# LEGISLATIVE COUNCIL

**Wednesday 5 February 1997**

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

## LEGISLATIVE REVIEW COMMITTEE

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

## PAPER TABLED

The following paper was laid on the table:

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

Corporate Affairs Commission—Report, 1995-96.

## MOUNT GAMBIER PRISON

**The Hon. K.T. GRIFFIN (Attorney-General):** I seek leave to table a ministerial statement made by the Minister for Correctional Services in another place on the subject of the Mount Gambier prison.

Leave granted.

## TRUCKING INDUSTRY

**The Hon. DIANA LAIDLAW (Minister for Transport):** I seek leave to make a ministerial statement in relation to trucking industry safety.

Leave granted.

*Members interjecting:*

**The Hon. DIANA LAIDLAW:** No, I have not got my truck driver's licence yet, only my bus driver's licence. There has been extensive media coverage in the past few weeks about a trial arising out of last year's fatal accident at Blanchetown. Comments by the trial judge highlighted problems in the road transport industry, particularly in the area of driver fatigue. The Government and, I believe, all members regret the tragic circumstances of the accident and express our sincerest condolences to the family and friends of all who died.

Driver fatigue was an important fact in the Blanchetown accident. Whilst the issue of fatigue has plagued the industry for decades, this Government has been determined to address driver fatigue and interrelated issues such as speed by a focus on management responsibility and not simply on driver behaviour. We recognise also that legislation alone without a commitment by the road transport industry to clean up its act will not be entirely effective in ensuring safe practices on our roads.

Accordingly, over the past two years in particular, this Government has undertaken a lot of constructive work in conjunction with other road authorities and the road transport industry associations aimed at developing measures to effectively deal with driver fatigue. Alternative compliance allows road transport operators to demonstrate their preparedness to comply with certain road transport laws by developing effective management systems within their own organisation.

In the case of the pilot fatigue management program, focus is placed on the ability of drivers and operators to control factors likely to contribute to driver fatigue, such as appropriate rest breaks, driver health and responsible rostering. The emphasis is on managing the time spent not only behind the wheel but also on the quality of rest in non-driving times.

Since 1995, South Australia has been an active participant in the pilot fatigue management program sponsored by the Queensland Department of Transport in conjunction with the National Road Transport Commission (NRTC) and the peak road transport industry body, the Road Transport Forum. It is important to note that many more South Australian companies have been keen to participate in the national pilot program than could be accommodated.

Accordingly, on 12 April 1995 I gave permission for the pilot program to operate within South Australia and exempted the drivers of five companies from the requirements to carry and complete log books, as required under section 4 of the Commercial Motor Vehicles (Hours of Driving) Act. This level of interest by these five companies is an important sign of increasing company responsibility in this field towards road safety and their drivers.

I now refer to log books. Currently in South Australia log books must be completed indicating the hours of driving and rest breaks taken. There is considerable criticism across Australia—and for good reason—about the use of log books and their ability to indicate accurately the level of driver fatigue of those drivers who carry them. Work on the development of the pilot fatigue management program has been premised on the need to move away from this prescriptive approach to one which more effectively allows drivers to manage their own individual needs within a framework which sets a maximum number of driving hours with defined rest breaks. The results to date of the South Australian alternative compliance program indicate that this new approach to driver management is working.

In relation to new legislation, as well as looking at alternative compliance measures, the South Australian Government has insisted that the Department of Transport be involved in developing with industry new policies and laws relating to both truck and bus driving hours. This led to the Ministerial Council on Road Transport in December 1995 voting to support a national policy applying to truck and bus driving hours. The policy complements alternative compliance by providing flexibility for an operator who could demonstrate that good controls were in place to manage driver fatigue.

Further development of a national log book system and the establishment of a transitional regime in each jurisdiction will be placed before the May 1997 meeting of the Ministerial Council on Road Transport.

I now refer to TruckSafe. Meanwhile, the road transport industry, both nationally and locally, is supporting moves such as driver fatigue management. In Queensland, the Road Transport Forum has developed the TruckSafe program, and the South Australian launch of TruckSafe, in conjunction with the South Australian Road Transport Association and the Department of Transport and with State Government help, is scheduled for next month. This should provide a head start for South Australia when a robust, regulated, alternative compliance regime for fatigue management gets off the ground nationally. I anticipate that that will occur next year.

In relation to new technology, other initiatives being developed by the National Road Transport Commission in cooperation with the Department of Transport and other road agencies include the development of 'driver specific monitoring devices' which will keep accurate computer controlled records of driver travelling hours.

Regarding rest areas, at the Australian Transport Council meeting to be held later this month consideration will be given by Ministers to the provision of additional and better rest areas for heavy vehicle drivers. This issue is one of a number of matters proposed by the Commonwealth Minister for Transport for inclusion in a national 'fast track' road safety package. Already the South Australian Department of Transport has identified suitable locations for additional rest areas and improvements to rest areas throughout the State.

In relation to penalties, at a local level, I intend to introduce legislation later this year to increase penalties under the Commercial Motor Vehicles (Hours of Driving) Act so that they act as a more effective deterrent to breaches of the Act. There is nothing that can be done to turn back the hands of time or undo the tragic consequences of the Blanchetown accident. However, the people of South Australia can be assured that this Government is diligent in addressing this issue of driver fatigue, speed and company responsibility and we will continue to exert our best endeavours to help the industry clean up its act.

## WATER RESOURCES BILL

**The Hon. DIANA LAIDLAW (Minister for Transport):** I seek leave to read a ministerial statement given elsewhere this day by the Minister for the Environment and Natural Resources. I understand that agreement has been reached that I read the statement rather than table it.

Leave granted.

**The Hon. DIANA LAIDLAW:** Over the Parliamentary recess there has been continuing consultation on the Water Resources Bill presently before us for consideration. It has been brought to the Government's attention that there is disquiet in some areas of the South-East over the potential impact of the Bill. I would like to take this opportunity to allay those fears and to reassure the people of the South-East that the passage of the Bill is to the long-term benefit of the region, as well as the rest of the State. The South-East of the State is an extremely important region, for many reasons. It is one of the most productive agricultural regions in the nation. That productivity, and the strength of the regional economy, has developed around a plentiful supply of good quality water. The management of the South-East's water resources is extremely important not only for the people of the South-East but also for the State. There appear to be two main areas of concern: a fear that any unnecessary bureaucracy for water management will be established side by side with the South-Eastern Water Conservation and Drainage Board, and fears that allocation policies in the South-East will lead to alienation of the available water from the majority of landowners, concentrating it in the hands of a few, and encouraging the formation of a monocrop economy in the region.

Water Management Boards: Let me assure the Council and the people of the South-East that it is not the Government's intention to create bureaucracy where it is not needed. The South-Eastern Water Conservation and Drainage Board has for many years served the region admirably in managing the drainage of surface water in the region, vastly increasing the productivity of large areas of land. In more recent years the board has also taken an environment protection role through the creation and protection of wetlands, and accepting carriage of the Upper South-East dryland salinity project.

The South-East has also been well served for many years by the Upper and Lower South-East Water Resources Committees, which have been responsible for advising on management of underground water in the area. The new Water Resources Bill provides a historic opportunity for underground water and surface water to be managed together in the South-East.

The Bill includes provisions for the Minister for the Environment and Natural Resources to recommend the appointment of an already existing board to carry out the powers and functions of a catchment water management board under the Bill, in addition to its own functions. It seems likely that the South-Eastern Water Conservation and Drainage Board could fulfil both functions, should the people of the South-East wish to see integrated water resources management.

However, whether or not the South-Eastern Water Conservation and Drainage Board will take on new functions under the Bill would first be the subject of intense public consultation, as set out in the Bill. It may indeed be that the people of the South-East will see no need for a change in their water management structures for many years to come. On the other hand, they may wish to take the opportunity given by the Bill to seek this in the near future. The Minister for the Environment and Natural Resources looks forward to hearing their views on the matter, if and when they choose to take it up. The Government is not interested in establishing any board without considerable community demand for it.

Proclamation and allocation policies: The South-East's plentiful supply of good quality water cannot survive indefinitely without some degree of management to:

protect the water resources themselves from pollution and over-use;

protect other users of the resource to ensure that it is fairly distributed and to protect the rights of legitimate users; and

ensure that the resources are used wisely and in the best interests of the development of the region;

tailor the use of water to meet the difficult recharge rates, depths to the aquifer and salinity levels and so on in various areas of the South-East.

Legislation in South Australia has provided the ability to introduce management schemes to achieve these objectives since 1959. Indeed, Padthaway was the second area in South Australia to be proclaimed under the legislation. Presently, about 40 per cent of the South-East is a proclaimed area for drilling bores and taking underground water. Proclaiming underground water areas simply means that all users will require a licence, although current policy excludes stock and domestic users from the need to hold a licence. This in turn allows for water resources to be formally shared amongst all users of it, thereby avoiding disputes over access to water, which is not something for which the common law provides.

Like its predecessors, the new Water Resources Bill will also allow for the control of underground water and for sharing access to it amongst competing users, thereby overcoming the shortfalls of the common law. However, the main difference between the new Bill and previous legislation is that it provides for all water management, including appropriate allocation policies, to be undertaken in accordance with management plans drawn up by and for the communities of each region. The Bill says very little about which method should be adopted for sharing proclaimed water resources. Instead it recognises the vast diversity of this State's resources and the needs of respective communities. The Bill enables regions to tailor management policies to the requirements of a particular community and the particular characteristics of the resource.

I assure the Council and the people of the South-East of these two things: first, that the Government will act to bring the remainder of the South-East under a proclamation in order to protect it now at a time when the resources are not yet under serious threat and when there is still plenty of water available to allow chosen allocation policies to be implemented fairly; and, secondly, that the use of different allocation and management policies will be fully discussed within the South-East during preparation of the water allocation plans under the new Bill.

It is acknowledged that there are some—perhaps many landowners in the South-East—who do not have water licences and who disagree with the current approach to water allocation that operates in the South-East. The assistance of the colleagues of the Minister for Environment and Natural Resources—the Hon. Angus Redford, MLC, the Hon. Jamie Irwin, MLC, the Minister for Finance and member for MacKillop (Hon. Dale Baker, MP) and the member for Gordon (Hon. Harold Allison, MP)—is gratefully acknowledged in drawing the Government's attention to the significance of this disquiet.

Suggested by some is a form of allocation policy for proclaimed areas that would see all landowners receive an allocation regardless of present or intended use. The allocation received would be a part of the total water available and would reflect the amount of land owned. If, as a result of extensive consultation with the landowners in the South-East, it is apparent that the best policy is to adopt this course, that will occur. However, at this stage the Government will not preempt that process. The Water Resources Bill allows any type of allocation policy to be provided for in a water allocation plan. The only restriction is that the allocation policy must only allocate the water that can be safely extracted from the resource (so the policy cannot advocate over allocation) and must aim to ensure that the use and management of the available water will sustain the physical, economic and social well-being of the people of the State and facilitate economic development while at the same time ensuring that the resource will be available for use by future generations and that ecosystems that depend on the water are protected.

By contrast, the Water Resources Act 1990, which already applies in the South-East, would not allow this sort of allocation policy to be implemented. The new Bill is needed to give flexibility to the type of allocation policies that can be implemented. Under the new Bill it will be the job of the local water resources manager, presently the Upper and Lower South-East Water Resources Committees, to prepare water allocation policies that are the most appropriate for the region through a full consultation process involving local communities.

Clearly, the people who have the most immediate dependence on the resource are the ones most likely to have ideas for allocation policies that would be suitable to the particular area and who are aware of the particular characteristics of the resource which might affect the suitability of different allocation policies.

The new Bill is flexible. It allows any allocation policy to be implemented provided it has the support of the local community and the Government. Any new policy would receive wide consultation before being adopted by the Minister. The Bill guarantees that. The Water Resources Bill heralds a new era of consultative resources management, designed to provide for the peculiarities of each region of the State.

### HARRISON, Mr I.

**The Hon. R.I. LUCAS (Minister for Education and Children's Services):** I seek leave to table a copy of a ministerial statement made by the Minister for Employment, Training and Further Education in another place on the appointment of the Chair of the Accreditation and Registration Council of South Australia.

## QUESTION TIME

### WATER OUTSOURCING CONTRACT

**The Hon. CAROLYN PICKLES:** I seek leave to make a brief explanation before asking the Attorney-General a question on the subject of a breach of probity.

Leave granted.

**The Hon. CAROLYN PICKLES:** A letter from the Chief Counsel, Mr Robert Martin, to Mr Phipps states:

> I believe it is my duty to alert you to a breakdown in the bid process which could have led to a breach of probity.

This letter is dated 12 October 1995—two months before the water select committee, the unsuccessful bidders and the public learnt that the successful UWI bid was lodged four and a half hours late and that the unsuccessful bids were opened, copied and distributed prior to lodgement of the UWI bid. This letter carries a handwritten note that states:

> Richard, the letter and a chronology supplied by SA Water to Mike Walter. . . (signed) Trevor.

*The Hon. K.T. Griffin interjecting:*

**The Hon. CAROLYN PICKLES:** That is you. It is in your handwriting; I recognise it well. My question is: Why did the Attorney-General fail to take immediate action to investigate the possible breach of probity arising from the opening and distribution of bids for the water privatisation contract?

**The Hon. K.T. GRIFFIN:** I suppose one would expect that, having a whole raft of documents, the Leader of the Opposition in another place would be poring over it all night trying to find some means by which to split hairs—

*Members interjecting:*

**The Hon. K.T. GRIFFIN:** With the sort of documents that were tabled yesterday, I would have expected that ultimately the Leader of the Opposition in another place would spend some time poring over them to try to split hairs and to find something to revive out of the debacle which faced the Leader of the Opposition in another place yesterday.

Mr Robert Martin, quite properly, referred to me a matter which is the subject of that letter. The matter was referred to the then Premier's chief adviser but, in addition to that, if the honourable member looks at the chronology of events and what actually happened as a result of that information, the Auditor-General conducted an inquiry and gave a clean bill of health and the Solicitor-General conducted an inquiry and gave a clean bill of health. That comprehensive report (something like 30 pages) from the Solicitor-General, was tabled—if not tabled here, it was certainly released publicly—and it quite comprehensively deals with this issue.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. K.T. GRIFFIN:** All that Mr Robert Martin did was to draw—

*The Hon. Carolyn Pickles interjecting:*

**The Hon. K.T. GRIFFIN:** Quite properly. I am not defensive about it: I am telling you what happened. It was drawn to my attention—quite properly by Mr Martin—and in those circumstances I did act upon it. Ultimately, if you look at—

**The Hon. T.G. Cameron:** We'll get to the truth eventually!

**The Hon. K.T. GRIFFIN:** You'll get to the truth, sure. You've got all the truth; you're trying to distort it.

*The Hon. T.G. Cameron interjecting:*

**The PRESIDENT:** Order!

**The Hon. K.T. GRIFFIN:** There was a quite comprehensive review by the Auditor-General, who accelerated his review in the light of this information. The Solicitor-General was extensively involved, and that report is on the public record. The conclusions—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. K.T. GRIFFIN:** In addition to that, the probity auditor, who, I think, was a senior member of Deloitte Tohmatsu, gave a report: in fact, he gave a report on it after investigating it on the day it was drawn to his attention, which was the day on which it occurred. He was not fazed by it.

**An honourable member:** He wasn't even there.

**The Hon. K.T. GRIFFIN:** He was the supervisor: he didn't have to be there. He was the supervisor of probity—he wasn't the police officer, he wasn't the doorman: he had to be satisfied about process.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. K.T. GRIFFIN:** Three clean bills of health were given. The matter was thoroughly investigated. What the Opposition has constantly failed to acknowledge is that there was a distinction between a request for tender process and a request for proposal process. That was extensively covered by the Auditor-General, the Solicitor-General and the probity auditor. So far as I am concerned, the matter which was raised by Mr Robert Martin was properly dealt with in the appropriate time frame.

**The Hon. CAROLYN PICKLES:** I seek leave to make a brief explanation before asking the Attorney-General a question about the water contract.

Leave granted.

**The Hon. CAROLYN PICKLES:** Representatives of North West Water told the water select committee on 9 February 1996 that they had learnt of the extension of time given to United Water in the media following the select committee meeting held on 8 December 1995. The North West Water representatives testified that they had only become aware of the extension of time provided to United Water when it had become general public knowledge and were not officially advised by SA Water.

Given that the letter from Robert Martin outlining his concerns about the breach of probity in the opening of the unsuccessful bids for the water contract was dated 12 October 1995—two months before the unsuccessful bidders became aware of the extension of time given to United Water—why did not the Attorney take action to ensure that the unsuccessful bidders were informed of this fact?

**The Hon. K.T. GRIFFIN:** Quite simply, it was not my responsibility—and, in any event, why should they have been notified? In fact, from the Solicitor-General's Report and the Auditor-General's Report, one other of the proposals was also late by about 10 minutes. Members have to recognise that, when all this occurred, it was, first, drawn immediately to the attention of the probity auditor; it was then the subject of investigation by the Solicitor-General; it was subject to investigation by the Auditor-General; and reports have been made public. In those circumstances, whilst North West Water may complain about having discovered this from the media, there was no either statutory or contractual obligation upon SA Water to get out there and specifically notify North West Water of the delay.

This issue has been out in the public arena already, because I recollect that, when this evidence was given to the select committee, it hit the headlines. It was, of course, something of which the Opposition then tried to make great play: that one of the parties had not been informed. The fact is that North West Water actually subsequently acknowledged that it was satisfied with the probity of the process.

*Members interjecting:*

**The Hon. K.T. GRIFFIN:** They can say whatever they like, but do not try to manufacture views on behalf of someone with whom you have had no contact.

*Members interjecting:*

**The Hon. K.T. GRIFFIN:** The fact is that the Opposition is casting around trying to find a way to undermine the propriety of this whole operation. The longer this goes on, the more discredited the Labor Party becomes.

**The Hon. T. CROTHERS:** As a supplementary question to the Attorney-General, what was the instructive brief given by the Government or by the Attorney-General to the Solicitor-General in respect of the investigation which he undertook and to which the Attorney-General has referred in his answer to the Leader's question?

**The Hon. K.T. GRIFFIN:** Actually I gave no instructions to the Solicitor-General except that I authorised him to act on the instructions of the Auditor-General. It was on the instructions of the Auditor-General that the Solicitor-General undertook his inquiry. The report was to the Auditor-General, as I recollect, but the Auditor-General concurred in its being released publicly. It consists of approximately 30 pages; it is on the public record and anyone can see it.

**The Hon. R.R. ROBERTS:** I seek leave to make a brief explanation before asking the Attorney-General a question dealing with the Solicitor-General's report on the probity inquiry.

*Members interjecting:*

**The PRESIDENT:** Order! You are all a lovely lot, but just listen for once.

**The Hon. R.R. ROBERTS:** Well, some of us are and some of us are not quite as lovely, Mr President!

**The PRESIDENT:** Order! The honourable member might not be if he continues down that track!

*The Hon. L.H. Davis interjecting:*

**The PRESIDENT:** Order, the Hon. Legh Davis!

**The Hon. Anne Levy:** Throw him out!

**The PRESIDENT:** Order!

Leave granted.

**The Hon. R.R. ROBERTS:** This question follows on from the questions that have been attempted to be answered by the Attorney-General. He talked in his answers about a comprehensive review and report by the Attorney-General and the Auditor-General. In a report of the Auditor-General to the Attorney-General dated 14 December 1995, the Crown Solicitor states (and the Attorney-General is known normally for the thorough and careful way in which he does his homework—careful to a fault):

> Given the time available for providing this advice, it is not possible to cross check any of the information to the extent that it consists of oral statements and unsubstantiated written statements; it has not been given on oath and it has not been subject to any cross-examination. I have not proofed any of these persons. The relevant statements are not inherently unbelievable and I am not aware of any information or evidence which would suggest the statements are untrue. I am prepared to advise on the assumption that these statements are true and accurate. I also assumed that the relevant information is complete. However, these are significant assumptions.

