LEGISLATIVE COUNCIL

Thursday 14 November 1996

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

CURREN, MR. A.R., DEATH

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

That the Legislative Council expresses its deep regret at the recent death of Mr Arthur Reginald Curren, former member of the House of Assembly, and places on record its appreciation of his distinguished public service.

I never met the former member for Chaffey, Mr Reg Curren, as he was known, and therefore cannot speak from personal experience about his contribution to public life and the Parliament. It may be that members of the Labor Party in this Chamber will be in a better position to speak of Mr Curren's personal attributes and contribution.

Mr Curren was a former bomber pilot during World War II. I understand that he came back to be a fruit grower within the Riverland district where he held a number of prominent positions in community and public affairs. He was Chairman of the Berri Community Hotel, a former President of the Berri Air Force Association, the Berri RSL, a member of the District Executive of the Dried Fruits Association and a delegate to its State conference. I understand that he was very active in local community affairs, schools and a variety of other community associations as an active local community worker prior to seeking parliamentary office.

Some of the press reports from the Parliamentary Library indicate that there is a longstanding family political history. I understand that both his father and his brother had previously tried to win the seat of Chaffey for the Labor Party before he did, first, in 1962. Chaffey, as many members will know, had a history during the 1960s and a good part of the 1970s as being a knife-edge marginal seat which seemed to swing backwards and forwards between the Labor and Liberal Parties.

Mr Curren won the seat from Mr King in 1962 on a recount with a mere 15-vote margin, so it was an extraordinarily close election result. He held the seat in 1965, lost it in 1968, won it back in 1970 and then lost it again in 1973. There is a history of some persistence and continuation of his endeavour to represent the electors of Chaffey and an indication of the knife-edge nature of the Chaffey electorate during the 1960s and early 1970s.

On behalf of Liberal members of the Legislative Council—present members and I am sure past members as well—we acknowledge the distinguished service of Mr Curren both as a community figure prior to his entry into Parliament and in his period of service during the 1960s and early 1970s as a member of Parliament representing the electors of Chaffey. On behalf of Liberal members we offer our condolences to Mr Curren's remaining family.

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition is very pleased to support the remarks made by the Leader of the Government. Reg Curren had left the Parliament before I entered it in 1985 and, indeed, he obviously had had a very interesting time, being in and out of Parliament on several occasions. He was elected for the first time in 1962 when he defeated Mr King. He won by 15 votes. He won again in 1965. He lost in 1968 to Peter Arnold. The Hon. Peter Arnold became a Minister in the Tonkin Government. Mr Curren won it back again in 1970 from the Hon. Peter Arnold and lost it again to him in 1973. So he certainly had a very busy time and it must have been very difficult working through that period being in and out of Parliament. However, one can see that he was dedicated Labor Party to put in the amount of work that he did in a seat that was very marginal.

As the Minister has mentioned, Reg Curren was very involved in his local community in the Riverland. He was a prominent member of the ALP's Rural Policy Committee for many years. He was a committee member of the Riverland Society for Intellectually Handicapped Children and involved in very many causes in the Riverland.

I understand that he died at the Riverland Regional Hospital at Berri at the age of 82. One of his commitments while he was a member was the need for a regional hospital to serve the Riverland. So, I guess one can say that all his life and at the end of his life his involvement and commitment was to that regional hospital.

The Leader has mentioned his wartime service as a bomber pilot and an officer. He was also a board member on many organisations in the Riverland, including the Australian Dried Fruit Association. He was a people's warden of the Berri Anglican Church and for a number of years ran the Legacy program for children at Berri. He was a past president of the Berri RSL and he was also an executive member of the Royal South Australian Bowling Association, Chairman of the Berri Community Hotel and Chairman of the Berri School Council. He was also involved in Neighbourhood Watch, a member of the Water Resources Committee and a member of the Caterpillar Club for airmen who were involved in serving their country in the Second World War. So, he was certainly a very strong community member.

I understand the Hon. Anne Levy, who knew Mr Curren better than I, would like to make a few remarks, so I will not go on. On behalf of the Opposition I extend my condolences to his widow Lydia and their two sons and their families.

The Hon. ANNE LEVY: I would like very briefly to pay tribute to Reg Curren. Reg had left Parliament before I became a member, but after he left Parliament he frequently came back to have lunch in the members' dining room when he was in Adelaide on other business, so all current Labor members got to know him well indeed from frequently having lunch with him. He certainly maintained his interest in the Parliament and the political matters which were occurring, was a stalwart of the ALP and was a very pleasant person to have as a companion around the lunch table. As the Hon. Ms Pickles has said, he was very active in the Party, took part in many of the activities at South Terrace and was certainly a well-known figure.

He was dedicated to the Riverland, always doing his best for that community, speaking up on its behalf and undertaking projects on its behalf. He was very well known through the Riverland and I certainly am glad that he had a long and happy retirement in his beloved Riverland prior to his recent death.

Motion carried by members standing in their places in silence.

[Sitting suspended from 2.25 to 2.35 p.m.]

OMBUDSMAN'S REPORT

The PRESIDENT laid on the table the report of the South Australian State Ombudsman for 1995-96.

PAPERS TABLED

The following papers were laid on the table:

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

Commissioner for Consumer Affairs—Report, 1995-96

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

Reports, 1995-96

Chiropractors Board of South Australia

Radiation Protection and Control Act 1982

South Australian Housing Trust

Local Government Act 1934—Amendment of Local Government Superannuation Scheme—1 November 1996.

SOUTH AUSTRALIAN STEEL AND ENERGY PROJECT

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a ministerial statement made by the Deputy Premier and Treasurer in the other place, on the SASE project.

Leave granted.

POLICE EFFICIENCY INITIATIVES

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a ministerial statement made by the Minister for Police in the other place, on police efficiency initiatives.

Leave granted.

QUESTION TIME

EDUCATION CONSULTANCY

The Hon. CAROLYN PICKLES: My question is directed to the Minister for Education and Children's Services. Has the Government engaged consultants, Arthur Andersen, to review education policy and operations; and, if so, what is the purpose of this consultancy, what are its terms of reference, and how much will it cost?

The Hon. R.I. LUCAS: The honourable member will need to provide me with a bit more detail. I cannot recall any consultancy in relation to Arthur Andersen, but it might be a specific consultancy within the department. There has certainly not been a general consultancy commissioned by me to look at education generally.

MIMILI SCHOOL

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Attorney-General representing the Minister for State Government Services a question about the provision of an asbestos building to the Mimili School.

Leave granted.

The Hon. R.R. ROBERTS: I am in receipt of a copy of a facsimile dated September 1996 from Mr Stephen Rainbow, the Public Environmental Health Officer, Nganampa Health Council Incorporated, to Mr Ian Benjamin, Anangu Pitjantjatjara Services, regarding the delivery of an asbestos classroom to the Mimili School. The facsimile states:

There are a number of issues that are of great concern:

1. Asbestos containing building materials have not been acceptable on the AP lands since the UPK review of 1987 due to their low impact resistance and their potential health risks.

2. I find it curious that this building has been shipped from a site where maintenance would be readily achieved to a remote location where there are known maintenance problems.

3. In 1993, OGEH, SAIT, PEHC were all aware of AP's requirement for building approval prior to installation. Why were Services SA not aware?

4. Finally, I would support any moves towards avoiding the placement of this undesirable building on the AP lands.

Given these concerns, my question is: why was an asbestos building provided to the Mimili School when such buildings have been considered not suitable for Anangu Pitjantjatjara lands since 1987?

The Hon. K.T. GRIFFIN: I will refer the question to my colleague the Minister for State Government Services and bring back a reply.

OIL SPILLS

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for the Environment and Natural Resources, a question about Gulf St Vincent oil exploration.

Leave granted.

The Hon. T.G. ROBERTS: An article in the *Southern Times Messenger* (13 November) headed 'Green alarm over gulf oil rigs' by Shannon Beaty goes on to state:

An announcement that two oil exploration wells will be drilled in southern waters has alarmed environmentalists who say it is only a matter of time before the coast is battered by another oil spill. In a $15 million project, Texan oil company Canyon will erect two oil rigs in St Vincent Gulf, with one rig set to sit just 22 kilometres offshore from Aldinga Beach.

A number of alarm bells should ring in relation to the setting up of oil rigs in such a sensitive area. One concerns the dangers associated not just with the servicing and raising of the rigs, but with the dangers that they pose to shipping, particularly in the United States, where there are rig farms where rigs are placed close together and where there have been a number of disasters and mishaps involving ships that go off course in bad weather and smack into rigs, causing all sorts of environmental problems and a danger to life, limb and the environment. In the case of only one or two oil rigs, they tend to pose a problem because they do not stand out as a farm or a major problem, and shipping tends to relax a little too much in some cases and have accidental hits on those isolated rigs erected world wide.

The article raises enough concern and serious questions to warrant an answer from the Government, given that the rig will be only 22 kilometres off our coast and could almost be deemed a suburban oil rig. Has the Government a contingency plan in the case of a possible mishap or disaster associated with the siting of two oil exploration wells offshore from Aldinga, given that the Commonwealth has major responsibility for the shores outside the three mile limit?

The Hon. L.H. Davis: Do you ever stumble across any good news?

The Hon. T.G. ROBERTS: There is not any harm in raising the potential for danger in relation to shipping and exploration. I have not condemned the exploration process,

but we need to learn from overseas experiences where possible mishaps could occur.

The Hon. K.T. GRIFFIN: On behalf of my colleague the Minister for Transport I will ensure that the questions are referred to the Minister in another place and bring back a reply.

AMBULANCE SUBSCRIPTION SCHEME

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Emergency Services, a question about the ambulance service's subscription scheme.

Leave granted.

The Hon. SANDRA KANCK: Members may recall that last week I posed a series of questions about the use of fridge magnets and coffee cups to promote the image of the South Australian Ambulance Service. Today, I raise a far more serious matter, which is a potential blow-out of the unfunded liability of the ambulance subscription scheme. The ambulance service subscription scheme is a simple insurance scheme to protect members of the scheme from the cost of ambulance transport. The scheme has four categories of membership, each attracting a different rate of contribution. The categories are family, single, pensioner family and pensioner single. Only the family membership category makes any money for the scheme: the other three categories lose money due to a combination of the frequency of use and the level of contribution required.

Consequently, for the scheme to remain financially viable it must attract families to the scheme at a far greater rate than each of the other categories. With that background in mind, I draw attention to the audit of the South Australian Ambulance Service by the Auditor-General. Under the heading, 'Administration and Finance Expenses', the Auditor-General records that in the financial year ending 30 June 1995, the service spent $46 000 on advertising and marketing, but in the past financial year the Ambulance Service invested $942 000 in advertising and marketing, a jump of almost $900 000.

As only the family membership category provides a return for the scheme, any successful advertising campaign for the scheme must be tightly targeted to attract families, but I understand, however, that an indiscriminate advertising campaign was conducted during the 1995-96 financial year. My questions to the Minister are:

1. How many subscribers did the Ambulance Service subscription scheme have during the financial year 1994-95?

2. How many extra subscribers did the scheme attract in the financial year 1995-96?

3. How many extra subscribers to each membership category did the scheme attract in the financial year of 1995-96?

4. Was any advertising agency, public relations consultancy or marketing group engaged by the Ambulance Service in the financial year of 1995-96 and, if so, what were their names and how much were they paid?

5. Has the Minister been informed of any increase in the unfunded liability of the scheme?

6. Has the Minister received a copy of the South Australian Ambulance Services annual report for the year 1995-96 and, if so, when will it be released?

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

LAWYERS' WORKSHOP

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Attorney-General a question about workshops for lawyers.

Leave granted.

The Hon. BERNICE PFITZNER: A workshop which was organised by the Law Council through Legal Aid in Adelaide was held in Adelaide in August this year. I understand that the workshop is an in-service training for lawyers involved in children's representation work. I gather that the workshop was a very good workshop and very helpful, so much so that the workshop was over-subscribed by 15 people. The workshop is entitled 'Child's Representative Training Program' and the flier states that:

> This workshop is a comprehensive course which will cover all aspects of child representation from receipt of initial instructions through to the post appellate processes. Vital matters such as interviewing and understanding children, evidence gathering, case coordination, ethnic and domestic violence, and ethical issues will be explored. Papers written by pre-eminent lawyers, clinicians and academics will be presented.

As a person with some experience in child development, I am always concerned that children when entering the law court system should be handled well and some lawyers—and with due respect to the lawyers here—due to their aggressive nature may not be sensitive to the children's needs.

I support such in-service training. However, a concern has been raised that Mr Russell from Legal Aid, the person who supplies the names of the lawyers to the Law Council, is less than objective when he puts forward names of people to attend these workshops. For example, a woman lawyer with 20 years' experience in child representative work put down her name and paid for the August Adelaide workshop. She was also one of the first people to register. She finds that she was omitted from the August workshop and it was only when she telephoned the Law Council in Canberra direct that she was given a place in another workshop which is to be held in Cairns.

She also telephoned Mr Russell of Legal Aid in Adelaide to ask why her name was dropped and, apparently, his reply was that he had to vary the ages of the lawyers. It is also alleged that perhaps he is discriminating against women, against older people and against one's political persuasion. Whatever the scenario might be, my questions to the Attorney-General are:

1. What criteria is in place for the selection of lawyers to be participants in these most important legal workshops?

2. If there are no criteria, why not?

3. I realise that this area relates to the Commonwealth, but will the Attorney-General investigate this issue on behalf of some of the lawyers in South Australia who appear to be disadvantaged?

The Hon. K.T. GRIFFIN: The appointment of a child's representative under the Family Law Act is generally proposed by the Family Court and is dealt with by the Legal Services Commission in this State. I am not aware of the criteria by which the Legal Services Commission decides who should or should not be charged with the responsibility of being a child's representative, but I will make some inquiries about that and bring back a reply.

It is interesting to note that the requirement for children in the Family Court to be represented by a child's representative has been increasing. The 1995-96 Annual Report of the Legal Services Commission makes the following reference:

The increasing court appointment of child representatives, just under 500 or an increase of 25 per cent on the previous year, continues to make a disproportionate claim on commission resources. Formal consultation about the problem took place this year between the commission and the judge administrator of the Family Court, Adelaide, and funding guidelines for child representation is an issue under consideration by the commission's costs review committee.

When a child's representative has been appointed a number of matters need to be taken into consideration. There is the question of what the child's representative does: it is to assist the court in determining where the child's best interests lie. The child's representative, like the court, is not concerned with the issues of fault or blame but only with what is best for the child in the future. There are issues about how to assess the child's witnesses; how the child's representative job fits in with the interests of the various parties; and the question which is fairly important in a family law dispute, does the child's representative decide what happens to the child?

They are matters which are taken into consideration after the appointment of the child's representative and are important questions which go also to the nature of the appointment and the kind of person who should be appointed to undertake the difficult task of representing a child in those sorts of circumstances. So far as the criteria are concerned, I will seek some information and bring back a reply for the honourable member in relation to that issue.

PRISONS, OVERCROWDING

The Hon. T. CROTHERS: I seek leave to make a precied statement prior to asking the Attorney-General, representing Minister for Correctional Services, questions about overcrowding in South Australian gaols.

Leave granted.

The Hon. T. CROTHERS: In an *Advertiser* article of Thursday, 7 November this year (page 3), headed 'Jails at flashpoint: chaplains', some of the chaplains made some comment on the subject matter. For instance, Chaplain the Reverend Heather Hubert—and I might add that she is the coordinator of the prison chaplains to the State's seven prisons—was constrained to say that she categorically rejected statements made by the Correctional Services Minister, Mr Matthew, and his Chief Executive, Ms Sue Vardon. This would seem to put her and her fellow chaplains as holding different opinions from the Minister and his Chief Executive Officer. In fact, in reference to the comments made by Minister Matthew and Ms Vardon she said:

In prison terms, that's just bullshit.

That is a most unusual remark from a minister.

The Hon. P. Holloway: A minister of religion.

