of a record or for administrative purposes. Any limits on access are, however, to the subject to the rights of access conferred by the *Freedom of Information Act 1991* or Part 5A of the *Local Government Act 1934*. In this connection, reference should also be made to the object set out in clause 5(1)*(e)* of the Bill.

PART 9
MISCELLANEOUS

Clause 27: Records other than official records

This clause makes it clear that the Manager may accept records (other than official records) or other objects that he or she considers appropriate to be kept in the custody of State Records. The Manager may, in accepting such a record or other object, agree to be bound by conditions and, in doing so, he or she will be binding future holders of the office of Manager.

Clause 28: Act applies despite secrecy provisions

This clause ensures that official records may be delivered into custody of State Records despite the provisions of any other Act or law preventing or restricting the disclosure of official information or information gained in the course of official duties.

Clause 29: Protection in respect of civil actions or criminal proceedings

This clause provides necessary protection in relation to criminal liability, or liability for defamation or breach of confidence or other civil liability, that might otherwise arise through the administration of the measure.

Clause 30: Evidentiary provisions

An official record produced from State Records will have the same evidentiary value as if it were produced from the agency from which it was obtained. An apparently genuine document purporting to be a copy, or to state the contents, of an official record in the custody of State Records and to be certified by the Manager as an accurate copy, or statement of the contents, of the record will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the contents of that record.

Clause 31: Certificate as to disposal of official record

A certificate signed by the Manager certifying as to disposal of an official record by the Manager will, in the absence of proof to the contrary, be accepted as evidence of the matter so certified.

Clause 32: Charges for services

State Records may, as approved by the Minister, fix and impose charges in relation to services provided to agencies or the public.

Clause 33: Annual report

This clause requires the Manager to provide an annual report to the Minister and requires the report to be tabled in Parliament.

Clause 34: Regulations

This clause empowers the making of regulations.

SCHEDULE

Amendments and Transitional Provisions

This schedule contains necessary transitional provisions and makes consequential amendments to the *Freedom of Information Act 1991* and the *Local Government Act 1934*.

However, the schedule also makes several substantive changes to the *Freedom of Information Act 1991* and Part 5A of the *Local Government Act 1934*. Section 20 of the *Freedom of Information Act* currently allows refusal of access (with limited exceptions) to documents that came into existence before 1 January 1987. Under the amendments this ground for refusing access will not apply if 20 years have passed since the end of the calendar year in which the documents came into existence. In practice, the vast majority of these documents will be in State Records' custody.

Clause 1 and 2 of schedule 1 of the *Freedom of Information Act* make Cabinet and Executive Council documents exempt documents (exempt from the right of public access). It is currently an exception to this if such a document has been in existence for 30 years. The amendments reduce this period to 20 years.

Section 65d of the *Local Government Act* makes documents declared by a council or council committee to be confidential exempt from public access for 30 years. Again, this period is reduced to 20 years.

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

TAXATION ADMINISTRATION BILL

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

In 1994, as part of this Government's commitment to micro-economic reform, approval was given to the South Australian State Taxation Office to participate with the tax offices of New South Wales, Victoria, Tasmania and the Australian Capital Territory in planning a rewrite of the *Stamp Duties Act*.

As part of the Stamp Duties Rewrite project, it was recognised that each participating jurisdiction's taxation legislation offered differing administrative procedures both in substance and in form.

These variations have resulted in administrative difficulties and uncertainty in the business community particularly when transactions involve a number of jurisdictions. For example, the record keeping requirements in the *Pay-roll Tax Act*, vary from those in the *Stamp Duties Act*, and furthermore are not consistent between jurisdictions.

As a means of addressing this uncertainty and difficulty it was decided to rationalise the administrative procedures currently embodied in a variety of forms in five taxing Acts, and present them under one Act, a *Taxation Administration Act*. In so doing, we will not only provide consistency across the tax heads, but wherever possible conformity among the jurisdictions involved, thus considerably reducing duplication, uncertainty and red-tape.

In preparation of this Bill, extensive public consultation was undertaken with key industry groups and professional bodies and their comments have been taken into account. All parties to the consultation saw the development of this Taxation Administration legislation as a major vehicle for achieving effective and professional taxation administration. The Government extends its thanks to those industry groups and professional bodies for their contribution to the consultative process.

The Bill now before us standardises administrative provisions relating to Pay-roll Tax, Stamp Duties, Land Tax, Financial Institutions Duty and Debits Tax. The administrative provisions in the Bill deal with the matters of Assessments, Refunds, Interest on Unpaid Tax, Penalties, Objections and Appeals, Special Tax Arrangements, Recovery, Record Keeping, Miscellaneous issues and Tax Officers.

A consequence of this legislation is that the *Pay-roll Tax Act*, *Stamp Duties Act, Land Tax Act, Financial Institutions Duty Act* and *Debits Tax Act* will need to be amended to remove those provisions proposed to be covered by this legislation. I shall also be introducing the *Statutes Amendment (Taxation Administration) Amendment Bill*, the purpose of which is to make the necessary consequential amendments to those other Acts.

While much of the legislation in this Bill broadly reflects the current administrative provisions, the preparation of the Bill has provided the opportunity to make significant reforms.

I will now move on to highlight the significant reforms contained within this Bill.

The standardisation of the assessment process will provide procedural efficiencies within the State Taxation Office and will also provide consistency for taxpayers and their agents.

Provisions to clarify refund procedures have been introduced which standardise, at five years, the time in which an application for a refund of overpaid tax can be made. This brings the legislation into line with the *Income Tax Assessment Act* of the Commonwealth, providing a further standardisation for the business community. Additionally, the Bill proposes that the Commissioner of State Taxation, with the taxpayer's consent, be able to use a refund amount to off-set a future tax liability. As an example, this would allow an overpayment of Pay-roll Tax in one month to be off-set against the following month's liability, instead of the taxpayer having to apply separately for the refund.

Current taxing legislation provides different methods of penalising taxpayers who pay their taxes late, or who fail to pay them at all. Under the proposed legislation, an interest charge will apply in all cases of late payment of tax, and will comprise two components. These components are a 'market rate' which will mirror the rate set out in Section 214A(8) of the *Income Tax Assessment Act 1936* or, if considered appropriate, a rate specified by the Treasurer of South Australia. The 'market rate' for the half year to June 1996 was 11.5 per cent per annum. This 'market rate' component is designed to reflect the 'opportunity cost' to the Government of not being able to use the revenue for the period that it remains unpaid. The second component will be 8 per cent per annum and is intended to act as a disincentive to a taxpayer using the Government as a defacto lending institution.

In instances where the non-payment of tax is detected, penalty tax will apply. The Bill proposes that this rate will be a flat 75 per cent of the unpaid tax in instances of deliberate non-payment, and 25 per cent for any other situation. No penalty tax will be payable where the Commissioner is satisfied that the non-payment was not deliberate and did not result from a failure of the taxpayer to take reasonable care to comply.

The rates for both interest and penalty, adopt a realistic approach to ensuring timely compliance with taxation laws. These new penalties substantially reduce many current more severe imposts, eg., pay-roll tax which can be up to 300 per cent, while reflecting a balance between cost recoupment, and encouraging taxpayers to meet their obligations.

The Bill will also provide for the Commissioner of State Taxation to approve of special tax return arrangements. This will provide the Government and business, with greater flexibility in complying with tax legislation and take into account future developments in electronic communications. It is envisaged that in the future, many taxpayers and/or their agents will satisfy tax requirements by transferring information and cash from a computer in their own office, together with an electronic fund transfer direct to the State Taxation Office and Reserve Bank respectively. This legislation will ensure that South Australia will continue to be well placed to take advantage of current and emerging technology.

Provisions in the Bill relating to the Collection of Tax, Record Keeping and General Offences, Tax Officers, Investigations and Secrecy, remain substantially the same as are currently found in existing taxation legislation. However, some changes have been made to standardise the period for retention of records at five years, and to clarify the methods of service of documents both on, and by, the Commissioner.

The Objection and Appeal provisions contained in the Bill substantially streamline the existing provisions contained in the various tax Acts, by making the provisions consistent across the five tax heads. Furthermore, the time allowed to lodge an objection or appeal, has been standardised at 60 days, as currently allowed under the *Pay-roll Tax Act* and *Debits Tax Act*. This means, for example, there is a very significant extension proposed of the period currently allowed under the *Stamp Duties Act*, thus providing a more realistic timetable for business. Under this legislation all objections will have to be lodged with the Minister, and all Appeals are considered by the Supreme Court. As a result, the existing Pay-roll Tax Appeal Tribunal will be disbanded after attending to any outstanding Appeals, thus reducing costs and time involved with the current Pay-roll Tax objection process. Appeals will not be restricted to the grounds of the original objection, again taking a more realistic approach to the process.