This is the greatest disclaimer of all times. He continues:

> If there are concerns about the truthfulness, reliability or completeness of the information that has been provided to me, then this advice should not be relied upon and should be reconsidered.

This is the comprehensive report, Mr President. He further states:

> I note that any such reconsideration would probably involve a more extensive inquiry using compulsory powers.

That is one part of the report that was on page 2 of his letter to the Auditor-General, with a copy sent to the Attorney-General. He was so concerned that, in the final paragraph in his letter to the Attorney-General, the Crown Solicitor says:

> If there are concerns about the truthfulness, reliability or the completeness of the information that has been provided to me, then this advice should not be relied upon and should be reconsidered.

That is hardly a comprehensive endorsement. The Hon. Angus Redford has sought to enter the debate.

**The Hon. A.J. REDFORD:** Mr President, the honourable member is expressing an opinion, and I ask that he be instructed not to do so.

**The PRESIDENT:** Order! The honourable member is bordering on giving his own opinion.

**The Hon. R.R. ROBERTS:** Very clearly, Mr President—

*The Hon. Carolyn Pickles interjecting:*

**The PRESIDENT:** Order! The honourable member is giving an opinion. As that does not meet the Standing Orders, I ask him to rephrase his question in some way.

**The Hon. R.R. ROBERTS:** The Crown Solicitor reiterated that:

> If there are concerns about the truthfulness, reliability or the completeness of the information that has been provided to me, then this advice should not be relied upon and should be reconsidered.

I ask why the Attorney-General ignored this warning by the Solicitor-General which raised serious doubts about the validity of the investigation into the probity of the process of the $1.5 billion water contract, and how the Attorney established beyond any doubt that there was no impropriety in the process.

**The Hon. K.T. GRIFFIN:** I suppose that the honourable member should in future be called the Hon. Rip van Roberts! This report from the Solicitor-General was, as I recollect, published in December 1995. We acknowledged, as the Solicitor-General did, that this was a warts and all review. If we were concerned as a Government about—

*Members interjecting:*

**The PRESIDENT:** Order! There is too much background noise.

*Members interjecting:*

**The PRESIDENT:** Order! The Hon. Ron Roberts had his chance.

*The Hon. L.H. Davis interjecting:*

**The PRESIDENT:** Order! The Hon. Legh Davis is out of order.

**The Hon. K.T. GRIFFIN:** The Hon. Rip van Roberts has woken up after 15 months. For 15 months this has been out in the public arena. For 15 months they have not raised one question about this disclaimer and explanation in the document. It has been on the public record. How long does it take for members opposite to read material that is out in the public arena?

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. K.T. GRIFFIN:** They are accusing us from time to time of not putting information into the public arena, and when we do so they do not read it; or, if they do read it, or are satisfied with it, and it happens as a matter of convenience—

*Members interjecting:*

**The PRESIDENT:** Order! Nobody can understand what is going on in here because nobody can hear.

*Members interjecting:*

**The PRESIDENT:** Order, the Hon. Terry Cameron! There are about 13 people talking all at once.

*The Hon. T.G. Cameron interjecting:*

**The PRESIDENT:** Order! If the Hon. Terry Cameron does not like it in here, he is probably wanted on the telephone. There are too many people talking at once, and *Hansard* cannot record the proceedings. I cannot understand what is going on half the time because everybody is talking at once.

**The Hon. K.T. GRIFFIN:** The difficulty from the Opposition's point of view is, as I said, that this has been in the public arena for 15 months.

*The Hon. R.R. Roberts interjecting:*

**The Hon. K.T. GRIFFIN:** The opinion has been out in the public arena for the 15 months. I do not know what the honourable member is talking about, but he has referred to the advice from the Solicitor-General in a form which indicates that it is the document which has been on the public record of the inquiry of the Solicitor-General since December 1995 or thereabouts. The fact is that that sort of qualification has been in the public arena for the last 15 months, and it is the first time it has been raised. There is something wrong on the other side of politics when something like this has been in the public arena and it takes them 15 months to raise it; and they raise it only—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. T.G. CAMERON:** I rise on a point of order, Mr President. I cannot hear what the Attorney is saying. We are all waiting with bated breath for his answer. He has been on his feet for 10 minutes, but he has not yet said a word. Will you ask members opposite to be quiet so that we can hear?

**The PRESIDENT:** Order! The honourable member is not taking a point of order; he is debating the subject.

**The Hon. K.T. GRIFFIN:** I do not intend to strain my voice any further to ensure that members opposite can understand or hear what I am saying. I will repeat it once more for the honourable member.

*The Hon. L.H. Davis interjecting:*

**The PRESIDENT:** Order on my right!

**The Hon. K.T. GRIFFIN:** The fact of the matter is that the issue in relation to the Solicitor-General's advice, which has been on the public record, where he indicated the qualifications to the review and his report, has been available for the public as well as for the Opposition to read and digest and, if they are concerned about it, then to raise it. The Solicitor-General appeared before the select committee last year, and I would have thought that if members opposite had any questions about this they could ask the Solicitor-General.

The fact of the matter is that the Solicitor-General gave advice—

*The Hon. R.R. Roberts interjecting:*

**The Hon. K.T. GRIFFIN:** That is a lie. The fact of the matter is that we ensured that the Auditor-General, the Solicitor-General and the probity auditor had properly signed off on this before the contract was actually signed. It is not incumbent upon me as Attorney-General to establish a particular matter beyond reasonable doubt. This related to an issue that was alleged to be related to probity. Whom did we get to do something about it: the Solicitor-General and the Auditor-General, in particular—and they did as much as they could to get the truth.

The qualification by the Solicitor-General is a reasonable review. I think about 42 witnesses were interviewed by the Solicitor-General. I do not know how many the Auditor-General interviewed, but it was a substantial number as well. So, you get to the point—

*The Hon. R.R. Roberts interjecting:*

**The Hon. K.T. GRIFFIN:** You ought to talk to the legal adviser of the Leader of the Opposition in the Upper House, who is also the legal adviser to Mr Rann, about what some of these things actually mean, rather than trying to undermine what has been said. As I have indicated, this has been on the public record, and it surprises me—perhaps it does not really surprise me—that it has taken so long for the issue to surface in a totally different environment than the one which existed in December 1995.

*Members interjecting:*

**The PRESIDENT:** Order!

## FINANCE MINISTER

**The Hon. M.J. ELLIOTT:** I seek leave to make a brief explanation before asking the Minister representing the Minister for Finance a question about conflict of interest.

Leave granted.

**The Hon. M.J. ELLIOTT:** I have had raised with me matters of great importance which relate to a Minister of this Government. Today, I intend simply to ask a few questions to confirm the information that has been supplied to me and to seek a quick response from the Minister. The issue relates to the actions of the present Minister for Finance and Minister for Mines (Hon. Dale Baker) when he was Minister for Primary Industries from 14 December 1993 to 22 December 1995. My questions are based upon documents provided to me, but for reasons of the protection of individuals it is not my intention at this time to table most of them. I seek leave to table, at this stage, one document, which is a letter from the Manager of the Banksia Company to Elders Limited, Millicent, South Australia.

Leave granted.

**The Hon. M.J. ELLIOTT:** My questions to the Minister are:

1. Will the Minister confirm that the Department of Primary Industries began discussions regarding the purchase of sections 35, 36, 37 and 190 in the hundred of Smith, near Greenways, on or before 28 February 1994? (I note that the land had been for sale for two years at that time.)

2. Will the Minister confirm that Alan Gray of Woods and Forests inspected the land on 9 March 1994?

3. Will the Minister confirm that he personally inspected the land on 12 March 1994 after not showing any personal interest in the land in the previous two years?

4. Will the Minister confirm that he expressed interest in buying in a personal capacity about 500 acres of the foregoing land along Jorgenson Lane?

5. Will the Minister confirm that the Department of Primary Industries continued to assess the land for suitability for use for the growing of pines through March, April and May and was interested in purchasing all that land?

6. Will the Minister confirm that the Department of Primary Industries completed its survey on 23 May 1994 and was waiting for written confirmation from the Native Vegetation Authority before proceeding further?

7. Will the Minister confirm that the Banksia Company, a company in which the Minister has an interest, made a written offer for a portion of sections 36 and 37 in the hundred of Smith on 2 June 1994?

8. Will the Minister confirm that the Department of Primary Industries made an offer for all the foregoing land on 14 July 1994 subject to the approval of the Minister for Primary Industries?

9. Will the Minister confirm that after a further delay of two months the Premier's office had been contacted by the landowner over concern as to the reason for the delay and that Richard Yeeles became involved?

10. Was the Minister instructed by the former Premier to allow the Department of Primary Industries to proceed with the Government's purchase of the land?

11. Will the Minister confirm that he approved the Government purchase of the land after the direction from the Premier's Department?

12. What relationship did or does the Minister have with other parties which sought to purchase the identical portion of land in which the Banksia Company had shown an interest subsequent to the Department of Primary Industries' confirming on 14 July its desire to purchase?

13. Subject to the Minister's confirming the foregoing, does he acknowledge that he was in a position of significant conflict of interest?

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

## YOUTH UNEMPLOYMENT

**The Hon. T.G. CAMERON:** I seek leave to make a brief explanation before asking the Minister representing the Minister for Youth Affairs a question about South Australian youth unemployment.

Leave granted.

**The Hon. T.G. CAMERON:** On Sunday 5 January 1996, the former Minister for Youth Affairs (Dr Bob Such) was reported in the *Sunday Mail* as describing South Australian youth unemployment as a 'social catastrophe' which was likely to worsen. Dr Such said that while official youth unemployment figures were 31.6 per cent 'the real figure is double that.' I understand that the figure has now risen to 39 per cent. Dr Such said, 'The reason for that is a lot of people don't register for unemployment because of the stigma.' Dr Such said that one reason for the rise in youth unemployment was the decline in the number of apprenticeships offered by ETSA and the EWS. He said that after being outsourced ETSA and SA Water (as it is now called) were no longer training young apprentices 'because they are interested in making money'. My questions to the Minister are:

1. Does the Minister agree with Dr Such's statement that the real level of South Australian youth unemployment is

probably double the current figure of 31.6 per cent which he quoted?

2. Is the Minister confident that the Government is doing enough to reduce youth unemployment?

3. Considering that the former Minister for Youth Affairs believes that the decline in the number of apprenticeships due to outsourcing is partially responsible for the increase in youth unemployment, will the Government move to ensure that both ETSA and SA Water employ a greater number of apprentices?

**The Hon. R.I. LUCAS:** I will refer the honourable member's questions to the Minister and bring back a reply. I must say from my experience over two or three years with the former Minister for Youth Affairs—and I am sure that his statements would be readily obtainable by the present Minister—that there were a number of occasions when the Minister indicated that he believed that the true level of youth unemployment was much lower than the figure of 30 to 40 per cent. He believed that that gave a misleading impression of the level of youth unemployment and indicated that he believed the figure was about 8 to 10 per cent. We will collect the statements made on the public record by the previous Minister for Youth Affairs—

*An honourable member interjecting:*

**The Hon. R.I. LUCAS:** Yes—because he indicated that the figure of 30 to 40 per cent refers only to those people aged 15 to 19 who are actually in the labour force looking for a job. Most young people between 15 and 19 are actually in training or education or in some way involved in education and training. The former Minister for Youth Affairs made that point publicly on a number of occasions. I think—and I can check this for you—he actually took up the matter with the ministerial council as to how misleading those figures of 30 to 40 per cent were in indicating the level of youth unemployment. I am sure the present Minister will be delighted to track back that record and provide a written response for the honourable member.

## COURTS, BROADCASTING OF TRIALS

**The Hon. R.D. LAWSON:** I seek leave to make a brief explanation before asking the Attorney-General a question about the broadcasting of trials.

Leave granted.

**The Hon. R.D. LAWSON:** Yesterday, the ABC Radio National's *Law Report* broadcast a condensed recording of an actual criminal trial conducted in the South Australian District Criminal Court last year. The trial is to be broadcast in three segments, the first of which, as I said, was broadcast yesterday. The Chief Justice of South Australia, Justice Doyle, was also on ABC Radio yesterday or perhaps the day before explaining his reasons for consenting to the recording of a criminal trial for use in this program. The Chief Justice said that he considered that the interest of increasing public awareness of the criminal process was served by this form of program. His Honour said that only three conditions had been laid down by him in relation to the selection of a trial for this purpose, namely, that there was no suppression order in place, that the judge and the parties concerned in the trial consented and that the trial was estimated to be of a short duration—perhaps two to three days—so as to enable the evidence to be conveniently consolidated into half hour segments. My questions to the Attorney are:

1. Do the Government and the Attorney support this initiative?

2. Can the Attorney say whether the presiding judge and parties to the trial will have any editorial control over the process of condensing the tapes and, if so, what control that will be?

3. What is the cost to the Government or the Courts Administration Authority of recording court proceedings for this purpose?

4. Are the makers of this program contributing to that cost?

**The Hon. K.T. GRIFFIN:** The initiative is worth supporting. I was impressed by the proposition and certainly I give my support to it because I think it brings the courtroom closer to the citizens and that is important. Of course, it does mean that you have to pick the right case so that people can understand exactly what is happening, and that is one of the difficulties in any representation of what is occurring in a court. A lot of the processes are frequently not understood or are not understood in a particular context. Whilst there are some difficulties with it, I think a program like the *Law Report* is eminently suited to taking this sort of initiative and I commend them for it.

In terms of the condensation of the transcript and proceedings, I am not sure what the arrangement is between the courts and the ABC. I will have some inquiries made and bring back a reply on that. As to the cost to Government, I would have thought that it was negligible but, again, I will see whether I can get some estimate of the cost. I would see that the cost would largely be in reading the transcript of proceedings or listening to the tape to ensure that there was nothing there which either should not go to air or, if it does go to air, is going to air in a form which distorts the context in which it originally occurred. I do not know whether the ABC is contributing to the court costs; certainly, it has some costs of its own, particularly in the recording of the case but, in respect of those sorts of questions, I do not have the answers at my fingertips but I will obtain information, if possible, and bring back replies.

## CENTRE FOR INTERNATIONAL TRADE AND COMMERCE

**The Hon. P. NOCELLA:** I seek leave to make a brief explanation before asking the Minister for Education and Children's Services, representing the Minister for Multicultural and Ethnic Affairs, a question about the Centre for International Trade and Commerce.

Leave granted.

**The Hon. P. NOCELLA:** On 27 July 1994 the Centre for International Trade and Commerce was launched by the former Premier for the specific purpose of increasing South Australian exports to a number of the countries from which many of our newer South Australians derive. The centre has a membership of 26 resident chambers of commerce and business councils, with the addition of a further six non-resident bodies. The centre is governed by a board, consisting of five elected members, three *ex officio* members—the CEOs of the Office of Multicultural and Ethnic Affairs (OMEA), the South Australian Employers Chamber of Commerce and the Economic Development Authority. The centre has a functional relationship with OMEA, since it is through - OMEA that it receives its funding.

However, since the appointment of the new CEO of OMEA the centre has experienced a number of problems. First, Mr Malcolm Clements, Chairperson of the centre who had been appointed by the former Premier, resigned on 22

July last year. In his letter of resignation to the former Premier he cites the fact that for three months he had been seeking to discuss with the CEO of OMEA various matters relating to his appointment. This request, like many others, went without recognition.

Since then, under constant expectation of a new chairperson being appointed, the board of the centre has been unable to hold its usual monthly meeting. When under pressure from the other eight board members a meeting was eventually called on 14 November, the CEO of OMEA initially tried to have the meeting postponed but eventually agreed for the meeting to go ahead, with the proviso that the agenda be limited to procedural and reporting issues and the organisation of the next AGM. Various board members have approached me to express their concern about the behaviour of the CEO of OMEA towards the centre in general as well as to complain of his independent actions in relation to other matters, such as his instigating a review of the manager's position, as confirmed by the minutes of the board meeting held on 14 November 1996.

Will the Minister intervene as a matter of urgency to instruct the CEO of OMEA to accept his responsibility as a board member of an independent incorporated body (such as the centre is); to adopt a more constructive attitude; and to avoid acting without the consent of the board?

**The Hon. R.I. LUCAS:** I will refer that question to the Minister and bring back a reply.

## FRINGE

**The Hon. A.J. REDFORD:** I seek leave to make a brief explanation before asking the Minister for the Arts a question about the Adelaide Fringe.

Leave granted.

**The Hon. A.J. REDFORD:** In today's *Advertiser* an article appears under the heading 'Determined Fringe on the march east'. In the article it is suggested that 'an argument erupted between Mr Cooper and the Arts Minister (Ms Laidlaw) about the location of the fringe offices'. Knowing both Mr Cooper and the Minister I find it hard to understand that an argument would have erupted. In any event, last week I heard a similar story being run on Murray Nicoll's show on 5AN. Indeed the Minister was not even given the opportunity to put her case until very much later. I understand that until the 1996 Festival the Fringe had operated from offices in the Lion Arts Centre and had used performance venues in that centre and at various other places all over Adelaide. The Fringe apparently could not remain in its West End offices for the 1996 Festival because of the building works at the University of South Australia, which now seem to have been completed.

The Fringe is now returning to the Lion Arts Centre, although I understand that this is for office accommodation only and that it will continue to operate in performance venues in the East End and elsewhere. Recent press comments from the Fringe suggest that the return to the West End—

*The Hon. Anne Levy interjecting:*

**The Hon. A.J. REDFORD:** If you had organised your question you might have had a chance to ask this one. Recent press comment suggested that the return to the West End was not the choice of the Fringe. I ask the Minister to set the record straight.

**The Hon. DIANA LAIDLAW:** I support the statement by the honourable member that, contrary to what has been said in the *Advertiser*, there has not been any argument between Mr Glen Cooper as Chairman of the Fringe and me. It has been quite a straightforward situation. The Fringe sought $250 000 more for operating purposes and, since it operates and performs a festival for three weeks every two years, the additional sums of money provided by the Government—untied funds of $125 000 a year on an ongoing basis—on my calculation comes to the $250 000 that the Fringe wanted in terms of its festival commitment. There is no argument between the board and myself, although there seems to be some misunderstanding and a bit of pique by the Fringe Director that she did not get her way in terms of basing facilities at the East End.

There seems to be some misunderstanding about the fact that wherever the Fringe bases its administrative headquarters there is no requirement for the Fringe to base its performing activities at that same site and certainly it was always understood in discussions I had with Mr Cooper and members of the board that, if the Fringe board chose to stay at the Lion Arts Centre, the main festival activities every two years would continue in the East End of Adelaide. It is my understanding that the board continues to hold that strong view and certainly it performed excellently from that site last Fringe festival.

I point out also that I ascertained in discussions with the board it had incurred losses—including debts from the past festival—of $83 000 and the Government has decided that it can help the Fringe in writing off that debt. No longer does the Fringe have to find funds to pay the interest towards that debt and that will be of benefit to it. We also discussed the issue of additional funds that the Fringe could generate through operating the licence at the Lion Arts Centre because it is of interest to know that the Fringe, in mounting its first argument to move to the East End for both performance and administrative activities, had suggested that it still wanted to keep some base in the Lion Arts Centre because it wanted to keep the proceeds from the bar sales. It seemed a bit of cheek to say that it wanted the Government or taxpayers to come up with $125 000 more (incorporating rental costs) and move out of the Lion Arts Centre but keep the Lion Arts Centre in terms of bar sales. If the Fringe so desperately wished to move out of the Lion Arts Centre it would mean that the Arts Department would still have a commitment that it would have to meet in terms of rental. Any new tenant of the Lion Arts Centre should enjoy, as did the Fringe in the past, access to the bar facilities at that centre. So, the $125 000 untied, on an on going basis, as well as the $83 000 written off in terms of debt, plus the licence, the operation and the proceeds were matters put to the board, and the board in its wisdom chose to stay at the Lion Arts Centre and invest those untied funds into performance activities.