The Hon. T. CROTHERS: Yes indeed, a minister of religion, and the coordinator of all the prison chaplains. This most unusual remark from a minister of the cloth was made after Minister Matthew and Ms Vardon had said that prisons were running more 'peacefully, effectively and efficiently' than ever. The Rev. Hubert further said:

You just walk in the doors and you can feel the tension. It's quite incredible.

The Hon. A.J. Redford: Where is it any different?

The Hon. T. CROTHERS: It will be quite different when we put you in there. Keep going, and that won't be long. Again, the Rev. Hubert said:

It is, in fact, worse than at any time during the six years that I've been involved in prison ministry in South Australia. In the last six months it has just continued to get worse because of the doubling up.

The whole of this general issue, in the eyes of the Rev. Hubert, emanated from statements made by Minister Matthew and Ms Vardon when they rejected claims that the practice of doubling up (that is, the practice of putting two prisoners into cells usually occupied by one) was causing widespread disruption. She further said that 'chaplains had found the Government's stance very hard to swallow when we constantly hear comments to the contrary from both prisoners and officers'.

Minister Matthew, of course, decried the Rev. Hubert's comments by saying that she often made claims which were 'anecdotal and are frequently proven to be without foundation or physical evidence. These latest claims are no different.' The *Advertiser* report continues:

She had failed to accept the economic reality that taxpayers had not been able to afford a new prison.

The Rev. Heather Hubert went on further to say:

. . . chaplains were dealing first-hand with more cases of drug use, 'standover' situations, bullying and rapes.

But there is more. The report also states:

. . . chaplains believed Mr Matthew had repeatedly ignored their warnings that overcrowding was creating 'enormous tension, anxiety and insecurity'.

The mood among both prisoners and prison officers was 'one of tension, dissatisfaction, fear, apathy and low morale,' she said. Tension within the Adelaide Remand Centre already was at an 'explosive level' because nearly 250 prisoners were being crammed into a building originally designed for 160.

With these matters to the fore, I direct the following questions to the Attorney-General:

1. What, if any, procedures are in place in order that prison officers can make the Minister aware of the day by day situations known directly to the Minister?

2. The Minister singled out the Rev. Heather Hubert for attention in his rebuttal of her remarks. Was he not aware that in her capacity as prison chaplain coordinator she, as she says in the article, was just not speaking for herself but for all other prison chaplains as well?

3. It is obvious that there is a chronic shortage of inmate space in the State's gaols and that all the spin-doctoring in the world by the Minister and his Chief Executive Officer—

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: At least I have some; I have yet to find one in you—will not cure that. Does the Minister therefore agree that if the question of new accommodation for prisoners is not dealt with as soon as possible innocent lives may well be at risk?

4. The question according to the Minister cannot be addressed because of affordability, but the question I put to him, to which I want a direct answer, is: can the State, in light of increasing crime, afford not to build a new prison?

5. If the Government intends to embark on a new gaol-building project, what is the anticipated completion date?

The Hon. K.T. GRIFFIN: The premises upon which the honourable member argues are not correct in terms of the—

The Hon. T. Crothers: Blame the *Advertiser*.

The Hon. K.T. GRIFFIN: The honourable member says it is the *Advertiser*, which is a very good newspaper, but the reporter can only report the information which is brought to his or her attention. In relation to the issues to which the honourable member has referred, the information is not correct. It may be the views of one person that there are difficulties in the context to which the chaplain referred, but that position is not accepted by the Government. As to the honourable member's premise that there has been a steady

increase in the rate of crime, that is not correct, because it is not demonstrated by the statistics. The honourable member has several flaws in the basis upon which he couches his questions. I am sure that the Minister in another place will be delighted to respond to the honourable member's questions. I will refer them to him and bring back a reply in due course.

DEFAMATION LAWS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about defamation laws.

Leave granted.

The Hon. L.H. DAVIS: In today's Australian *Financial Review* there is a report that the Commonwealth Attorney-General, the Hon. Daryl Williams, will be taking steps, through the Standing Committee of Attorneys-General, to encourage uniform defamation laws in Australia. Mr Williams was quoted as saying that the Commonwealth would argue before the High Court next year in the Levy case that defamation laws should be determined as part of the common law (that is, the argument of qualified privilege) and by Parliament rather than through the courts. Has the Attorney-General any comment to make on Mr Williams's statement or views on this important matter of defamation laws?

The Hon. K.T. GRIFFIN: The real difficulty, when the High Court makes the sorts of decisions that it made in the Theophanous case of the existence of a right, is that ultimately the legislature and the people cannot change it except by a referendum. Whenever there is a broadening of the scope of the Constitution, frequently if Governments, Oppositions or the populace do not agree, it requires the rather extensive mechanisms of constitutional amendment to be pursued. In the case of the Commonwealth Constitution, it requires a majority of electors voting at a referendum across Australia and a majority of States for a referendum to be carried. Obviously, trying to amend the common law in that fashion is a particularly difficult task.

I have given instructions in relation to two matters, *Levy v. Victoria* and *Lange v. the ABC*, for South Australia to intervene at the hearings. The instruction is that South Australia should not put any argument on the question whether the Theophanous case should be reopened. That is not the purpose of the intervention. The advice which I—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: We intend to make no submissions on whether or not the Theophanous case ought to be reopened. However, if leave is given by the High Court to reargue that case, my instructions to the Solicitor-General and to the Crown Solicitor is that we should argue that the process of reasoning relied upon by the majority in *Theophanous* was incorrect. The question of reopening does not depend only upon the correctness of the decision but also the inconvenience caused by it, and it is for that reason that we have taken the position that we should not put submissions on whether or not it should be reopened.

I note that the Commonwealth Attorney-General proposes to have submissions put on behalf of the Commonwealth that it should be reopened. New South Wales, on the other hand, will be putting submissions that it should not be reopened. South Australia is in the middle, but if it is reopened the case which we wish to put in relation to the High Court decision is that the process of reasoning relied upon was incorrect. There are other aspects of the intervention which we will certainly be arguing. I do not think it is appropriate at this stage to signal those, but in due course I will be happy to make further information available to members about the way in which South Australia intends to deal with the issues. However, the threshold issue is whether or not the High Court will allow the Theophanous case to be reargued.

The Hon. R.D. LAWSON: Will the Attorney say whether the State of South Australia will be supporting or opposing the proposition that there is a constitutionally entrenched right of free speech, that being the issue on which the Commonwealth and New South Wales are divided?

The Hon. K.T. GRIFFIN: We are not arguing that there is no entrenched right. I think one has to accept that the High Court having made the decision that there is a right, it is going to be very difficult to change that decision. However, there is a lot on the fringes. There is the issue of qualified privilege. There is a range of issues which are, in a sense, peripheral to that principal question: is there or is there not a right? But they are the issues which have really caused the greatest level of concern in the implementation of the right which the High Court has found exists.

There are other issues. We will argue, for example, that the Constitution should not be construed as dealing with the issue of common law rights for the very reason that I have indicated: that if the High Court argues that the Constitution is to be expanded to create further rights and limitations—as, for example, in relation to the power of State courts, where there is a decision of considerable concern made in the Matthews case which potentially impacts upon State courts exercising Federal jurisdiction. All of those sorts of issues are issues which the Federal Parliament cannot even legislate to override, very largely because they are established by the High Court as fundamental positions created by the constitution which require amendment by referendum, a majority of electors voting in favour and a majority of States supporting change. So, that is the difficulty as we see it. It is a fundamental difficulty, and we would be arguing for a narrower approach by the High Court than it has presently taken.

CROWN APPOINTMENTS

The Hon. G. WEATHERILL: I seek leave to make a brief explanation prior to asking the Attorney-General, representing the Minister for Transport and the Minister for Emergency Services, a question about appointments of officers of the Crown.

Leave granted.

The Hon. G. WEATHERILL: The *Government Gazette* of 24 October 1996 states:

> His Excellency the Governor in Council was pleased to appoint as Officers of the Crown, without pay or any other industrial entitlement, the following staff of Group 4 Correctional Services pursuant to section 68 of the Constitution Act 1934.

The names of five males and five females are then listed. My questions to the Minister are:

1. What titles do these people have?
2. What jobs do they do?
3. Where do they work?
4. To whom are they answerable?
5. Who is the responsible Minister?
6. Do they come under a private sector employer and, if so, who is the private sector employer?

The Hon. K.T. GRIFFIN: I will refer those questions to the appropriate Minister and bring back a reply. The appointment of officers under section 68 of the Constitution Act for

no pay is quite a proper course to follow. It has been done, as I understand it, on a number of occasions. So, it is quite constitutional and legal. In terms of the requests made by the honourable member, I do not have that information at my fingertips, but I will ensure that I obtain it as far as it is possible to do so and bring back a reply.

EDUCATION, TERTIARY

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 senior secondary education.

Leave granted.

The Hon. P. HOLLOWAY: Yesterday, when I asked the Minister for Education about shortages of engineering graduates and technicians the Minister sought to lay blame on previous Governments. However, a report in this morning's *Advertiser* indicates that after three years of the Brown Government's policies universities and TAFE colleges are heading for '. . . a dramatic slump in admissions next year—in some areas by up to 20 per cent'. Year 12 applications for university places in South Australia for 1997 are down by 12 per cent and applications from mature age students are down by 20 per cent. These statistics follow recent admissions by the Minister that retention rates for year 12 students have fallen in each of the past three years. My questions are:

1. Will he say whether applications for engineering and information technology courses have fallen by the same rate as other applications?

2. Does the Minister accept responsibility for the education policies of the Government over the past three years which have led to these falling retention rates and university and TAFE admissions?

The Hon. R.I. LUCAS: Certainly I would be interested in getting some figures from the universities in relation to the various IT courses. The anecdotal responses we had from some of the academics from the universities a month or so ago was that there has been tremendous demand for the new information technology courses at a number of the universities. I would have to get that information via the appropriate Minister, who is the Hon. Dr Bob Such, in relation to the applications for next year. But certainly this year there was a significant increase in demand for IT related courses at the University of South Australia and at the other universities as well. I am aware that at least two of the universities have established new information technology related degree courses for next year and, as I said, it will be interesting to see the demand for the important areas of information technology within those total figures that the member is talking about.

Certainly, the Government's demonstrated strength in attracting information technology industries and companies to South Australia is giving new hope to graduates leaving both schools and our universities, in terms of trying to get high-tech jobs in information technology. The demand for those IT courses at universities is an indication of the realisation of young people that if they can get into those courses, or related courses and disciplines, they are maximising their chances of job prospects in the future. Some of the Government figures that have been quoted are that there are, I think, already over 2 000 jobs in the IT industry in South Australia at the moment. Based on current commitments—not promises—from companies, that figure is estimated to grow to 6 000 by early in the next decade. According to some estimates—and admittedly these are estimates—potentially that figure might grow to as many as 10 000 to 12 000 jobs in the IT industry.

I will have to take advice regarding the information technology breakdown of the applications, because the honourable member is talking about overall applications. There is no doubt that, in relation to overall applications for next year, there are a number of potential reasons for decline in that area, one of which clearly is the issue of declining retention rates over recent years. We have discussed that recently during Question Time and in debate in this Council. Potentially, some of the Commonwealth changes related to funding might have had an impact in some areas in terms of changed policies involving HECS. So, a number of factors may well impact on the overall figures for application to universities.

Regarding the detailed question about information technology, I do not think that one could rely on the overall figures on which the honourable member relies. One must look at the breakdowns in regard to particular areas, and I will seek further advice from the Hon. Bob Such to see whether or not there has been the decline that the honourable member asserts in relation to applications to information technology.

OLIVE TREES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister for the Environment and Natural Resources a question about feral olive plants.

Leave granted.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: It is not my intention to discuss the culinary delights of the olive, which I am told are very good, as that would be an opinion, so I will not do so. Over the past couple of years, I have been contacted by quite a few people concerned about the spread of olives through the Adelaide Hills. There is probably little doubt that they are the most significant woody weed in the Adelaide Hills at present. Not only are they spreading over quite a few hillsides but they have invaded, for instance, the Belair National Park. They occur in quite large numbers within the park—

The Hon. Anne Levy: Carrick Hill.

The Hon. M.J. ELLIOTT: —and Carrick Hill, and they are continuing to spread—not as fast as the African Daisy, but they have become a legitimate pest, and one which is hard to remove. My question is quite simply: does the Government have a policy in terms of the long-term removal of this particular pest plant—I understand that at this stage it is leaving it to individual councils but that most councils appear not to be acting on it—and is it giving any consideration to being more pro-active on this issue?

The Hon. K.T. GRIFFIN: I will have the matter referred through my colleague the Minister for Transport and bring back a reply.

RETAILERS, SMALL

The Hon. T.G. CAMERON: I seek leave to make an explanation before asking the Minister representing the Minister for Industry, Manufacturing, Small Business and Regional Development a question about South Australian small retailers.

Leave granted.

The Hon. T.G. CAMERON: Small retailers make up 97 per cent of all retailers in South Australia. The Small Retailers Association of South Australia recently conducted a survey amongst its members to identify what issues were specifically impacting on them. According to the association, the response to the survey was the broadest and most representative that it has ever undertaken. The survey found four specific issues that were having a negative impact on the State's small retailers including: the introduction of poker machines (82.5 per cent); rent prices (80.8 per cent); Government charges (78 per cent); and trading hours (64.9 per cent). Interestingly, only 25.4 per cent believed that industrial matters were having a negative impact on their business.

An honourable member interjecting:

The Hon. T.G. CAMERON: Responsible trade union movement. When asked how they rated the performance of their business, 49.7 per cent stated that profits were down; 54.8 per cent stated that rents were up; 50.3 per cent believed that the value of their business was down; 78 per cent thought that the cost of goods was up; 49.2 per cent said that the price of goods was up; but 65 per cent stated that the cost of staff was static. When asked to nominate how they saw their future, 67.8 per cent believed it to be either static or declining or that they had no future at all. When asked whether, given all the problems facing small retailers, there should be a Government inquiry into the industry, 98.2 per cent said, 'Yes'. My question is: considering that nearly 70 per cent of small retailers believe that they have a static to very bleak future, will the Minister conduct a Government inquiry into the small retail industry?

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

OVERSEAS QUALIFICATIONS BOARD

The Hon. P. NOCELLA: I seek leave to make a brief explanation before asking the Minister representing the Minister for Multicultural and Ethnic Affairs a question about the Overseas Qualifications Board.

Leave granted.

The Hon. P. NOCELLA: Since 1992, the Overseas Qualifications Board has been located both physically and administratively in the Department of Employment, Training and Further Education. I have been approached recently by a number of people who have a genuine interest in the activities of the board, which was established with the specific purpose of enhancing the skills recognition and employment prospects of new arrivals with overseas trade or professional qualifications. There seems to be almost universal agreement that the Overseas Qualifications Board has not produced any measurable outcomes. This is not intended as criticism of the board. I think it is more a case of a combination of factors including: delays in the appointment of members of the board; delays in assigning resources; some uncertainties about the direction of the board; and, more recently and currently, lack of executive support.

The question is whether the time has come to have another look at the working of this board in relation to the other bodies with which it has to interact and the people whom it is supposed to assist by way of advocacy or practical actions undertaken in terms of bridging courses and the like with a view to finding a better location, both physically and administratively, for this organisation. My question is: will the Minister undertake to review the Overseas Qualifications Board with a view to establishing a better location with better guarantees of resources, executive support and staffing?

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

PARLIAMENT HOUSE TOURS

The Hon. ANNE LEVY: I seek leave to make a brief explanation before asking you, Mr President, a question about tours of Parliament House.

Leave granted.