It is intended that this Bill will operate from 1 January 1997 in relation to the *Debits Tax Act* and *Financial Institutions Duty Act*, and from 1 July 1997 for the *Pay-roll Tax Act*, *Stamp Duties Act* and *Land Tax Act*. This is in keeping with a timetable for an orderly and efficient introduction of the legislative and administrative changes, and will allow for a comprehensive education program by the State Taxation Office.

This Bill marks a milestone in the reform of taxation administration in South Australia, and provides considerable benefits to Government, the business community and the taxpayers of South Australia.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure is to be brought into operation by proclamation. Under the *Acts Interpretation Act 1915*, different provisions may be brought into operation on different days.

Clause 3: Interpretation

This clause sets out definitions of terms used in the measure. The following are the more significant definitions:

'Tax': a tax or duty under a taxation law, including—

(a) interest and penalty tax under Part 5; and

(b) any other amount paid or payable by a taxpayer to the Commissioner under a taxation law.

'Assessment' an assessment by the Commissioner under Part 3 of the tax liability of a person under a taxation law, including—

(a) a reassessment and a compromise assessment under Part 3; and

(b) an assessment by the Minister or the Supreme Court on an objection or appeal under Part 10.

'Return' a return, statement, application, report or other record that—

(a) is required or authorised under a taxation law to be lodged by a person with the Commissioner or a specified person; and

(b) is liable to tax or records matters in respect of which there is or may be a tax liability.

'Tax default' failure by a taxpayer to pay, in accordance with a taxation law, the whole or part of tax that the taxpayer is liable to pay.

'Deliberate tax default' a tax default that wholly or partly consists of or results from a deliberate act or omission by the taxpayer or a person acting on behalf of the taxpayer, including a tax default where the taxpayer, or a person acting on behalf of the taxpayer, deliberately failed to provide information to the Commissioner, or deliberately misinformed or misled the Commissioner, in relation to the tax liability in contravention of a taxation law.

Clause 4: Meaning of 'taxation laws'

The following are taxation laws for the purposes of the measure:

(a) the measure itself and regulations made under it;

(b) the *Debits Tax Act 1994* and the regulations under that Act;

(c) the *Financial Institutions Duty Act 1983* and the regulations under that Act;

(d) the *Land Tax Act 1936* and the regulations under that Act;

(e) the *Pay-roll Tax Act 1971* and the regulations under that Act;

(f) the *Stamp Duties Act 1923* and the regulations under that Act.

Clause 5: Meaning of 'non-reviewable' in relation to certain decisions

A non-reviewable decision cannot be the subject of objection or appeal under Part 10 and no court or administrative review body is to have jurisdiction or power to entertain any question as to the validity or correctness of the decision.

Clause 6: Crown bound

The measure is to bind the Crown in right of this jurisdiction, and so far as the legislative power of the legislature of this jurisdiction permits, the Crown in all its other capacities.

However, this is not to affect the liability of the Crown to tax under another taxation law.

As a result, various provisions of the measure facilitating the enforcement or collection of tax will apply to Crown bodies (such as the Public Trustee) while the question of whether tax is directly payable by the Crown will be left unaffected and to be determined under the provisions of the Acts imposing the various taxes.

PART 2

PURPOSE OF ACT AND RELATIONSHIP WITH OTHER TAXATION LAWS

Clause 7: Purpose of Act and relationship with other taxation laws

This clause spells out that the purpose of the measure is to make general provisions with respect to the administration and enforcement of the other taxation laws. The clause describes the matters left to be dealt with in the other taxation laws and the matters now to be contained in this measure.

PART 3

ASSESSMENT OF TAX LIABILITY

Clause 8: General power to make assessment

The clause empowers the Commissioner to make assessments of tax liabilities and spells out that an assessment may consist of or include a determination that there is not a particular tax liability.

Clause 9: Taxpayer may request assessment

The clause confers on taxpayers the right to obtain assessments of tax liabilities. This will not extend to assessments of prospective liabilities. Nor will a taxpayer have a right to obtain an assessment of a tax liability that has previously been the subject of an assessment. If a taxpayer has paid an amount as tax, the right to request an assessment of the tax liability concerned must be exercised within 6 months after the payment. This period is consistent with the limitation period of 6 months set under section 36 of the *Limitation of Actions Act 1936* for the recovery of money paid by mistake under a tax law subsequently declared to be invalid.

Assessments (and reassessments) will be subject to taxpayers' rights of objection and appeal under Part 10 of the measure.

Clause 10: Reassessment

The Commissioner is empowered to make one or more reassessments of a tax liability of a taxpayer.

However, the clause makes it clear that reassessment is not to involve the introduction (except where required by legislative change) of legal interpretations not generally applied by the Commissioner at the time of the initial assessment. Reassessment will, as a result, generally be confined to correction of mathematical or factual errors affecting liability, while disputes as to the legal basis of liability will generally be resolved at the stage of initial assessment and through objection and appeal in relation to the initial assessment.

Under the clause, a reassessment may not be made more than 5 years after the initial assessment except with taxpayer's agreement or where there has been a deliberate tax default.

Clause 11: Instruments and returns to include all relevant information

Subclause (1) is an offence that corresponds to section 19 of the *Stamp Duties Act 1923* (which is to be repealed under the *Statutes Amendment (Taxation Administration) Bill 1996*).

The clause provides that a taxpayer or tax agent must include in an instrument that is liable to tax, or in a statement that is produced to the Commissioner together with the instrument prior to payment of tax, all information necessary for a proper assessment of the tax liability of the taxpayer in respect of the instrument.

Similarly, a taxpayer or tax agent must include in a return required to be lodged with the Commissioner under a taxation law, in addition to the required information, any further information necessary for a proper assessment of the tax liability of the taxpayer in respect of the return or the matters to which the return relates.

Breach of either of these requirements will attract a maximum penalty of $10 000.

However, it will be a defence if it is proved—

- by a taxpayer that the taxpayer reasonably relied on another person liable or required with the taxpayer to pay the tax or lodge the return, or on a tax agent, to ensure that these requirements are satisfied; or
- by a tax agent, that the tax agent reasonably relied on information supplied by the taxpayer or by another person liable or required with the taxpayer to pay the tax or lodge the return.

Clause 12: Information on which assessment is made

This clause makes it clear that the Commissioner may make an assessment on the information that the Commissioner has from any source at the time the assessment is made.

Further, it allows an assessment to be made by way of estimate if insufficient information is available to make an exact assessment.

Clause 13: Compromise assessment

This clause allows compromise assessments to be made by agreement with taxpayers in cases where the Commissioner considers it appropriate to do so to settle a dispute or to avoid undue delay or expense or for some other reason.

If a compromise assessment is made in respect of a tax liability, the Commissioner cannot make a reassessment of the taxpayer's liability except with the taxpayer's agreement or where the compromise assessment was procured by fraud or there was a deliberate failure to disclose material information.

Clause 14: Form of assessment and service on taxpayer

This clause requires an assessment to be a formal document and to be served on the taxpayer. Failure to serve will not, however, affect the validity of an assessment nor the recovery of an amount to which it relates.

Clause 15: Inclusion of interest and penalty tax in assessments

This clause requires that if there has been a tax default, an assessment of the taxpayer's liability must specify interest accrued and penalty tax payable under Part 5 in respect of the default.

Clause 16: Refund resulting from assessment

If an assessment shows that a taxpayer has overpaid tax, the Commissioner is to make a refund subject to the provisions of Part 4 with respect to the offsetting of refunds and the prevention of windfalls.

Clause 17: Cancellation of assessment

An assessment issued in error may be cancelled if no amount has been paid under the assessment. (If such a payment has been made, the Commissioner will deal with the matter by way of reassessment).

PART 4

REFUNDS OF TAX

Clause 18: General right to apply for refund

A taxpayer has a right to obtain a refund of tax overpaid. However, the right must be exercised within 5 years and does not exist at all if there has already been as assessment of the tax liability in question. A prior assessment, of course, would have grounded a right of objection and appeal. As with reassessments, the refund process under this clause is not to take into account changes in legal interpretation except where required by legislative change made after the making of the payment sought to be refunded. The process will generally deal with overpayments where there has been a mathematical error or a factual error affecting liability. Questions as to the legal basis for the taxpayer's liability will, as a result, generally be capable

of being raised only by a request for an initial assessment or by objection or appeal against an initial assessment.

Clause 19: Application of remaining provisions of Part

This clause provides that the remaining provisions of Part 4 apply to refunds or refund applications whether under the Taxation Administration measure or another taxation law.

Clause 20: Form of application for refund

An application for a refund must be made to the Commissioner in a form approved by the Commissioner.

Clause 21: Commissioner may refuse to determine application until information, etc., provided

This clause allows the Commissioner to refuse to determine a refund application until the applicant complies with any requirement made under Division 2 of Part 9 for the purposes of determining the application.