I emphasise again that the event is held for three weeks every two years, so out of 104 weeks the Fringe festival is held for three weeks.

*The Hon. Anne Levy interjecting:*

**The Hon. DIANA LAIDLAW:** Whether it is three or four weeks, it is a hardly a question when you look at 104 weeks. The board questioned whether, over a two year period, it needed to base its headquarters in the East End for quite additional sums of money when it could be investing that money in performance. It has so chosen to follow that course.

## OUTSOURCING

**The Hon. ANNE LEVY:** I seek leave to make a brief explanation before asking the Attorney-General asking a question about contracts.

Leave granted.

**The Hon. ANNE LEVY:** Currently four select committees set up by this House are looking into privatisation contracts undertaken by this Government. They include the committees on Modbury Hospital, the EDS contract, the water contract and the prison contract. Last August agreement was reached between the Government and the Opposition that sanitised versions of these contracts would be prepared, signed off by the Auditor-General and presented publicly. That was last August, 5½ months ago. The select committees are being considerably hampered in their work because they are unable to see even these sanitised contracts. By sanitised, I mean the contracts with the commercial-in-confidence information removed.

**The Hon. L.H. Davis:** Which you have agreed to.

**The Hon. ANNE LEVY:** Which we agreed to 5½ months ago.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. ANNE LEVY:** After 5½ months and with persistent rumours that an election is about to be called—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. ANNE LEVY:** As I was saying before that 30 second interruption, there are persistent rumours that an election is about to be called.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. ANNE LEVY:** Thank you, Mr President. After a further 30 second interruption from the benches opposite, I repeat that—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. ANNE LEVY:** —with the persistent rumours given great currency in the press—

*Members interjecting:*

**The Hon. ANNE LEVY:** Mike Rann does not write the press—which might surprise you. With the persistent rumours that an early election is about to be called, several people have—

*The Hon. A.J. Redford interjecting:*

**The PRESIDENT:** Order!

**The Hon. ANNE LEVY:** Several people have said to me that they—

*Members interjecting:*

**The PRESIDENT:** Order!

*The Hon. T.G. Cameron interjecting:*

**The PRESIDENT:** Order! The Hon. Terry Cameron, you are upsetting your colleague.

**The Hon. ANNE LEVY:** Several people have said to me that they suspect the Government is delaying the provision of the sanitised contracts until after—

*Members interjecting:*

**The PRESIDENT:** Order! The Hon. Angus Redford, I ask you to stop interjecting while the question is being asked.

**The Hon. ANNE LEVY:** That is twice you have had to warn him, Mr President. To repeat what I was trying to say before the Hon. Angus Redford rudely interrupted, as he has done on numerous occasions several people have said to me that they suspect the Government is delaying provision of these contracts so that the calling of an early State election will prevent even an abbreviated and sanitised version of the contracts being made available to members of Parliament and the public of South Australia.

My question is: will the Attorney-General give definite dates as to when these contracts will be available to each of the four select committees whose work is being so hampered by non-provision of even the sanitised contracts?

**The Hon. K.T. GRIFFIN:** So far as persistent rumours of an early election are concerned, as the interjections have indicated, my understanding is that they have generally come from the Opposition and from the Leader of the Opposition, and each week it is a different date as the time frame changes, but I can assure the honourable member that an issue of an election is not a matter which is relevant to my consideration of the issue of summaries.

In terms of the water contract, the Premier in another place yesterday indicated that the summary for the water contract had gone to the Auditor-General which, of course, is part of the process. He will now have to give his certificate as to the accuracy of the summary and also in relation to those matters for which commercial confidentiality is claimed.

The Modbury Hospital summary has gone to the Auditor-General for the same purpose. I would expect that the EDS summary will go to the Auditor-General this week; it is almost at the point where it can go to the Auditor-General and then it is a matter for the Auditor-General. Certainly, I have requested that the Auditor-General endeavour to deal with these matters as soon as possible because I want to get them out into the public arena and to the committees.

*The Hon. Anne Levy interjecting:*

**The Hon. K.T. GRIFFIN:** The honourable member has been in Government before and she knows what some of the pressures are and she knows that one has to rely on a lot of other people to do a variety of things. In terms of providing a contract summary, she would be the first to criticise us if the summary was not an accurate representation of the contract. There must be consultation between the Crown Solicitor and the parties, including the private sector parties, in terms of the content of the summary before it goes to the Auditor-General. I indicated in a letter which went to both Mr John Quirke and the Hon. Michael Elliott that in further discussing the matter with the Auditor-General (I think it must have been during December), he had suggested that there be a standard format in which the various contract summaries were presented, which would assist him in his task, assist us as a Government and also assist the select committees to ensure that there was a consistency of approach. All that is coming together. As I indicated, two of them are with the Auditor-General, the third I hope will be with the Auditor-General this week. My understanding is that the whole of the prison contract is with the Prisons Select Committee and is not therefore at issue.

## PRISONS, OVERCROWDING

In reply to **Hon. T. CROTHERS** (14 November 1996).

**The Hon. K.T. GRIFFIN:**

1. All incidents involving prisoners are summarised in a weekly report. The Minister is advised of major incidents within two hours of the event. Additionally, prison officers are free to write to the Minister or contact his office if they have any concerns.

2. The Rev. Heather Hubert was not speaking with the authority of the Uniting Church Committee on Chaplains. The Minister has, in fact, received an apology from the Moderator Elect of the Uniting Church, for her inappropriate remarks.

3. Whilst the issue of the prisoner bed space is of concern to the Government, there is no evidence to indicate that the measures taken to provide extra accommodation in the short term are likely to result in any risk to lives.

4. Plans to accommodate the State's increasing prison population have been underway for some time and the Government will be making a decision in the very near future as to the size and location of the new prison.

5. It is anticipated at this stage that construction of the new prison will commence in 1997. Any construction could be expected to take up to eighteen months to be completed.

## CROWN APPOINTMENTS

In reply to **Hon. G. WEATHERILL** (14 November 1996).

**The Hon. K.T. GRIFFIN:**

1. Escort Officers, Correctional Officers and a Program Co-ordinator.

2. The roles of each of these positions are as follows:

Correctional Officer

- Supervision and control of prisoners.
- Supervision and control of visitors to prisoners.
- Security surveillance within the prison.
- Liaison with prisoners about their personal problems and behaviour in prison.
- Monitoring of prisoners behaviour, assessing their progress and, with appropriate training, delivering personal development programs to prisoners.
- Administrative and record-keeping duties associated with prisoner management.

Escort Officer

- Work co-operatively with SAPOL, DCS, Courts and FACS staff with the hand-over and take-over of prisoners, including searching of prisoners and placing them in handcuffs or other physical restraints.
- Check in detail documentation and property of prisoners under transfer.
- Load prisoners into vehicles and unload them at their destination safely and securely with the minimum of delay.
- Drive escort vehicles containing prisoners in a safe and expeditious manner.
- Use radios and telephones to communicate.
- Act as escort in a prisoner escort vehicle, checking and communicating with prisoners in transit, ensuring their security and well-being.
- Be familiar with and follow closely all written procedures for both routine and emergency procedures.
- Prepare written reports on incidents and events that have occurred.
- Maintain statistical records, vehicle, prisoner and property lists, complete forms and proformas.
- Supervise prisoners in court while their case is being heard.
- Remain alert and attentive to security risks posed by the prisoners while paying proper respect to court officials.

Program Coordinator

- Responsible for ensuring that programs are delivered to prisoners.
- Monitor performance and quality of program delivery.
- Liaise with TAFE for the provision of education for prisoners.
- Support the Institutional Social Worker.
- Chair Local Reviews.

3. Correctional Officers and the Program Coordinator work in the Mount Gambier Prison.

Escort Officers work out of Mount Gambier and Adelaide.

4. All of these staff are answerable to the Manager, Mount Gambier Prison.

5. The responsible Minister is the Minister for Correctional Services.

6. All staff in question are employees of Group 4 Correction Services Pty Ltd.

## PORT LINCOLN PRISON

In reply to **Hon. R.R. ROBERTS** (12 November 1996).

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

1. As at 15 November 1996 there were 64 prisoners and 24 officers at the Port Lincoln Prison.

2. Between 1 July and 30 October 1996, 79 return airfares between Port Lincoln and Adelaide were taken by staff of the Department for Correctional Services. Of these, 64 return flights were booked with Kendell Airlines and 15 return flights with Lincoln Airlines. Twenty-five one-way flights were booked, 16 of which were with Kendell Airlines.

3. Since July 1996, the following staff have travelled by each airline:

| Staff | Lincoln Airlines (Return) | Kendell Airlines (Return) | Kendell/Lincoln AirLines—(One way) |
|---|---|---|---|
| Executive | 2 | 13 | 4 Kendell Airlines<br>5 Lincoln Airlines |
| Staff | 13 | 51 | 12 Kendell Airlines<br>4 Lincoln Airlines |

The travel agency through which the flights are booked selects the airline to be used, based on the time that the travel is required and the availability of flights. The class of travel offered by both airlines is considered similar and it is not the practice for Department staff or the executive to nominate a preferred airline.

Another factor that could contribute to the predominance of travel with Kendell Airlines is that their aircraft have a larger carrying capacity (i.e., 36 as against 18).

## PRISON, NEW

In reply to **Hon. G. WEATHERILL** (6 November 1996).

**The Hon. K.T. GRIFFIN:** A final decision has not yet been made in relation to the site of a new prison in South Australia. When the preferred location has been determined by Cabinet, appropriate announcements will be made.

It is not the Minister's intention to put the matter before the Environment, Resources and Development Committee.

I can advise the honourable member that a new prison will not be built on any land owned by MFP.

## HERITAGE PROTECTION

In reply to **Hon. T.G. ROBERTS** (15 October 1996).

**The Hon. K.T. GRIFFIN:** The issue generating the inquiry arose in regard to a matter of natural heritage, specifically the loss of rare palaeontological material, being the 'Stegosaurus footprints'. Such issues need to be addressed from a multidisciplinary view that covers both natural and cultural heritage.

1. The Aboriginal Heritage Act 1988 establishes a 'Register of Aboriginal Sites and Objects' which is kept by the Minister for Aboriginal Affairs pursuant to the Act. However, any Aboriginal sites, objects or remains which fall within the definitions of the Act are protected, even if they are not on the Register. The Act provides substantial penalties for damaging Aboriginal sites or objects.

2. Site conservation management strategies are conducted to address issues of protection and conservation of registered sites. An example of the necessary site protection, considered necessary to reduce vandalism and theft from Aboriginal Heritage sites, is located at Yourambulla Caves where extensive protective metal grilles have been installed. Unless sites can be actively protected in this manner, the remote location of many of the sites makes it preferable to restrict the public awareness and access. This is one of the main reasons why Aboriginal people are reluctant to talk openly about sites and seek the protection of the Aboriginal Heritage Act.

## BANK FEES

In reply to **Hon. P. HOLLOWAY** (31 July 1996).

**The Hon. K.T. GRIFFIN:** I do not consider that it would now be appropriate to approach the Federal Government on these matters in light of the work of the Financial System Inquiry by Mr S. Wallis.

I was pleased to note that the specifics of the Terms of Reference refer to *The Choice, Quality and Cost of Financial Services Available to Consumers*, and *Consumer Needs and Demands*.

### DOCTORS' TRAINING

**The Hon. DIANA LAIDLAW:** I seek leave to give a reply to a supplementary question asked yesterday by the Hon. T. Crothers about doctors' training.

Leave granted.

**The Hon. DIANA LAIDLAW:** Dr Pfitzner worked for approximately 15 years with CAFHS (Child, Adolescent and Family Health Service). During that time, one-third of her full-time work was as a medical officer in the country. She was involved in training CAFHS country nurses and in childhood screening programs; she liaised with rural doctors and specifically assisted children in Aboriginal communities at Point Pierce, on Yorke Peninsula and at Davenport near Port Augusta.

### INNER WEST COMMUNITY HEALTH SERVICE

**The Hon. SANDRA KANCK:** I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about the impending closure of Inner West Community Health Service.

Leave granted.

**The Hon. SANDRA KANCK:** The Inner West Community Health Service is located at Hindmarsh but also serves Thebarton and West Torrens. With the restructuring of community health centres (which began two years ago) Inner West became a part of the Adelaide Central Community Health Services. The Inner West Community Health Service was established in early 1993. However, a decision was made to close that site at a board meeting in November last year. As from the end of March 1997, services will come from either Port Adelaide Community Health or The Parks. The area which the Inner West Community Health Service currently serves is one of high need because of its low socioeconomic status. This results in a number of health problems. For instance, programs currently undertaken at the centre include mental health, unemployment, casual job agency, and a women's domestic violence support group—to name a few.

A number of programs have already been dropped such as parents and disabilities, rooming houses and men's health. Research shows that there is an undeniable correlation between the health of people and their socioeconomic status, thus community health centres being located in areas like Hindmarsh are very important in keeping people healthy as well as keeping health costs down. My questions are:

1. Will the Minister advise how disadvantaged people in the suburbs of Hindmarsh, Thebarton and West Torrens will be effectively served from sites at Port Adelaide or The Parks given the difficulties in transport and the lack of a sense of community?

2. Currently, the Inner West Community Health Service has its own bus to provide services to its citizens. Will the Minister advise whether there will be a bus operating out of Port Adelaide or The Parks which will be dedicated to servicing the people of Thebarton, Hindmarsh and West Torrens?

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

## MATTERS OF INTEREST

### HOSPITALS, FUNDING

**The Hon. P. HOLLOWAY:** Before I address the subject at hand, I would like to remark on what an extraordinary mess the Government of this State is in at the moment.

*Members interjecting:*

**The Hon. P. HOLLOWAY:** What a great pity it is for South Australia that the energy that is now being expended between the Brown and Olsen forces in fighting each other—

**The Hon. T.G. CAMERON:** On a point of order. I can't hear what he is saying, Mr President, and I am about two metres from him.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. P. HOLLOWAY:** What a great pity it is that that energy is not being spent on addressing some of the real problems of this State.

*Members interjecting:*

**The PRESIDENT:** Order! Order on my right.

**The Hon. P. HOLLOWAY:** The matter that I wish to address today is in relation to debt. I have just received an answer to two questions that I had on notice about country hospitals in this State, one at Mount Gambier and the other at Port Augusta. We already know from the Auditor-General that these hospitals will cost taxpayers, in the case of Mount Gambier Hospital, $4 million more and, in the case of Port Augusta Hospital, $2.5 million more. The answer that was received from the Minister—and it is an identical answer for both hospitals—stated:

> There are no financial savings from this proposal and it has never been claimed that the private funding of a hospital would generate financial savings.

The Government was aware of the higher cost when approval was given. The answer continues:

> The decision to proceed with private sector funding was based upon—

and it then talks about the massive debts that the Government supposedly inherited. Why is it that this Government says that it has high debt and it needs to reduce it by spending more money? What an incredible idea. This Government says that it has debt problems and it then has to go and spend—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. P. HOLLOWAY:** —$6.5 million more of taxpayers' money. What a crazy situation.

**The Hon. T. CROTHERS:** On a point of order, Mr President.

**The PRESIDENT:** Order! I ask all members to resume their seats. Members make it very difficult: you provoke and you respond. I ask members to act in a more civilised manner. This is not the jungle. We all want to hear debate and we want it clearly recorded in *Hansard*. I ask all members to listen. If members provoke there will be a response.

**The Hon. T. CROTHERS:** On a point of order, Mr President. Those of us in this Chamber who watched the disgraceful behaviour in Federal Parliament prior to the last Federal election by way of interjections do not want to allow—and you should rule accordingly, Mr President—debate in this Chamber to descend to the levels that occurred prior to the Federal election in another Chamber in another place. Particularly during this parliamentary session I would ask you, Mr President, to uphold Standing Orders so that

members on both sides of the Chamber cannot demean the level of debate in this place by raucous, unnecessary interjections that are aimed at destroying the credibility of the speaker on his or her feet.

**The PRESIDENT:** Order! I think I have ruled in that fashion. I ask members to be sensible about interjections. I am not trying to stop them, but—

*Members interjecting:*

**The PRESIDENT:** Order! For heaven's sake, how can we have any order when members talk like rabbits, on both sides of the Chamber. The Hon. Paul Holloway.

**The Hon. P. HOLLOWAY:** The Hon. Legh Davis is to speak next: perhaps he can tell us how, by spending more money, this Government will reduce debt? It will be very interesting to hear his explanation. There are matters in relation to the Mount Gambier Hospital—that is, the way in which it is being funded and built—that I wish to raise in this debate. The Public Works Committee investigated this project, as it does with all projects, in 1994; and it produced a report in October 1994 which stated:

> Options for both public and private hospital operations were examined at length as the public hospital option would result in operational savings of $2.2 million per annum which could be used to service a loan for part of the construction cost of the new hospital. This option was preferred over operational savings to the State Government of $2.1 million per annum from the private option. Further, under the private option, the Health Commission would be required to pay an annual availability charge estimated to be somewhere between $2.5 million and $3 million per annum. It was therefore probable there would be a significant additional cost to the State if this option were pursued.

That was the finding of the Public Works Committee back in October 1994, and the Government completely ignored that finding. After calling for tenders for this hospital it went ahead with a private financing operation which clearly was in contradiction with the finding of the Public Works Committee.

I think that there are legitimate questions to be asked. Why were the Public Works Committee's recommendations not adhered to? Was the Public Works Committee notified of the change? I notice that in its report of October 1994 one of its recommendations was:

> The Health Commission is requested to notify the committee in writing should there be substantial changes to the nature of the project at any stage in the process.

What could be a more substantial change than to make it privately funded, against the recommendation of the committee. So, what is going on at Mount Gambier and Port Augusta Hospitals? We know that the options that have been chosen by this Government will cost the taxpayers of this State $6.5 million more. That will not reduce the debt of this State—in fact, it will do the complete opposite.

It is about time this Government came clean and provided some information. We have seen the debacle of this Government over the past few years during the Brown-Olsen fight which has covered up how these two Governments—the Brown and the Olsen Governments—are the most secretive Governments in the history of this State. They do not want to come clean with the public about what they are doing with the finances of this State.

## RENTAL ACCOMMODATION

**The Hon. L.H. DAVIS:** During the past few weeks a friend of mine relocated with his family back to South Australia after many years as a senior executive interstate and overseas. He tried to find a house with four bedrooms to rent in the eastern suburbs and contacted 20 agents. He said it was an amazing experience: there was an overwhelming feeling that clients were a nuisance.

It should be noted that all the agents he contacted had a property division which specialised in the renting of housing as distinct from selling homes. For example, he rang one agent and asked if the firm had a four bedroom house available for rent. The property division representative of that agent said that there was nothing on its books, so my friend asked to be registered as having an interest in a four bedroom house. The representative said, 'If we got a house with four bedrooms we wouldn't ring you back because we're too busy. I suggest you look at our ads.'