The Hon. ANNE LEVY: I recently attended a conference held in the New Zealand Parliament at Wellington, and you will have received my report on that conference. Attached to my report was a brochure, which was freely available throughout Wellington, in Parliament House itself, in all travel agencies and tourist agencies, in information kiosks and in many locations in Wellington, advertising tours of Parliament House. The New Zealand Parliament runs tours throughout Parliament House, particularly when Parliament is not sitting, including weekends. There is one tour on Saturday morning, one on Saturday afternoon and one on Sunday afternoon. These tours are conducted by staff of the Parliament and are extremely popular. Many tourists to New Zealand take part in these tours as well as many New Zealanders, who take advantage of the three tour times at the weekends to be able to visit their own Parliament, an opportunity denied to most South Australians, as currently there are no tours at weekends and only a very limited opportunity for anyone to walk in off the street to see our Parliament House or Old Parliament House, despite what the Minister might like to pretend is the contrary.

There is no charge for these tours and, in the few days I was there, they were well attended, as I say, by foreign visitors to New Zealand and particularly at weekends by New Zealanders themselves. Japanese tourists did have to be accompanied by their own interpreter, as there was no interpreting service available, but officers of the New Zealand Parliament indicated to me that they were hoping they might get a Japanese speaking guide who could assist with tours by Japanese speakers.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: Thank you, Mr President. I was very impressed not just with the organisation of the tours but with the fact that they were available at weekends, thereby giving New Zealanders the opportunity to visit their own Parliament House. My question is: will you investigate having tours of this Parliament House at weekends so that ordinary South Australians, who are otherwise occupied earning a living during the week, would be able to visit what is in fact their Parliament to appreciate Parliament House, this historic heritage building—

Members interjecting:

The PRESIDENT: Order! I am trying to listen to the question.

The Hon. ANNE LEVY: —particularly when the current renovations are finished and Parliament House, I am sure, would be extremely attractive to members of the South Australian public who would welcome seeing it, as are the New Zealanders who are seeing their recently renovated Parliament House in that country?

The PRESIDENT: I thank the honourable member for her question. The honourable member is aware that we do have a part-time education officer in the Parliament to deal

with school tours but not so much to deal with the general public. I emphasise the need for more members of the public witnessing the operations of the Parliament. I agree with the honourable member about the public having access to the Parliament and becoming familiar with the way it works. Perhaps it would raise our stature in the rest of the community if that were the case. As for weekend tours, I will comment on the New Zealand Parliament. New Zealanders like their Parliament so much that they burnt it down and they had to rebuild it.

The Hon. Anne Levy: They didn't—it was the administration building that was burnt down—the beehive—and not the old heritage building.

The PRESIDENT: The aim was a bit askew. There was a fire in a building attached to the Parliament and that building has been rebuilt.

The Hon. Anne Levy: That is not Parliament House.

The PRESIDENT: Is the honourable member interested in the answer? As I understand it, the New Zealand Parliament is nicely renovated and is a very good Parliament and, I might add, is not used at the moment. We have a Parliament that we can all be proud of, and I must say that a considerable sum has been spent on its upgrading so that it is, first, attractive to the public and, secondly, a safe and pleasant place for people to work in. Certainly, when the renovations are complete, I will try to encourage more people to come into the Parliament, first, to witness the operation of Parliament and, secondly, to look at the building, because I think it is something that all taxpayers ought to be proud of.

DECS EXECUTIVE SERVICE

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

Leave granted.

The Hon. CAROLYN PICKLES: On Tuesday I asked the Minister questions concerning advertisements for DECS director positions, to which as yet I have received no answer. The advertisements for these appointments indicated that the appointments would complete the realignment of the department's executive service.

The Hon. L.H. Davis: Very slow—

The Hon. CAROLYN PICKLES: He could not answer the questions. Given the cuts made to education in almost every area, I would like to know the details of this realignment and, specifically, how it will improve our children's education. Therefore, my questions to the Minister are:

1. How was the realignment process conducted?
2. What benchmark was used for assessing new salaries?
3. Were salaries determined on the basis of productivity or a comparison with executive salaries in other States?

The Hon. R.I. LUCAS: I am still waiting on answers to questions I asked when we were in Opposition, so it is a bit rich for the Leader of the Opposition to be complaining that she has had to wait 48 hours for answers to questions. There are a number of reasons for some of the streamlining that is currently being undertaken within the Department for Education and Children's Services. There is no radical restructure or change at all. The principal reason has basically been that we were formerly two separate agencies—the Children's Services Office and the Department of Education—and in bringing the two together as the Department for Education and Children's Services there have been some improvements made in terms of streamlining the child-care and children's services section of the department and school education.

The view of the Chief Executive Officer and myself was that there were a number of other areas where we had to try to bring together education and children's services within the one department and to make it truly one department. The advice provided to me, for example, is that the leadership of the Institute of Teachers met with the Chief Executive Officer recently and broadly indicated its support for the changes.

I have not had a meeting with the Institute in the past week, so I cannot attest to that directly, but I understand there has not been any major concern expressed by anyone with the broad goal of trying to provide better services to children and young people through children's services and school education by the streamlining that has occurred within the department. In relation to executive salaries for any new positions, we have to take advice from the Commissioner for Public Employment in relation to all these issues. We rely upon him and any other officers or consultants that he or the agencies might have to engage to provide us with advice on the appropriate range and salary levels for executive officers.

SOUTH AUSTRALIAN PORTS (BULK HANDLING FACILITIES) BILL

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

This Bill is to authorise and facilitate the sale of bulk handling facilities ('BHFs') situated at Port Adelaide, Port Giles, Wallaroo, Port Pirie, Port Lincoln and Thevenard presently owned and operated by South Australian Ports Corporation ('Ports Corporation').

It is intended that this asset sale will be concluded within the next few months.

The BHFs have been identified as an asset that should not be retained as part of the business of Ports Corporation and should be sold. There are a number of issues which mean that the BHFs are not an asset which should be retained within Government ownership:

- the BHFs are physically the last link in the export of South Australian grain. The grain industry is worth $500 million to $700 million per annum in exports. It is vital that the BHFs are maintained to support the industry. Based on current charges and cost structures, Ports Corporation would not be able to replace the BHFs at the end of their economic lives;
- the BHFs require substantial regular maintenance because of the harsh environment in which they operate. The condition of the BHFs is declining with age and corrosion so that significant capital expenditure will be required to maintain the BHFs and to meet safety and environmental regulations. The funding requirements are best met by a private owner rather than Government; and
- selling the BHFs will raise a substantial amount of money which can be used to retire State debt.

Under the Bill, the BHFs at the ports mentioned are declared to be chattels despite the fact that they are affixed to land. The Treasurer is authorised to sell them. In addition, the Treasurer, as agent for Ports Corporation, will grant long leases (100 years or so in each case) over land and air space occupied by each of the BHFs. As coastal land is involved, it is not proposed to sell it outright but merely to grant a lease so that the land involved will revert to the Crown at the expiration of the term or sooner determination of the lease in each case.

The jetties and wharves concerned will continue to be managed by Ports Corporation and will continue to be accessible to members of the public and available for use by fishing and other vessels—except where such uses are incompatible with operations for the loading of grain or other commodities.

In addition to facilitating the sale of the BHFs, the Bill will put in place an access regime under which other persons may negotiate with the operator of the BHFs for access to them for the purpose of loading ships with grain or other commodities such as salt and gypsum.

At the time of sale of the BHFs, it is proposed that haulage agreements will be entered into between existing users of the BHFs and the operator in order to preserve existing rights.

Under the access provisions, the operator of the BHFs is required to provide a bulk handling service on terms agreed or, if parties are unable to agree, on fair commercial terms determined by arbitration. The parties are required in the first instance to appoint an arbitrator but if they are unable to agree, the Minister may make the appointment.

An award made under Part 3 of the Bill is enforceable in the Supreme Court. Also, it may be varied or terminated by agreement with the operator or by further arbitration where the parties are unable to agree.

The access provisions are compatible with the Competition Principles Agreement made on 11 April 1995 between the Commonwealth, the States and the Territories relating to the making of consistent and complementary competition laws and policies throughout the Commonwealth.

I commend the Bill to honourable members.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

The bulk handling facilities covered by the Bill are the grain facilities at Port Adelaide, Port Giles, Wallaroo, Port Pirie, Port Lincoln and Thevenard. Other facilities may be added by proclamation.

PART 2

SALE OF BULK HANDLING FACILITIES

Clause 4: Sale of bulk handling facilities

This clause authorises the Treasurer to sell SA Ports Corporation's bulk handling facilities. The net proceeds of the sale are to be used in discharging the Corporation's liabilities and the balance to retire State debt.

Clause 5: Statutory easement

This clause creates an easement in favour of the purchaser of bulk handling facilities for support for the facilities and for necessary access to the facilities.

Clause 6: Registrar-General to note statutory easement

This clause enables the Treasurer to apply to the Registrar-General to have the statutory easement noted on relevant titles.

Clause 7: Leases and other rights in relation to land

This clause authorises the Treasurer to act as agent of SA Ports Corporation in selling, leasing or granting other rights over or in respect of land of the Corporation.

PART 3

CUSTOMER ACCESS TO BULK HANDLING FACILITIES

Division 1—Basis of customer access

Clause 8: Access on fair commercial terms

The operator of bulk handling facilities is required to provide services to customers on agreed terms or, in the absence of agreement, on fair commercial terms determined through arbitration.

Division 2—Disputes about terms of access

Clause 9: Proposal for access

A person seeking access to the facilities is to put up a written proposal to the operator. The proposal may include alterations or additions to the facilities. The operator must give information about the proposal to other customers who may be affected by it.

Clause 10: Duty to negotiate in good faith

Negotiations are to proceed in good faith and on the basis that the reasonable requirements of the proponent are to be accommodated as far as practicable.

Clause 11: Existence of dispute

A dispute is to be taken to exist if agreement has not been reached within 30 days.

Division 3—Reference of dispute to arbitration

Clause 12: Power of parties to refer dispute to arbitration

Once a dispute exists the parties have 60 days within which to jointly appoint an arbitrator.

Clause 13: Minister's power to refer dispute to arbitration

If the parties cannot agree on an arbitrator or have not done so after 60 days, either party may within 90 days of the dispute arising ask the Minister to appoint an arbitrator.

Clause 14: Appointment of fresh arbitrator

This clause allows for appointment of a replacement arbitrator if an arbitration is not able to be completed for any reason.

Clause 15: Application of Commercial Arbitration Act 1986

The *Commercial Arbitration Act* is to apply to the extent that it can apply consistently with the Bill.

Division 4—Parties and representation

Clause 16: Parties to the arbitration

The parties to an arbitration are the proponent, the operator and any interested third parties and any other persons joined as parties on the basis that their interests may be materially affected by the outcome of the arbitration.

Clause 17: Representation

Parties may be represented by lawyers or, if the arbitrator agrees, by other representatives.

Clause 18: Minister's right to participate

The clause authorises the Minister to participate in arbitrations.

Division 5—Conduct of arbitration

Clause 19: Arbitrator's duty to act expeditiously

The arbitrator is required to proceed expeditiously.

Clause 20: Hearings to be in private

The parties must agree before a hearing can be conducted in public. The arbitrator is authorised to control who may be present at private proceedings.

Clause 21: Procedure on arbitration

The arbitrator is authorised to obtain relevant information in any way the arbitrator thinks appropriate and may decide what evidence must be written and what oral.

Clause 22: Procedural powers of arbitrator

This clause contains various procedural and evidentiary powers facilitating arbitrations, including authorising the arbitrator to seek expert or legal advice.

Clause 23: Power to obtain information and documents

The arbitrator is authorised to require information to be provided or persons to attend to give evidence. Legal professional privilege and the privilege against self incrimination apply.

Clause 24: Confidentiality of information

The arbitrator is authorised to impose conditions about the confidentiality of information.

Clause 25: Proponent's right to terminate the arbitration before an award is made

The proponent may terminate the arbitration by giving notice to the Minister, the arbitrator and the other parties to the arbitration.

Clause 26: Arbitrator's power to terminate arbitration

The arbitrator may terminate the arbitration if satisfied the matter is trivial, misconceived or lacking in substance or the proponent has not negotiated in good faith or the terms and conditions of an existing contract or award should continue to govern the matter.

Division 6—Awards

Clause 27: Formal requirements related to awards

The award is required to specify the period for which it remains in force and the reasons on which it is based.

Clause 28: Principles to be taken into account by arbitrator

The arbitrator is required to take into account various commercial and competition principles.

Clause 29: Incidental legal effect of awards

An award may vary the rights of other customers so long as they continue to be able to meet their reasonably anticipated requirements and are compensated appropriately.

An award may require facilities to be extended with certain protections to the operator (including that the operator cannot be required to bear the cost).

Clause 30: Consent awards

A consent award may be made if the arbitrator is satisfied the award is appropriate in the circumstances.

Clause 31: Proponent's option to withdraw from award

The person seeking bulk handling services has 7 days within which to elect not to be bound by the award. Any further proposals within the next 12 months by the person would require Ministerial authorisation.

Clause 32: Termination or variation of award

The parties may agree to terminate or vary an award. If the parties cannot agree and there has been a material change in circumstances, the matter can proceed to arbitration.

Division 7—Enforcement of award

Clause 33: Contractual remedies

An award is to be enforceable as a contract.

Clause 34: Injunctive remedies

The Supreme Court may grant an injunction to ensure an award has effect on the application of the Minister or a person with a proper interest in whether the relevant provision is complied with.

Clause 35: Compensation

The Supreme Court may order compensation to be paid by a person involved in the contravention of an award on the application of the Minister or an interested person.

Division 8—Appeals and costs

Clause 36: Appeal from award on question of law

An appeal to the Supreme Court against an award or refusal to make an award may only be made on a question of law.

Clause 37: Costs

Costs are generally to be borne by the parties in equal proportions unless the arbitrator orders otherwise.

Division 9—Expiry of Part

Clause 38: Expiry of Part

The Part is to expire after 10 years but it can be renewed for further periods not exceeding 10 years by proclamation.

PART 4

MISCELLANEOUS

Clause 39: Bulk handling facilities to be regarded as chattels

Bulk handling facilities are to be treated as chattels regardless of the extent of their affixation to land.

Clause 40: Interaction between this Act and other Acts

Various provisions of other Acts are not to apply to transactions under the Bill.

Clause 41: Hindering access

This clause makes it an offence to prevent or hinder a person gaining access to a bulk handling service to which the person is entitled.

Clause 42: Accounts and records of bulk handling service

This clause requires an operator to keep separate accounts and records for each bulk handling facility.

Clause 43: Regulations and proclamations

This clause provides general regulation making power and allows proclamations (other than the commencement proclamation) to be varied or revoked.

SCHEDULE

Amendment of South Australian Ports Corporation Act 1994

The schedule amends the *South Australian Ports Corporation Act* to broaden the purposes for which land may be resumed and vested in the Corporation; to facilitate vesting of land not previously brought under the *Real Property Act 1886*; and to extend the concept of land to a subsurface stratum or a stratum of airspace.

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

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

This Bill amends sections of the Local Government Act 1934 as part of a comprehensive review of the whole of the Local Government Act. It is also intended that a draft Bill to replace the present Act will be released for public consultation later this year.

The proposals contained in this Miscellaneous Provisions Bill are required to be in place before the overall revision timetable because it supports the Government's structural reform program, and therefore needs to be in place for the May 1997 Local Government elections. The Bill also provides a number of technical amendments which update the existing Act.

The program of structural reform of Local Government areas by the Local Government Boundary Reform Board is in progress. The program encourages voluntary amalgamations of Councils with an aim to halve the number of Councils by the end of the year. Under the current legislation, the Board has the capacity to initiate its own reform proposals and, where these are not accepted by the Councils concerned, polls of electors must be held. However, the current legislation is not clear about the voting eligibility of persons nominated by a body corporate, or nominated by a group of persons who are ratepayers. There is certainly no intention to exclude any class of electors from voting in these polls, and the Bill will clarify voting eligibility to avoid confusion.

Under the Bill, members will be elected for three year terms, an extension to the current two year period. This is in keeping with Local Government in all other Australian States which elects councillors for three or four year terms. Longer terms will assist the corporate planning and management processes of Councils by allowing them to confidently plan ahead for a minimum three year period.