Such refusal is to be a non-reviewable decision.

Clause 22: Offset of refund against other liability

The Commissioner may apply the whole or part of an amount that would otherwise be required to be refunded to meet any amount payable by the taxpayer under a taxation law (whether or not being the law in respect of which the refund became payable).

In addition, the whole or part of an amount that would otherwise be required to be refunded may be credited towards a taxpayer's future liability under a taxation law, but only with the taxpayer's consent.

Any decision of the Commissioner under this clause is to be a non-reviewable decision.

Clause 23: Windfalls—refusal of refund

The Commissioner may refuse to make a refund if—

- the relevant taxation law did not prevent the passing on of the tax to another person; and
- the tax to be refunded has been passed on to another person; and
- the taxpayer has not reimbursed that other person in an amount equivalent to the amount of tax passed on to that other person.

A decision under this clause is to be a non-reviewable decision.

Clause 24: Refunds paid out of Consolidated Account

This clause provides for payment of refunds and for the automatic appropriation of the necessary money.

PART 5

INTEREST AND PENALTY TAX

DIVISION 1—INTEREST

Clause 25: Interest in respect of tax defaults

This clause provides for the payment of interest, in the case of a tax default, on the amount of tax unpaid. The interest is to be calculated on a daily basis from the end of the last day for payment until the day it is paid at the interest rate from time to time applying under *clause 26*.

The clause makes it clear that interest is payable in respect of a tax default that consists of a failure to pay penalty tax (see Division 2) but is not payable in respect of any failure to pay interest.

Clause 26: Interest rate

The interest rate that applies is the sum of the market rate and 8 per cent per annum.

The market rate is the rate fixed under section 214A(8) of the *Income Tax Assessment Act 1936* of the Commonwealth or the rate fixed by the Minister by order published in the *Gazette*.

Clause 27: Minimum amount of interest

Interest payable of less than $20 is not payable in respect of a tax default.

Clause 28: Interest rate to prevail over interest otherwise payable on judgment debt

If judgment is given by or entered in a court for an amount that represents or includes unpaid tax, the interest rate applying under this Division continues to apply in relation to the tax unpaid, while it remains unpaid, to the exclusion of any other interest rate.

Clause 29: Remission of interest

The Commissioner is given a discretion to remit interest payable by a taxpayer by any amount.

Any such decision is to be a non-reviewable decision.

DIVISION 2—PENALTY TAX

Clause 30: Penalty tax in respect of certain tax defaults

The taxpayer responsible for a tax default will be liable to pay penalty tax in addition to interest on the amount of the tax unpaid.

However, penalty tax will not be payable in any case when the Commissioner is satisfied that the tax default was not a deliberate tax default and did not result, wholly or partly, from any failure by the taxpayer, or a person acting on the taxpayer's behalf, to take reasonable care to comply with the requirements of a taxation law.

The clause makes it clear that penalty tax is not payable in respect of a tax default that consists of a failure to pay interest or a failure to pay penalty tax previously imposed.

Clause 31: Amount of penalty tax

Penalty tax payable is, in the case of a deliberate tax default, 75 per cent of the amount of tax unpaid or, in any other case, 25 per cent of the amount of tax unpaid.

The penalty tax payable in respect of a tax default is to be subject to adjustment according to the conduct of the taxpayer:

- If the taxpayer made a sufficient disclosure of the tax default while not subject to a tax audit, the penalty tax is to be reduced by 80 per cent.
- If the taxpayer made a sufficient disclosure of the tax default while subject to a tax audit, the penalty tax is to be reduced by 20 per cent.
- If the taxpayer engaged in obstructive conduct while subject to a tax audit—the penalty tax may be increased by the Commissioner by 20 per cent.

Subclause (3) of the clause sets out details governing audit periods and what will constitute sufficient disclosure and obstructive conduct.

Clause 32: Minimum amount of penalty tax

Penalty tax is not payable in respect of a tax default if it amounts to less than $20.

Clause 33: Time for payment of penalty tax

Penalty tax is to be paid by a taxpayer within the period specified for that purpose in an assessment of the tax liability of the taxpayer.

Clause 34: Remission of penalty tax

The Commissioner is given a discretion to remit penalty tax payable by a taxpayer by any amount.

Such a decision is also to be a non-reviewable decision.

PART 6

APPROVAL OF SPECIAL TAX RETURN ARRANGEMENTS

Clause 35: Approval of special tax return arrangements

This clause will allow the Commissioner to give approval for special arrangements for the lodging of returns and payment of tax under a taxation law. Such an approval may be given to a specified taxpayer or a specified agent on behalf of a specified taxpayer or taxpayers of a specified class.

An approval may provide for exemptions from specified provisions of the taxation law to which it applies and may, amongst other things, authorise the lodging of returns and payments of tax by electronic means.

An approval may be given on the initiative of the Commissioner or on application.

Clause 36: Application for approval

An application for an approval must be made to the Commissioner in a form approved by the Commissioner.

The Commissioner will have a discretion to grant or refuse an application for an approval, and any such decision is to be non-reviewable.

Clause 37: Conditions of approval

This clause provides for the conditions of an approval under this Part. The conditions of an approval may include—

- conditions limiting the approval to matters of a specified class
- conditions requiring the lodging of returns at specified times and conditions as to the contents of the returns
- conditions requiring payments of tax at specified times
- conditions as to the means by which returns are to be lodged or payments of tax are to be made
- if the approval provides an exemption from a requirement for the stamping of instruments, conditions as to the endorsement of the instruments
- conditions requiring the taxpayer or agent to whom the approval was given to keep specified records.

A decision as to the terms and conditions of an approval is to be a non-reviewable decision.

Clause 38: Variation and cancellation of approvals

The Commissioner is to have a discretionary power to vary or cancel an approval by written notice served on the taxpayer or agent to whom the approval was given. A decision under this clause is to be non-reviewable.

Clause 39: Effect of approval

The conditions of an approval are binding on the taxpayer or agent to whom the approval applies and the contravention of a condition is to be an offence punishable by a maximum penalty of $10 000. However, compliance with the provisions of a taxation law from which a taxpayer is exempted by an approval is to be an alternative to compliance with the conditions of an approval.

Clause 40: Stamping of instruments

If an approval provides for an exemption from a requirement for the stamping of an instrument, endorsement of the instrument in accordance with the conditions of the approval will constitute sufficient stamping of the instrument. This will not, however, affect liability for the payment of tax in relation to the instrument under the relevant taxation law.

The clause goes on to create an offence where a person endorses an instrument otherwise than under and in accordance with an approval under Part 6 so as to suggest or imply that the instrument is properly so endorsed and as a result duly stamped.

PART 7

COLLECTION OF TAX

Clause 41: Recovery of tax as debt

This clause deals with recovery of unpaid tax. The Commissioner is empowered to recover amounts assessed as being payable as tax as debts.

In addition, the Commissioner may recover interest accrued since the date of the assessment on the amount unpaid.

Clause 42: Joint and several liability

If two or more persons are jointly or severally liable to pay an amount under a taxation law, the Commissioner may recover the whole of the amount from them, or any of them, or any one of them.

This provision does not affect any provision of another taxation law under which a person who is jointly or severally liable to pay an amount and who pays the amount to the Commissioner may recover a contribution from any other person who was also liable to pay the whole or part of that amount.

Clause 43: Collection of tax from third parties

This clause allows the Commissioner to recover tax from third parties who owe money to, or hold money for, a taxpayer.

Clause 44: Duties of agents, trustees, etc.

This clause applies to a person who has possession, control or management of a business or property of a taxpayer (as an agent or trustee or in any other capacity) where obligations of the taxpayer under a taxation law have not been discharged or will arise in relation to the business or property in the future. The clause requires such a person to ensure that the obligations are discharged through the management of the taxpayer's business or property and imposes a personal liability on the person if the person fails to manage the business or property as required.

Clause 45: Arrangements for payment of tax

The Commissioner is to have a discretion to extend the time for payment of tax by a taxpayer and to accept the payment of tax by instalments. When the Commissioner extends the time for payment of tax by a taxpayer, the Commissioner may also extend the time for lodging a return relating to the matters in respect of which the tax is payable.

Clause 46: Decisions non-reviewable

Decision under Part 7 are to be non-reviewable decisions.

Clause 47: No statute of limitation to apply

This clause makes it clear that no statute of limitation will bar or affect any action or remedy for recovery by the Commissioner of an amount assessed as being payable as tax.

PART 8

RECORD KEEPING AND GENERAL OFFENCES

Clause 48: Requirement to keep proper records

This clause imposes a general obligation on persons to keep all records necessary for an accurate assessment of the persons' tax liability. Non-compliance is to constitute an offence punishable by a maximum penalty of $10 000. The regulations may limit the application of the requirement to taxes and persons of a specified class.