He rang another agent three times and left a message, but no-one ever rang back. One agent advertised a four bedroom house for rent in the Saturday *Advertiser*, and two phone numbers were given to contact the agent. My friend started ringing at 7.30 a.m. on the Saturday morning but was unable to get through: the mobile was turned off. Finally, after trying six times over 1½ hours, he went to the house that was advertised for rent. A car with a Victorian number plate was parked outside and two people were standing on the verandah. He went into the house.

One person on the verandah was the existing tenant; the other was a potential tenant attracted by the ad. The existing tenant said that he would complain to the agent about these unheralded inquiries. My friend said, 'There's not much point doing that because the agent is uncontactable.' He also contacted another agent to make an appointment to see another house and left a message, and again no-one rang back. In fact, that was the pattern with most of the agents: messages were left, sometimes on an answering machine, and almost invariably there was no response.

Another agent said that he had no four bedroom houses for rent on his books, but the next day an advertisement by that same firm advertised a four bedroom house for rent. My friend has a very senior executive position. He was scathing in his criticisms. In fact, he became so amazed by this experience that he made notes. He said that the uniformly bad service showed a lack of understanding of the importance of customer service and marketing.

It is not as if the agent is not well remunerated for arranging rentals. For renting a four bedroom house in the eastern suburbs with a weekly rent of, say, $300, the agent would receive generally two weeks rent, which would equate to $600 and eight to 10 per cent of gross rental on an ongoing basis. I am sure the Real Estate Institute will be disappointed to hear of his experiences. That incident, which occurred in recent weeks, highlights the importance of the service industry. In fact, the service industry accounts for over 65 per cent of Australia's gross domestic product and 77 per cent of Australian jobs. Tourism is the biggest export earner in the country.

So, bad service is a business phone not answering and just ringing out; a message which is not passed on; or a manager who blames the customer or the company that refuses to exchange faulty goods. It is the waiter who forgets to bring the bottle of wine; it is the rude taxi driver; it is the sales assistant who does not see the customer but is talking to another sales assistant. There are many examples of bad service.

In Victoria, for example, two or three years ago a customer telephoned the State water authority several times but there was a recorded message on the emergency line over the weekend. He left a message about a burst main. He rang all

day. Eventually, the customer left the message on the final time he rang to say that he did not need help any more because the burst water main had ruined his house and his furniture. Of course, no-one from the water board called until the next day.

There has been an increasing number of studies world wide and overseas that have highlighted the importance of consumer service. I am pleased to say that in some areas, notably those related to tourism, such as accommodation and restaurant, there has been a dramatic improvement in service, and hopefully that will also extend one day to the real estate industry in South Australia.

## CARRICKALINGA PROPERTY

**The Hon. ANNE LEVY:** My discussion today also deals with the real estate industry, but in this case it is not as I understand it the real estate agent who is at fault but the Government. At Carrickalinga, a property was developed a number of years ago by the Health Commission for the benefit of patients at Glenside who were to have respite with the care of staff from Glenside for short periods. Members may recall that, at the time it was built, certain opposition was expressed to the construction of this development, but this was overcome, particularly after expressions of support were received from three past and present Supreme Court justices who had properties in the area and three State and Federal politicians who had properties in the area, of whom I was one.

That property has been used very successfully in the intervening years with no problems whatsoever to any of the residents at Carrickalinga, and doubtless has very much benefited the health of the residents at Glenside who have been able to take advantage of using the place. That property is now for sale. There is a large sign outside it saying it is part of a clearance sale—and I stress that. I do not know who has decided to use the words 'clearance sale', but it certainly indicates to me that the Government is desperate to unload all possible assets, that it does not care whether it gets—

*The Hon. L.H. Davis interjecting:*

**The Hon. ANNE LEVY:** It is a five bedroom place. It does not care whether it gets the right and proper return for the taxpayers of South Australia as it sells off these assets. It is just desperate to flog them off at any price to look as if it is doing something about reducing debt, even though to dispose of assets at less than their proper value is a great disservice to the taxpayers of this State.

I stress that this is claimed to be a clearance sale. I do not know whether the Government instructed the land agent to use the word 'clearance' on his large sign or whether he chose to do so himself following intimations from the Government that the property had to be unloaded at any price as soon as possible. I deplore this action. The property has been of great benefit to the residents of the Glenside Hospital. It has been used from Mondays to Fridays only, as far as I understand it, and it is a great shame that this successful relief and pleasure for the residents at Glenside is now being abandoned. I am prepared to bet that no substitute is being provided for the Glenside patients to give them the pleasure and holiday atmosphere of a few days at the beautiful beach at Carrickalinga.

I feel that this is a dereliction of duty on the part of the Government, which is determined to flog everything off. It does not matter whether it is a clearance sale, fire sale or garage sale: the Government just wants to get rid of everything, regardless of its proper value and regardless of the great benefit which the ownership in public hands of that property has brought to the residents of Glenside. I am prepared to bet that no alternative is being provided for them.

## IMMUNISATION

**The Hon. BERNICE PFITZNER:** I wish to speak on the matter of immunisation. What is immunisation and why this big uproar with regard to child immunisation? Immunisation is the process of introducing a weakened strain of a 'germ' into the body, thus stimulating the body's reaction to produce cells (or antibodies) against this particular germ. This procedure is known as immunisation and will prevent infection and illness following future exposure to that specific infective agent or germ.

I read in the papers recently that immunisation has never eradicated or eliminated any disease. The writer is quite wrong. Smallpox is a case in point. Smallpox is a viral disease which results in high fever, skin rashes of pustules, internal haemorrhaging and prostration. The fatality rate was 15 per cent to 40 per cent in the non-immunised. Smallpox epidemics can be recalled in history over many continents. Due to smallpox immunisation, the last naturally acquired case in the world occurred in October 1977 and global eradication was certified two years later by WHO. This virulent disease is now virtually extinct due to immunisation.

We now move on to child immunisation, and as we have heard the tragic deaths of new born children from whooping cough (or pertussis) have jolted us out of our complacency. We in Australia have a shocking uptake rate of childhood disease immunisation for a developed country—an uptake of 30 to 50 per cent. From memory, I recall that we are the third lowest developed country in the world in terms of immunisation of children.

We have a set schedule for childhood immunisation, and basically it is triple antigen, which includes diphtheria, tetanus and pertussis; haemophilus influenza; and polio. These are given at two, four and six months, with a booster at 18 months. Then we have measles, mumps and rubella, which is due at 12 months, and then hepatitis B, which is given at 10 years. This schedule will give satisfactory protection to most children mainly before the age of two years. However, the uptake of this immunisation schedule will be effective only if we have at least an 85 per cent uptake and therefore an 85 per cent coverage.

The important question is why parents do not have their children immunised when the service is accessible and free. We all know of the anti-immunisation groups which put out unsubstantiated negative statements. I worked in London for nine years with an immunisation clinic. There were queues of parents requiring their child to be immunised, and there was not one single significant adverse reaction.

Here, we must look at the strategies that we have in place to encourage parents to immunise their children. We have multiple providers, including GPs, councils and CAFHS, and the vaccines are mostly free. However, this does not seem to be enough. We are not marketing effectively the benefits of childhood immunisation. The Federal Health Minister has floated some ideas with regard to cash incentives, such as more money to be given to local councils which achieve a high immunisation rate, and the setting up of clinics in supermarkets and shopping centres.

Our own strategy appears to involve an emphasis on training of providers, access to providers, increasing the

number of providers and vaccine quality. However, I feel that we need to market the fact that childhood immunisation is beneficial and essential. We are concentrating too much on the techniques of immunisation rather than on the marketing of it. For example, in Queensland, a child-care centre barred two children who were not immunised from attending. The parents lodged a complaint, but the complaint was dismissed on the grounds that the decision 'was reasonably necessary to protect public health'. The Queensland Health Minister is now considering making immunisation compulsory for all Queensland children. I do not think this is the way to go. I think we should market it better and we should never forget that immunisation is one of the world's best strategies in preventive medicine.

## YOUTH UNEMPLOYMENT

**The Hon. T.G. CAMERON:** Without doubt, one of the most serious problems facing South Australia today is the high rate of youth unemployment. I have said that before and I will continue to say it when the youth unemployment rate as of January stood at 39.6 per cent. Unemployment has been shown to be destructive of individuals, families and communities. The unemployed, particularly the long-term unemployed, are less healthy and happy than their counterparts and are more likely to be homeless or in conflict with the law. In the case of young people, high and prolonged levels of unemployment are an obstacle to their achieving social and economic independence. Although the present youth unemployment situation is serious, I believe that it can be substantially reduced, but only if the Olsen Government is willing to show the political will and provide the necessary resources.

As of January 1997, the South Australian youth unemployment rate stood at 39.6 per cent, the highest of any State or Territory and well above the national youth unemployment average of 30.2 per cent. More than 13 000 young South Australians are battling to find work. They are the victims of South Australia's stagnating economy, and it is John Olsen who is culpable both as Minister responsible for business for a number of years and now as Premier.

It is time for a rethink by the Government on its youth unemployment strategies. Recently, a joint proposal on youth unemployment was released by three organisations with a longstanding interest in this area: the Youth Affairs Council of South Australia, the South Australian Council of Social Service and South Australian Unemployed Groups in Action. Its principal recommendation was the need for the Government to establish a State Employment Authority (SEA) as the key coordinator and policy organisation responsible for reducing youth and adult unemployment in South Australia. The role of the SEA would be clearly outlined, and it would have a mandate to implement and coordinate policy and program initiatives for all relevant State Government departments. It would establish a whole-of-Government approach to employment policy development and program implementation. There would be greater cooperation between agencies of Government and between the public and private sectors. A strong partnership between both is essential if we are to achieve growth and reduce unemployment.

Preference in the allocation of Government contracts would be given to bids which provide higher proportions of new employment opportunities for young people. A central fund would be established to provide resources for schools with low retention rates and to develop and extend viable programs for youth at risk. There would be enhanced support for vocational education and a boost would be given to South Australia's regional development network. The SEA would report directly to the Premier and Cabinet and would seek advice from Government, private, academic and community sectors. Most importantly, the SEA would set realistic employment targets to be achieved and would report to Parliament within a year on the new scheme's success.

In 1933, at the height of the Great Depression, President Roosevelt declared:

> We have nothing to fear but fear itself.

In effect, he was saying that we can do it, that we can solve our problems but that we must have the will to do so. If we do not exercise our will in this area of youth unemployment, in the years to come we will still be looking at rates of 20 30 and 40 per cent youth unemployment in this State. If that is the case, we will have gone a long way towards destroying the future of a generation of young people in this State.

Parents are worried sick about whether their children will be one of the lucky ones to get a job, whether they will become a Social Security statistic, or whether if they live in the country their children will come to the city and that is the last they will see of them. Even if they live in Adelaide, parents are constantly having to deal with requests from their children to go interstate, often to Queensland, to try to find work.

In South Australia, we have handed out tens of millions of dollars of taxpayers' money to big business, yet we have done very little about youth unemployment. When I say 'very little', whilst some good initiatives have been introduced, in my opinion youth unemployment is still the largest single problem facing society in South Australia. I have always taken the view that if a society cannot find decent jobs for its young people when they leave school that society is failing its young people.

## HANCOCK PORTEOUS, Ms R.

**The Hon. A.J. REDFORD:** This afternoon, I would like to express my disgust at some of the rubbishy and grossly irresponsible advice being given out by Rose Hancock Porteous in the *New Idea* column entitled 'Dear Rose'. In the 25 January column, a young girl wrote:

> I am 16 and I love my parents, but they just won't let me grow up. School friends are allowed out any time of night but I have a 10.30 p.m. curfew. It's embarrassing. . .

So, what did Rose Hancock Porteous advise? Let us remember that her relationships with her child and her stepdaughter are hardly model ones. She said:

> Dear Miss Earlybird,
>
> There are two ways to approach your dilemma. . . If you're mature enough to account for your own freedom as well as safety and accept the responsibility, you just go against your parents' wishes—the worst that could happen is you'll get some form of punishment plus lose their trust. If this does not bother you, use escape tactics. (I used to let my parents go to sleep, jumped off windows and walls, then got home before they got up). . . If you don't want to cause them heartache because of a mere curfew, then leave home and be your own master. . .

This was written to a 16-year-old girl. To say the least, this advice is hardly responsible. The girl has been told either to be deceitful to her parents or to leave home. Is it any wonder that street kids are a problem? Is it any wonder that in the face of that sort of advice community leaders are calling for curfews? How dare Rose Hancock Porteous advise 16-year-olds to embark on a course of lying to their parents or leaving home at a time when they should be concentrating on their

education? How can a magazine such as *New Idea* by its silence endorse that kind of advice?

I have no doubt that Rose Hancock Porteous is not the only person to have peddled this sort of rubbish. The extensive problems pertaining to our young people and juvenile crime are in no way assisted by this sort of advice. Is it any wonder that there is a call for increased discipline for our children? It is often said that appropriate discipline is a form of love and that absence of discipline is neglect. As a parent, I know that we have to be pragmatic, but that is no excuse for the Rose Hancock Porteous prescription.

Recently, two practical responses have been mooted in dealing with undisciplined children and juvenile crime. First, there has been the call by the newly appointed Youth Affairs Minister, Hon. Dorothy Kotz, for a public debate on the issue of child curfews. Joy Baluch, the Mayor of Port Augusta, has over the years expressed strong views on the topic. Indeed, in 1990, Mike Rann, then Minister for Youth Affairs, urged consideration of a 'time out' option, putting kids into camps. What the then Minister and now Leader of the Opposition did was to highlight the problems of youth crime and, in fact, his only actual response was to quickly break the 1989 Bannon election promise for free public transport for young people. The rest was just rhetoric.

More recently, there have been strong arguments in favour of increasing parental responsibility in the form of parents being responsible for the damage caused by their children. How does that fit in the light of the Rose Hancock Porteous advice? Mr President, you might also recall Mr Rann's record as Minister for Youth Affairs and that he passed 'tough new graffiti laws', only to leave a real mess in the area of graffiti when we took over Government. That goes with many other failed Rann initiatives when he was Minister. Is it any wonder that, with the Hancock Porteouses and the Mike Ranns of this world, the community has to seriously consider these sorts of options. Is it any wonder that the level of self esteem of our youth—in the light of her advice—is so low?

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## DISEASE CONTROL

**The Hon. DIANA LAIDLAW (Minister for Transport):** I seek leave to table a ministerial statement given earlier this day by the Minister for Health in another place and to table the report of a consultation regarding reanalysis of the metwurst associated outbreak haemolytic uraemic syndrome in South Australia 1994-95.

Leave granted.

## SELECT COMMITTEE ON THE PROPOSED PRIVATISATION OF MODBURY HOSPITAL

The Hon. Diana Laidlaw, on behalf of the **Hon. BERNICE PFITZNER:** I move:

That the time for bringing up the committee's report be extended until Wednesday 19 March 1997.

Motion carried.

## SELECT COMMITTEE ON OUTSOURCING FUNCTIONS UNDERTAKEN BY EWS DEPARTMENT

**The Hon. L.H. DAVIS:** I move:

That the time for bringing up the committee's report be extended until Wednesday 19 March 1997.

Motion carried.

## SELECT COMMITTEE ON TENDERING PROCESS AND CONTRACTUAL ARRANGEMENTS FOR THE OPERATION OF THE NEW MOUNT GAMBIER PRISON

**The Hon. J.C. IRWIN:** I move:

That the time for bringing up the committee's report be extended until Wednesday 19 March 1997.

Motion carried.

## SELECT COMMITTEE ON CONTRACTING OUT OF STATE GOVERNMENT INFORMATION TECHNOLOGY

The Hon. L.H. Davis, on behalf of the **Hon. R.I.LUCAS:** I move:

That the time for bringing up the committee's report be extended until Wednesday 19 March 1997.

Motion carried.

## SELECT COMMITTEE ON PRE-SCHOOL, PRIMARY AND SECONDARY EDUCATION IN SOUTH AUSTRALIA

The Hon. L.H. Davis, on behalf of the **Hon. R.I.LUCAS:** I move:

That the time for bringing up the committee's report be extended until Wednesday 19 March 1997.

Motion carried.

## TRANSPORT STRIKE

Adjourned debate on motion of Hon. A J. Redford:

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

(Continued from 13 November. Page 478.)

**The Hon. R.R. ROBERTS:** Members will recall that as a result of a disputation within TransAdelaide two members of this Chamber—the Hon. Diana Laidlaw and the Hon. Angus Redford—personally attacked the spokesman who represented the employees involved in the TransAdelaide dispute. These events occurred on 13 November last year. Members would remember that in my first contribution I condemned the reasons for the motion. I also went through the events that occurred from the time this negotiation started, which showed clearly at that time that, far from the accusations being levelled at the Australian Workers Union and the other unions involved in TransAdelaide negotiations, certainly no blame could be laid at their feet and that the blame ought to be laid squarely at the feet of the Minister and TransAdelaide in particular.

The employee spokesperson was a Mr John Braithwaite from the Australian Workers Union and I intend to show that the attacks were completely unwarranted, were inappropriately directed to the spokesman and were contrary to the facts

on the matter. During the first part of my speech on this matter I did not resort to the emotive attacks used by members opposite but instead outlined the facts in relation to this dispute. Such facts indicated that time and again the union had sought to resolve the dispute through negotiations and conciliation in the Industrial Commission. Every time it did it was frustrated by people representing the Minister. That speech outlined the series of events that occurred up to 13 November 1996 and today I intend to continue to outline the facts in relation to this matter. Such facts again have shown the inability of this Minister to appropriately discuss and resolve disputes within her portfolio.

I pause to note that when I raised these issues and sought leave to conclude—I did on two other occasions seek a further extension to conclude my remarks—I did so because I was assured that negotiations were taking place. However, that was a loose description of what was taking place and I outline to the House what was going on. On 13 November 1996 the metals unions met with TransAdelaide at the single bargaining centre. At this meeting the union gave a commitment that there would be no further industrial action at least until midnight on Friday 15 November 1996.

On 14 November 1996, as a result of the unfair and inappropriate personal attacks on the integrity of Mr John Braithwaite and his colleagues, his family received threatening phone calls and threatening facsimile messages were sent to the union office, copies of which I have but will not table. On 14 November 1996, the metals unions met with their delegates to discuss the outcome of the single bargaining centre meeting. Again the delegates agreed to attempt to find a peaceful outcome to their claim. They sought to do so on 14 November. On this basis a letter was sent to Mr K. Benger requesting that TransAdelaide agree to have the Australian Industrial Relations Commission resolve the dispute by way of a consent arbitration. Again the union is doing positive things to resolve the dispute. A copy of the letter was sent to the Minister (Hon. Diana Laidlaw) advising her of the union's request and giving an undertaking that no further industrial action would be taken at least until 22 November 1996. The commission was also advised of this proposal. What we see here again is the unions using the industrial laws of this State—put in place by these people—and being frustrated by a Minister and a squealing backbencher who have no idea of industrial relations.

On the following day—15 November 1996—TransAdelaide responded to this correspondence by advising that it was not prepared to abide by the umpire's decision. Here we go: these people who talk about dispute resolution would not turn up. They were not prepared to have the Australian Industrial Relations Commission resolve the dispute by way of consent arbitration. They talk about enterprise bargaining, about individual contracts and the fact that workers ought to have faith in Ministers and their employers. The Australian Workers Union then sent further correspondence seeking to clarify TransAdelaide's position.

On 18 November 1996 TransAdelaide responded by reiterating that it was not prepared to have the matter resolved through consent arbitration. These people opposite—the Minister and the Hon. Mr Redford—talk about the insensitivity and the unwillingness of the Australian Workers Union to resolve the dispute properly and this is the sort of thing with which they provoke the Australian Workers Union and the South Australian Industrial Commission.