Continuity and commitment to the structural reform process will be fostered by increased terms of office for members elected in May 1997, or at the first general election of a newly formed Council if the election timetable is affected by proclamation in particular cases. Three year terms are also consistent with the requirement that structural reform proposals must include a three year financial and management plan.

Since 1986, District Councils have had the option of conducting elections by postal ballot in remote areas following a proclamation by the Governor. The Bill proposes to make this an option for all Councils to help increase voter participation in Local Government elections and give Councils greater flexibility.

The Bill allows Councils to make special arrangements for the personal delivery of advance and postal voting papers, and the collection of these papers by electoral officers. These proposals give Councils an option to provide assisted advance or postal voting services at various places that are convenient for electors. These could include shopping centres, Council chambers, nursing homes, hospitals, and Aboriginal communities within Council boundaries.

Modifications have been made to the provisions dealing with illegal practices in the conduct of elections to support the increased use of postal voting.

In recent times, there has been much public debate and scrutiny by the media about the perceived secrecy of Council decision making. This Bill strongly reinforces the principle of open government by ensuring members of the public cannot be excluded from Council meetings unless absolutely necessary, and that related documents are not unduly restricted. It also encourages a fully informed debate by Councils about whether and when to consider matters in confidence.

The right of the public to attend meetings can only be overturned if disclosure of the information would cause significant damage, confer an unfair commercial advantage, is relevant to a Development Plan amendment, or the Council has a duty or obligation to deal with certain information on a confidential basis.

The Bill proposes that Councils cannot make an order to keep certain types of information confidential which is of interest to the public. This information includes:

. Employees' remuneration and conditions of service
. The identity of successful tenderers and the reasons for their selection
. The identity of land bought or sold and the reasons for the transaction.

The Bill provides the Minister with the power to investigate and report on Councils that fail to comply with these sections of the Act after an appropriate path of inquiry. This capacity is essential to assure members of the public that due weight is being given to this important area of reform.

It is also proposed that the same freedom of information rights apply to documents which are the subject of an order for confidentiality as those which exist in relation to other Council documentation.

Finally, there are a number of technical amendments to the primary legislation. These include an amendment to the Local Government Superannuation Board's regulation making powers. The amendments allow a regulation to come into operation, in certain circumstances, less than four months after it is made, and where the Minister certifies it is necessary.

The proposed changes to sections of the Local Government Act are essential to the State Government's Structural Reform program and the future accountability of Local Government.

The increased flexibility for postal voting regulations and the extended term for councillors are significant advantages for Local Government, and the increased access to Council information will be a major benefit to the community.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause provides for the short title of the measure.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Amendment of s. 21—Formulation of proposals by the Board

The first amendment to section 21 addresses an incorrect cross-reference. The second amendment to section 21 addresses a technical issue concerning nominated agents, being that the Act needs to reflect that while a nominated agent is an 'elector' for the purposes of the Act, it is the body corporate or group that the nominated agent represents that is the ratepayer in respect of the relevant property.

Clause 4: Amendment of s. 58—Meetings of council

It is proposed to insert in section 58 an express requirement that the chief executive officer ensures that items on an agenda given to members of a council are described with reasonable particularity, and that each member receives a copy of any documents or reports that are to be considered at the meeting. The chief executive officer will be able, in consultation with the principal member of the council, to indicate on a document or report (or on a separate notice) any information or matter arising from the document or report that may, if the council so determines, be considered in confidence under the Act (provided that the chief executive officer also specifies the basis on which an order to exclude members of the public from the meeting could be made).

Clause 5: Amendment of s. 60—Procedure at meetings

This is a technical amendment to ensure consistency between sections 60 and 43 of the Act (on the basis that a chairman is chosen at a meeting of the council, and that paragraph (b) of section 60(2a) is redundant).

Clause 6: Amendment of s. 61—Meetings of council committees

This clause makes amendments to section 61 of the Act (relating to meetings of council committees) to ensure consistency with the amendments being made to section 58 of the Act.

Clause 7: Amendment of s. 62—Meetings in public except in certain special circumstances

This clause revises subsection (2) of section 62 of the Act concerning the grounds on which a council or council committee may order that the public be excluded from attendance at a meeting. There will now be four distinct circumstances where an order may be made by a council, namely (1) in order to consider in confidence information or a matter referred to in new subsection (2a) where the council or committee is satisfied that it is reasonably foreseeable that public disclosure could cause significant damage or distress to a person, cause significant damage to the interests of the council or a person, or confer an unfair commercial or financial advantage on a person and accordingly the principle that meetings should be open to the public has been outweighed by the need to keep the information or discussion confidential; (2) in order to consider information provided by a public official or authority with a request that it be treated by the council as confidential; (3) in order to consider a proposed amendment to a Development Plan before a Plan Amendment Report is released under the Development Act 1993, and (4) in order to ensure that the council does not breach any law, order or direction of a court or tribunal, or other legal obligation or duty, or in order to prevent unreasonable exposure to any legal process or liability. New subsection (2a) then sets out various matters that may be considered in connection with the operation of new subsection (2)(a).

Clause 8: Amendment of s. 64—Minutes

A council will not be able to use its powers under section 64(6) to prevent the disclosure of various (specified) matters once a decision has been made by the council. New subsection (7a) will require a council to specify the duration of any order under subsection (6), the circumstances in which the order will cease to apply, or a period after which the order must be reviewed.

Clause 9: Insertion of ss. 65AAA and 65AAB

It is intended to require that councils prepare a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of sections 62 and 64(6), (7) and (7a) (as amended by this measure). The code will need to be consistent with prescribed requirements and include any mandatory provision prescribed by the regulations.

New section 65AAB will give the Minister express power to initiate an investigation if the Minister has reason to believe that the council has unreasonably excluded members of the public from its meetings under section 62(2) or unreasonably prevented access to documents under section 64(6). The Minister will in certain cases be able to give directions to a council if the Minister considers that the council has acted unreasonably.

Clause 10: Repeal of s. 65d

A document that is subject to an order made under section 64(6) of the Act will not necessarily be exempt document for the purposes of Part VA of the Act (relating to 'Freedom of Information').

Clause 11: Amendment of s. 65t—Right of access to councils' document

The right to have access to a council's documents in accordance with Part VA of the Act will prevail over the operation of an order under section 64(6).

Clause 12: Amendment of s. 65zb—Refusal of access

This is a consequential amendment.

Clause 13: Amendment of s. 65zq—Internal review

This amendment clarifies the operation section 65zq.

Clause 14: Amendment of s. 73—Local Government Superannuation Scheme

These amendments set out a scheme for the commencement of regulations made by the Local Government Superannuation Scheme, to replace the operation of section 10AA of the *Subordinate Legislation Act 1978*. In particular, the amendments will provide specific grounds on which a regulation may come into operation earlier than four months after it is made, and ensure consistency with requirements under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

Clause 15: Amendment of s. 85—Preliminary

These amendments will provide that the close of voting for an election or poll carried out entirely by the use of advance voting papers (ie., under section 106a of the Act) will be at 6 p.m. on the day immediately preceding polling day.

Clause 16: Amendment of s. 89—Polling places and booths, and places for counting votes

These amendments are principally concerned to make it clear that a council may make special arrangements for the delivery of advance voting papers to electors who attend, or reside at, various places.

Clause 17: Amendment of s. 94—Date of elections

This clause will result in council elections being held at three-yearly intervals, commencing on the first Saturday in May, 1997.

Clause 18: Amendment of s. 106—Issue of advance voting papers

This clause makes a technical amendment, will require an envelope bearing declaration votes to comply with prescribed requirements, and will provide that relevant declarations must appear on a tear-off extension to the envelope flap.

Clause 19: Amendment of s. 106a—Voting entirely by use of advance voting papers

This clause recasts section 106a of the Act so as to allow a council to determine that an election or poll will be conducted entirely by the use of advance voting papers (subject to the operation of the section).

Clause 20: Amendment of s. 107—Procedures to be followed for advance voting

Clause 21: Amendment of s. 111—Voting procedure at polling booths

These amendments are consequential on earlier amendments, or provide consistency with earlier amendments.

Clause 22: Amendment of s. 120—Scrutiny of declaration voting papers

This clause makes provision for the removal of the tear-off extensions for declaration votes, and the shuffling of envelopes, before the ballot papers are removed from the envelopes.

Clause 23: Amendment of s. 132—Persons acting on behalf of candidates not to act as witnesses, etc.

This clause clarifies the operation of section 132(1) of the Act in relation to the position of a witness.

Clause 24: Amendment of s. 132a—Persons acting on behalf of candidates not to collect postal voting papers

These amendments strengthen the operation of section 132a of the Act to make express reference to a person who attempts to gain possession of advance voting papers in the specified circumstances. The penalty provision is to be made consistent with other sections of the Act.

Clause 25: Amendment of s. 151—Offences

This amendment will remove the requirement that the members of the public must be excluded from a meeting of a council or council committee before any information included in a return under Part

VIII of the Act can be disclosed at the meeting. It is intended that the general provisions and principles of section 62 will now apply in the relevant case.

Clause 26: Amendment of s. 193—Rebates of rates

This amendment will give councils express power to grant a rebate of rates or charges under section 193(4)(a) for a period of up to 10 years. The amendment also clarifies that a rebate of rates granted by a council may be a rebate of 100 per cent of the rates.

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

ROXBY DOWNS (INDENTURE RATIFICATION) (AMENDMENT OF INDENTURE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 497.)

The Hon. CAROLINE SCHAEFER: I support this Bill and again express my great delight at the fact that this major expansion will proceed. This expansion of the Olympic Dam mine by the year 2001 by Western Mining Company will more than double the production from the current 85 000 tonnes to up to 200 000 tonnes of ore per annum. This doubling of production will involve a cost of $1.25 billion invested over four years by that company in this State. Olympic Dam has already been a great contributor to this State since it ceased being a 'mirage in the desert' and became operational in 1988. Currently, it contributes $12 million per annum to the State's coffers via royalties. The expansion will double those royalties. Of course, that is only a minuscule part of the contribution it will make. It is estimated that export income from Olympic Dam will jump from the current $270 million per annum to $600 million per annum and, of course, the appropriate taxes and duties will also increase proportionately to this extra production.

As with any mining expansion, there are always those who express concerns with regard to environmental matters. It is worth noting that the EIS for Olympic Dam was re-endorsed recently by the Federal Government following public review. Although the plan, as it now stands, is for production to reach 200 000 tonnes, this indenture also attempts to anticipate any future increase in production and to provide for more than is currently required so that it allows for a conceptual project of up to 350 000 tonnes. Western Mining will have a smelting and refinery capacity beyond that which it will need initially. This indenture will allow Western Mining Company to treat copper, gold and silver from other sources outside the Olympic Dam area, particularly concentrates but also limited amounts of ore. The same royalties will be required for the State as if the ore was locally accessed. The indenture also provides that:

> At all times the most up-to-date codes of practice on radiation protection, safe transport of radioactive substances and management of radioactive wastes must be adopted as soon as they are adopted nationally.

Other clauses deal with water rights, including the right to purchase treated water from Port Augusta and access up to 250 megawatts of electricity via ETSA and the new national grid.

As part of the agreement, the Government will provide substantially upgraded health and medical facilities at Roxby Downs township. These will have a particular focus on acute care and birthing facilities, which I am sure is exceptionally good news for those people who live in the area. I do not have the most recent figures, but until recently the average age of people at Roxby Downs was 25. It also has the highest birth rate per capita of any town in South Australia. Birthing facilities of world-class standards in such an isolated community will be very welcome and some would say are somewhat overdue.

I think I should serve notice on the Minister for Education that within the foreseeable future this burgeoning population of babies will be requiring education facilities and I know that those members who have visited the township of Roxby Downs have been impressed by the standard of facilities that are already at the school and provided by access to a community library as well as a school library and very up-to-date classrooms. Western Mining has also donated a vast amount of information technology equipment to the school. On a recent visit I made with the Attorney-General, I saw the computing room which would be the envy of many urban schools and many urban schools of a much larger population than that which is being served at the moment. This is by far the largest investment made by any company or by any organisation in this State for many years; but there is also a human face to this expansion. It is, indeed, true regional development and it is, indeed, true decentralisation. It provides security for the families who are there now and for their families for up to 100 years. It will flow on to urban families and to manufacturing industries throughout this State.

Over the next four years some 1 200 contract construction workers will be employed in that region. In the long term there will be double the requirements for transport to the area for spare parts and tyres for what is now the largest mine in this State. Some have estimated that the flow-on effect per dollar of export income is 4:1 and some are optimistic that it will be 6:1. Either way, Roxby Downs, Olympic Dam and Western Mining will play a major part in the economy of this State in the foreseeable future.

I confess to a great interest in the Roxby Downs township and the Roxby Downs mine. It began in 1988 at the end of one of the most severe droughts that Eyre Peninsula has ever seen—one which was considered to be a one in 100 year four-year drought. Many people were saved from bankruptcy by sending their sons or relocating themselves to Roxby Downs, and many have stayed in that town. I always feel as though I am moving into almost home territory whenever I go there: I always feel very welcome. Indeed, I know many of the people who are there and have watched them raise their children in that area. My sister, brother-in-law and their four children live in Roxby Downs and are reliant on Western Mining for their income. This expansion and investment excites me and I believe it should excite everyone in South Australia. I commend the Bill to the Council.

The Hon. G. WEATHERILL secured the adjournment of the debate.

POLICE (CONTRACT APPOINTMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 November. Page 374.)

The Hon. T.G. ROBERTS: The Opposition supports the second reading of this Bill. We have amendments on file (which have been circulated) which will put in place safe-guards for anything that may be untoward in making the notification. For the reasons explained in another place, the

Opposition does not object to fixed term appointments for police chiefs. In the last three years we have seen an extraordinary politicisation of the Public Service generally, probably more Government interference in the structure of the Public Service than any previous Governments have ever attempted in the history of this State.

We have seen a blatant parade of what we could call Party apparatchiks and others who have helped themselves to fairly attractive positions within the Public Service. Some have been moved to this State from interstate to restructure the Public Service or to downsize it (whichever name you wish to put on it) and some have been rewarded with plum jobs on plum salaries, whereas long-serving, hard-working and competent public servants have been asked to take packages. Some of our more experienced and dedicated public servants have had to leave to go interstate to seek work as their positions seem to have been tainted by servicing and assisting previous Labor Governments.

Probably the greatest of the cases to come to the public's attention was the dismissal of Dr Blaikie from the Health Commission in the early days of the Liberal Government. That was a noted failure by the Government in being able to ride roughshod over an individual's rights while trying to restructure, to take not a position that was to benefit the State but a philosophical position that was directed at incorporating conservative policy within a Public Service department.

I make the point that the removal of Public Service tenure positions is not always a good thing, that if you want to hold out corruption and bring about efficiencies within the Public Service then tenure and security is one of those things that individuals are prepared to trade in staying in the public sector as opposed to going to the private sector, because security of employment to some people, particularly those who have their eye on advancement through the public sector, is one thing they are prepared to trade for the larger salary packages that go with going into the private sector.

Unfortunately, that has ended, that disciplinary process, if you like, or that advantage for individuals within the Public Service has been removed. Some people would say that that is a good disciplinary process to keep people in check and on their toes so that they do become good public servants on behalf of the party concerned, but we seem to be moving more towards an American system of Public Service where, as the political administration goes out the key public servants and those people who are seen to have assisted the administration are either victimised or restructured or asked to find new career starts so that the new administration can put together an administrative structure that follows a philosophical pattern rather than a broad Public Service identification with the delivery of public service for and on behalf of people in the State.

The new philosophical position of the Public Service hiring process on a contract basis can be a good thing where it can identify and deal with issues of efficiency and effectiveness, and it can also bring about flexibility, and certainly allows for people who are not performing in some circumstances to be dealt with. I do not mean 'dealt with' in a way in which they are pointed towards the door with a package. In a lot of cases public servants, like people in the private sector, need upgrading of their skills, training programs and to be kept up with international and national best practice so that, with contracting tenures, you can bring in specialists within their fields for short-term contracts to assist those sorts of programs.