Clause 49: Commissioner may require specified records to be kept

The Commissioner may, for the purposes of a taxation law, by written notice served on a person required to keep records, require the person to keep additional records specified in the notice.

A person who fails to comply with such a notice is to be guilty of an offence punishable by a maximum penalty of $10 000.

Clause 50: False or misleading information in records

This clause makes it an offence if a person keeps a record under a taxation law that the person knows is false or misleading in a material particular or includes in such a record information that the person knows is false or misleading in a material particular. The clause fixes a maximum penalty of $10 000 for the offence.

Clause 51: Accessibility of records

Persons are required to keep records under a taxation law so that they can be produced readily to the Commissioner if the Commissioner requires their production. A maximum penalty of $10 000 is fixed for non-compliance with this requirement.

Clause 52: Form of record—English language

Records under a taxation law must be kept in English or in a form that can be readily converted or translated into English. A maximum penalty of $10 000 is fixed for non-compliance with this requirement.

Clause 53: Period of retention

A person required to keep a record under a taxation law must keep the record for not less than five years. Ten thousand dollars is fixed as the maximum penalty for non-compliance. The Commissioner is given a discretion to approve destruction of a record within the 5-year period.

Clause 54: Damaging or destroying records

It is to be an offence if a person deliberately damages or destroys a record required to be kept under a taxation law. A maximum penalty of $10 000 is fixed for this offence.

Clause 55: Giving false or misleading information

This clause makes it an offence to make a statement or give information, orally or in writing, to a tax officer knowing that the statement or information is false or misleading in a material particular. A maximum penalty of $10 000 is fixed for the offence.

Clause 56: Omissions from records, statements or information

This clause is an interpretation provision designed to make it clear that a record, statement or information may be false or misleading because of its contents or because of matter omitted from it.

Clause 57: Failure to lodge returns or records

This clause creates an offence of failing or refusing to lodge a return or record as required under a taxation law. The offence is to be punishable by a maximum penalty of $10 000.

Clause 58: Falsifying or concealing identity

A person must not, with the intention of impeding the administration or enforcement of a taxation law—

- falsify or conceal the identity, or the address or location of a place of residence or business, of the person or another person; or
- do anything or make any omission that facilitates the falsification or concealment of the identity, or the address or location of a place of residence or business, of the person or another person.

A maximum penalty of $10 000 is fixed for contravention of this provision.

Clause 59: Deliberate tax evasion

This clause makes it an offence if a person, by a deliberate act or omission, evades or attempts to evade tax.

A maximum penalty of $10 000 or imprisonment for two years is fixed for this offence.

PART 9

TAX OFFICERS, INVESTIGATION AND SECRECY PROVISIONS

DIVISION 1—TAX OFFICERS

Clause 60: Commissioner of State Taxation

This clause provides that there is to be a *Commissioner of State Taxation* who is to be a Public Service employee.

Clause 61: Commissioner has general administration of taxation laws

The Commissioner is to have the general administration of this Act and the other taxation laws.

Clause 62: Legal proceedings in name of Commissioner

This clause allows legal proceedings to be taken by or against the Commissioner in the name 'Commissioner of State Taxation'.

Clause 63: Commissioner may perform functions under Commonwealth Act

The Commissioner is authorised to perform the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

Clause 64: Deputy Commissioners

There are to be one or more *Deputy Commissioners of State Taxation* who are also to be Public Service employees. The clause provides that a Deputy Commissioner of State Taxation is to have the same powers and functions as the Commissioner under a taxation law.

Clause 65: Other staff

There is to be such other staff (comprised of Public Service employees) as is necessary for the administration and enforcement of the taxation laws.

Clause 66: Delegation by Commissioner

This clause allows delegation by the Commissioner of any of the Commissioner's powers or functions under a taxation law.

Clause 67: Authorised officers

The Commissioner is to be an authorised officer for the purposes of the taxation laws. The clause also empowers the Commissioner to appoint Public Service employees to be authorised officers for the purposes of the taxation laws.

Clause 68: Identity cards for authorised officers

An authorised officer is to be issued with an identity card.

Clause 69: Personal liability

This clause protects a tax officer from personal liability for an honest act or omission in the exercise or performance, or purported exercise or performance, of a power or function under a taxation law. Any such liability is instead to lie against the Crown.

DIVISION 2—INVESTIGATION

Clause 70: Power to require information, instruments or records or attendance for examination

Under this clause, the Commissioner may, for a purpose related to the administration or enforcement of a taxation law, by written notice served on a person, require the person—

- to provide to the Commissioner (either orally or in writing) information that is described in the notice; or
- to attend and give evidence before the Commissioner or an authorised officer; or
- to produce to the Commissioner an instrument or record in the person's custody or control that is described in the notice.

The clause makes it an offence if a person, without reasonable excuse, refuses or fails to comply with requirements of the Commissioner under the clause.

Clause 71: Powers of entry and inspection

This clause confers on authorised officers powers of entry and inspection for the administration or enforcement of taxation laws.

Clause 72: Search warrant

This clause provides for the obtaining of a warrant for forcible entry and search.

Clause 73: Use and inspection of instruments or records produced or seized

Under this clause, an instrument or record that has been produced to the Commissioner or seized and removed by an authorised officer, may be retained for the purpose of enabling the instrument or record to be inspected and enabling copies of, or extracts or notes from, the instrument or record to be made or taken by or on behalf of the Commissioner. However, if the instrument or record is liable to tax or is required by the Commissioner as evidence for the purposes of legal proceedings, the instrument or record may be retained until the tax is paid or the proceedings are finally determined. Persons otherwise entitled to inspect such an instrument or record continue to be so entitled while it is in the possession of the Commissioner. Liens on such an instrument or record are not affected. A decision under subclause (2) or (3) is to be a non-reviewable decision.

Clause 74: Self-incrimination

A person is not excused from answering a question, providing information or producing an instrument or record, when required to do so under this Act, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

However, if the person objects to complying with such a requirement on that ground, the answer, information, instrument or record is not admissible against the person in any criminal proceedings other than proceedings for an offence with respect to false or misleading statements, information or records or proceedings for an offence in the nature of perjury.

Clause 75: Hindering or obstructing authorised officers, etc.

A person who—

- hinders or obstructs an authorised officer in the exercise of a power under Division 2 Part 9; or
- without reasonable excuse, refuses or fails to comply with a requirement of an authorised officer under that Division,

is to be guilty of an offence.

However, an authorised officer entering onto premises must have identified himself or herself as an authorised officer and warned the person that a refusal or failure to comply with the requirement constituted an offence.

Clause 76: Impersonating authorised officer

It is to be an offence if a person impersonates or falsely claims to be an authorised officer.

DIVISION 3—SECRECY

Clause 77: Prohibition of certain disclosures by tax officers

A tax officer or former tax officer is to be guilty of an offence if he or she discloses any information obtained under or in relation to the administration or enforcement of a taxation law, except as permitted by Part 9.

Clause 78: Permitted disclosure in particular circumstances or to particular persons

A tax officer may, however, disclose information obtained under or in relation to the administration or enforcement of a taxation law—

- with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates, if the information has been obtained from that person; or
- in connection with the administration or enforcement of a taxation law (including for the purpose of legal proceedings arising out of a taxation law or reports of such proceedings); or
- in connection with the administration or enforcement of a law of another Australian jurisdiction relating to taxation; or
- in accordance with a requirement imposed under an Act; or
- to the holder of a prescribed office under a law of this jurisdiction or another Australian jurisdiction.

Clause 79: Permitted disclosures of general nature

The Commissioner may disclose information obtained under or in relation to the administration or enforcement of a taxation law that does not directly or indirectly identify a particular taxpayer.

Clause 80: Prohibition on secondary disclosures of information

It is to be an offence if a person discloses any information obtained from a tax officer in accordance with Part 9 unless the disclosure is made with the consent of the Commissioner or in the performance of a function conferred or imposed on the person by law for the purpose of the administration or enforcement of a law or protecting the public revenue.

Clause 81: Restriction on disclosure in legal proceedings

A person who is or has been a tax officer is not required to disclose or produce in a court or for the purposes of legal proceedings any information obtained under or in relation to the administration or enforcement of a taxation law unless—

- it is necessary to do so for the purposes of the administration or enforcement of a taxation law or the *Taxation (Reciprocal Powers) Act 1989*; or
- the requirement is made for the purposes of enabling the holder of a prescribed office under a law of this jurisdiction or another Australian jurisdiction to perform a function conferred or imposed on the person by law.

PART 10

OBJECTIONS AND APPEALS

DIVISION 1—OBJECTIONS

Clause 82: Objections

This clause creates a right of objection against—

- an assessment (other than a compromise assessment); or
- a decision under Part 4 concerning a refund or an application for a refund of tax; or
- any other decision of the Commissioner under a taxation law that is not declared to be a non-reviewable decision.