On 19 November 1996 there was a report back to the Industrial Commission. The unions complied with the commission's request that there be no further industrial action until at least 29 November 1996. This request was endorsed by a meeting of members on 20 November 1996. At this mass meeting the following resolutions were carried. Here we are trying to resolve the dispute, being frustrated by the Minister and her representatives. These resolutions were carried:

> That this meeting endorses the proposal of metals unions to seek orders from the commission that TransAdelaide negotiate in good faith.

Here we go again: always positive and always trying to find a resolution. Secondly, it was resolved:

> That this meeting instructs the metals unions (AWU, AMWU and CEPU) to oppose any application by TransAdelaide to terminate the bargaining period during the current processing of this matter.

As any union official or any group of people negotiating would do, they seek to stop people who are not trying to resolve the dispute from trying to avoid their responsibility to negotiate the matter through. It was further resolved:

> That this meeting accedes to the request of SDP Hancock that no industrial action take place for a further week. This moratorium will be extended should the Industrial Commission proceedings be delayed due to the unavailability of the commission. This extension can be granted by the campaign committee.

Every step of the way we see positive action by the employees and their representatives to work with the Industrial Commission to resolve this dispute, only to be frustrated continually by the Minister.

On 28 November 1996 a commission hearing before Commissioner Lewin was held to hear an application by the Australian Workers Union that TransAdelaide negotiate in good faith. You would think that from a Minister of the Crown in an important area like TransAdelaide there should be no hint that the department would not negotiate in good faith. Yet here, after about 12 months of negotiation, the unions have to apply to the commission to ask it to insist that TransAdelaide and the Minister negotiate in good faith. It is an absolute disgrace and an indictment on the Minister.

TransAdelaide's response was to make application to have the bargaining period terminated. They have been messing around with these people, frustrating every attempt to resolve this dispute, and when they get close to a determination—and I might add that I was being assured that proper negotiations were taking place at this time—they apply to have the bargaining period terminated. The Industrial Commission rejected TransAdelaide's application to terminate the bargaining period and instead directed that TransAdelaide respond to the union's 14 point claim in detail by the close of business on 29 November 1996. They had to actually be told to respond to the union's propositions. TransAdelaide was also required to supply information identified by the unions and the unions were to notify the commission if there was any intention to take industrial action. As a result of this commission hearing the parties conferred on four further occasions between 3 and 17 December 1996. Similarly, the unions met with their delegates on numerous occasions between 4 and 18 December and on 18 December 1996 the unions met with their delegates and concluded that TransAdelaide was still not negotiating in good faith and therefore decided to notify the Industrial Commission of an intention to take industrial action in support of their claims.

On 19 December 1996, the Australian Workers Union wrote to Commissioner Lewin advising him of a break-down in negotiations. Again, the Australian Workers Union and the other unions involved were working with the Commission to try to resolve this dispute that had been taking place for many months and on every occasion were frustrated by the Minister and her negotiators.

Following discussions between the unions and the commission, once again agreement was reached that no industrial action would occur pending a conference before Commissioner Lewin on 6 January. These are the people that the Minister accuses of being unreasonable: they are reasonable, I believe, to a fault. One could never blame them for taking industrial action but, on every occasion, led by the honourable Mr Braithwaite—and I know precisely what I am saying—they have attempted to resolve this dispute in line with industrial principles and without disruption to the people of South Australia. All they have for their trouble is frustration caused by this Minister and her underlings. Yet again we have a situation where the unions have attempted to negotiate an equitable settlement with TransAdelaide—

**The Hon. A.J. REDFORD:** I rise on a point of order. Did the Hon. Ron Roberts refer to Mr Braithwaite as an honourable? I am not aware that he is a member of this place or ever has been.

**The ACTING PRESIDENT (Hon. T. Crothers):** There is no point of order. I think he has used the word in its proper adjectival form and not as an appellation as it may apply to members of this Chamber.

**The Hon. R.R. ROBERTS:** Thank you for your wise judgment, Mr President. In fact, I was using it in the everyday sense and I quite understand why some members, given their performances in this place, would not understand the meaning of the word. Despite the failures of TransAdelaide to negotiate in good faith—

**The Hon. A.J. REDFORD:** This time I do have a valid point of order. It is entirely inappropriate for the honourable member to reflect upon individuals in this place, or indeed upon this place as a whole, or on the members of this place as a general group. I would ask that the honourable member withdraw his reflection upon all members of this place in implying that we are dishonourable.

**The ACTING PRESIDENT:** There is a partial point of order. The general rule of thumb is that where members are referred to in the collective it is fairly open style. If the honourable member had referred to an individual, then it is an absolute point of order. However, I do accept that no reflection ought to be made by the speaker in respect of honourable members and I ask him to withdraw that.

**The Hon. R.R. ROBERTS:** I did use the words 'some members in this House', referring specifically to nobody or anybody in a collective, but if members want to identify themselves and take offence, then I do withdraw the comment.

**The ACTING PRESIDENT:** Order! I have asked the Hon. Mr Roberts to withdraw his collective reflection on any and all honourable members in this place.

**The Hon. R.R. ROBERTS:** I have done that and I thank you, Mr Acting President, for your wise counsel.

**The ACTING PRESIDENT:** I accept the withdrawal.

**The Hon. A.J. REDFORD:** I rise on a further point of order. The Hon. Ron Roberts suggested, indicated and implied that, because I had taken offence on behalf of all members in this place, I was accepting the point that I was dishonourable and I ask him to completely, unequivocally and without any reservation withdraw the implication that I am a dishonourable member.

**The ACTING PRESIDENT:** If the honourable member is suggesting that there was an implication along those lines, that is asking the Acting President of this place to draw a very long bow. There is no point of order. I listened carefully to what the speaker said and I never heard him make utterances of that nature. If the Hon. Mr Redford continues to raise points of order, I shall have no option but to leave this Chair and ring the bells to get the President back. I have no authority in respect of those matters. The honourable member seems to be repeatedly on his feet taking points of orders. If they exist that is fine, but if there are points of order of your legally trained mind then I as Acting President resent it.

**The Hon. A.J. REDFORD:** If you are suggesting that I am taking what is only the second point of order since we resumed this week purely for political purposes, then I can only say that that is not the case. The honourable member said that, by my rising to my feet and taking a point of order on his general reflection of all of us, I was identifying myself as a dishonourable person, and I asked him to withdraw that. If he wants to sit there and obfuscate instead of withdrawing in the first place, and drag this out because he wants to play politics—

**The ACTING PRESIDENT:** What is your point of order?

**The Hon. A.J. REDFORD:** My explanation—because I note you will not accept my point of order—is that by my rising to my feet and taking a point of order, and it being assumed I am conceding that I am dishonourable or in any way, shape or form not acting appropriately, is inappropriate and unfair—but I accept your ruling.

**The ACTING PRESIDENT:** I never heard that and for the second time I rule that there is no point of order.

**The Hon. R.R. ROBERTS:** Thank you, Mr President. I am fully aware of what is going on.

**The ACTING PRESIDENT:** The Hon. Mr Roberts, can you address your mind to the substance of your speech and not encourage interjections?

**The Hon. R.R. ROBERTS:** I am not trying to encourage them, but I am certainly receiving them. Yet again, we have a situation where the unions have attempted to negotiate an equitable settlement with TransAdelaide and the response is either to try to end the bargaining period or stonewall the negotiations. These people are again demonstrating that they are prepared to negotiate in good faith; they are prepared to state on the record their position and they are not looking for any protection from anybody. They are quite open and honest about what they have to say and are quite prepared to be judged on what they have to say. Despite the failure of TransAdelaide to negotiate in good faith, the unions, time and again, have given undertakings to the commission that they would not take industrial action and continue to attempt to resolve this matter through negotiation and conciliation.

On 6 January 1997 a further conference was held before Commissioner Lewin. However, once again, TransAdelaide indicated that it was not prepared to move from its stated position in an endeavour to resolve the dispute. The unions sought a recommendation from Commissioner Lewin that TransAdelaide arrange a meeting with TransAdelaide's General Manager for the purpose of attempting to resolve the dispute.

On 7 and 8 January, the unions met with Mr Benger and came up with a proposition. On 9 January 1997 there was a conference with Commissioner Lewin to report on progress and seek guidance in relation to procedural matters. On 13 January 1997 there was a meeting of delegates to advise them of TransAdelaide's proposition, and this was followed by a mass meeting of members on 16 January 1997 to put the proposition to all members. At this meeting two resolutions were carried.

*The Hon. Diana Laidlaw interjecting:*

**The Hon. R.R. ROBERTS:** The Australian Workers Union was happy to put its propositions on the table in an attempt to resolve the dispute. The resolutions are as follows:

This meeting of members endorses the proposed wage outcome in principle.

It endorsed it in principle after the negotiations. It endorsed the negotiated position after the intervention of the commission: after three or four applications in the commission it finally got to the table and the union was able to negotiate a position with someone in some authority. It continues:

The unions are requested to develop with TransAdelaide a formal enterprise agreement incorporating the wages outcome along with issues such as: no forced retrenchment; outsourcing principles; allowances; payroll deductions; maintainer/operator etc.; reserved matter aggregate wage.

The union obviously intends to pursue that in the same responsible way during the course of the agreement. It continues:

A further meeting is to be convened to vote on the enterprise agreement.

The preamble to the second part is as follows:

At the commencement of this industrial dispute a mass meeting of members elected a 'campaign committee', comprising delegates from each depot, to oversee the conduct of the dispute. This campaign committee determined that, to avoid confusion, only one person should speak to the media on behalf of the commission. Mr John Braithwaite, union official, was the nominated spokesperson. Subsequently, Mr Braithwaite was the subject of an ill-informed and personal attack by the Minister, the Hon. Diana Laidlaw, in the 'Cowards' Castle'.

They are referring to the Legislative Council—but that is something that they may make a judgment on themselves. The resolution of 16 January 1997 states:

This mass meeting of CEPU, AWU and AMWU members employed in TransAdelaide—

(a) condemns Minister Laidlaw, for her ill-informed and misleading personal attack on our spokesperson's integrity whilst hiding behind parliamentary privilege;

(b) demands that the Minister give a personal public apology to Mr Braithwaite and his family;

(c) requests that should the opportunity present itself, this resolution be read into *Hansard* to answer the statements made by the Minister concerning Mr Braithwaite.

Under parliamentary privilege, I am only too pleased to allow these people to have the right to put their point of view. It was not abusive or derogatory, it was not a personal attack, and there was no threat of retaliation.

This motion was an off-the-cuff reaction by a junior backbencher of this Government to try to get some cheap political publicity on a particular day at the expense of the Australian Workers Union. He was dishonourable enough to drag school leavers into it and to try to stir up the emotions of parents about things that were never considered when this campaign was undertaken—a campaign, as I have outlined, which was continually frustrated by TransAdelaide and the Minister.

The Minister did not move the motion herself but has certainly supported it, and started the ball rolling. We have seen a number of stunts—a recent one being where the Minister, in trying to give the community the impression that she is on top of this portfolio, got a bus driver's licence. Instead of her undertaking such stunts she ought to have undertaken a course in industrial relations.

Her on-the-job performance has been abysmal. Industrial relations in her portfolio areas—Transport and the Arts—are in a shambles. Instead of these attacks on members of the trade union movement, who are doing their job as they are elected to do and showing great propriety in the way that they go about it, the Minister should do as this motion suggests and give a personal and public apology to Mr Braithwaite and his family for the inconvenience caused by those unfounded attacks. If this Government has any integrity, instead of carrying on with this farce and pushing this motion to a vote, it ought to discharge it from the Notice Paper and apologise to Mr John Braithwaite and his family.

**The Hon. DIANA LAIDLAW** secured the adjournment of the debate.

**The Hon. ANNE LEVY:** Mr Acting President, I draw your attention to the state of the Council.

*A quorum having been formed:*

## FOOD (LABELLING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 November. Page 349.)

**The Hon. T.G. ROBERTS:** This Bill, which was introduced by the Democrats, is being supported by the Opposition so that we can at least, at the State level, signify the labelling processes for the requirements of identifying irradiated food and/or food or a component of it that has been derived from a plant, animal or other organism to which it has been subjected or which is a product of genetic engineering. I think it is a reasonable requirement for food processors to indicate to the public exactly what they are buying. There are out there many people who are concerned that the further you move away from natural fresh foods to canned, processed or packaged foods—in jars or whatever the packaging—there needs to be identification so that people can make choices based on the best scientific evidence available, and labelling is one of those ways in which people can make that choice.

Modern retailers tend to try to use methods that encourage people to buy not selectively but at random. I have recently been doing a lot more shopping than I have done in the past, and I now find that there are probably two or three groups of shoppers out there, some of whom are very well educated and who know how the labelling process works and know the signified coding that indicates the presence of food additives and other potentially deleterious or harmful substances. This applies particularly where children are concerned, where mothers must educate themselves to eliminate food additives such as colouring, flavouring and preservatives that are now starting to cause major problems not just for children but for many adults in relation to asthma and other allergies.

So, over the years, we have come a long way. There were days, perhaps in the 1940s and 1950s, when labelling was just an identification of a trademark, so that those people who were marketing food could have an identifiable label, and occasionally the trade name of the product would be the only indicator of what was in the package that the consumer was buying. Now, there is quite a lot of identification of contents, but it is only educated shoppers in the main who are able to derive from the coding exactly what is in it.

*The Hon. Sandra Kanck interjecting:*

**The Hon. T.G. ROBERTS:** Yes, that is the point I was getting to: you do have compulsive buyers who will shop as the retailers dictate—that is, those product names and brands at eye level that are easy to grab, or those that are around the checkout where children and others grab by impulse at the last minute if they do not think the basket is full enough, or there are some little sweeties or additional items that they would like to take with them. I have even noticed some retailers who sell products that have gone over their due date, which is not quite legal, and there are other items that are

clustered around the checkout areas that encourage people to buy while they are standing in the checkout queue waiting to be served.

There are all these little tricks or whims that encourage shoppers to buy, and there are various categories of people who do buy, including those who do not have a lot of time and those who need readily identifiable coding that stands out so that it is easy for them to see exactly what they are buying.

One other confusion of late is that bar coding makes it very difficult for consumers to know exactly the cost of the item they are buying until they reach the checkout and they can see the price of the item they have bought. One of the systems that was used in the past was that the stick-on price label for an item replaced the old one and you could tell how much the price had increased. That luxury is no longer affordable, and it is very difficult to crosscheck prices. Fortunately, we live in a time of low inflation, brought about by the previous Federal Government's economic policies. There is not a lot of movement in the price of food at the moment, but it can be disturbing if people are not aware of those requirements so that people can buy good, wholesome, fresh or processed food at a reasonable price. That is where consumer protection is necessary: if self regulation is not to be part of the industry's *modus operandi*, legislation must be introduced. I would prefer the industry to implement standards of its own in relation to labelling so that any harmful substances or additives in the products can be identified so that mothers can reduce the risk of their children or even adults in the family being affected by some of the ingredients in the jars.

The Bill before us directly concerns irradiation as a potential health problem for some people. There has been a huge debate over the past 15 years about irradiated food. The industry claims that there is no harm at all, that you can eat as much irradiated food as you like and that in fact it improves its quality, by stopping botulism and preventing food poisoning. Those claims are made by defenders of irradiated food, whereas detractors of irradiated food have concerns about its long-term use. They believe that, if identification is not available, there could be long-term deleterious health effects. The industry is defending its case in Australia. There was a long drawn out inquiry and unfortunately—or the industry would say fortunately—imported food can be irradiated, but as I understand it no irradiated food is produced in Australia at this time. The debate will probably be reintroduced by the industry, which will not go away. It is a very powerful, high pressure lobby which will try to get its way.

This is one early indicator to potential producers of irradiated food that, if irradiated food is clearly labelled, consumers will steer away from it in favour of processed or even fresh food that is not irradiated. One of the claims that food irradiators are making is that they can irradiate fresh food and make it safer. Perhaps this is one way in which market research can show to potential food irradiators that, if they label their product clearly and consumers steer away from it, it will be in their interests not to irradiate the food but to maintain their reputation as fresh food people so that consumers can have clear choices and act accordingly by rejecting irradiated food and buying fresh. At the moment nobody can say what consumer resistance or preference is, because people buy food without knowing whether or not it is irradiated as it is not clearly indicated on the label.

Groups of consumers have expressed concern that genetically engineered food could possibly present health problems, and purists have also put forward the argument that genetically engineering the food required for supermarket shelves will lead to concentration of ownership and control, and the elimination of a lot of choice, particularly in fresh food. There are a lot of illustrations, but I will give one. When I was in Britain in the early 1970s a brand of apple was grown in Kent that was fairly rough and did not have the shape that the supermarkets wanted. It was a tasty apple, and the British had grown used to its shape and taste, but the supermarkets decided that they would not buy any more of them. The Kent producers had to pull out all their trees, because the European Common Market did not want the apples they were growing; and imported—in many cases Australian—apples replaced them. Because these apples were the ugly duckling of the fresh food apple range, they were withdrawn, and rounded, well-shaped fluted apples were put in their place, all waxed up and washed, and in a lot of cases picked green and with very little taste. That apple was taken off the market—

*The Hon. P. Nocella interjecting:*

**The Hon. T.G. ROBERTS:** Yes, possibly irradiated as well—and consumers lost the choice of what they would have preferred to have on their table if they could have influenced the outcome. If genetically engineered food is marked and branded, I think consumers will react by trying to buy food that is not genetically engineered, if only to preserve the seed stocks and ensure variety in the range of foods they require. Also, as hybrids are now being produced and seed collection is difficult for home gardeners, many people, including myself, are not particularly interested in supporting the genetically engineered food industry.

Supporters would say that in order to feed the growing number of people on this planet we will need broadacre genetically engineered food to take into account the use that is now being made of chemicals to protect large volumes of broadacre farming. The consideration that they have seems to involve getting the volume into the markets in order to put cheap nutritious food on people's tables. That is a valid argument, but I think it think can be countered by the fact that you can achieve the same result with fresh varieties of food that are not genetically engineered.

With those few words, I will return to my delegation in the King William Room. I indicate the Opposition's support for the Bill, which has been introduced by the Democrats.

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

## VOLUNTARY EUTHANASIA BILL

Adjourned debate on second reading.

(Continued from 27 November. Page 579.)

**The Hon. CAROLYN PICKLES (Leader of the Opposition):** I support the second reading of this Bill. I certainly support the sentiment expressed in this Bill, that is, that voluntary euthanasia be permitted with very strict safeguards. Many people will speak in judgment of those who support this Bill, but I think it is quite clear that the central purpose behind this Bill is to alleviate human suffering.

The beneficiaries from this Bill will mostly be those who are debilitated by painful and wasting diseases. Many members in this place would have personal experience of a loved member of their family who has had a very serious illness, and would have watched with pain their passing.

Certainly in my case I have two very close family members who have cancer. It is a very painful process to watch the passage of that illness take hold of someone and know that you are absolutely helpless to do anything about it. I believe that the person who is suffering from the illness has the right to make a decision about whether or not they wish to have their life terminated at a point when it becomes intolerable to live.

I know that the Hon. Anne Levy has also had personal experience in this area. That is why she has been motivated to move this Bill, and she has done so, I believe, with a great deal of sincerity. I certainly supported the palliative care measures that were introduced into the Parliament some time ago, and I believe that they go some way towards solving the problems of people who are suffering from a terminal illness, but not the whole way. We have now reached the stage where this debate has had very wide coverage in the media, mostly as a result of the situation in the Northern Territory and, of course, a Bill introduced in South Australia by my colleague, John Quirke, was defeated in the House of Assembly.