If a particular Public Service department is growing or if it has new challenges, then those contract provisions can bring about some benefits. As I say, if you want an incorruptible Public Service then those public servants have to have good salary and wage packages, security of tenure and a belief in the philosophical direction of the Government of the day, that the policies of that Government will benefit the majority of the State's people and the structures, so that they are able to carry out their duties with confidence, that what they are doing lines up with their own morality in terms of how they view society's strengths and weaknesses generally.

The contracting system can bring about nepotism and patronage on a grand scale, and the current Government has shown itself to relish the powers that it has had in being able to restructure under the disguise of a shortage of finance and budget shortfalls, when in fact it is a philosophical relish with which it attacks the restructuring of the Public Service. The Opposition does support this Bill, and trusts that the special importance of the Police Commissioner's role will lead to a search for merit and integrity prevailing over political considerations. In any case, if there are any serious doubts about motivations for the imminent appointments of the new Police Commissioner and Deputy Commissioner that could count heavily against the incumbents in five years' time when an ALP Police Minister assesses the situation. So there are checks and balances in the system. However, with four-year terms for Governments and overlapping five-year contracts, that could take some time in some cases.

With respect to the dismissal of the Bavandra Government in Fiji, when the incoming Government sought to look at some of the documentation relating to the problems associated with the previous Government, a coup was enacted which prevented any overriding considerations being made of an examination of any previous Government's decisions. I am not saying that will happen in Australia, but there are ways in which there can be information or private meetings and no documentation without scrutiny by Parliaments or incoming Governments. However, with regard to Police Commissioners and Deputy Police Commissioners, I am sure that the documentation, discussions and appointments will be above board.

In Committee I shall move amendments moved by the member for Playford in another place. We consider that some scrutiny of the reasons for the failure to reappoint a Police Commissioner will give some limited protection from the abuses that I mentioned earlier. The Opposition supports the second reading.

The Hon. A.J. REDFORD: I support the Bill and congratulate the Deputy Premier and Treasurer on this significant and important legislative initiative. In fact, it follows up a number of issues which concerned me in June last year when I considered the law and the politics governing the relationship between the Police Commissioner and the Minister for Police. Indeed, the timing of this legislation is also important because we can debate it without any concern over the personalities of the incumbent Commissioner and Deputy Commissioner in the light of their indicated resignations at the end of this calendar year. In that regard, this legislation is timely.

The existence of conflict between a Commissioner of Police and a Police Minister occurred in Queensland, culminating in the Fitzgerald Royal Commission and the then Commissioner's resignation, conviction and gaoling. Similar circumstances have arisen in both New South Wales and

Victoria. Thankfully, with one exception, the relationship between Commissioners of Police and Police Ministers or the Executive arm of Government in South Australia has been much better. The one exception was the Salisbury Royal Commission, and I will touch on that later.

This is a very important piece of legislation. Briefly, if passed, it will have the following effects: first, it establishes that a Commissioner of Police's conditions of appointment will be the subject of a contract; secondly, that the appointment is to be for a period not exceeding five years and can be renewed; thirdly, it applies the same provisions to Deputy and Assistant Commissioners of Police; and, fourthly, it provides for the termination of these officers' employment or position by the Governor in certain events.

The Act does not apply to the existing Commissioner, Deputy Commissioner or Assistant Commissioners of Police, who remain engaged under the terms of the Police Act as it stands. In the other place and today the Opposition has indicated its support for the Bill, subject to the insertion of two amendments to the effect that, in the event that the Commissioner does not have his contract renewed or his contract is terminated, reasons for those decisions should be tabled in Parliament. Those amendments were not accepted by the Government, and therefore they were lost. I assume that similar amendments will be moved in this place, and I will canvass them later in my contribution.

The conflicts between Commissioners of Police and Governments arise from ambiguous and confusing principles reflected by laws throughout Australia based on the so-called police independence from Government theory. Unfortunately, the debate about police independence from Government (or Government independence from police) has been full of furphies and it fundamentally misunderstands the nature of the Westminster system and the interrelationship between the various arms of Government. When Dicey and Blackstone were developing the doctrine of separation of powers, they identified the three arms of Government as the legislative, the executive and the judicial functions. They certainly did not identify a fourth arm of Government described as police or anything like it. The relationship of each of the three arms of Government is one of independence, subject to checks and balances that vary from system to system. Indeed, we have a system where the Executive arm of Government is directly accountable to the Parliament and the doctrine of parliamentary supremacy is paramount.

Notwithstanding that, there is a view, usually put about by the police, that they or, more fairly, the Commissioner is totally different from a Chief Executive Officer and that the Government has no right to interfere with the police. Subject to one exception, that, in my view, is nonsense. The exception to the right and responsibility of the Executive and Parliament to provide good government through the police is that neither, particularly the Executive arm of Government, should interfere with individual investigations of specific criminal acts. Other than that, Governments have a duty and, indeed, a responsibility to ensure that the police are provided with sufficient resources to undertake their responsibilities and, further, and just as importantly, to ensure that there is appropriate accountability in the use of those resources.

Two basic positions on the power of the Executive to direct the police and the Police Commissioner have emerged. The first is that the Executive cannot direct the Police Commissioner, with perhaps one exception, to do anything except in matters of resources. The extreme end of this view was expressed by the former Queensland Police Commissioner, Ray Whitrod, in his resignation speech on 16 November 1976, when he said that the police and the Police Commissioner are 'answerable not to a person, not to the Executive Council, but to the law'.

The view that the Minister cannot direct the Police Commissioner in matters of enforcement of the law is outlined in the report by Mr Justice Lusher of the Commission to Inquire into New South Wales Police Administration—one of many inquiries of that nature—published in 1980-81. Justice Lusher concluded that the police are largely independent of Executive control and cited a fair amount of legal authority to that effect. However, he conceded that the Minister for Police could properly direct the Commissioner in matters relating to the provision of resources and for ensuring that the police act efficiently and responsibly and according to law. Justice Lusher recommended the preservation of the 'longstanding independence of the Commissioner and the constabulary in their duty to enforce the law and the exercise of the discretion related thereto'.

Justice Lusher's viewpoint can be contrasted with the Royal Commission Report on the September Moratorium Demonstration by the late Justice Bright, who stated that, whilst the Police Force had some independence of operation, it was still part of the Executive function. In his report, he said:

> In a system of responsible government, there must ultimately be a Minister of State answerable in Parliament and to the Parliament for any Executive operations. This does not mean that no senior public servant or officer of the State has independent discretion. Nor does it mean that the responsible Minister can, at his (or her) pleasure, substitute his own will for that of the officer responsible to him. The main way in which a Minister and an officer of State become identified with an important decision is by a process of discussion and communication. The Minister inquires of his officer, the officer provides information and advice to his Minister, perhaps drawing from a wider view of policy and political purpose and perhaps also drawing on a different field of information, provides information and advice to the officer. Almost always in such a case agreement will be reached on the broad basis of decision and action. From there on the officer will be the 'field commander'. He will carry out the decision, acting reasonably and using his own discretion, in circumstances as they arise.

The Royal Commissioner goes on and importantly states:

> But ultimately he will be responsible, through the Minister, to the Parliament—not in the sense that he will be subject to censure for exercising his discretion in a manner contrary to that preferred by the majority in Parliament, but in the sense that all Executive action ought to be subject to examination and discussion in the Parliament.

Justice Bright concluded with this comment:

> To point up this discussion, the Commissioner of Police is an important executive officer of State, he is trusted to exercise powers essential to any civilised society. He necessarily exercises some discretion in the mode of exercise. It is right that he should, in important matters, especially matters which have some political colour, discuss the situation with the Minister who is ultimately responsible to Parliament.

As a consequence of that report the Police Regulation Act, now rescripted as the Police Act, was amended.

In most States the Commissioner of Police is subject to Ministerial or executive direction. The type of direction and the amount of detail in relation to directions varies considerably from State to State. In South Australian legislation the control and management of the police is in the hands of the Commissioner. Until 1972 there was no specific provision that the Commissioner of Police was subject to any governmental or ministerial direction. The Police Act was amended to provide:

> Subject to this Act and the directions of the Governor, the Commissioner shall have control and management of the Police Force.

This provision remains in the Police Act and other provisions were incorporated to provide for the publication of each direction by the relevant Minister in the *Government Gazette* and its presentation before Parliament. These provisions are unchanged as a consequence of this Bill.

The amendments followed recommendations from the Bright royal commission, to which I referred earlier. Details of the events arose from police conduct during the moratorium demonstrations. Justice Bright noted the lack of a provision that stated that the Police Commissioner was subject to any direction. He recommended that the Commissioner of Police should retain the independence of action appropriate to his high office, but should ultimately be responsible, like his colleagues in many other parts of Australia, to the Executive Government. In his report Justice Bright alluded to the preference that there be less formal discussion between the Minister leading at times (not necessarily as a result of disagreement) to a ministerial written direction. Notwithstanding that, the Parliament chose to ignore the recommendation and adopt a more formal process. Indeed, the Bill was opposed by the then Liberal Opposition.

The New South Wales situation is different. In 1990 the New South Wales Parliament passed the Police Service Bill. In introducing the Bill the then Attorney-General Mr Dowd (now Justice Dowd) said that the Bill 'would establish the Police Service as an entity'. He stated:

> The replacement of the present clumsy Police Force and the Police Department with an integrated Police Service has the following main purposes.
>
> · To signal commitment to the successful policy of community—based policing by emphasising the concept of service.
> · To provide a legislative framework to underpin modern policing and management initiatives consistent with the Government's public sector reforms.
> · To give the Commissioner more flexibility to manage the service.
> · To enhance the role of the Police Board in relation to the Public Service.

It is worthwhile noting that Mr Dowd also stated that the need 'to distance the police from undue political pressure cannot of course cut across the clear right of Ministers and Governments to establish policies and priorities'. He added that the Bill preserved the 'existing relationship between the Commissioner of Police and the Minister'. In addition, that Act made no changes in the procedures for appointment of the Commissioner which required that a Police Board make a recommendation to the Minister who would in turn seek Cabinet's approval to the proposed appointment. The important point for the purposes of this debate is that the New South Wales legislation provided that the term of the Commissioner should not exceed five years, but that the Commissioner would be eligible for reappointment.

In Victoria the Chief Commissioner of Police is appointed by the Governor in Council. The Governor in Council may also suspend, reduce, discharge or dismiss the Chief Commissioner. The Act also provides that the Chief Commissioner 'shall have, subject to the directions of the Governor in Council, the superintendence and control of the force'. Again, the term of the Chief Commissioner cannot exceed five years.

Queensland has had considerable recent experience of controversy in police matters. One result was the Fitzgerald royal commission which, amongst other matters, made recommendations about a revamp of the Police Force. The Commissioner of Police was the subject of a number of recommendations. At page 278 of the report it says:

> Under current legislation the Police Commissioner is appointed conditional on good behaviour effectively until attaining the age of 65 years.

I draw members' attention to the fact that the provision that existed at the time of the events leading to the instigation of the Fitzgerald royal commission are identical to the provisions that are currently contained within the South Australian legislation. In other words, precisely the same provisions in terms of accountability and tenure applied to Police Commissioner Lewis in Queensland as applies to the law currently in existence in South Australia. I say that without making any reflection whatsoever on the current Police Commissioner or his senior staff. The report went on to say:

> This has proven unsatisfactory and, in any case, it is inconsistent with the approach taken to other statutory officers within the Queensland Government and Public Service. The position of Police Commissioner does require secure tenure so that it is insulated against potential political interference. On balance, it would be preferable if the Commissioner were contracted for a term of three to five years.
>
> A provision enabling the Government to remove a Commissioner from office for good reason is needed. The Commissioner's contract of employment should obviously provide for termination prior to completion of the specified term on the grounds of established disability or misconduct. The former would be the subject of competent medical opinion and the latter a matter of determination by the proposed misconduct tribunal. Provision for termination on the grounds of inefficiency or incompetence evidenced by failure to achieve agreed goals. Standards of discipline and performance of the Police Force is also required, but needs safeguards to prevent the premature dismissal of a diligent Commissioner for political reasons.

The Fitzgerald royal commission went on and said, at pages 278-279:

> It is anticipated that the Commissioner remain answerable to the Minister of Police for the overall running of the Police Force including its efficiency, effectiveness and economy. Under no circumstances should the Department be included in the responsibilities of the Attorney-General. The Minister can and should give directions to the Commissioner on any matter concerning the superintendence, management and administration of the force. The Minister may even implement policy directives relating to resourcing of the force and the priorities that should be given to various aspects of police work and will have the responsibility for the development and determination of overall policy. Priorities determined would have to include the degree of attention which is to be given to policing various offences. The advice sought by the Minister in deciding these matters and the process by which such decisions are made will depend on the circumstances at the time and cannot be defined or rigidly laid down in legislation. Nor should they be left to the discretion of the Police Commissioner or the Police Union.

I believe that that is a very significant and important point. He emphasises it when he goes on and says:

> In the interests of open and accountable government and the proper independence of the police, a register should be kept of policy directions given by the Minister to the Commissioner and recommendations by the Commissioner to the Minister. In the case of staff appointments, the register would also record the instances where the Minister or Cabinet chooses not to follow recommendations put forward.
>
> The Commissioner of Police should continue to have the independent discretion to act or refrain from acting against an offender. The Minister should have no power to direct him to act or not to act in any matter coming within his discretion under laws relating to police powers.

It is my view that this legislation goes a long way towards implementing those very important recommendations made by the Fitzgerald royal commission. The only real difference is that there is a supervisory role placed in the hands of the Criminal Justice Commission. I do not have time to deal with my views on the Criminal Justice Commission or bodies

similar to that, except to say that I am fundamentally opposed to the establishment of organisations such as that. Indeed, I think if Mr Fitzgerald, who discussed the idea of re-establishing an Upper House in Queensland, had actually recommended that and if that proposal had been adopted I doubt very much whether the Queensland Government would be having the problems that it is currently having; nor, I suspect, would the previous Queensland Government have had some of the problems that it was confronted with.

In Queensland, a commissioner can be removed or suspended from office for a number of reasons, including breach of contract and incompetence. The protection against the dismissal of a commissioner for incompetence in Queensland is that it cannot occur unless there is an address by the Legislative Assembly and there is concurrence with the Chairman of the Queensland Criminal Justice Commission. In that context, one might consider the Criminal Justice Commission being substituted by the Legislative Council or an Upper House in the case of a bicameral system. Further, in Queensland, a Minister can give the commissioner written directions on the overall administration and management of the service, policies and priorities to be pursued and the number and deployment of officers and staff members. The commissioner is required to comply with all these directions, and these directions are recorded in a register which is subsequently tabled in Parliament.

In Western Australia, the Police Act is remarkably short in relation to the control of the Commissioner of Police. The Act provides that the Governor 'may appoint and, as occasions shall require, may remove any Commissioner of Police and appoint another in his stead.' The Act also provides that the commissioner can frame rules, orders and regulations for the Police Force 'with the approval of the Minister'. Other than that, the legislation is remarkably silent. The Tasmanian Act provides that the Police Commissioner, under the direction of the Minister and subject to the Act, has control and superintendence of the Police Force. There is no provision for a fixed term of office.

In light of the examination of the other States, it is easy to see that South Australia is coming into line with a number of other States with its legislation, including Queensland, Victoria and New South Wales. The Fitzgerald Royal Commission report stated—and I cannot emphasise this more—that the position concerning a term of employment until the commissioner turns the age of 65 has:

> . . . proven unsatisfactory and in any case is inconsistent with the approach taken to other statutory officers within the Queensland Government and Public Service.