Clause 83: Grounds of objection

The grounds of an objection must be stated fully and in detail in the notice of objection.

Clause 84: Objection to reassessment

In the case of an objection to a reassessment, the objection may only relate to tax liabilities specified in the reassessment to the extent that they are additional to or greater than those under the previous assessment.

Clause 85: Onus on objection

This clause makes it clear that the objector is to have the onus of proving the objector's case.

Clause 86: Time for lodging objection

A person is allowed 60 days for lodging an objection. The period runs from the date of service of the assessment or the date of notification of the decision to which the objection relates.

Clause 87: Objections lodged out of time

The Minister is to have a discretion to permit a person to lodge an objection after the end of the 60-day period.

Clause 88: Determination of objection

This clause sets out the procedure for determination of an objection. The Minister may, after consideration of the objection, confirm or revoke the assessment or decision to which the objection relates or make an assessment or decision in place of the assessment or decision to which the objection relates.

Clause 89: Notice of determination

The objector must be given written notice of the determination of the objection.

Clause 90: Interest to be included in refund resulting from objection

This clause provides for a refund of tax found on an objection to have been overpaid. The amount of a refund must include interest on the amount overpaid calculated on a daily basis from the relevant date until the date it is refunded or otherwise applied under Part 4 at the market rate from time to time applying under Part 5.

The 'relevant date' is the date of payment of the amount overpaid or the date on which the Commissioner made the assessment or decision to which the objection relates, whichever is the later.

Clause 91: Recovery of tax pending objection

The fact that an objection is pending is not in the meantime to affect the assessment or decision to which the objection relates and tax is to be recoverable as if no objection were pending.

DIVISION 2—APPEALS

Clause 92: Right of appeal

A person who has made an objection may appeal to the Supreme Court if the person is dissatisfied with the Minister's determination of the objection or 90 days (not including any period of suspension under clause 88) have passed since the objection was lodged with the Minister and the Minister has not determined the objection and served notice of the determination on the person.

Clause 93: Appeal prohibited unless tax is paid

This clause provides that an appellant must first pay the whole of the amount of any tax to which the appeal relates as assessed by the Commissioner or by the Minister on the objection. However, the Minister is to have a discretion to permit the right of appeal to be exercised even though the tax has not been paid.

Clause 94: Time for appeal

The time for making an appeal is fixed as 60 days after the date of service on the person of notice of the Minister's determination of the person's objection. However, if 90 days (not including any period of suspension under section 88) have passed since the person's objection was lodged with the Minister and the Minister has not determined the objection and served notice of the determination on the person, the person may appeal at any time. The Commissioner must first, however, be given not less than 14 days written notice of the person's intention to make the appeal.

Clause 95: Appeals made out of time

The Supreme Court is to have a discretion to allow a person to appeal after the end of the 60-day period.

Clause 96: Grounds of appeal

The appellant's and respondent's cases on an appeal are not to be limited to the grounds of the objection or the reasons for the determination of the objection or the facts on which the determination was made. However, if the objection was to a reassessment, any limitation of the matters to which the objection could relate under Division 1 applies also to the appeal.

Clause 97: Onus on appeal

This clause makes it clear that an appellant has the onus of proving the appellant's case.

Clause 98: Determination of appeal

On an appeal, the Supreme Court may—

- confirm or revoke the assessment or decision to which the appeal relates;
- make an assessment or decision in place of the assessment or decision to which the appeal relates;
- make an order for payment to the Commissioner of any amount of tax that is assessed as being payable but has not been paid;
- make any further order as to costs or otherwise as it thinks just.

Clause 99: Interest to be included in refund resulting from appeal

This clause corresponds to clause 90 and provides for a refund and interest if tax is found on an appeal to have been overpaid.

DIVISION 3—EXCLUSION OF OTHER PROCEEDINGS OR DISPUTES AS TO TAX LIABILITY

Clause 100: Exclusion of other proceedings or disputes as to tax liability

The validity or correctness of an assessment or any other decision in respect of which rights of objection and appeal are conferred under Part 10 is not to be open to challenge in any proceedings other than proceedings by way of objection or appeal under that Part.

The clause also prevents proceedings for the recovery of an amount paid as tax unless the amount has been found to have been overpaid as a result of an assessment, or a decision on an application for a refund, made by the Commissioner, or by the Minister or the Supreme Court on an objection or appeal under Part 10. Similarly, no question is to be raised as to liability to pay tax except through an application to the Commissioner for an assessment or a refund, or in proceedings by way of objection or appeal under Part 10.

PART 11
MISCELLANEOUS

Clause 101: Means and time of payment

This clause allows payment of tax by a cash payment made at, or a bank cheque or postal money order delivered to, an office of the Commissioner or by any means of payment approved by the Commissioner. An approval may be general or limited to particular taxes, persons or payments and unconditional or subject to conditions.

The clause provides that payment by a personal cheque will be taken to be effected when the cheque is received by the Commissioner provided that payment occurs when the Commissioner first presents the cheque for payment. Otherwise payment by personal cheque will be taken to be effected when payment occurs under the cheque following presentation by the Commissioner.

An approval of a means of payment (other than personal cheque) may include a stipulation as to when payment by that means will be taken to be effected, and any such stipulation is to have effect according to its terms.

Clause 102: Adjustments for fractions of dollar

If an amount calculated and payable in accordance with a tax law is not a multiple of a dollar, the Commissioner may decrease the amount but not lower than the nearest dollar.

Clause 103: Valuation of foreign currency

If an amount involved in the calculation of tax is not in Australian currency, the amount is to be converted to Australian currency at the rate of exchange reported by the Reserve Bank and current at the date on which the liability to pay the tax arose. This is a general rule that is subject to any provision of another taxation law governing the calculation of tax where an amount involved in the calculation is not in Australian currency.

Clause 104: Writing off of tax

The Commissioner is authorised to write off the whole or a part of any unpaid tax if satisfied that action, or further action, to recover the tax is impracticable or unwarranted.

Clause 105: Public officer of corporation

This clause corresponds to a provision currently contained in the *Pay-roll Tax Act*. Under the clause, the Commissioner may, by written notice, require a corporation to appoint a natural person resident in South Australia as a public officer of the corporation for the purposes of the taxation laws. If the Commissioner has made such a requirement and the corporation does not make such an appointment or does not keep the office of public officer constantly filled as required, the Commissioner may appoint a person as the public officer of the corporation. Service of a document may be effected on the public officer of the corporation. The public officer is to be answerable for the discharge of all obligations imposed on the corporation under a taxation law. Any criminal or civil proceedings brought under a taxation law against the public officer are to be taken to have been brought against the corporation, and the corporation is to be liable jointly with the public officer for any penalty imposed on the public officer, or for compliance with any order made against the public officer.

Clause 106: Notice of liquidator's appointment

A liquidator appointed to wind up a corporation is required notify the Commissioner of the appointment within 14 days after the date of the appointment.

Clause 107: Service of documents on Commissioner

This clause sets out various alternative means for service of documents on the Commissioner.

Clause 108: Service of documents by Commissioner

This clause sets out various alternative means for service of documents by the Commissioner.

Clause 109: General criminal defence

It is to be a defence to a charge of an offence against a taxation law if the defendant proves that the offence was not committed deliberately and did not result from any failure by the defendant to take reasonable care to avoid the commission of the offence.

Clause 110: Offences by persons involved in management of corporations

If a corporation commits an offence against a taxation law, a person who is concerned in, or takes part in, the management of the corporation is also to be guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person.

It is to be a defence to a charge of such an offence if the defendant proves that the principal offence did not result from any failure by the defendant to take reasonable care to prevent the

commission of the principal offence.

The clause sets out a definition of persons concerned in taking part in the management of a corporation.

Clause 111: Penalties for corporations

The maximum penalty that a court may impose for an offence against a taxation law that is committed by a corporation is five times the maximum penalty that would otherwise apply.

Clause 112: Continuing offences

A person may be convicted of a second or subsequent offence for a failure to do an act (where the failure constitutes an offence against a taxation law) if the failure continues beyond the period or date in respect of which the person is convicted for the failure.

Clause 113: Time for commencement of prosecutions

A prosecution for an offence against a taxation law may be commenced at any time within five years after the date of the alleged commission of the offence or, with the authorisation of the Minister, at any later time.

Clause 114: Tax liability unaffected by payment of penalty

The payment by a person of a penalty imposed by a court does not relieve the person from the payment of any other amount the person is liable to pay under a taxation law.

Clause 115: Evidence

This clause provides appropriate evidentiary assistance for legal proceedings under taxation laws.

Clause 116: Regulations

This clause authorises the making of regulations.

SCHEDULE

The schedule sets out appropriate transitional provisions.

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition in its usual efficient way will deal with this Bill expeditiously as it has gone through the—

The Hon. L.H. Davis: Have you told the Hon. Terry Cameron that?