I believe that even if this Bill is defeated the matter will not die: it will continue until such time as people have made some sensible decision. The criticism made is that it will open up the floodgates and that people will be put to death who do not wish to be put to death, but I believe the Hon. Ms Levy's legislation contains enough safeguards to ensure that that will not occur. I must stress that this is about voluntary euthanasia: it is not about compulsory euthanasia. For those people who feel nervous that their wishes would not be taken into consideration, they must really understand the nature of the term 'voluntary': that if this legislation is passed it is only those people who want this to happen to them who will be taking part in this exercise.

I do not believe that there are any people in the world who would want to see other people suffer, particularly those who are close to them, but suffer they do. We have seen demonstrated in the past few months a number of people in the Northern Territory who have chosen the path of voluntary euthanasia, who really have reached the end of their lives, who are suffering terribly and who do not wish their life to continue any longer. I believe that they have the right to make that decision. It is very important that this kind of legislation has protective measures so that it is not misused in any way. I believe that the measures contained in the Hon. Ms Levy's Bill achieve that.

The safeguards aim to ensure that the person makes a request after being fully informed of the implications of their condition and all aspects of voluntary euthanasia, including the alternatives available; that the person must be of sound mind and not suffering from depression; and that at least 48 hours must pass after the formal request for euthanasia is made so that the euthanasia process absolutely cannot be rushed. I ask the Hon. Anne Levy to indicate what she means by not suffering from depression because I cannot think of anything more depressing than to be—

**The Hon. Anne Levy:** Clinically treatable depression.

**The Hon. CAROLYN PICKLES:** The Hon. Anne Levy interjects by way of explanation that she means clinically treatable depression. Again, I query that because I believe many people who are suffering from terminal illness can be included in that category, and I would not want to see them excluded from the process for that reason. The Hon. Ms Levy might like to refer to that when she responds.

I do not believe this Bill has anything to do, as some of its critics have claimed, with getting rid of any members of our society. I believe that any proposal for voluntary euthanasia that I have seen in this country and in others is at great pains to stress that no-one can be forced through the process. The Hon. Anne Levy has introduced a very sensible Bill and it is timely that we in this State again refer to this issue. It is a very topical issue, because it is currently being debated in another form—perhaps to suppress voluntary euthanasia in the Northern Territory—in the Federal Parliament. I must say from my point of view that it is regrettable how the issue has been handled in the Federal Parliament. Perhaps it might take note of the fact that States should have a right to exercise their own free will in this case and I would not like to see a situation where the Federal Government overrides the State on this issue.

**The Hon. Anne Levy:** It can't.

**The Hon. CAROLYN PICKLES:** I know it cannot, but it probably wants to have a jolly good try. Certainly, some Federal members are doing their best to ensure that the Territory's democratic process does not continue. For the reasons I have given I am happy to support the second reading. I am sure that members will deal with it expeditiously because I would like to see the Bill dealt with by this Council at least before any other events overtake us, such as an early election.

**The Hon. J.C. IRWIN** secured the adjournment of the debate.

## PUBLIC FINANCE AND AUDIT (APPOINTMENT OF AUDITOR-GENERAL) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 November. Page 577.)

**The Hon. CAROLYN PICKLES (Leader of the Opposition):** The Opposition supports the second reading. The Auditor-General's role examining the fiscal propriety and consequences of Executive Government decisions is a crucial safeguard for the democratic process. Democracy in our State is treasured by those who know its value and taken for granted by many, but it is a fragile thing. In our political system we have Premiers who are willing to deceive Parliament and the public about issues of major significance to this State—and much of the time they get away with it. Our system also permits billions of dollars of public money to be tied up in secret contracts, contracts which the Opposition is not even permitted to inspect, even though we have actually gone through a court process.

These abuses are examples of the reasons why we need an independent and effective Auditor-General. Without an independent and powerful agency to scrutinise Government financial dealings, our democracy could easily be weakened and corrupted. The principle encapsulated in this Bill should, therefore, appeal to every parliamentarian who truly has the interests of the State at heart. We need a strong and capable Auditor-General to uncover the lack of integrity of any Government. It is only due to the Auditor-General that we have any sort of objective evaluation of the Government's privatisation and assets sales program. The Auditor-General has reviewed the privatised management of our water system, the EDS deal, private prisons and privatisation of hospitals and he has had the perspicacity and courage to point out that these ideologically driven projects will cost the community more—not less.

In these areas the Government has refused to be fully accountable, so the role of the Auditor-General is more important than ever. Yet the 1996 Auditor-General's Report was immediately disparaged by the Liberal Premier of the day, only because the report revealed too much. For the past two years the Auditor-General has pointed out numerous examples of inaccurate information being provided by the Government. The relationship between the Auditor-General and the Executive of the Liberal Government therefore underlines the importance of a rigorously independent Auditor-General. The Bill aims to achieve this and the Opposition supports the second reading.

**The Hon. BERNICE PFITZNER** secured the adjournment of the debate.

## SUBORDINATE LEGISLATION (COMMENCEMENT OF REGULATIONS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 6 November. Page 377.)

**The Hon. M.J. ELLIOTT:** I am appalled by the reasoning being used to introduce this legislation. The Government is using the excuse that most Ministers are deciding to declare regulations immediately rather than letting them go through the normal wait of several months for which the legislation allows, the fact that they are constantly bringing regulations into effect straight away, to say that, because that is happening, there is no need for the legislation. The real problem is that Ministers are choosing to treat the legislation with contempt.

The reasons for the principal Act still remain. We have only to recall the debates in this place in relation to netting—where a regulation was brought in, knocked out, brought in, knocked out, and where that process had the capacity to continue—to realise that there are times when regulations should be given due consideration before coming into effect.

The very fact that Ministers are choosing to bring regulations into force immediately, in my view, is a contempt of the Parliament and a contempt of the regulation process. More often than not they are working on the assumption that, once the regulation is in, whether or not it has flaws, the difficulties involved in knocking it out will give a greater chance to its not being knocked back. That is not good enough. I will be moving further amendments to this Bill to provide that, if a Minister chooses to bring a regulation into force immediately, he or she will be required to give detailed reasons for so doing.

At the moment that is not necessary and it is quite plain that it is too easy at this stage for the present process to be abused. I want to ensure that the legislation works as intended rather than doing what the Government wants to do, namely, to forget that what was intended is not happening and give up on it. I will support the second reading but moving amendments in Committee to return the legislation to its original intent.

**The Hon. K.T. GRIFFIN:** I note that the Opposition is opposing the second reading and the Australian Democrats are supporting the second reading. I should be thankful for small mercies which will at least get the Bill through the second reading stage, although I suspect that the battle in Committee will be more difficult in light of the amendment that the Hon. Mr Elliott has on file. The Government is anxious to ensure that the Bill pass because at the moment there is, in our view, a bureaucratic requirement that is not really in the interests of any person and, as I said in the second reading explanation, something like 75 per cent of regulations bear a certificate waiving the four month rule.

Whilst conceived by Mr Martyn Evans and supported by the then Labor Government, this process might have had, at least theoretically, some attraction but in real life it does not work satisfactorily and adds a step to the bureaucratic process that is not serving anyone's interest. I have indicated to the Leader of the Opposition that I will not conclude my remarks today as undoubtedly there will be a division on the second reading. For that reason, I seek leave to conclude my remarks later.

Leave granted; debated adjourned.

## STATE RECORDS BILL

Adjourned debate on second reading.
(Continued from 3 December. Page 691.)

**The Hon. K.T. GRIFFIN (Attorney-General):** I thank members for their contribution on this Bill. Members who have spoken raised a number of issues and I thought it appropriate that today I put responses on the record with a view, hopefully, to dealing with the Committee debate tomorrow.

The first issue raised relates to the State Records Council. The role and composition of the State Records Council has been the major topic of interest and concern during the earlier periods of public consultation on the Bill in 1994 and 1995. This is, I think, in keeping with the significant part that the council will play in achieving the objectives of the Bill, particularly that of accountability to the community. Three aspects of the State Records Council have been addressed by members. The first of these relates to gender balance. The Hon. Anne Levy expressed surprise that a provision to guarantee gender balance had been omitted. She believes that on a council of eight members at least two should be male and two should be female.

It is Government policy that all boards and committees achieve a gender balance, and some significant progress is being made towards that end. Given the size of the council, it is proposed to prescribe for at least two of each gender, and there will be an amendment to this effect. I suppose it really raises the issue of principle, whether we are still in a position where members believe that attitudes of Government have not changed sufficiently to take on trust the commitments that Governments make that there will be an attempt to achieve a gender balance. Of course, two and two is not gender balance.

**The Hon. Anne Levy:** At least two.

**The Hon. K.T. GRIFFIN:** It may lead to it, but from my own experience there is now sufficient sensitivity to the issue and so much pressure on Government if it does not comply with the objective to suggest that it is no longer necessary to put this provision in legislation. Members will have differing views about that. That is my personal view. But because the issue has been raised—and I suppose that when the issue is raised no-one likes to be in a position of being subject to criticism for not doing it—I will be moving an amendment to address that issue. I raise the issue of principle because I think at some stage we must get to a point of saying: is it tokenism to put this in legislation specifically at a lower level,

or should we be recognising that equality of opportunity is in fact recognised?

**The Hon. Anne Levy:** Let us wait until there is 50/50 instead of 70/30.

**The Hon. K.T. GRIFFIN:** The honourable member must acknowledge that we are making some good progress; perhaps not as fast as some of us would like, but there is significant progress towards a gender balance on boards and committees of the Government. I suppose if you look at my areas, in some we have equality of representation but in other areas we have more females than males. I do not necessarily recognise any because of their gender but more for their ability, and it is quite obvious that you can pick women representatives of ability and get the gender balance without, in my view, too much difficulty.

The second issue is composition. The Hon. Anne Levy noted that, while the council membership comprises people with a particular skill or background, there is no provision for a general user of the archives. She mentioned the use made of State records by amateur historians, genealogists and Aboriginal people, and foreshadowed the amendment now on file from the Opposition to have an additional member who, as a member of the public, makes use of official records in the custody of State Records for research purposes. The Hon. Mike Elliott was also interested in this matter.

The Hon. Anne Levy also wondered why the Australian Society of Archivists and the Records Management Association of Australia are allowed to nominate people eligible for membership and why, in the case of the Records Management Association, this eligibility test is not confined to professional membership as it is with the Australian Society of Archivists.

Again, the Hon. Michael Elliott referred to this. The Hon. Anne Levy also expressed concern about what she terms the 'recall' clause, that is, clause 11(2)(a), where a member of the council may be removed from office if a member nominated by a person or body requests the Minister to do so. She suggested this should be confined to the nominations made by the Commissioner for Public Employment and the Local Government Association of South Australia.

**The Hon. Anne Levy:** I said it read as if those were the only two to whom it could apply.

**The Hon. K.T. GRIFFIN:** I note the interjection by the honourable member. Linked to the question of the council's status is the nature of remuneration for members. The Bill makes no specific provision for this and the Hon. Anne Levy considered that there should be. It may be appropriate to make some general observations first.

The composition of the State Records Council as provided in this Bill is very specific. By comparison the Libraries Board comprises nine members, five of whom are nominated by the Minister without any qualification, expertise or organisational basis being required. As a result, the council will have consistently strong representation from major stakeholder groups—a characteristic which has found wide support in earlier consultations. Obviously, not every interest can be represented in this way but the normal expectation of such bodies is that members will be aware of other interests and take a broad view.

Furthermore, under clause 24(3) the manager is require to consult with 'any other person who has, in the opinion of the manager, a proper interest in the record'. That puts an obligation on the manager to ensure an adequate consultation network outside the council and this would readily enable a users group to be established.

In relation to the issue of qualifications, the wording for nominations by the Australian Society of Archivists and the Records Management Association of Australia was developed in consultation with both organisations. As the Hon. Anne Levy thought, the use of the word 'eligible' is deliberate and does reflect the small size of actual membership in the State. In relation to the recall provision, the provision to enable nominating bodies or persons to ask the Minister to change their representatives is simply a reflection that such people are often office bearers who may change at annual meetings.

In relation to historical interests, given the very important contribution which State Records has in the documentary heritage of South Australia, historians have consistently looked for the maximum opportunity to participate in the council. The desire to have a broader representation from historians was raised in consultation during 1994 and 1995 and in August last year by the Minister for Employment, Training and Further Education. There appears to be a strengthening belief that the member on the council who is an historian on the academic staff of a tertiary institution (which derives from a recommendation made by the South Australian Centre for Academic Studies) might not have a primary interest in Australian history. Of course, such a person would be likely to have knowledge of other archives and such comparative experience will be valuable. However, the number of historians at tertiary institutions in South Australia is dwindling while the number of contract historians and people engaged in local histories and genealogy is increasing.

The Hon. Anne Levy has on file an amendment to provide that the council will have a guaranteed perspective from a 'general user' of the material held by State Records. The Government believes that this perspective is very likely to be something which several council members, chosen to represent organisations or expert interests, would also have. It may be more appropriate to widen the scope of the historian's place on the council by having the nomination rather than the representation come from tertiary history faculty and also involve the director of the History Trust in this.

Since the amendments proposed to this Bill were put on file in December, the appointment of the State Historian has been announced. Providing for his membership in place of the academic historian would seem to be a way of resolving the concerns of having an adequately informed local historical perspective on the council. He is familiar with one vital function that the council will have: approving the disposal of official records. The State Historian is a current member of the Libraries Board Records Advisory Task Force which makes recommendations to that board on disposal of official records. I would be interested in the Hon. Anne Levy's reaction to this and will get an opportunity to discuss that at the Committee stage.

In relation to Aboriginal representation, there is a potentially more significant omission in terms of representing views on the council, and it is one noted by the Hon. Anne Levy in her speech. Given the public interest in a number of Aboriginal issues—land titles, heritage, separated families—for which official records have considerable importance, together with the specific function given to State Records on identifying official records whose disclosure might constitute a contravention of Aboriginal tradition, the council would benefit from including a knowledgeable representative from the Aboriginal community. There is a perception that having such representation might create distraction or political

pressure on the council. However, within the information management profession there is increasing support for providing access to Aborigines on governing or advisory bodies; the recently published *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services (1995),* includes, under Governance and Management, an expectation that agencies like State Records will:

> . . . ensure appropriate Aboriginal and Torres Strait Islander membership of governing and advisory bodies including boards, councils and committees.

In fact, I will be moving an amendment to provide for Aboriginal representation on the council.

In relation to remuneration, the Hon. Anne Levy has suggested that there should be provision for remuneration to council members. The Government does not support this. No budgetary provision for paying meeting fees (as distinct from meeting actual expenses incurred by members in attending meetings) currently exists.

There is a third aspect which has been briefly touched on in debate and that relates to the issue of status. There appears to be some concern that the State Records Council will have a lower status than the Libraries Boards of South Australia, whose nine members are appointed by the Governor (with six being nominated by the Minister). The Hon. Michael Elliott specifically referred to this concern (as raised by the Friends of South Australia's Archives), but saw it being addressed in terms of the expertise of the council's members.

The breadth of function given to the Libraries Board (oversight over all the State's library services) is considerably greater than that given to the State Records Council, and the financial management responsibility is vastly more complex, requiring a management board. State Records is better served by an advisory group, representative of a range of interests and relevant expertise with at least one person having business acumen.

The council has a wide mandate. It approves disposal of official records on the recommendation of the manager, and it has the function of providing advice (to the Minister or to the manager) on policies relating to record management or access to official records. There are two unusual occurrences which the Bill presently leaves at the manager's discretion—the ability to restrict access on the grounds of preservation of administration, and the ability to accept delivery of non-official records. Both of these are matters of interest for the user community, and I will be proposing amendments which will ensure that the council is aware of the manager's intentions beforehand.

I turn now to the issue of the total exclusion of the records of the Parliament, an issue touched on by the Hon. Anne Levy, who quite rightly noted that this was based on the issue of the separation of executive and legislature and that the Parliament looks after its own records. The Hon. Ms Levy mentioned that in New South Wales the State Archives (while not having custody or control of parliamentary records) is contracted by the State Parliament to undertake records management functions for the Parliament. The Hon. Michael Elliott added to this by noting the view of the Friends of South Australia's Archives that to not include the records of Parliament somewhat undermined the position of State Records.

The practice of excluding records of Parliament from an Act concerned with managing official records is quite widespread. There is a general tendency though to include the Government archives body in a consultative way and there are two examples of this. The Australian Commonwealth Government has a provision in the Archives Act 1983, whereby records of the Parliament are covered by that Act only where regulations are passed, and these regulations must have had prior consultation with the President of the Senate or the Speaker of the House of Representatives (or both, depending on the case), and regulations have been passed. The other example is in the New Zealand draft Archives Bill. In that 'parliamentary records' are excluded, but within the Bill there are procedures for negotiated deposit and access, and an opportunity for the New Zealand archivist to take custody of any parliamentary records which the Clerk of the House of Representatives—remembering that there is only one House—gives notice of intention to destroy but which the archivist believes warrants permanent preservation. The Minister in the other House noted that the Standing Orders of both Houses of the South Australian Parliament:

> have coverage. . . with respect to the keeping and availability of their records.

In 1995 State Records undertook a consultancy of several months within Parliament, and there is no impediment in this legislation for this working relationship to continue.

I agree with the position that Parliament's records should not be subject to the direction of Executive Government but that there should be a consultative relationship between the Executive and the Parliament as to the way in which Parliament's records are maintained and preserved.

In relation to the records of courts, at present courts are included within the definition of 'agency'. No special circumstances or exemptions for courts are provided in the Bill, and both the Hon. Anne Levy and the Hon. Michael Elliott thought that was anomalous, when the Bill exempts the records of Parliament but leaves the records of the courts wholly within the scope of the Bill. That matter has been the subject of consultation at my instigation with the Chief Justice, and I have expressed concern about that position.

The Chief Justice has given considerable thought to the matter. He is particularly concerned about the issue so far as it relates to the independence of the courts and he is concerned that they should not be treated exactly the same as public sector agencies, which are part of the executive arm of Government. Obviously, there are differences between the constitutional role of public sector agencies and the courts as well as the Parliament, and I will move an amendment, which has the support of the Chief Justice, which seeks to address that issue.

As to the definition of 'official record', the Hon. Anne Levy wondered whether collections such as those within the Mortlock Library are within the scope of that definition. She noted that the Libraries Board is happy with the Bill, so it is not intended that personal papers deposited in the Mortlock Library should be surrendered to State Records at the manager's whim. The Hon. Michael Elliott was also interested in that issue. As the Hon. Anne Levy has indicated, the State Library has not raised this as a concern.

By comparison with other similar legislation, it seems possible that collections such as those in the Mortlock Library are within the scope of the definition even though that was not the Government's intention. I will move an amendment to deal specifically with this to exclude those from the definition of 'official record'.

As to the mandate for publishing guides, the Hon. Anne Levy noted that clause 7(d) restricts the mandate for publishing guides to records in the custody of State Records. Traditionally, description of records and the production of

guides have been done after records have been received and are being processed. Increasingly and especially with electronic records, the description of records will be done before delivery or, in the case of electronic records, on-line and networked access.

In the pursuit of ensuring that there are no boundaries between agencies, and for the very popular concept of the one-stop shop, it is appropriate for State Records to have a clear mandate for describing all records where the mandatory time for delivery has elapsed, and I will move an amendment to achieve this. The amendment will apply where exemptions for delivery have been granted by the manager and where a postponement has been approved.