Quite clearly, we have come a long way from the viewpoints expressed by Justice Lusher in 1980 and, more particularly, from the views expressed by the former Queensland Police Commissioner, Ray Whitrod, in 1976. He was of the view that the Police Commissioner is 'answerable not to a person, not to the Executive Council, but to the law'. In fact, it was an attitude of that nature that led to our Salisbury Royal Commission in South Australia. Whilst it was not fashionable at the time for a Liberal supporter to agree with the then Premier Don Dunstan in his sacking of then Police Commissioner, Harold Salisbury, and whilst I was then only a student at the Adelaide Law School, I agreed wholeheartedly—as I do now—with the action taken by the then Premier and also the subsequent findings of the Royal Commission.

The Hon. T.G. Roberts: How did you get preselection?

The Hon. A.J. REDFORD: The Salisbury Commission was hardly a burning issue at that time, but time moves on. The police are not, cannot, and never should be allowed to have total independence. The courts are inadequate in being the sole repository of police accountability. Anyone who analyses the Fitzgerald Royal Commission report and various other reports that support and come to the same conclusion would have to say that the idea that employment contracts for police officers should be treated differently from those of other senior bureaucrats does not stand the gaze of strong argument. All the reports (with the exception of the Lusher report) lead to the conclusion that there must be transparency and that there must be accountability not only on the part of the Police Force but also on the part of their political masters. There is nothing in those reports to suggest that they should be treated any differently. Indeed, I note some comments were made that if a deputy commissioner's or commissioner's contract was not renewed and, further, that if they were under the age of 50 years, they would have nowhere to go.

Simply put, that is no different a position from the situation faced by many senior bureaucrats in the public sector who are the subject of a contract. I cannot see why a commissioner or a deputy commissioner should be treated any differently. I endorse the comments made by the Deputy Premier and Police Minister that this legislation allows us to choose the best candidate and to ensure that vigour, vitality and accountability are intrinsic parts of the Police Force. That is no less a standard than that which the public, through this Parliament, imposes upon Ministers of the Crown. They have as onerous, if not greater, responsibilities as the Commissioner of Police. A Minister of Police has a responsibility to the people through this Parliament, whereas the Commissioner's responsibility is not as direct. Constitutionally, the Commissioner is no different from any other chief executive officer.

I note that, on occasion, people have suggested that there might be interference. However, interference is something that often appears in the eye of the beholder. For argument's sake, a demand from the beachside communities of Glenelg and Brighton might require police to conduct their duties on bikes during summer months. On the other hand, the Commissioner of Police may have another objective. Ultimately, the priorities in terms of the use of the resources provided to the police by the public through its taxes must have some accountability, and that in my view should occur through the Minister and ultimately to this Parliament.

The same accountability applies in general terms to the investigation of criminal offences. If the Minister's directions or interference is such that the Commissioner's ability to investigate generally criminal offences is hindered or interfered with, ultimately he will be accountable both to the Parliament and to the people. In fact, so long as there is transparency, I have no quibble with a Police Minister indicating to the Police Commissioner that the police ought to increase the number of apprehended speed camera offences by a certain factor or to concentrate on breaking and entering or sex offences, because at the end of the day the Minister is more directly accountable than the Commissioner of Police.

Indeed, there are occasions when the political parameters demand such a direction. I do not think that, in that context, however, it would be politically wise for a Minister to impose such a direction, but that ultimately is a matter for the Minister of the day. This Bill does not seek to prevent a Minister from doing so as long as the process is transparent.

It is pleasing to see in today's ministerial statement that the Minister for Police announced improvements in courier services, aircraft services, photographic processing and

infringement notice processing in the context of the administration of police activity. I must say that I have no doubt that the Minister played some role and had some responsibility and some say in those initiatives, and for that he ought to be congratulated. Any Minister of any political persuasion ought never to be hindered from improving efficiencies in the exercise of police duties, nor should a Minister of any political persuasion be hindered in directing police priorities in accordance with normal community demands. The important proviso in relation to that, however, is that there must be some transparency.

In relation to the amendments proposed in the other place and here by the Opposition, I agree with the Minister's statement to the effect that there will be occasions where a Police Commissioner has provided a service of a good and honest standard but not to what could be described as world best practice. I think no good would be served if a statement to that effect was tabled in Parliament. Indeed, I have no doubt that, given the vigour with which the media pursues issues such as this, Ministers who do not re-appoint commissioners, particularly in controversial circumstances, will be asked to account and ultimately will be held accountable. Indeed, there is nothing to prevent a member of Parliament from asking a Minister why a police commissioner did not have his term renewed and, if there were suspicious or other unusual circumstances relating to such a failure to reappoint, I have no doubt that an Opposition (even one of the standard that we currently have) would raise that issue, thereby bringing it to the attention of the public and, ultimately, to the scrutiny of this Parliament and the public.

I see no good reason why there should be a legislative prescription requiring the Minister to table reasons, particularly if it is not in the interests of either the Government or the Commissioner to disclose those reasons. I am sure that any proper Government, in any situation where confidence needs to be kept, would feel that the Opposition would be privately briefed. If it were not, a simple question should reveal all.

There may well be occasions when neither the Police Commissioner nor the Minister feels that it is appropriate to raise these issues publicly. I believe that there are sufficient protections within our Constitutional framework. At the end of the day, I heartily congratulate the Deputy Premier and Police Minister for this Bill. Indeed, I also heartily congratulate the Minister for the timing of this Bill as, in the light of the fact that the Police Commissioner has indicated that he will resign at the end of the year, it will enable this place to conduct a proper debate of these very important and complex issues without the question of personalities or short-term politics intervening. I commend the Bill.

The Hon. R.D. LAWSON: I, too, support this Bill. It is worthy of note that we are now changing a system of appointment of police commissioners that has hitherto served the State well. To some extent I lament the passing of the old era. My colleague the Hon. Angus Redford mentioned the Salisbury case, but perhaps he could have gone back to the 1972 report into the moratorium, which resulted in the Royal Commission of Sir Charles Bright. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

LOCAL GOVERNMENT (CITY OF ADELAIDE) BILL

The House of Assembly intimated that it had disagreed to the Legislative Council's amendments.

Consideration in Committee.

The Hon. R.I. LUCAS: I move:

That the Legislative Council's amendments not be insisted upon.

The Government's position as put by the Minister for Transport during debate this week is quite clear on these issues. The Government strongly holds its views. I do not intend to repeat the arguments at this stage. We are going through a process which, unless the Australian Labor Party or the Australian Democrats see the good sense of the Government's position on these issues, will lead inexorably towards a conference of managers to try to resolve the differences between the two Houses on this important issue. The Government maintains its position and does so very strongly.

The Hon. P. NOCELLA: The Opposition's position has not changed. The reasons illustrated during debate are as valid today as they were before.

Motion negatived.

RACIAL VILIFICATION BILL

The Legislative Council agreed to a conference to be held in the Plaza Room of the Legislative Council at 9 a.m., 15 November, at which it would be represented by the Hons T. Crothers, Sandra Kanck, R.L. Lawson, R.I. Lucas and Paolo Nocella.

POLICE (CONTRACT APPOINTMENTS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 519.)

The Hon. R.D. LAWSON: It will be recalled that the Dunstan Labor Government in 1970 sought to limit the role of the police in preventing street demonstrations and, in particular, the moratorium demonstration. The Commissioner of the day, Commissioner McKinna, considered that the Dunstan Government was intruding into his arena of decision responsibility. The matter was resolved by political direction of the police, but it did leave a legacy of tension between police and the Dunstan Government. Justice Bright was appointed a Royal Commissioner to examine the issue and the Hon. Angus Redford referred to the report of that judge. Justice Bright concluded:

While the Government should not interfere in the detailed administration of the law, it should have power to intervene.

Subsequently, the Police Regulations Act was amended in 1972 to give power to the Government to give directions to the Police Commissioner for the control and management of the police force. However, an ambiguity remained. What should be the areas of responsibility in relation to which the Government might give such directions? Sir Charles Bright had recommended that a convention be established between the Minister and the Commissioner. The 1972 amendments brought the position in South Australia into line with that of a number of other States but did not end the desire of the police here to resist political direction.

Of course, subsequently, this State experienced the Salisbury affair where Premier Don Dunstan dismissed the

Commissioner, Mr Salisbury. A royal commission was subsequently held and the Commissioner, Dame Roma Mitchell, handed down a report which supported the Government. However, the circumstances of Mr Salisbury's dismissal were circumstances of great disquiet in the South Australian community about the capacity of political directions to be given to the police. I was fortunate to act in that royal commission on behalf of Mr Salisbury, and it was amazing to see and hear the disparity of views then expressed about the appropriate relationship which ought to exist between Government and the Police Commissioner. It is a subject of enormous complexity.

During the 1980s there were a number of major inquiries in Australia in which there was a sustained examination of police organisation and political relationships: in New South Wales, the Lusher report of 1991; in Victoria, the Neesham report, 1986; and, of course, in Queensland, the celebrated Fitzgerald report in 1989. Of these three reports, only the Fitzgerald inquiry went beyond what might be termed the conventional approach to police independence and made a number of recommendations which have been implemented in Queensland and which are encapsulated in the following extract from the report of that commission. Fitzgerald said that:

> Ministers can and should give directions to the Commissioner on any matter concerning the superintendence, management and administration of the force. The Minister may even implement policy directives relating to resourcing of the force and the priorities that should be given to various aspects of the police force and will have responsibility for the development and determination of overall policy.

At the same time, Fitzgerald recommended that the accountability of the Minister for Police was to be strengthened by requiring policy directives from the Minister to the Commissioner to be either entered on a register or tabled in Parliament through the criminal justice commission and its parliamentary committee.

It is worth recalling some of the circumstances in Queensland which led to the Fitzgerald inquiry. When the Bjelke-Petersen Government was in power, a South Australian police officer, Ray Whitrod, was appointed Commissioner. Whitrod adopted what is described as an unacceptably independent line in limiting the scale of police response to political demonstrations over the Springbok rugby tour in 1971 and the Vietnam War. Whitrod refused to accept a Government cajolery, it might be termed, in relation to an inquiry into police behaviour on a hippy community. A crisis developed and Whitrod was forced to resign and the more subservient Police Commissioner, Terence—later Sir Terence—Lewis, was appointed, first, as Assistant Commissioner against Whitrod's wishes which precipitated Whitrod's resignation in protest. Ray Whitrod, who in my opinion is a fine police officer and exhibited that degree of independence which the community should expect of its Police Commissioners, made the following comment in a lecture he gave and which is published in the Australian Journal of Criminology:

> From the police point of view if the Executive, as distinct from Parliament, takes to itself the authority to instruct the police when they are not to enforce the law, as in the Adelaide incident [there speaking of the moratorium incident], then the rule of law could collapse and make mockery of each officer's sworn oath to uphold the law.

The subsequent career of Terry Lewis is, of course, well-known and the events in Queensland which followed the appointment of a corrupt Police Commissioner who had a close relationship with the Government—an unnecessarily close relationship—is too well-known to be repeated, but there is a lesson to be learned from recent history.

The relationship between police and Government is not only important but also very delicate. As I pointed out, there have been a number of tensions and some of those tensions have not been resolved in a manner which has been satisfactory to the public interest.

There is a balancing act to be performed. On the one hand, the independence of the Police Commissioner is important to maintain public confidence in the police and the independence of the Commissioner should not be compromised. On the other hand, the Commissioner, like other public officials, must be accountable and that accountability is as important as his independence.

At the present time, we are wrestling with exactly the same tension in regard to judicial independence. It is a central tenet of judicial independence that judges are appointed to a certain age and that their remuneration cannot be lowered during their term. For more than 200 years that has been one of the cornerstones of the British Constitution. But these days there are those who are saying that judicial independence is all very well, but judicial accountability is also an issue which must be addressed and an appropriate balance must be struck between the two.

No-one would accept, I suggest, with equanimity the proposal that judges be put on short-term contracts. It seems to me that no-one would relish the prospect of appearing before a judge on a charge, for example, of causing death by dangerous driving during the heat of an election campaign in which law and order issues had become significant if the judge presiding over the case was a judge whose appointment was coming up for renewal at or about the time of that election, because there is the possibility of the judge's reappointment being a factor which came into his decision, or, more likely, there would be the perception in the public mind that the possibility of renewal of the contract played some part in the way in which the judge decided the case.

One can well imagine circumstances in which a police commissioner, who is coming up for reappointment, might make decisions which, in the public mind, could be interpreted as being decisions designed to secure his reappointment—in other words, politically popular decisions rather than decisions which might be in the general interests of the community. There is a conflict of duty and interest in these circumstances: on the one hand, the interests of the Police Commissioner in making a decision which will be favourable to the Government, thereby advancing his own personal interest; and, on the other hand, the duty to the community to resolve issues in the interests of the whole community and not in the Police Commissioner's personal interest.

I lament the fact that we are seeing, in the passage of this legislation, the passing of a tradition which has served us well. Commissioner Hunt, the incumbent Police Commissioner, has been an outstanding officer and has maintained a very high degree of public confidence in the South Australian Police. It is appropriate that, having announced his intention to retire, Parliament should consider the terms of his successor freed of any personal considerations.

What we are doing here is falling into line with what has happened in most other States of the Commonwealth. If memory serves me correctly, Victoria and Tasmania have not yet placed their commissioners on contracts, but the new managerialism has taken over elsewhere: it has been on the ascendancy not only in relation to police administration but

in relation to the Public Service generally and tenure for academics, and now we are seeing it in the police.

As I said, the question is one of striking a balance between independence and accountability. There is no doubt that the measure now proposed is designed to enhance the accountability of the Police Commissioner in relation to his performance. I do not believe that the Bill contains provisions which are inimical to the public interest and I do not believe that independence will be sacrificed. Of course, there will be some diminution in the independence of the Police Commissioner, but it is in the interests of increasing accountability. Accordingly, and not without some regret because we are passing from an old tradition, I support the Bill and congratulate the Minister for introducing it.

The Hon. J.F. STEFANI secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (SELF DEFENCE) AMENDMENT BILL

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

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

That this Bill be now read a second time.

Until 1991, the law in relation to self-defence in South Australia was the common law of self-defence. That law required that a person defending his or her person or property exercise reasonable judgement and use reasonable force. The deceptive simplicity of the common law is summed up in the following quotation:

> The question to be asked in the end is quite simple. It is whether the accused believed upon reasonable grounds that it was necessary in self-defence to do what he did. If he had that belief and there were reasonable grounds for it, or if the jury is left in reasonable doubt about the matter, then he is entitled to an acquittal.

So said the High Court in 1987 (*Zecevic* (1987) 162 CLR 645 at 661). But it was not quite so simple as it appeared. Indeed, in that very case, the High Court overturned its own decisions over the past 30 years on excessive self-defence on the basis that, although the principle was right, the law was so complicated that it was not possible to explain it to a jury.

In late 1989, concerns began to emerge in this State that victims of crime had been treated as criminals for taking reasonable measures to protect themselves. In the event, this turned out not to be the case. However, in response to petitions with thousands of signatures, in July 1990 Parliament approved the establishment of a parliamentary select committee on self-defence and related issues. The select committee presented its final report to Parliament on 13 December 1990. The report contained a number of recommendations including:

- that the law in relation to self-defence and defence of property be codified and placed in the Criminal Law Consolidation Act;
- that the justification for the use of force by a person acting in self-defence or defence of property be assessed on the basis of the facts as the person genuinely believed them to be rather than, as under the common law, as the person reasonably believed them to be; and
- that the partial defence of excessive self-defence be codified.

The result of this process was the Criminal Law Consolidation (Self-Defence) Amendment Act, 1991, which codified the law on self-defence and excessive self-defence and inserted it as section 15 of the Criminal Law Consolidation Act. This was a provision unique to South Australia.

This statutory version of the law appeared to have operated in a satisfactory manner until the decision of the South Australian Court of Criminal Appeal in *Gillman* (1994) 62 SASR 460. In that case, the Court of Criminal Appeal stated that it found section 15 far too complicated and impossible to explain to a jury. Since that time, two chief justices and the judges of the Supreme Court and the Director of Public Prosecutions have called on the Government to amend the legislation as soon as possible. The basis for that call is that the combination of the burden of proof beyond reasonable doubt and the absolutely subjective nature of the test placed an impossible burden on the Crown.