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: Our average is pretty good. I do not recall this kind of service from the Hon. Mr Davis when he was in Opposition. The Opposition supports the second reading. We note that this Bill improves the procedures dealing with refunds, penalties, tax return arrangements, record retention and appeals. The goal of streamlining tax administration procedures for the various State taxes and keeping these procedures consistent with interstate tax regimes is a goal to be supported by all parties. We support the second reading.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

STATUTES AMENDMENT (TAXATION ADMINISTRATION) BILL

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

This Bill forms part of the package to reform the administrative aspects of the State's taxation Acts. It is closely linked to the Taxation Administration Bill on which I have just reported, and is of course dependent on the passage of that Bill. The legislation contained in this Bill is designed to standardise the administrative provisions relating to pay-roll tax, stamp duties, land tax, financial institutions duty and debits tax.

As the Taxation Administration Bill embodies many of the administrative provisions contained in the primary taxing Acts, it is necessary to amend those Acts in order to reflect the changes.

This Bill will effectively remove the provisions relating to assessments, refunds, penalties, objections and appeals, recovery, record keeping, tax inspectors and other miscellaneous matters from those other Acts which will be covered by the Taxation Administration Act. In summary, this Bill is consequential on the proposals contained in the Taxation Administration Bill.

The Hon. CAROLYN PICKLES (Leader of the Opposition): Again, I note that the Opposition is extremely speedy in dealing with this Bill. This Bill is consequential upon the Taxation Administration Bill that we have just supported, and we therefore have pleasure in supporting the second reading.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

LOCAL GOVERNMENT (CITY OF ADELAIDE) BILL

Bill recommitted.

Clause 12—'Proceedings.'

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

Page 6, lines 31 to 38, page 7, line 1—Leave out subclauses (5) and (6).

We discussed this last evening before we almost completed the Committee stage. I believe that those subclauses have become redundant in light of the fact that the Bill will no longer allow for the sacking of the Adelaide City Council.

The Hon. ANNE LEVY: The Opposition supports this amendment. We discussed it yesterday and it was only a procedural matter that it was not done at that time.

The Hon. DIANA LAIDLAW: I accept the inevitability of the amendment but, as indicated throughout, we do not like the amendment at all.

Amendment carried.

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

Page 7—New subclause (6a)—Leave out '(other than under subsection (5) or (6))'.

This amendment is consequential on the previous amendment.

Amendment carried; clause as amended passed.

Bill read a third time and passed.

ROXBY DOWNS (INDENTURE RATIFICATION) (AMENDMENT OF INDENTURE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 November. Page 373.)

The Hon. R.R. ROBERTS: The Opposition will support the passage of the Bill. When the indenture was signed for the opening up of Roxby Downs, it was an inevitable conclusion that this Bill would come before us. It was a question only of the time when the stage 2 development would occur. There was always meant to be a stage 1 and a stage 2, and this is the day we consider the second stage. This matter has been supported by my colleagues in another place, and it has also been supported at a Federal level. The Bill was determined in the Lower House to be a hybrid Bill, and normally it would have gone off to a select committee. It was a decision of the House of Assembly—the people's House—that it was pertinent to bypass that procedure on this occasion. I support that decision and the proposition that there ought to be some scrutiny of the fragile subterranean waters that exist in the north of our State. It is worth proper scrutiny by an appropriate body to see what is occurring with those resources and what the future may hold.

Without referring in great detail to matters that are proposed in other areas, I will support the proposition that

those fragile subterranean waters in the north of our State be the subject of scrutiny by the Environment, Resources and Development Committee of this Parliament. There are good reasons for that. A two-House committee will look at it, which will encompass representation by the three major Parties that are represented in both Houses. It will give the Democrats the opportunity to be involved in a significant debate for the future not only of mining in the north of the State but of pastoralism and the contamination that may occur with operations in that area. I will not debate this matter much further, despite the interjections across the Council.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: That is probably the best possible course of action that we can take. It gives everybody the opportunity of untrammelled discussion on water resources in the State in future. One of the Democrats has been putting out press releases condemning the Australian Labor Party for supporting this Bill. I will happily stand in this place and support this motion for the reasons I have outlined. It was suggested—and the Democrats clearly believed—that we ought to have had a select committee in the Lower House. I do not believe that that would have achieved the objectives the Democrats are seeking. Clearly by the Constitution and rules of the House we only had to look at the structure of the Bill, which would have occurred in about two days. It is now proposed to allow this development to go ahead unhindered with bipartisan support at least and to allow the people living in Roxby Downs to enjoy some of the benefits such as the development of hospital resources in that area.

I have a personal affection for Roxby Downs, having visited there on regular occasions. I am aware that the people living in Roxby Downs have had problems with the provision of medical facilities. This at least gives a start in that area, and I encourage the Government to provide social infrastructure for those people living in Roxby Downs.

As an Opposition we will undoubtedly (as we have in the past) look at the operations of Roxby Downs and be moving amendments from time to time to ensure the safety and well-being of the people who not only work in the mines but also live in the area, and we will be doing our best to ensure that this Government provides those people living in the remote parts of South Australia with equal facilities and amenities that people living in the metropolitan area expect. No amendments were moved in the Lower House and it is not the intention of the Opposition to move amendments in this place, but I encourage members to support the legislation as it stands and urge them to support what is a very worthwhile exercise, namely, the scrutiny of the fragile subterranean water resources in our north. We support the Bill.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 November. Page 371.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. This Bill can be speedily resolved on a bipartisan (or in the case of this Chamber a tripartisan) basis. The Opposition is aware of the earnest endeavours of the Law Society and many in the legal profession to minimise impropriety and negligence among lawyers in this State. The Opposition believes that it is entirely appropriate that some of the guarantee fund moneys be directed towards educational programs and publications that will improve the standard of the profession.

Obviously the legal profession wishes to maintain its status in society, and raising standards to minimise the problems arising from lack of honesty or competence will benefit the legal profession generally, but we do not forget that the ultimate beneficiaries will be the litigating public. As to the increased flexibility and delegation of powers permitted by clause 3 of the Bill, the Opposition fully accepts the reasoning of the Attorney as expressed in his second reading explanation last Wednesday. We support the second reading.

The Hon. M.J. ELLIOTT: I indicate the Democrats' support for this Bill. We had been waiting for a response from the Law Society, which took some time, but we have received it. The Law Society has expressed no concern, and as that is the organisation that has the vital stake in this matter we are happy for the Bill to proceed.

The Hon. L.H. DAVIS secured the adjournment of the debate.

ELECTRICITY BILL

Adjourned debate on second reading.

(Continued from 6 November. Page 369.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. The competition reform initiatives agreed to by COAG, the group consisting of representatives from each of the Australian Governments, is like a juggernaut which cannot be stopped. The Opposition will certainly not stand in its way. In the market for electricity we will see drastic changes. The economic circumstances underlying these changes are that South Australia has a relatively small electricity market compared with the national market, and up to now we have run a relatively small electricity generation and distribution operation to cater for our own needs. With this Bill and other related legislation such as the National Electricity (South Australia) Act 1996 and the Electricity Corporations (Generation Corporation) Amendment Act 1996, the flood gates will be opened for Eastern States electricity generation corporations to supply electricity on the South Australian grid.

Economies of scale will obviously be a powerful factor in the reconfiguration of the electricity generation and distribution market. We may well see cheaper electricity for South Australian residents and businesses as a result—I certainly hope so. But the disadvantages of removing protective barriers apply in this case as they apply nationally to Australia. For example, on a national level, although we must promote efficiency in our automotive and other industry, the removal of tariff barriers will have a severe effect. South Australia will suffer more than other States if car production becomes uneconomic in Australia, because we will lose thousands of jobs presently generated by GMH and Mitsubishi. I am afraid that the same may happen with those workers presently engaged in the electricity generation and distribution industries.

In summary, what we gain in terms of cheaper electricity we may well lose in terms of employment. At some point the Federal and State Governments will have to take responsibili-

ty for the huge increases in unemployment which can result from free trade competition policies. I note that this Bill provides for someone called a technical regulator who will have the responsibility for administering and overseeing the electricity industry. Of course, when we deal with electricity, safety is the prime consideration. If this Government has the same attitude towards inspection of electricity installations as it has towards inspections of labour conditions, occupational health and safety and inspection of child care centres, this Bill may indeed have some tragic consequences.

The Opposition was not reassured by the answers given by the Deputy Premier to the member for Price in another place. When asked about who will inspect new installations the Deputy Premier responded that the company itself will have to inspect its own work. The Deputy Premier was not aware of any provision for random checks to be made of existing electrical installations. It may well be that someone in this place will be able to answer those questions more satisfactorily than the Deputy Premier. So, with some uncertainty and a little trepidation about what the future holds for the electricity industry and electricity consumers, we support the second reading.