I turn now to the issue of fees. There continues to be anxiety over the apparent ability to charge fees for any service provided by State Records. Again, the Hon. Anne Levy noted this in her speech and indicated that there are likely to be different views on what is a reasonable fee to charge. The Hon. Anne Levy expressed the view that the best way of taking all the variables into account in an open fashion is to have the fees determined by regulation. The Government does not support that view. The provisions of clause 32 enable fees to be charged for any service provided by State Records. The ability to charge fees to fund delivery costs and the development of new services is a critical business need.

At present, there are some services where fees are not currently charged, particularly relating to the provision of public reading room facilities and inspection of documents there. While it would be possible to specify such services as exempt from charges, this may act as a barrier to developing electronic access, which is more cost effective, and where one-on-one consultation and inspection of original documents becomes an alternative value-added service where charging is appropriate.

The council will undoubtedly monitor the fees charged, particularly for services to public inquirers, and the advice is that where the council believes that the charging was inappropriate and conflicted with the objects of the Act the council would write to and inform the Minister of that view. I am confident that this watchdog role will meet the concerns which have prompted the amendment by the Hon. Anne Levy.

Fees are currently charged to all agencies, including local councils, for retrievals of records. Public users of records are not charged for this. The storage of permanent records—that is, archives—is one which is covered by community services funding, so no agency—again including local councils—is charged for this. However, agencies do pay for the storage of temporary or unsentenced records and for consultancy services provided by State Records staff.

To have all charges specified in regulation could introduce delay in providing the service—for example, where a document needed for urgent inspection required repair before it could safely be made available. Some charges, particularly for services where there are other possible providers, may be negotiated on a confidential basis, and it would be inappropriate to disclose these in regulations.

Concerning the impact on local councils, the Hon. Anne Levy has concerns relating to inadequate consultation claimed by the Local Government Association and the issue of fees being charged to local councils.

The Hon. Michael Elliott quoted extensively from a letter from the association's Secretary-General to the Minister, noting that the powers given to the Manager of State Records appear excessive over local councils. He also queried an inconsistency between this Bill's amendment of a provision in the Local Government Act and the same provision being repealed by the Local Government (Miscellaneous Provisions) Amendment Bill currently before the Council.

There is some resistance to having local councils treated like other State public sector agencies and a query whether this should proceed, given the current review of the Local Government Act. However, local councils have always been within the scope of the draft Bill, and the Local Government Association nominates a member to the State Records Council. Currently, disposal of their records is, as with Government agencies, subject to the final approval of the Libraries Board of South Australia proceeding on recommendations provided by State Records.

The apparent inconsistency with the Local Government Act noted by the Hon. Michael Elliott is illusory. Pending the inclusion of local councils into the Freedom of Information Act—which is part of the Bill to which he refers—it is necessary to amend section 65(d) of the present Local Government Act, since this provides for access to local council records held in State Records.

As to administrative arrangements, three queries have been raised in debate. The first is the machinery of Government considerations: to or through whom does the Manager report? Secondly, will the certificates of disposal signed by the Manager referred to in clause 31 be retained for inspection? Thirdly, why is the date for submitting the annual report set at 31 October?

The Hon. Michael Elliott briefly noted the first matter. The Hon. Anne Levy had a concern to retain certificates issued under clause 31 and believed that the Manager's annual report should be due and delivered to the Minister on 30 September and presented to Parliament within six sitting days thereafter.

In relation to the first matter, the concern to know whether the Manager of State Records reports directly to a chief executive or through another manager, I suggest that it misses the main point. The key relationships are, however, between the Minister, the Manager and the council. The supporting role of a department may well vary over time, and there is no need to try to specify it.

In relation to the second matter, it is inconceivable that the Manager would not have such significance carefully managed and available for inspection. Legislative provision for this as proposed by the Hon. Anne Levy's amendment is, I suggest, unnecessary.

Regarding the third matter, the Bill requires the Manager to provide the annual report by 31 October each year. This mimics the provision for the Libraries Board, but the Manager will be bound by section 66 of the Public Sector Management Act 1995 to report within three months of the end of a financial year, that is, 30 September. That provision requires the relevant Minister to present such report to the Parliament within 12 sitting days. The council does not submit a separate annual report. Accordingly, I have on file an amendment that changes the date when the Manager must provide annual reports.

The remaining issue relates to consultation. While agreeing that the Bill is overdue and worthwhile, both the Hon. Anne Levy and the Hon. Michael Elliott have criticised what they say was the lack of public consultation in 1996. The Hon. Michael Elliott also commented on the delay by the Minister in responding to a recent letter from the Secretary-General of the Local Government Association of South

Australia. Given the general support for the Bill, this criticism is unfortunate.

It took rather longer to introduce the Bill than was envisaged during the last intensive round of consultations in 1995. The file showed that the then Minister was intending to introduce the Bill into the House of Assembly before the close of the 1995 session. That did not happen because of changes in Cabinet portfolios and other legislative priorities. It is clear that the introduction of the Bill generally took stakeholders by surprise, but there has been considerable energy since by such groups as the Friends of South Australia's Archives in trying to get the Bill to be as near to perfect as possible.

Since last December's debate, the Secretary-General of the Local Government Association of South Australia has received a reply from the Minister in response to a concern that the memorandum of understanding of the Premier which gives them advanced knowledge of legislation affecting local councils had been breached.

When a Bill such as this one, on which there has been a long period of deliberation or consultation, finally is before the Parliament, a range of issues will be raised. Some proposals will be timely and improve the legislation, but inevitably some proposals, however often and forcefully advanced, are not appropriate and have to be discarded.

In relation to consultation, there are Bills such as this one which impinge not only on local government but also government as a whole, and in some instances it is just not possible to ensure so-called adequate notice to a body like the Local Government Association about its introduction. This Bill has now been in the Parliament for some months, so hopefully any concerns about lack of consultation have now been overcome. I thank members for their contributions.

Bill read a second time.

## PULP AND PAPER MILL (HUNDREDS OF MAYURRA AND HINDMARSH) (COUNCIL RATES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 February. Page 807.)

**The Hon. K.T. GRIFFIN (Attorney-General):** I thank the Hon. Terry Roberts for his support for this Bill. It is a relatively straightforward Bill which will facilitate better relationships between the operator of the mill and local government.

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

## CRIMINAL LAW CONSOLIDATION (SELF DEFENCE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 February. Page 806.)

**The Hon. R.D. LAWSON:** There are a few areas of community concern in relation to the criminal law, but the subject of self-defence is one area of the criminal law which gives rise to considerable community concern. There are many concerns in relation to sentencing in criminal matters but, generally speaking, the fabric of the criminal law is perceived to be satisfactory. People do not complain so much about the law itself: they complain that it is not being enforced. The frequent cry one hears is that there is too much law and not enough order. The subject of self-defence has excited the attention of the public and does so whenever publicity is given to a case in which a householder is charged with injury, killing an intruder, discharging a firearm or the like. It is easy to see why.

We all fear intruders, and we all wonder what our response to an intruder would be. I am sure we all like to feel that we would have the courage to repel an offender, even though most of us realise that, even if we could summon the courage, we might not have the strength to defend ourselves. But we do know and have come to expect to know that we have a right to defend ourselves. Any watering down or diminution of that right is seen as offensive to the principle that the right of self-defence is a hallmark of a free people, to the principle that law abiding citizens are entitled to the protection of the law and, further, to the principle that those who choose to break the law should not be entitled to its full protection.

This principle is well ingrained in our legal system and in our collective psyche. It has been pointed out that the law of self-defence was developed at a time before effective police forces existed. In those days if you did not defend your own property and person, for most people there was no-one else to do it. The slogan 'Every man's home is his castle' is often cited in this context and arose very early in the development of the common law. The principle is said to derive from Semayne's case, which was decided in 1601, in which the courts said:

> That the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose: and although the life of a man is a thing precious and favoured in law. . . if thieves come to a man's house to rob him, or murder, and the owner or his servants kill any of the thieves in defence of himself and his house, it is not felony, and he shall lose nothing.

Even at that early time there were limitations on the principle. The very point of *Semayne's* case illustrates the point. In that case, Semayne was owed money by the defendant. Semayne took out a writ to seize the goods for non-payment of that debt. The sheriff sought to break into the house of the defendant to seize the goods and execute the writ but was met with resistance from the defendant. The plaintiff won the ensuing court case because the sheriff, who was of course the party bursting into the house of the defendant, had the legal authority to enter and seize. So, limits were placed upon the rights of persons to inflict violence in the defence of property.

Before addressing the provisions of the Bill, it is worth recalling some of the recent history of attempts to reform the law relating to self-defence. Regrettably, the recent history is not good, and to some extent Parliament has failed in its role to clarify the law. So, too, have the courts, as I will demonstrate later.

Before 1991, the South Australian statutory provisions relating to self-defence were very simple. They were found in section 15 of the Criminal Law Consolidation Act. Except in relation to causing death by negligent driving, that section provided very simply:

> . . . no punishment shall be incurred by any person who kills another by misfortune or in his own defence or in any other manner without felony.

That section merely reflected the common law, and it had been virtually unchanged since the nineteenth century. Of course, it applied only to the death of a person; it did not apply specifically to lesser offences such as assault or unlawful wounding or the like. However, the common law rules applied to those offences as well. So, our Criminal Law Consolidation Act simply said, without more, that no

punishment should be incurred if a person killed another in his defence. The courts developed rules to determine exactly what is meant by 'in his own defence', and there were a number of rules relating to the circumstances in which the right of self-defence arose and the limits of that right.

The application of common law rules in Australia came to public attention and achieved some notoriety via the case of *McKay* in Victoria in 1956-57. McKay was the caretaker of a poultry farm. He lived there with his wife and family. There had been a spate of thefts of poultry from the farm. Police had been informed of the thefts and a person had been prosecuted and fined. Notwithstanding that, the thefts continued. McKay believed that the punishment inflicted on the offender was trivial. A primitive alarm system was installed and McKay, as caretaker, kept a loaded .22 rifle in his room. On the night of 9 September 1956 the alarm rang. McKay rose, spotted the intruder and fired a shot at him. The intruder then ran and McKay fired further shots in quick succession. One of those shots killed the intruder. The intruder had actually stolen three fowls but had dropped them when he fled. McKay was charged with murder and convicted of manslaughter and, on his appeal, the conviction was upheld. There was a great public outcry about the result of the case, but on the existing common law rules McKay could hardly have hoped to avail himself of the defence of self-defence.

He had fired shots on a number of occasions, which might well be said to be a disproportionate response to the threat, if any, that he faced; and it is arguable whether one faces any threat from a person who is fleeing on foot, having dropped the goods that had been stolen. There really was no threat at all. The deceased had made no approach to McKay, and one of the learned judges in the Victorian Full Court said:

> I am unable to see how it could be said that the appellant could honestly and reasonably believe that it was necessary to fire a shot, involving the risk of fatal consequences, to the intruder. He was not threatened in any way; the deceased made no approach to him, but made off.

The public outcry that followed this decision largely results from the fact that, in the cold light of day before a court of appeal, it is easy for one to say that the appellant could not honestly and reasonably have believed that it was necessary to fire the shot. Very often in circumstances such as this a person is called upon in the heat of the moment to make decisions. However, the conviction and subsequent imprisonment of Mr McKay stimulated great public debate, and from time to time over the years similar cases arose, similar concerns were expressed and the predictable public outcry ensued. It would be easy to dismiss public concerns as being merely media driven, as arising from ignorance, or as irrational concerns by people who do not have sufficient knowledge of the law.

The fact is that the law relating to self-defence was itself being changed in the courts, and it is clear from the decisions—to which I will refer shortly—that the judges themselves were getting into a bind about some of the nuances and aspects of the law of self-defence.

Shortly following McKay's case a development occurred in the High Court in the case of *Howe v The Queen*, which was decided in 1958. That case enunciated the principle, which had previously not been part of the common law of Australia, that there was a partial defence of excessive self-defence. The general principle is that a person who kills or wounds another in the defence of his person or property is entitled to be acquitted. That is reflected in section 15 of the Criminal Law Consolidation Act—'no punishment shall be incurred'. In the case of *Howe v The Queen* a partial common law defence was developed.

The principle enunciated in that case was that where a defender kills an assailant when purporting to defend himself from a violent assault, and in so doing uses force that exceeds that which is reasonably necessary for the defence and is subsequently charged with murder, such a person could be convicted of manslaughter. That principle of the partial defence which reduced murder to manslaughter was not accepted in England and was authoritatively rejected by the Privy Council in the case of *Palmer* decided in 1971.

A similar case came before the High Court in 1978 in the case of *Viro*. The High Court decided that the decision of the Privy Council in *Palmer* was not correct and was not to be followed in Australia. So, we had a division of opinion between the judges in England and the judges in Australia about the proper extent at common law of the principle of excessive self-defence. However, in 1987 in the case of *Zecevic v DPP*, the High Court reversed its earlier decisions in *Howe* and *Viro*. The common law of Australia thereafter did not acknowledge the possibility of excessive self-defence reducing murder to manslaughter.

The general issue of self-defence was considered by the Mitchell Committee in its Inquiry into the South Australian Criminal Law and Methods. In the fourth report of the committee, published in 1977, there was a recommendation that the test, which the jury was to apply when considering whether it was necessary—and I emphasise 'necessary'—for the accused to use force, was whether or not the accused was 'acting genuinely in self-defence'. I place emphasis on the genuineness of that requirement.

The common law test in Australia requires the jury to assess whether an accused person reasonably believed that the facts warranted the use of force. So, there came to be a dichotomy in this context between a genuine belief and a reasonable belief. In the United Kingdom it was suggested that the test ought not to be whether the accused had a reasonable belief, because that introduced into the test elements of objectivity. What if the accused was not a reasonable person; what if he or she was irrational; what if he or she was easily frightened; or what if he or she had a very short temper? Why should such a person be denied the opportunity of being acquitted on the ground of self-defence? The view arose in England, and it was ultimately accepted in Australia as well, that the test should be whether the person actually entertained the belief that force was necessary; in other words, a subjective test rather than an objective test ought be applied when considering the question of the accused's use of force.

This principle was derived in a number of South Australian cases that are worth putting on the record because they show the development of this branch of the law which in this Bill we seek to alter. In *The Queen v Witham* 1977 the Full Court of South Australia was required to consider a case in which the manager of the Feathers Hotel had intercepted a customer on the premises. The customer had come towards the manager in a threatening manner with a glass in his hand. The manager punched the customer, he said in self-defence, and he was subsequently charged with assault. The customer claimed that the attack by the manager was an unprovoked assault, and the customer claimed that the manager had accused him of mucking about with his, namely the manager's, wife. The case went to trial and the manager was convicted. The appeal concerned the adequacy of the

summing up given to the jury on that occasion. The judge had said to the jury when instructing them on the law relating to self-defence as follows:

> If you are satisfied. . . that the accused's conduct in striking out was reasonable in the circumstances, then there is nothing unlawful about it. . .

The test that had been put to the jury was that they had to be satisfied that the conduct was reasonable. Chief Justice Bray in the Full Court said that, standing alone, those terms might be defective because they seemed to lay down an entirely objective test. Was it reasonable for the manager in these circumstances to strike out? Chief Justice Bray said:

> In my view there was no doubt that in a sense the true test is a subjective one. It is not, 'Was the force used by the accused necessary in his own defence?' but 'Did he honestly and reasonably believe that it was necessary in his own defence?'

Justice Wells was a member of the court on that occasion, and he said that the question should not be stated in the form suggested by Chief Justice Bray because the concept of belief can be considered in different ways. The first belief is as to the circumstances, namely, is the attacker holding a gun or a water pistol? Is it a loaded gun or is it an unloaded gun? Does the accused have to have a belief in relation to that particular matter? The second belief relates to his own interest, namely, his belief about the necessity to take some action to defend himself and what action is necessary. This second fact is not really a belief at all but a subjective appraisal or judgment by the accused person in the heat of the moment.

Justice Wells said that, as to the first belief, the jury was entitled to judge it objectively, namely, whether the belief about the weapon being held is in fact a lethal weapon. That belief had to be assessed objectively by the jury and any unreasonable claim rejected, but as to the second belief, namely, the appropriateness of the action required to be taken, the jury was entitled to view that matter subjectively. Already we see the seeds of difficulty arising in relation to the application of this test. It is fair to say with the benefit of hindsight that Chief Justice Bray had stated the common law position perfectly, and the distinction which Justice Wells was drawing was one which had the potential to create confusion, especially in trials. In fact, in practice, it did lead to confusion.

In the following year (1978) the Full Court was again required to consider the subject of self-defence in the case *The Queen v Fahey*. In this case a woman was charged with an offence. She was attacked by a man called Andrews whose weapon was actually his shoe. After the attack Andrews was sitting on his bed doing up his shoe with his back to the accused and she then stabbed him. The accused told the jury that she was drunk at the time and that details of the incident were hazy. She said:

> Obviously I stabbed him—I really don't know why I did it—it was connected with him hitting me over the head with his shoe. I've had bashings previously—it must have been self-defence.

This was a case like many cases of self-defence in which the participants were intoxicated to a more or less degree, and that is one of the very real difficulties about establishing principles that will apply in all cases. The issue in the case of *R. v Fahey* is whether a person who is so intoxicated as to be incapable of forming any intention to attack or defend is entitled to self-defence. If a person is required to satisfy the jury that that person entertained a reasonable belief, it is obviously difficult for a person who was intoxicated at the time of the incident to give any satisfactory evidence, let alone evidence that will convince a jury on this point.

The Full Court considered the decision of the High Court in Viro—it was only a new decision at that time—and it reflected upon the decision in England of Palmer. The Full Court then adopted what appears to have been a subjective standard. I cite a passage from the judgment of Justice White, where he referred to a statement of Sir Anthony Mason in Viro's case, as follows:

> The expression 'reasonably believed' is meant [to connote] not what a reasonable man would have believed but what the accused himself might reasonably believe in all the circumstances in which he found himself.

We there see the development of a subjective standard. The court in the result held in Fahey that there was not a scintilla of evidence that any jury could have regarded as self-defence, namely, the stabbing in the back of a man sitting on a bed, albeit after he had attacked the accused.

Next was the case of *Morgan v Colman*, decided in 1981 in South Australia. It was an application for leave to appeal to the Privy Council in the matter in which self-defence was raised. It is not necessary to go into the underlying facts, but the point of an appeal to the Privy Council was to resolve the disparity that had existed between the High Court's statement of principle and Palmer's case to which I earlier referred.

Justice Wells in this case adapted the language of Viro's case and enunciated a number of useful principles of self-defence. He appeared to have adopted the subjective approach. It is worth quoting, because this is the approach which, in the legislation currently before the Parliament, we seek to embrace. He states:

> When a person is subjected to or genuinely fears an attack he may use force to defend himself. That person may do, but may only do, what is reasonably necessary for the purpose, having regard to all the circumstances as he genuinely believed them to be at the time. If he does no more than is reasonably necessary, such force is justifiably and lawful. A person who, according to the circumstances as he understands them, genuinely believes that he is threatened with an attack is not obliged to wait until the attack begins. A person accused of having used unlawful force is not obliged to prove that he was acting in self-defence. If it is reasonably possible that he was acting in lawful self-defence, the prosecution will not have proved that he was acting unlawfully.

That was fairly clearly a subjective test. The next decision in this series of South Australian decisions, which indicate not only the underlying principle but also underline some of the difficulties that the judges have over the years encountered in it, was the case of *The Queen v Kincaid*, decided in 1983. In this case the presiding judge was the acting Chief Justice Dame Roma Mitchell and Justices Zelling and Cox. His Honour Justice Cox adopted the self-defence rules that had been laid out by Justice Wells in Morgan v Colman. That judge said of Justice Wells that he:

> . . . avoids any difficulties with the notion of reasonable belief. . . by speaking of a genuine belief on the accused person's part. The test is expressed in terms that are wholly and obviously subjective. That makes it unnecessary to distinguish in the jury's mind what a reasonable man would have done and what he might reasonably have done.