In the more recent case of *Foreman* earlier this year, the trial judge, Mr Justice Lander, discussed the meaning of the existing section 15 of the Criminal Law Consolidation Act with counsel for the prosecution, Ms Ann Vanstone QC, and defence counsel, Mr Michael David QC (as he then was), in the absence of the jury. It is obvious from the transcript that all parties were having difficulty with that part of the section dealing with excessive force being used in self-defence. At one point the judge, in what appeared to be a mood of frustration, in relation to section 15 said, 'It is a shocking section.'

It is quite clear that the law on self-defence must be changed. If that is not done, prosecutions which ought to succeed on any reasonable assessment of the facts will fail and unwarranted acquittals will ensue. Trial judges will continue to struggle to explain the difficulties and juries will struggle to understand them. There will be more appeals and the complexity of the law will cause expense which should be avoided. Therefore, a major objective of this Bill is to identify the complexities, and remove or simplify them without creating prejudice to generally law-abiding citizens who, in unforeseen circumstances, may have to use force to defend themselves and their property.

An overriding consideration in this proposal to clarify the law is a desire to ensure that generally law abiding citizens are not prejudiced. Ultimately, it will remain the prerogative of the jury to determine whether or not to agree with a defence of self-defence but, while this the case, it is nevertheless important to make the law as intelligible as possible to ordinary citizens.

The major substantive change from current law in section 15 is that, for an acquittal, the force used by the person in self-defence must be objectively reasonable on the facts as he or she believed them to be, rather than, as section 15 currently states, it suffices if the person genuinely believes that the force used was reasonable in all of the circumstances.

This change, on a balanced assessment of its practical effect, should not cause any concern. It does not put South Australian law back to the unsatisfactory common law position from which all parties agreed to move in 1991. It brings South Australian law into line with that of all other Australian jurisdictions and with the law in the United Kingdom and Canada. Further, it is in accordance with the recommendations of the Model Criminal Code Officers Committee (a body which has reported to the Standing Committee of Attorneys-General on, among other matters, the general principles of the criminal law), the English Law Commission, the Canadian Law Reform Commission and the English Criminal Law Revision Committee. In this Bill, the

use of force to defend oneself or one's property requires the jury to assess the situation on the facts as the defendant genuinely believed them to be. If, on the basis of the defendant's genuine belief, the force used was 'over the top' then it would not be acceptable.

The principle behind requiring at least some form of proportional response has been expressed in the following way:

> Self-defence is founded on the principle that it is right and proper to use force, even deadly force, in certain situations. The source of the right is a comparison of the competing interests of the aggressor and the defender, as modified by the important fact that the aggressor is the one party responsible for the fight. This theory of the defence appears to be a straightforward application of the principle of lesser evils. . . The required balancing of interests of the defender against those of the aggressor is expressed in the unquestioned assumption that defensive force must be reasonable and proportionate to the threat. Though deadly force might be necessary to avert a minor assault. . . it is clearly disproportionate to the threat and therefore impermissible. (Fletcher, *Rethinking Criminal Law* (1978) at 857-858).

Professor Glanville Williams explained the principle at work in the following way:

> . . . if the only way a weakling can avoid being slapped in the face is to use a gun, he must submit to being slapped. . . . the use of the gun may be 'necessary' to avoid the apprehended evil of being slapped, but it is disproportionate to that evil, and therefore unlawful. . . . The proportionality rule is based on the view that there are some insults and hurts that one must suffer rather than use extreme force, if the choice is between suffering the hurt and using the extreme force. The rule involves the community standard of reasonableness. (*Textbook of Criminal Law* (1978) at 456)

I propose to provide members with two examples to give some air of reality to what might otherwise seem an unduly theoretical or political exercise. The facts that I am about to recite are real. The first comes from a case called *Oatridge* (1992) 94 Cr App R 367. I will explain why I have chosen this example in a moment.

Gail and Tony began a relationship in 1988 and started to live together in 1990. The relationship was a stormy one from the very beginning. Tony was diabetic and, while reasonable when sober, drank too much and failed on those occasions to keep his blood sugar under control. He then became abusive and violent. There was ample evidence that on such occasions he struck Gail and grasped her around the neck. On October 14, 1990, he went out and came home very drunk. Gail had also been out with friends and was not sober. They quarrelled and she stabbed him in the chest with a knife. He died as a result.

According to Gail, Tony was generally violent towards her, pulling and grabbing her and trying to strangle her. She stabbed him because he was choking her. She said "I couldn't breathe tidily." He kept saying "I'm going to kill you, you [expletive deleted]." He would not let go, she panicked and stabbed him. A medical examination of Gail showed a reddened line on the left side of her neck consistent with a necklace being pulled and broken, but she displayed none of the classical symptoms of a serious attempt at strangulation. She was tried for murder and argued that she acted in self-defence.

This was an English case. Under the law which this Bill seeks to enact, she was convicted of manslaughter by a jury. That necessarily means that the jury did not accept her argument of self-defence. On appeal, the conviction was overturned because the trial judge did not direct the jury that the response of the accused to the attack had to be assessed on the facts as she *believed* them to be. That factor will remain the law under this Bill. The result under the law that South Australia has at the moment cannot be predicted. All would depend on whether the jury could come to the conclusion that the Crown had proved beyond a reasonable doubt that Gail did not honestly believe that the stabbing was both necessary and reasonable for her own defence.

I have picked this example for a number of reasons. First, it represents the reality of the kinds of situations with which this Bill deals as well as the examples based on home invasion which have attracted a much higher level of publicity. The violence is between people who know each other, both are affected by alcohol, there is only one side to the story because one of the participants is dead—and the evidence is not all one way. Second, place yourself in the position of trying to assess the evidence. Under current South Australian law, the Crown has to prove beyond a reasonable doubt, that, whatever the real facts, Gail did not honestly believe that what she did was necessary for her own defence. How is the prosecution ever going to be able to do that? Under the Bill, the task of the prosecution is to prove beyond a reasonable doubt that, on the facts as she believed them to be, what Gail did was *either* not necessary in her own defence *or* that her response was not reasonably proportionate to the threat that she believed to exist.

However members feel about this debate and this area of law, I ask that they remember this example. This is a part of the reality of self defence as it works (or does not work) in the courts year after year. Home invasions are real, but they are rare by comparison to the sad reality of drunken violence between those who know each other well. That is why this Government—and this Parliament—have rightly placed an emphasis on the prevention and punishment of domestic violence.

My second example is *Gillman* (1994) 76 A Crim R 553. The deceased was beaten to death with an iron bar, having been hit by a minimum of seven blows to the head. A number of witnesses, passing in motor vehicles, saw the deceased and the accused having a fight in the street at about 6 a.m. Some of the witnesses' evidence suggested that the deceased was attacking the accused with some sort of stick or like weapon. The accused presented at Casualty at the Royal Adelaide Hospital some 15 minutes later. He was drunk and had some minor injuries. The accused said that he was attacked by the deceased with an iron bar, that he had wrestled the iron bar from the deceased and hit him one or twice.

Here too is the reality of violent crime, this time a different kind of reality from the last example. If we leave aside domestic violence for a moment, the next large category of violence in our society is between males, usually drunken and usually in public. Think about the ambiguities in this example. The deceased is beaten violently about the head with an iron bar and killed. The person who did at least some of the beating was drunk and can remember only hitting out in self defence once or twice. If the truth be told, he cannot recall much more. He thinks that others may have been involved in the attack on him—but none of the witnesses saw any of that. His own injuries were not serious. There was no obvious motive for any of this violence. The accused did not give evidence.

What are we as a hypothetical jury to make of this? Let us suppose that we accept that the Crown cannot prove beyond a reasonable doubt that the deceased attacked the accused with an iron bar. Let us accept that the accused honestly acted in self defence. Now the question is—under current law, can the Crown prove beyond a reasonable doubt that, drunk and confused as he was, the accused did not *honestly* believe that lethal force—a dozen blows to the head

with an iron bar—was the right thing to do? Or would your answer be different—and perhaps better—if the question was whether the Crown could prove beyond a reasonable doubt that it was unreasonable on those facts for the accused to beat the deceased to death with an iron bar? Which question makes you more comfortable about acceptable social standards? How many times do you think that this kind of scene is played out in courts annually? My answer is that I think that the force used must be reasonably proportionate to the threat as the accused genuinely believed it to be—and that is what this Bill is designed to achieve.

I wish to make only one more observation. In the debate which has occurred in relation to what the Government was proposing to do in relation to self-defence laws, two cases have been used most frequently. The first is the case of Kingsley Foreman who was tried for murder and acquitted by a jury. He was in a service station when a youth with what appeared to be a firearm robbed the cashier, turned and fled, although he appeared to turn as he reached the door. The jury made the decision in this case and this proposed law would not preclude a jury from making the same decision. The second case involves the 80 year old man, previously the victim of a break in, in a wheelchair at night, who shot a young burglar. The DPP decided that it was not an appropriate case to prosecute. Self-defence played a part in that decision. Again, the proposed law is not likely to provide a basis for any different outcome. It is not sensible to try to distinguish in law between "home invasion" situations and others. Any attempt to define, in a principled and comprehensive manner, what constitutes a "home" and what constitutes "invasion" for these purposes is doomed to fail. In addition, people in this situation are really motivated by a mixture of defensive motives, for both person and property. In so far as it is possible to distinguish these motives, the Bill attempts the task. In the end, though, the 80 year old believed that his personal safety was at stake and that is precisely what the general principle seeks to address.

The formulation of this Bill has involved consultation with, in particular, the judges of the Supreme Court. They, and the Chief Judge, Chief Magistrate, Director of Public Prosecutions and the Bar Association, have supported the general principles involved. The law has to be explained to a jury in terms which a jury can understand and apply. In the end it is the jury which has to make the decision and that is as it should be. The jury represents the community and makes decisions for and on behalf of the community.

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

Leave granted.

Clause 1: Short title

This clause is formal.

Clause 2: Substitution of s. 15

This clause repeals current section 15 of the principal Act and substitutes two new sections as follows:

15. Acts directed at the defence of life, bodily integrity or liberty

This proposed section provides a defence to a charge of an offence where—

- the defendant genuinely believed the conduct in question was necessary and reasonable for a defensive purpose (ie. self defence, defence of another or prevention or termination of unlawful imprisonment); and
- the conduct was, in the circumstances as the defendant perceived them to be, proportionate to the threat that the defendant genuinely believed to exist.

The proposed section also provides that a charge of murder will be reduced to manslaughter if the defendant genuinely believed the conduct in question was necessary and reasonable for a defensive purpose even though excessive force was used.

A person will not be taken to be acting for a defensive purpose within this section if he or she resists a person purporting to exercise a power of arrest or other law enforcement power or resists a person who is responding to an unlawful act (against person or property) committed by the person or to which the person is a party, unless the person genuinely believes on reasonable grounds that the other person was acting unlawfully.

15A. Defence of property, etc.

This proposed section provides that it is a defence to a charge of an offence if—

- the defendant genuinely believed the conduct in question was necessary and reasonable to protect property, to prevent or terminate criminal trespass (defined in proposed subclause (3)) or to make or assist in a lawful arrest; and
- the conduct was, in the circumstances as the defendant perceived them to be, proportionate to the threat that the defendant genuinely believed to exist.

If the conduct in question resulted in death, the defence is only available if the defendant did not intended to cause death and did not act recklessly realising that death could result.

This section, like proposed section 15, provides a partial defence to a charge of murder (reducing the charge to manslaughter) where the defendant genuinely believed the conduct in question to be necessary and reasonable for a purpose specified in the section and did not intend to cause death but used excessive force.

In addition, both sections specify that once the defence is raised the Crown has the burden of excluding it beyond a reasonable doubt.

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

RETAIL SHOP LEASES AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Retail Shop Leases Act 1995. Read a first time.

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

That this Bill be now read a second time.

The Joint Parliamentary Select Committee on Retail Shop Leases investigated retail shop leasing issues and reported to the Parliament in August. The committee heard evidence from 33 witnesses and received 47 written submissions from interested people and organisations. The Government had already moved to implement the select committee's recommendations in relation to the resolution of disputes before the committee reported.In September the new mediation scheme for retail shop leasing disputes was launched. In addition, as recommended by the committee, the regulations were amended to bring Landlord and Tenant Act leases within the ambit of the mediation scheme.

This Bill responds to a number of concerns identified by the committee as legislation requiring change. The amendments are designed to improve the operation and effectiveness of the Retail Shop Leases Act and to ensure that lessees have as much information as possible prior to making a decision whether or not to enter into a lease and are then to be able to make an informed decision knowing the consequences if a lease is entered into. The key feature of this Bill is that it provides for a statutory right of first refusal for an existing tenant who has no right or option to extend the lease. This right is unique in Australia.

The provision attempts to weigh the needs and relative bargaining positions of the lessor and the lessee. It will apply in circumstances where the lessee has no right to renew the lease, or no further right to renew the lease and the lessor proposes to continue to lease the premises for a business of

substantially the same kind as that conducted by the existing lessee. It will require the lessor before entering into a lease with another prospective lessee to offer the existing lessee a new lease on terms that are no less favourable to the lessee than those offered to another prospective lessee. The statutory right of first refusal will be available only so far as it is necessary to bring the aggregate period of occupation up to 10 years if that is what the lessee wishes. To weigh the interests of lessors the Bill provides, as the select committee recognised would be necessary, a range of reasons for which the lessor may decline to offer renewal of a retail shop lease.

If the landlord requires the repossession of the premises for the purpose of renovation or redevelopment or if the landlord wishes to change the tenant mix in a shopping centre or to use the premises for a purpose that will not involve re-letting for at least six months, or if the lessee has been guilty of a substantial breach or persistent breaches of the lease or if the continuation of the lease would substantially disadvantage the lessor, the landlord may decline to offer a new lease. In addition, the lease itself may exclude the application of the statutory right of first refusal provided a lawyer acting for the lessee and independently of the lessor certifies that the effect of the provision has been explained to the lessee.

In keeping with the Government's view that existing negotiated commercial relationships should not be disturbed or interfered with retrospectively, this provision will only apply to leases entered into after the commencement of the section. The Government's view also is that this statutory right should only relate to retail shop leases and not leases of a commercial nature. This will be dealt with in the regulations.

In addition to this matter, this Bill also deals with other matters which were the subject of recommendations of the select committee on which there was unanimous agreement. A number of amendments relate to the information required to be disclosed to a potential lessee. A feature of the Retail Shop Leases Act is that it contains a disclosure statement requiring certain matters to be disclosed to a potential lessee. The select committee recommended that it be mandatory for a statement of legal consequences to be provided to a lessee or assignee. The committee considered that such a statement would alert potential lessees to the key features of a lease and the consequences of breach of the lease, warn that oral representations should be reduced to writing and warn a lessee to obtain independent financial and legal advice. This Bill requires the disclosure statement to contain this information and to comply with the requirements in the regulations about the form in which it is to be presented. Presentation of the information, particularly the statement of legal consequences, will be vital if that information is to be used for the warning purposes envisaged by the select committee.

The Bill requires the lessor to disclose in the disclosure statement if a margin is being added to the cost of supply of services or if the lessor is obtaining services at a price different from the price being charged to the lessee and, if so, the amount of the difference or the method used to calculate the difference. Current tenancy mix will need to be disclosed, as well as any proposed changes to that mix. The disclosure statement will also be required to state whether the lessor is prepared to give an assurance that the tenant mix will not be altered. Fit-out requirements will be required to be disclosed, along with an estimate of the likely cost of that fit-out. If such disclosure is not made any lease provisions requiring such expenditure will not be enforceable.

In addition, there are a number of technical amendments to the Act. One minor but, nevertheless, significant amendment is that the name of the Act has changed to the Retail and Commercial Leases Act, a name which better reflects the ambit of the Act.