The Hon. L.H. DAVIS secured the adjournment of the debate.

PAY-ROLL TAX (SUPERANNUATION BENEFITS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 6 November. Page 370.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the second reading. The Bill extends the definition of wages to include employer contributed superannuation benefits and contingent employer liabilities so that payroll tax calculations can be made on a broader base. In other words, the payroll tax take will go up again. Already this Government has carefully set about reaping extra tens of millions of dollars from net payroll tax increases, even though the rate has been ever so slightly lowered. If the Government wants to have another go at businesses and further extend the reach of payroll tax liability, we will not stand in its way and so we support the second reading.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

ADOPTION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 7 November. Page 411.)

The Hon. P. HOLLOWAY: The Opposition supports the major measures contained in the Bill although we will raise some concerns about several administrative aspects of the legislation and it is likely that we will be moving several amendments during the Committee stage. To fully appreciate the impact of the legislation it is necessary to understand the history of adoption laws in South Australia. Adoption laws were first introduced into South Australia in 1926. From 1937 to 1966 the secrecy practices in adoption were discretionary. Considerable information was accessible to both parties to an adoption. In 1966 the Adoption of Children Act—based on a national model Act—allowed for the total secrecy of adoption records, although this was not mandatory unless all parties agreed. In accord with the social mores of the time secrecy became the standard practice. The decision to give up a child for adoption must surely be one of the most difficult decisions that any mother could make and I suspect that it is extremely difficult for anyone who did not live through the 1960s to understand the pressures faced by relinquishing mothers who are now to be called 'birth parents' under the new Act. That in itself has been an issue of some discussion.

Following the changed social values in the 1980s there was a worldwide trend to more open adoptions and the greater availability of information about adoptions. This led to a review of adoption policy and practice in 1986 and a select committee of this Council reported in 1987. The Adoption Act of 1988 was the result. All other Australian States have also amended their adoption legislation in the past decade to reflect the changing philosophy on adoptions. As was pointed out in the Minister's second reading speech, it is important that legislation of this nature stays abreast of changes over time and be flexible to meet individual situations.

Bipartisan support was given to the review of the Adoption Act after five years of its operation. This review was established in May 1994, and it coincided with the release of an issues paper. A report from the review committee was completed in October 1994, although it was made available only recently. A number of people have queried why it took so long. Given the concern of those affected by the legislation it has taken a long time for that report to be made available and for the legislation to find its way into Parliament.

This Bill is the Government's response to that report. The most contentious issue in the 1988 adoption legislation was the question of the veto of information about adoptions. In 1996 this still remains the most controversial issue. For adoption orders issued prior to 1988, an adopted person or the relinquishing parent who does not wish to make contact with the other has been able to direct that information in the possession of the Department for Family and Community Services, which might enable them to be traced, not be disclosed. The veto of that information applies for five years after which time the veto must be renewed. Ever since the 1988 Act was first debated it has been strongly argued by some birth parents, adoptees and adoptive parents that a lifetime veto should apply, that is, once an adoptee or relinquishing parent decides that information about him or her should not be released, a veto should apply until such time as the person chooses to remove the veto.

The position of other States on the question of vetoes illustrates the divergence of opinion on this issue, and I should like to quote from the discussion paper which sets out the situation in other States, as follows:

> The length of veto varies in other States from three years renewable in the Northern Territory, to lifetime unless revoked in Western Australia, New South Wales, the Australian Capital Territory and Queensland. Western Australia, New South Wales and the Australian Capital Territory provide for contact vetoes only.

That is, vetoes on actually making contact, not on the provision of information. The discussion paper continues:

> Victoria and Tasmania allow adopted people to veto the release of identifying information and contact. Victoria and Tasmania also allow for birth parents to register their wish not to have contact. This is not enforceable.

That makes the point that there is some difference of opinion on the issues involved. The principal arguments for and against the lifetime veto are well presented in the May 1994 issues paper, and I will briefly summarise those arguments. The arguments against a five-year veto were given as follows:

> Issues which relate to the five-year time period include the resurfacing of painful memories each time the veto must be renewed. There can also be anxiety around remembering to renew the veto or being in circumstances where the person may be unable to renew the veto.

The arguments in favour of a five-year veto were listed as follows:

> People who have been denied information because a veto has been registered experience considerable distress. They understand that a system is in place which encourages the instructor [of the veto] to periodically review the impact of their actions on the other party to the adoption. The five-year time period is not such a lengthy wait as to encourage applicants to search more intensively for themselves and attempt to contact despite the presence of the veto. Many people seeking information stress that their request was primarily for information. However, when they find a veto in place, they are left with questions which are without an answer and a further sense of rejection.

The statistics provided by the Minister on the use of the Adoption Act since 1988 reveal the extent of the issue with which we are dealing. During the period 1937 to 1989, about 12 500 secret adoptions out of a total of 25 000 adoptions took place. Over 5 000 people have registered for the release of information. Further, 1 400 vetoes have been placed. Some of these have been removed and some have lapsed. Just over half the vetoes currently in place are from adopted persons. As at 31 March 1994, 127 people out of 3 786 people who applied for information were refused because a veto was in place. That gives us a sense of perspective about the number of people who are affected by the issue now before us.

The review committee that was set up to consider the operation of the Act recommended something of a middle course between lifetime and five-year renewable vetoes, and I will read some of the relevant recommendations, as follows:

> 7.3.1: An eligible person should have the right to lodge a veto on the release of identifying information or contact for a period of not less than five years and up to a period covering the lifetime of that instructor.

That is the instructor of the veto. It continues:

> 7.3.2: Where no period is nominated by the instructor, the veto period should become five years.
>
> 7.3.3: A veto instructor should have the right to remove their veto at any time or allow the veto to lapse at the end of the nominated period, or renew or vary their veto at any time.

The recommendations of the review committee were something of a middle course between the two options. Given that background information, the Opposition has carefully considered all the above and has decided to support the Government's position and the status quo on the question of five-year vetoes. The system has worked reasonably successfully, as was indicated by the small number of people who were refused information because of a veto. Vetoes which were issued pursuant to the 1988 Act expired in 1994, and those who wished the veto to continue have renewed them, so the system has already gone past the first renewal point.

The Opposition's view is that we should continue that practice. Nevertheless, we are receptive to any suggestions which might make the system work better within those parameters. I know a number of people from every side of this debate, that is, persons who have been adopted, adoptive parents and birth parents. I can understand each of their points of view and the expectations that they had at the time the adoption took place.

This Bill attempts to reach a balance between the right to privacy of adoptees and birth parents and also the right of an adopted person to know about their background. Whatever approach we come up with, it will not please everyone. We can only do our best to try to satisfy the greatest number and balance as best we can the competing rights. As I said, the Opposition will support the retention of the five-year veto as proposed by the Government in this legislation. During the Committee stage of the Bill, I will raise some concerns in relation to several aspects of the operation of the legislation. We are not averse to considering any administrative changes to the system which would assist it to work better.

At this stage I will indicate briefly some areas of concern which we will address later. One of our concerns relates to new section 27C which provides:

> The Chief Executive must, before providing information to a person or accepting a direction from a person under this Part—

that is, either providing information about an adoption or requesting a veto of that information—

> must encourage the person to participate in an interview with a person authorised by the Chief Executive.

It has been put to members of the Opposition that it is painful enough for adoptees or birth parents to go through the process of renewing a veto without having to be 'social worked', as one person put it. We believe that it is appropriate that the department provide information on request and to assist the operation of this legislation, but we have some concerns about legislating to provide that the Chief Executive must encourage people to participate in an interview should it be clearly their wish not to do so. Another concern we have is the process of advising people that renewal of a veto is required. The Opposition is seeking further information on this section because we believe, if it is possible to clarify this process further, we should seek to do so. The final concern relates to new section 27(1). I raise this as an individual rather than on behalf of the Opposition. New section 27(1) gives the lineal descendants of an adopted person the right to obtain information.

It has been put by some people concerned with this issue that this provision may well broaden the request for information to a degree where elderly people might be contacted suddenly by grandchildren whom they might not even know existed, because it does somewhat extend the likelihood that such a request will be made. In relation to this legislation, the point is that it has always been the view that the principal rights should rest with the adopted person, because the adopted person had no say in being adopted and their rights to discover their origins and information about their background should be the principal right. Obviously, the relinquishing parent also has strong rights, particularly for adoptions which may have occurred at a time when social values were considerably different from those of today, so they are the principal rights.