I seek leave to have the detailed explanations of the clauses incorporated in *Hansard* without my reading them.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Substitution of s. 1

This clause changes the name of the principal Act to *Retail and Commercial Leases Act 1995*.

Clause 4: Amendment of s. 3—Interpretation

This clause inserts a new definition of capital obligation. A capital obligation is an obligation under a lease or a collateral agreement—

. to make or reimburse capital expenditure; or

. to fit or refit the shop; or

. to provide fixtures, plant or equipment.

Clause 5: Amendment of s. 4—Application of Act

This clause proposes an amendment excluding leases for a term of one month or less from the ambit of the legislation.

Clause 6: Amendment of s. 12—Lessee to be given disclosure statement

New subsections (2) and (3) set out the matters that are to be dealt with in a disclosure statement (*ie* the statement that is to be given to the lessee before entering into the lease or a renewal of the lease). The form of the statement is currently included in the schedule to the Act. However, greater flexibility in the form of the statement is desirable and new subsection (3A) provides for the form of the statement to be prescribed by regulation.

Clause 7: Substitution of s. 13

This clause proposes a new section 13 under which a provision of a lease or collateral agreement under which a lessee is required or may be required to undertake a capital obligation or to pay or contribute towards the cost of services is void unless the disclosure statement discloses the obligation and contains an estimate of the likely cost of complying with it.

Clause 8: Amendment of s. 14—Lease preparation costs

This amendment extends the definition of preparatory costs to cover the costs of a registered conveyancer acting for the lessor. Hence, the limitation in section 14 on the lessee's liability for preparatory costs will apply also the fees of a registered conveyancer acting for the lessor.

Clause 9: Repeal of s. 17

This clause repeals section 17. The Bill transfers this section to the proposed new Part 4A where it appears as new section 20A.

Clause 10: Insertion of Part 4A

This clause inserts new Part 4A comprising sections 20A to 20E.

20A. Initial term of lease

New section 20A largely reproduces the current section 17. This provides (subject to certain exceptions) for a mandatory initial term of 5 years.

20B. Statutory rights of renewal

New section 20B gives a lessee a statutory right of first refusal a further period of 5 years.

20C. Notice of lessor's intentions at end of lease

New section 20C requires the a lessor to inform the lessee, a reasonable time before the expiry of a lease, whether the lessor proposes to offer a renewal or extension of the lease. This new section corresponds to the present section 47.

20D. Premium for renewal or extension prohibited

New section 20D prevents a lessor from charging a premium for renewal of extension of a retail shop lease. It corresponds to the present section 49.

20E. Unlawful threats

This new section makes it unlawful for a lessor or an agent acting for a lessor to make threats to dissuade a lessee from exercising a right or option to renew or extend a retail shop lease.

Clause 11: Repeal of s. 25

This clause repeals section 25 which provides that a retail shop lease may provide for the payment of a special rent to cover the costs of fitout. This section has now been supplanted by the new provisions dealing with the imposition of capital obligations on a lessee.

Clause 12: Repeal of ss. 27 and 28

Sections 27 and 28 have also now been overtaken by the new provisions dealing with capital obligations.

Clause 13: Amendment of s. 32—Lessor to provide auditor's report on outgoings

This clause deals with the report to be given under the lease in relation to outgoings. The effect of the amendment is that the report need not be prepared by a registered company auditor in cases where the outgoings consist only of council rates, water and sewerage rates and charges, and insurance premiums provided that the report is accompanied by the relevant receipts.

Clause 14: Repeal of s. 42

Section 42 is repealed. This section has now been overtaken by the new provisions dealing with capital obligations.

Clause 15: Repeal of ss. 47, 48 and 49

Sections 47, 48, and 49 are repealed. The substance of these sections has now been transferred to the proposes new Part 4A.

Clause 16: Amendment of s. 81—Amendment of the Landlord and Tenant Act

This clause amends a transitional provision to make it clear that leases entered into before the commencement of the principal Act which are renewed in pursuance of right or option of renewal granted before the commencement of the principal Act fall within the ambit of the transitional provision.

Clause 17: Repeal of schedule

This clause repeals the schedule setting out the form of the disclosure statement. As mentioned above, the form of the disclosure statement is now to be dealt with in the regulations.

The Hon. M.J. ELLIOTT: I have had an opportunity to read through the Bill very rapidly and I want to focus on two points. They are in response to the Attorney's talking about a key feature of the Bill being a statutory right of first refusal for an existing tenant who has no right or option to extend the lease. Having read through the Bill very quickly, I believe it is quite plain that clause 20B provides the world's two largest loopholes in relation to the statutory right of first refusal. People need to appreciate why the first right of refusal was being sought. The classic example of what happens is a tenant coming up for their first renewal has a landlord telling them that they want a 30 per cent rent increase or there will not be a renewal of the lease. The tenant says, 'Look, if I pay that much I am going to go broke or, alternatively, I am simply not going to make a profit.' The landlord's response is 'Take it or leave it' and the tenant then is in a position, having already spent five years and sometimes quite a deal longer, of deciding whether they are going to walk away from a business in which they have made a significant investment in both financial terms and in terms of their labour and their family's labour, etc., and sometimes often have their house mortgaged as well. Or do they pay this increase in rent that they simply cannot afford?

The select committee was quite clear on this issue. It recommended five to one, with the one opposing voice being the Attorney-General, that there should be a first right of refusal, recognising that the landlord still must have rights. All it was seeking to do was really to level the playing field a little and give some balance. Basically, the landlord should not have been disadvantaged in terms of getting a fair price, because if the landlord could get someone else to come in who is prepared to pay a higher rent, the landlord could do that. All the first right of refusal was supposed to be about was, if the tenant said, 'Look, I won't pay your rent increase', the landlord could not just offer a lower rent to someone else. But I tell you that is precisely what happens now. Sometimes, having asked for a 30 per cent increase, the landlord has actually given someone else a rent lower than the initial rent. This has happened on a number of occasions. It is one of the great rorts that have been going on, and major companies have been involved. The committee saw it as a contemptible thing, and it made a very strong recommendation, with no ifs or buts, that there needed to be a first right of refusal, but giving the landlord a series of protections which, I note, are in the Bill.

They are quite reasonable protections. For instance, a landlord might want to change the tenant mix and take out a poultry shop and put in a dress shop, because that would bring more customers through the door—that is fine—or the landlord might want to rebuild the centre. There are a number of those sorts of quite legitimate reasons for a landlord wanting to remove a tenant, but they should not be able to just use the threat of removal to force an unreasonable rent increase. What the Attorney-General has done—and I guess that his colleagues in the Party room will be intrigued when they read what he has done—

The Hon. R.I. Lucas: The Party room agreed to it.

The Hon. M.J. ELLIOTT: The Party room certainly agreed to lease renewal. I hope that the Party room will spend some time reading new section 20B(4)(d), which provides:

> A lessor may decline to offer renewal of a retail shop lease under this section if a provision of the lease excludes the lease from the ambit of this section . . .

What the big landlords will do now when a new tenant comes in is agree to give the tenant a lease, but the tenant must agree never to insist on a first right of refusal within five years, because unless they do the landlord will not give them a lease to begin with. So, all tenants will be offered this deal: 'Either you take a tenancy on these terms or you don't get it at all.' That means that the first right of refusal which exists in theory will disappear in practice, because, almost without exception, landlords will insist on putting that clause into a tenancy agreement. What a great little loophole! It has made a farce of it. I believe that the Party room after quite vigorous discussion said that there should be a first right of refusal, but this essentially eliminates it.

For good measure, there is also new section 20B(1)(a) which provides:

> A lessee under a retail shop lease entered into after the commencement of this section will, by the end of the term of the lease, have been in occupation of the premises for at least five years, but less than 10 . . .

I cannot understand the logic that says that a first right of refusal after five years is reasonable. If a landlord has a better use for the premises, it is bad luck, but you will be able to negotiate a fair market rent—and that is essentially what they will do—but at 10 years or at any time after that, forget it. Either it is right or it is not. Either it is right at five, 10, 15 and 20 years, or it is not right at all.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: It is not forever. Clearly, a bulldozer will go through the shopping centre within 40 years or probably less of construction.

The Hon. R.I. Lucas: Have you ever run a shopping centre?

The Hon. M.J. ELLIOTT: Don't be a joke. In much less time than that, the landlord will have changed the tenancy mix, and in much less time than that most of the tenants will have left, anyway. The reality is that anyone who goes beyond five years will stay for about 10 or 15 years, but probably not much beyond that. The Property Council has had its way and had those two new sections inserted which actually remove that right. From reading today's *Advertiser* it is quite plain that the Property Council has been consulted on a number of occasions. Small retailers have not been contacted once. I rang them a short while ago, knowing that the Bill was being introduced, to ask them whether they had

been consulted. They have not been consulted. I do not know about the RTA, but the small retailers have not been consulted at all, and the Property Council has been seeing drafts. We know what has been going on. There has been a bit of window dressing about the first right of refusal and then new sections inserted creating loopholes so wide that it makes first right of refusal non-existent.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: It is not a sop to them, because they will see straight through it. I am sure that anyone with half a brain will see through this very quickly, so at least half the backbench will be in revolt very soon. This was the single most important issue before retailers. There is no doubt that there were 14 recommendations for change to the legislation. On reading the Bill, most of those recommendations appear to have been addressed by the Bill, but not all of them. This issue, above all others, was the important one, because if a tenant gets the threat, 'I will not renew your lease', the tenant will not enforce any other right they have been given, because they cannot afford to. It makes a farce of the whole retail tenancy legislation. I argued that fact when the legislation was previously before Parliament. Unless the Government does something about the lease renewal, any other so-called right it gives tenants will not be enforced. It is simply not worth it, because the one thing tenants cannot afford is not having their lease renewed at the time of renewal.

I have focused on the key issue. This is the most appalling piece of two-faced legislation that I have ever seen in my life. One would usually expect loopholes to be subtle, but this is not subtle at all. When I heard that we were going to get first right of refusal at last—a first in Australia—I thought that the Government had done a truly wonderful thing. I believed that the Party Room had prevailed because it was in contact with people who were hurting badly. From time to time I am criticised by the Leader of this place for not congratulating the Government more often. If it had not been for those two new sections I would have been praising the Government, but the fact is that it has not done what it pretended to do, and that is a grave disappointment.

The Hon. T.G. CAMERON secured the adjournment of the debate.

IRRIGATION (CONVERSION TO PRIVATE IRRIGATION DISTRICT) AMENDMENT BILL

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

ANIMAL AND PLANT CONTROL (AGRICULTURAL PROTECTION AND OTHER PURPOSES) (INTERIM CONTROL BOARDS) AMENDMENT BILL

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

LOCAL GOVERNMENT (CITY OF ADELAIDE) BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference, to be held in the Plaza Room of the Legislative Council at 8.30 a.m. Thursday 21 November, at which it would be represented by the Hons. M.J. Elliott, P. Holloway, Diana Laidlaw, Anne Levy and A.J. Redford.

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 November. Page 497.)

The Hon. R.D. LAWSON: I support the second reading of the Bill, which makes two amendments to the Legal Practitioners Act. The first amendment to section 11 was prompted by the recommendation of a committee appointed by the Law Society. The amendment will enable the delegation of certain functions of the Law Society to a company. It is envisaged that the professional indemnity scheme conducted by the society will be henceforth conducted by a separately incorporated company. It is worth putting on the record that the Law Society, for a number of years, has conducted a professional indemnity insurance scheme for its members and also for all legal practitioners in this State. The professional indemnity scheme has operated to the benefit of the clients of legal practitioners.

The annual contributions made by legal practitioners are not insubstantial. The premium in 1995 for a legal practitioner was, including an administration fee, $3 448. In 1996, the premium fell slightly to $3 281. In 1997, as a result of negotiations conducted by the society on behalf of the profession, the standard premium for a practitioner will reduce to $2 780. The amount required to be paid by legal practitioners for their own compulsory insurance is not insignificant, and the market for professional indemnity insurance is competitive and somewhat volatile.

Premiums have risen fairly regularly and steadily from 1988 when they were $1 800 a year for standard practitioners. Fortunately, the number of claims made against the scheme has been falling in recent times. In 1992, there were 276 claims; the following year, 226; in 1994, 216; and in 1995, the number of claims was reduced to 182. The largest category of claims, which was once a failure to issue proceedings within time, has fallen as a proportion of total claims, and the most significant area of claims now arise out of commercial matters. The society's recommendation that it be permitted to delegate its powers to a separate incorporated company is reasonable, with no countervailing detriment to the public interest.

The second amendment deals with section 57 of the guarantee fund. It will allow money from the guarantee fund to be used for educational and publishing programs conducted for the benefit of legal practitioners or members of the public. This is a somewhat more controversial measure and, notwithstanding that I support it, it is worth noting that what is being done here is largely the use by legal practitioners of interest on their clients' money for purposes which at first blush might appear to be for the benefit of the legal practitioners themselves. It ought never be forgotten that the interest on trust accounts, strictly speaking, is money belonging to clients of lawyers and not to the lawyers themselves. It is worth examining the figures for the Legal Practitioners Guarantee Fund, the most recent being for 30 June 1996 and published in the annual report of the Law Society for that year.

Income in 1996 from the statutory interest account was some $454 000; the special interest account contributed about

the same; interest from investments contributed about $1.3 million; and a certain proportion of practising certificate fees—$317 000—was another large contributor. In all, the income of the fund was $2.6 million: $860 000 of that was expended from the guarantee fund, $201 000 was spent on the inspection of solicitors' trust accounts, the managers' supervisor expended about $90 000, and $100 000 was spent on disciplinary matters, mostly on remuneration for members of the discipline tribunal.

Complaints expenditure amounted to about $639 000, and total expenditure was $1.8 million, leaving a surplus for the last financial year of $750 000 as against the deficit in the previous financial year of about $300 000. A principal source of income, as I mentioned, was the statutory interest account, and it yields, as I read the figures, some $1.2 million a year, and that is clients' money. The sum of $1.2 million is the interest paid to the Legal Practitioners Combined Trust Account.

It will be seen from these figures that substantial amounts are allocated from the combined trust account to the Legal Practitioners Guarantee Fund, with the consequence that the funds we are dealing with under clause 57 are largely but not exclusively moneys of clients. It should be mentioned that the Legal Practitioners Guarantee Fund includes not only interest from statutory interest accounts but other matters such as prescribed fees, costs recovered by the Attorney-General, any money that the society thinks fit to include in the guarantee fund, and income and accretions arising from investment of the money constituting that fund.

Moneys can be applied, subject to the approval of the Attorney-General, for certain purposes. Those purposes are outlined in section 57(4). Hitherto they have not included amounts for education programs, publishing and the like. I support the inclusion of those programs, notwithstanding that not all the funds are sourced from the legal profession, which will be the principal immediate beneficiary of such educational programs. Ultimately, the community will benefit from educational programs for professional people such as lawyers, because one would hope that those educational programs will have the effect of increasing compliance with regulations, better professional services and the like. It is envisaged in the new measure that these educational publishing programs may also be for the benefit of members of the public. I would be interested to hear from the Attorney what type of programs are envisaged as being for the benefit of the public in this area and, likewise, what type of programs are envisaged as coming within the purview of this new provision.

The important fact is that no payment can be made from the guarantee fund except with the authorisation of the Attorney-General, and in that respect the Attorney will be the custodian of the public interest and will require the society to appropriately expend any funds for release for this purpose. I support the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indication of support for this Bill. So far as the questions raised by the Hon. Robert Lawson are concerned, I will endeavour to clarify the issues by letter rather than on the run. As he has observed, the approval of programs upon which moneys may be expended from the guarantee fund is in the hands of the Attorney-General, and I assure him that caution, rather than generosity, is the watchword. At least in terms of the approach that I would take, there would need to be a demonstrated link between the program and ultimately the benefit of the public. I will deal with any other issues by correspondence and certainly before the Bill is passed in another place.

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

ADJOURNMENT

At 5.44 p.m. the Council adjourned until Tuesday 26 November at 2.15 p.m.