I think it is arguable that the rights of lineal descendants for information are less than those of the adopted person. I think we need to be careful to ensure that by extending this power we also consider the interests of people who may be contacted. So, we will also consider concerns that have been raised with us on those matters. Those areas of concern that I have raised are fairly peripheral to the main thrust of the Bill. The big issue before us is whether we should retain the five year veto, and on balance the Opposition has come down

in favour of that course of action. I believe that the 1988 Act represented a considerable advance on the previous situation and has addressed a real need in the community and, on the whole, the operation—

The Hon. M.J. Elliott interjecting:

The Hon. P. HOLLOWAY: That's right: there are competing interests, but on the whole the 1988 Act has addressed the interests of the community reasonably successfully and we believe that it should continue on that basis. I look forward to the Committee stage of the Bill, when we will raise some of these administrative matters. We support the broad thrust of it.

The Hon. CAROLYN PICKLES (Leader of the Opposition): I support the second reading. It is interesting to note how this legislation has been working in South Australia. It is also interesting to look at the history of adoption law in South Australia. I understand that the first Act was introduced in 1926 and that several Acts have existed since that time. During the period 1937 to 1966 the secrecy practices in adoption were discretionary and all parties to an adoption had the ability to access significant amounts of information about their adoption.

In the 1980s there was extensive discussion and debate about adoption practices which in 1986 led to the review of adoption policy and practice and subsequently, in 1987, the setting up of a select committee of the Legislative Council into adoption. That committee was set up when the Hon. Dr John Cornwall was Minister for Health and Community Welfare, as the portfolio was called in those days. At that time, although I was a member of this Chamber, I was not a member of that committee. However, I do recall the high level of emotion that was generated during the debate on that piece of legislation.

All members in the Chamber at this time would have been extensively lobbied by people who were, on the one hand, more willing to have a more open Adoption Act in South Australia and, on the other hand, those people who had very genuine fears, who had given up a child for adoption during a period when we had more repressive laws and more secrecy and did not wish people to find out the details of that adoption. I believe that the Adoption Act of 1988 was a very good Act. It has operated well, and I am pleased to see that the Government has not recommended any major changes to the operation of that Act.

The legislation has some contentious aspects, and perhaps the most contentious issue is that of veto. I believe that the Government has made a sensible decision not to amend that particular aspect of the legislation, although I understand the review recommended a lifetime veto. It is probably sensible to leave the five year right of review intact and, as the Hon. Paul Holloway has indicated, there is concern about some aspects of the operation of that clause, but we will deal with those concerns in Committee. I personally believe that, in time, there will not be these tensions that are inherent now because, of course, we will have moved beyond that period when adoptions were taking place with high levels of secrecy.

Over the many years I have been involved with this issue, a number of people have come to me with quite heart-rending stories on both sides: people who have been an adopted child themselves and have wanted desperately to find their birth parents, and people who have given up a child for adoption under, sometimes, absolutely appalling circumstances when the child was born. The parent did not even see the child; it was just taken away. The parent knew the sex of the child but they often did not ever see the child—it was taken away for life. When we amended the legislation in 1988 to allow for much more openness and to give the rights, on balance, to the person who is the adopted child, I believe we made the right decision as a Parliament, and I am very pleased that the Government has continued along those lines.

It is very important for an adopted person to track their roots to know from where they came. In recent times in Australia we have heard the harrowing tales of Aboriginal children who were taken away from their parents, never to know their parents, never to see them, and never to hear their voices. That was one of the blackest and most disgraceful parts of our history with which we must come to terms as a nation before we can grow. Generally speaking, I am pleased to see that the review took place. My understanding is that the review was promised by the previous Government.

It was promised that, after a period of time, we would look at the issues to see how the adoption law had been working. The review discovered that it has been working very well. My only negative comment is that there has been rather a long time, since 1994 and the completion of this review, to the introduction of this Bill, and that caused a lot of people some anxieties. When bureaucrats sit around trying to devise ways of introducing legislation—and it is not always the fault of the Government of the day, although this time I think the Minister has been somewhat tardy—they forget the human aspect, and the fact that many people have been quite worried about what will come out of this review. The Opposition is quite pleased that there are no major changes, and we believe that our proposed amendments during Committee will be constructive amendments and, hopefully, the Government will support them.

The Hon. L.H. DAVIS secured the adjournment of the debate.

SOUTH AUSTRALIAN PORTS (BULK HANDLING FACILITIES) BILL

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

ANZ EXECUTORS & TRUSTEE COMPANY (SOUTH AUSTRALIA) LIMITED (TRANSFER OF BUSINESS) BILL

Returned from the House of Assembly without amendment.

SOUTH EASTERN WATER CONSERVATION AND DRAINAGE (CONTRIBUTIONS) AMENDMENT BILL

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

The Hon. DIANA LAIDLAW (Minister for Transport): 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 Upper South East Dryland Salinity and Flood Management Program is to be funded by contributions from the Commonwealth Government (37.5 per cent), the State Government (37.5 per cent), and the local community (25 per cent). In 1995, amendments were made to the *South Eastern Water Conservation and Drainage Act*

1992 ('the Act') to provide a mechanism for collection of the community contribution. That mechanism is contained in section 34A of the Act.

Following the 1995 amendment, negotiations with the community have continued regarding collection of the levy. The basic proposal is for collection of an annual amount (calculated on a per hectare basis) over a period of six years. Following negotiations, however, it was determined that a number of different payment options should be offered to landholders liable to pay the levy. These options would include early payment of amounts due, with a discount and payment over a longer period with an interest component.

In addition it is considered desirable that there be a mechanism for reimbursement of a levy paid in relation to land that has an effective management plan in place for conservation of wetlands or vegetation or reimbursement in the event of the project being completed under budget.

Under the Bill the Board may prepare a scheme, with Ministerial approval, providing for the above matters.

It was also considered that there should be some penalty for non payment of the levy in terms similar to that contained in the *Local Government Act* for late payment of council rates.

The Bill replaces section 34A of the Act to provide for these more complex levy collection arrangements.

It is also proposed to amend section 50 of the Act, which deals with waiver and deferral of payments, to allow conditions to be imposed. This would increase flexibility by allowing the Board to grant, for example, deferral of a payment on the condition that interest is paid for the period of the deferral.

The other provision in the Bill deals with the validity of Ministerial notices fixing the rate of the levy. Because negotiations regarding collection of the levy were still being finalised at the commencement of the current financial year, it was not possible to publish the necessary notice in the *Gazette* (formally fixing the rate of the levy) before that date. There is, however, legal authority that it is not valid to fix a rate during the financial year that the rate is to be applied.

The time taken to negotiate the new collection arrangements has not delayed the design work for the first stage of the project, but the funding is required this financial year if construction is to commence this summer. If the project is to remain on schedule it is therefore essential that collection of the levy commence during the 1996/1997 financial year and clause 4 of the Bill has been included to provide for this.

I commend the Bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Substitution of s. 34A

This clause substitutes a new section 34A into the principal Act, dealing with contributions by landholders to the cost of works undertaken by the South Eastern Water Conservation and Drainage Board.

Proposed subsections (1) and (2) correspond to current subsections (1), (2) and (3).

Proposed subsection (3) provides for backdating of an exemption granted under subsection (2) so that if, for example, a landowner prepares a management plan for conservation of wetlands or vegetation, the levy can continue to be charged until the Board is satisfied that the plan has been put into operation. Once satisfied that this has happened, the Minister can grant an exemption effective from the actual date that the plan commenced operating in relation to the land. It is then envisaged that, under the terms of a scheme prepared under proposed subsection (10), the Board would refund contributions paid in respect of the land during the period backdated.

Proposed subsections (4), (5), (6) and (7) make provision for the matters currently dealt with in subsections (4), (5), (6), (7) and (8).

Proposed subsection (8) ensures that, if the Minister varies the rate of contribution, such variation may only effect payments to be made following the commencement of the financial year next following publication of the variation. This means that if, for example, a person chooses to pay an amount early under a scheme prepared under proposed subsection (10), that person will not be liable to make extra payments if the rate is subsequently varied.

Proposed subsections (9) and (10) provide the Board with the necessary powers for collection of the levy. Proposed subsection (10) allows the Board to prepare a scheme (the terms of which are to be approved by the Minister) which would set out the details of the different methods a landholder may choose for payment of the levy. The scheme may also provide for recalculation of contributions where a landholder wishes to change from one method of payment to another, and for refunds to be made in certain specified circumstances.

Proposed subsection (11) provides a monetary penalty for late payment, with a power to remit such penalty, in appropriate cases, being provided under subsection (12).

Proposed subsections (13) and (14) correspond to current subsections (10) and (11).

Clause 3: Amendment of s. 50—Power to waive or defer payments

This clause amends section 50 of the principal Act to allow conditions to be imposed on the waiver or deferral of payments under the Act.

Clause 4: Validation of notices relating to 1996/1997 financial year

This clause provides that a notice fixing a rate of contribution in respect of the 1996/1997 financial year will not be invalidated on the ground that it was published in the *Gazette* after the commencement of that financial year.

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

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

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

ADJOURNMENT

At 8.49 p.m. the Council adjourned until Thursday 14 November at 2.15 p.m.