That was a series of South Australian cases in which the issue was raised. But the issue of self-defence was not only being raised in the courts of appeal of the country, it was also being raised in a number of events out in the community. There was the case of Mr Leon Hutton from the south coast, who fired a shot over intruders and was charged with and convicted of unlawfully discharging a firearm. The case of Mr Hutton created a great public outcry. There were other cases not only in South Australia but elsewhere where, in the mind of the community, the issue of self-defence and the law's response to it was causing grave disquiet. In view of the hour, I seek leave to conclude.

Leave granted; debate adjourned.

**The Hon. K.T. GRIFFIN:** Mr President, I draw your attention to the state of the Council.

*A quorum having been formed:*

## ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The House of Assembly intimated that it had appointed Mr Andrew to fill the vacancy on the Environment, Resources and Development Committee caused by the resignation of Mrs Kotz.

## OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

The House of Assembly intimated that it had appointed the Hon. D.C. Brown to fill the vacancy on the Occupational Safety, Rehabilitation and Compensation Committee caused by the resignation of the Hon. G.A. Ingerson.

## LIVESTOCK BILL

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

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

*That this Bill be now read a second time.*

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

Leave granted.

The Livestock Bill, which is the culmination of 20 months joint effort by representatives of the State's livestock industries and Government, represents a major step forward in the regulation of the State's livestock industries. It supports opportunities for the livestock industries to position themselves as safe and wholesome providers of food to our local and export markets. The Bill is a result of this joint approach and is designed to meet the needs of livestock producers, processors and service sectors in the 1990's.

The major effect of this Bill is the consolidation of eight Acts into the one Act, to be called the *Livestock Act*. This step alone will significantly enhance the administration of livestock legislation, thereby enabling Government to focus public expenditures into activities beneficial to livestock industries.

The Bill incorporates support for a number of important national agreements, thereby ensuring that South Australia is in harmony with livestock legislation enacted, or to be enacted, elsewhere in Australia. In particular, these changes ensure that South Australia complies with national agreements on the control of and funding for exotic diseases and vendor liability.

This Bill contains effective controls in relation to contaminants (residues). Contaminants are becoming a major trade issue in livestock products and their control is essential if South Australia is to retain its reputation as a supplier of high quality and clean livestock products.

The Bill also provides Government with the ability to investigate and control any disease or contaminant that has the ability to affect the health of livestock or native or feral animals, or the marketability of livestock or livestock products. With the continuing emergence of serious new conditions in livestock, such as equine morbilivirus in Queensland last year, the ability of Government to quickly and effectively investigate, and if necessary control, a new potential threat to productivity of the State's livestock industries or marketability of livestock products is essential.

Fish health is incorporated into this Bill, which will ensure that the control of diseases and contaminants of this rapidly emerging sector continues to receive a high priority from Government. This is a step forward in ensuring the continued preservation of the productivity and market access for this important sector, especially aquaculture.

Under the Bill, each of the livestock sectors are offered the opportunity of establishing a livestock advisory group. These groups will advise the Government directly on a number of matters affecting the sector that they represent, including the establishment of a self-funding capacity, codes of practice and vendor warranties. Through this mechanism, the livestock industries have opportunity to actively contribute to the management of their own industry. This is in keeping with the Government's philosophy of fostering self-regulation.

The State's livestock industries are also offered the opportunity in the *Livestock Act* to undertake self-funding for areas they consider important to develop for the well-being of their industry. Due to the State's relatively small size in a number of mainstream livestock industries, it is important that the State's livestock industries are able to develop and position themselves within the global marketplace, to take advantage of any strategic advantages they may have. The provision of a self-funding capability to them will enable this to occur.

The *Livestock Act* will provide South Australia with additional controls over the feeding of livestock equivalent to those found anywhere else in Australia. The controls are designed to prevent, for example, an outbreak of mad cow disease.

The Bill contemplates vendor liability provisions being prescribed by regulation. This is an important step forward in risk management for livestock producers and processors. These provisions enable buyers of livestock and livestock products to determine risk of market or production limiting conditions before the sale is transacted, with the confidence of knowing that there is a ready remedy available to them if the product is found not to be in the condition described. This will place South Australia at the forefront as a supplier of safe livestock and livestock products.

Several benefit/cost analyses have been conducted during the preparation of this Bill. For each of these, the benefits to the community as a whole have been shown to substantially outweigh their associated costs. In applying this Act to particular diseases and contaminants consideration will be given to a number of parameters including risk and benefit/cost analyses. This will ensure maximum return to South Australia on expenditure for the control of diseases and contaminants. For example, the benefits to the community of imposing controls on virulent footrot in sheep within South Australia exceed the costs incurred by the community of doing so by a factor of 17:1. More extensive and exhaustive benefit cost analyses conducted in Victoria gave similar benefit/cost outcomes for legislation which is substantially the same as that contained in this Bill.

I commend the Bill to Honourable Members.

Explanation of Clauses

PART 1

PRELIMINARY

*Clause 1: Short title*

*Clause 2: Commencement*

*Clause 3: Interpretation*

This clause defines terms for the purposes of the Bill.

*Clause 4: Interpretation—notifiable condition and exotic disease*

The Minister may declare particular diseases and contaminants (called residues in the *Stock Act*) to be notifiable conditions for the purposes of the Bill. Special provisions apply in Part 4 Division 1 to notifiable conditions.

*Clause 5: Interpretation—livestock etc. affected or suspected of being affected with a disease or contaminant*

This clause assigns a meaning to the terminology used throughout the Bill about livestock or other property affected with a disease or contaminant. It also provides that the Minister may declare periods in respect of which livestock that have been exposed to affected livestock will themselves be suspected of being affected. The latter concept is similar to that of endangered stock under the *Stock Act*.

*Clause 6: Interpretation—controlling or eradicating disease or contamination*

This clause ensures that the concept of controlling or eradicating disease or contamination encompasses diagnosis, preventing the spread of disease, minimising risks etc. It is designed to overcome some of the difficulties associated with choosing terminology relevant to both disease and contamination.

*Clause 7: Application of Act*

This clause authorises Ministerial exemptions. It also ensures that civil remedies are unaffected by the provisions of the Bill.

PART 2

INDUSTRY INVOLVEMENT IN REGULATION

DIVISION 1—LIVESTOCK ADVISORY GROUPS

*Clause 8: Establishment of livestock advisory groups*

Livestock advisory groups may be formed for the various sectors of the industry to provide advice to the Minister. This is a new initiative designed to recognise the significant role that industry can play in determining relevant regulation and to foster communication between government and industry.

*Clause 9: Functions of livestock advisory groups*
Advice is to be given to the Minister about the operation of the Bill in relation to the sector of the industry. The Minister may seek advice about other issues related to the relevant sector of the industry.

*Clause 10: Terms and conditions of membership and procedures*
Appointments are to be made by the Minister and the Minister is to determine the terms and conditions of appointments.

*Clause 11: Annual reports*
Annual reports are required and are to be made available to industry.

DIVISION 2—INDUSTRY FUNDS

*Clause 12: Establishment of funds*
The Minister may establish a fund for a particular sector of the industry, on the recommendation of or after consultation with the relevant livestock advisory group. The provisions in this Division support self-funding schemes. The funds are designed to take the place of the funds maintained under the *Apiaries Act 1931*, the *Cattle Compensation Act 1939*, the *Deer Keepers Act 1987* and the *Swine Compensation Act 1936*.

*Clause 13: Contributions to funds*
The regulations are to prescribe the methods of collecting or paying money into funds. Constitutional limitations will apply to the schemes established by regulation.

*Clause 14: Application of funds*
The regulations (or a trust deed incorporated or referred to in the regulations) will set out the purposes for which the funds may be applied. These may include compensation schemes, services such as the honey testing service or other benefits.

*Clause 15: Audit of funds*
The Auditor-General is to audit the funds at least once each year.

DIVISION 3—INDUSTRY CODES OF PRACTICE

*Clause 16: Codes of practice*
This clause contemplates the establishment of sector specific codes of practice by regulation. The relevant livestock advisory group is to be consulted with a view to ensuring that any regulation is relevant and advantageous to industry.

It is, for example, intended that various of the provisions in the *Apiaries Act* relating to the management of hives and bees will be included in a code of practice.

PART 3
REGISTRATION OF CERTAIN INDUSTRIES

This Part provides the framework for registration schemes for keeping livestock, artificial breeding and veterinary diagnostic laboratories. The schemes are to be supported by regulations. The resulting flexibility facilitates appropriate regulation of industry.

DIVISION 1—KEEPING LIVESTOCK

*Clause 17: Requirement for registration to keep certain livestock*
The regulations may prescribe classes of livestock in respect of which registration is required.

Under current legislation registration is required for keeping bees or deer (*Apiaries Act, Deer Keepers Act*). By enabling regulations to prescribe the classes of livestock, the matter can be kept under constant review and an appropriate response made to industry needs.

DIVISION 2—ARTIFICIAL BREEDING

*Clause 18: Requirement for registration of artificial breeding centre*
Registration is required for a business involving artificial breeding for livestock of a prescribed class. This is similar to the current requirement under regulations under the *Stock Act*.

*Clause 19: Requirement for registration to perform artificial breeding procedure*
Registration is required for the carrying out of an artificial breeding procedure. This does not apply to veterinarians. It is intended that the regulations will exempt owners of livestock from the requirement for registration authorising the carrying out of certain artificial breeding procedures on the livestock.

Registration is currently required under regulations under the *Stock Act* for all procedures in relation to specified classes of livestock.

DIVISION 3—VETERINARY DIAGNOSTIC LABORATORIES

*Clause 20: Requirement for registration of veterinary diagnostic laboratory*
This requirement for registration authorising operation of a veterinary diagnostic laboratory is similar to the current requirement under the *Stock Act*.

DIVISION 4—GENERAL

*Clause 21: Eligibility for registration*
This clause contemplates requirements for registration being spelt out in regulations.

*Clause 22: Application for registration*
This clause determines the process for applications.

*Clause 23: Term of registration and renewal*
The regulations are to specify the term of registration.

*Clause 24: Conditions of registration*
The regulations may impose conditions of registration, as may the Chief Inspector.

*Clause 25: Periodic returns*
The regulations may require registered persons to make periodic returns.

*Clause 26: Suspension or cancellation of registration*
The Chief Inspector is empowered to suspend or cancel registration if the person ceases to be eligible or commits an offence against the Bill.

PART 4
HEALTH OF LIVESTOCK

DIVISION 1—NOTIFIABLE CONDITIONS

The *Stock Act* applies to diseases and residues (contaminants) declared by the Minister by Gazette notice. The reporting requirements and the provisions empowering inspectors to issue orders or take action both relate to declared diseases and residues. To ensure that appropriate action may be taken many relatively minor conditions are declared and technically must be reported. The Bill limits the reporting requirements to the more serious conditions (declared as notifiable conditions under clause 4) while allowing action to be taken in relation to any disease or contaminant as necessary. This change is designed to facilitate owners and veterinarians distinguishing the conditions that are serious and to encourage compliance with the reporting requirement. Other serious offences are limited to notifiable conditions.

*Clause 27: Requirement to report notifiable conditions*
The owner or manager of livestock or livestock products is required to report notifiable conditions or a suspicion of a notifiable condition to an inspector. A veterinary surgeon or a livestock consultant is under a similar obligation.

This clause is similar to section 16 of the *Stock Act*, but extends the requirements to livestock consultants (stock agents or other persons who provide advice about livestock for fee or reward) and, as noted above, limits the reporting requirement to notifiable conditions.

*Clause 28: Acts causing or likely to cause livestock to become affected with notifiable condition*
This clause makes it a serious offence to do an act intending or being recklessly indifferent as to whether livestock become affected or further affected with a notifiable condition.

This clause is similar to section 13(2) of the *Stock Act*.

*Clause 29: Bringing notifiable disease into State*
This clause makes it an offence to bring a notifiable disease into the State without the approval of the Chief Inspector.

*Clause 30: Movement of livestock or other property affected with notifiable condition*
This clause makes it an offence to move livestock or livestock products affected with a notifiable condition into, out of or within the State.

The provision is similar to section 13 of the *Stock Act*.

*Clause 31: Supply of livestock or livestock products affected with notifiable condition*
This clause makes it an offence to sell or supply livestock or livestock products affected with a notifiable condition.

This provision is similar to current section 27 of the *Stock Act*.

*Clause 32: Feeding of products that may cause livestock to become affected with notifiable condition*
This clause makes it an offence to sell or supply livestock food that may cause livestock to become affected with a notifiable condition or to otherwise feed or facilitate the feeding of livestock with such food.

This provision is similar to section 28 of the *Stock Act*.

DIVISION 2—RESTRICTIONS ON ENTRY OF LIVESTOCK OR OTHER PROPERTY

*Clause 33: Prohibition on entry of livestock or other property absolutely or without required health certificate, etc.*
The Minister is empowered to prohibit the entry into the State or a specified area of livestock, livestock products or other property by notice in the Gazette for the purposes of controlling or eradicating disease or contamination. The measures can be preventative, *ie*, there is no need for any particular disease or contamination to be present.

The notice may require livestock or other property to be accompanied by a relevant health certificate.

The clause covers matters currently contained in sections 14 and 15 of the *Stock Act* and in the *Apiaries Act*.

DIVISION 3—INVESTIGATIONS

*Clause 34: Investigation by inspector*

Like section 17 of the *Stock Act* this clause authorises investigations by inspectors. The power is extended to investigation of the cause of death or of a condition affecting livestock.

*Clause 35: Investigation by owner or occupier of land*

This clause allows the owner or occupier of land to detain and examine stock found on the land and to recover costs if the stock are found to be affected with a disease or contaminant. It is similar to section 18 of the *Stock Act*.

DIVISION 4—CONTROL OR ERADICATION OF DISEASE OR CONTAMINATION

*Clause 36: Guidelines for taking action under this Division*

Action may be taken under this Division to control or eradicate any disease or contamination affecting livestock. There is no need to prescribe the diseases or contaminations by Ministerial notice before action can be taken as is currently the case. This clause requires the Minister, Chief Inspector or inspector in taking action under the Division to have regard to the gravity of the consequences of the disease or contamination.

This clause also recognises the importance of the national strategies for exotic disease and allows other guidelines to be prepared in relation to other diseases and contaminations.

The provisions in this Division rationalise the provisions in Part 3 of the *Stock Act* and provide a flexible system providing a range of powers to assist in the effective and efficient control of an outbreak of disease or contamination.

*Clause 37: Gazette notices*

The Minister is empowered to impose restrictions by Gazette notice for a specified period for the purposes of controlling or eradicating disease or contamination. Schedule 1 sets out examples of the sorts of restrictions that may be imposed.

Section 25 of the *Stock Act* provided for proclamations covering similar matters in relation to exotic disease.

*Clause 38: Individual orders*

An inspector is empowered to impose restrictions by individual order for the purposes of controlling or eradicating disease or contamination if the inspector knows or has reason to suspect that livestock, livestock products or other property is affected or in danger of becoming affected with the disease or contaminant. The examples set out in Schedule 1 are also applicable to individual orders.

Compare sections 19 and 21 of the *Stock Act*.

*Clause 39: Action on default*

If a person refuses or fails to take action required under a notice or order, the inspector may take the action and the costs of doing so may be recovered.

*Clause 40: Action in emergency situations*

An inspector may taken urgent action for the purposes of controlling or eradicating disease or contamination without issuing an order or without the Minister having issued a notice. This is a new power to ensure a prompt response can be made where it is warranted.

*Clause 41: Action where no person in charge and owner cannot be located*

An inspector may also take action for the purposes of controlling or eradicating disease or contamination where the owner of livestock or other property cannot be found and there is apparently no person in charge of the livestock or other property. The costs of taking the action may be recovered from the owner of the livestock or other property. Compare section 20 of the *Stock Act*.

*Clause 42: Exercising powers in relation to native or feral animals*

Native or feral animals may be treated or destroyed if necessary for the purposes of controlling or eradicating disease or contamination. Before issuing an order in relation to native animals an inspector must seek the approval of the Chief Inspector. Powers may be exercised in relation to native animals despite the fact that they may be protected. Except in urgent circumstances the Minister for the Environment and Natural Resources must be consulted before powers are exercised in relation to native animals. Compare section 29 of the *Stock Act*.

*Clause 43: Limitation on destruction or disposal of livestock or other property*

The approval of the Chief Inspector must be obtained for the destruction or disposal of livestock, livestock products, livestock food or equipment or articles used in relation to livestock and destruction or disposal of other property must be authorised by warrant of a magistrate.

This is similar to section 23 of the *Stock Act* except that section 23 requires the warrant of a justice rather than a magistrate and that requirement extends to livestock food and equipment or articles used in relation to livestock.

*Clause 44: Limitation on proceedings in case of exotic disease*

Like section 26 of the *Stock Act* this clause prevents legal action that may delay a prompt response to exotic disease.

DIVISION 5—IMPLIED CONTRACTUAL TERMS AND CONDITIONS AS TO HEALTH OF LIVESTOCK

*Clause 45: Implied contractual terms and conditions*

This is a new initiative. It is contemplated that the regulations will establish terms and conditions for vendor declarations relating to the health of livestock, or the quality of livestock products or livestock food. The terms and conditions will determine the consequences that flow if the declaration is proved false in relation to some of the livestock, livestock products or livestock food. They will also set out qualifications for persons who may certify matters relevant to proving a declaration false.

The terms and conditions are to be implied into every contract. However, it will be up to the vendor to invoke the provisions by making the relevant declaration in individual cases.

The parties are to be free to vary or revoke the terms and conditions set out in the regulations.

DIVISION 6—MISCELLANEOUS

*Clause 46: Feeding of animal products in certain circumstances*

This clause prohibits feeding material from a placental mammal to livestock; feeding material from a ruminant to another ruminant; and feeding material that contains faeces (such as chicken litter) to livestock. This regulation is, in part, aimed at attempting to avoid problems such as mad cow disease.

A prohibition against swill feeding is currently contained in the regulations under the *Stock Act*.

PART 5

EXOTIC DISEASES ERADICATION FUND

This Part takes the place of the *Foot and Mouth Disease Eradication Fund Act 1958*. The provisions are consistent with an intergovernmental cost sharing agreement on exotic animal diseases.

*Clause 47: Establishment of Fund*

The Fund is to be kept as directed by the Treasurer and consists of money advanced under the cost sharing agreement or by the Treasurer.

*Clause 48: Application of Fund*

The Fund is to be applied to clean up operations and to compensation.

*Clause 49: Claims for compensation from Fund*

This clause sets out the amount of compensation payable in relation to livestock or other property destroyed in a program to control a declared exotic disease outbreak. In the case of livestock, this is the value of the livestock basically at the beginning of the outbreak or, if there has been an increase in the overall value of livestock owned by a particular claimant at the end of the outbreak, the value at that later date. The aim is to provide an amount of compensation that will allow the claimant to restock at the end of the outbreak.

In the case of property other than livestock, it is the value of the livestock at the time it is destroyed.

*Clause 50: Procedure for making claim and determination of claim*

Claims must be made within 90 days of the death or destruction of the livestock or other property. However, a top up claim may be made if the overall value of livestock owned by the claimant has increased at the end of the outbreak.

The Minister may refuse or reduce compensation if the claimant is convicted of an offence related to the outbreak.

The Chief Inspector is to assess the claim and inform the claimant of the amount determined.

*Clause 51: Appeal against Chief Inspector's determination of claim*

The claimant has 21 days to appeal to the Minister against the Chief Inspector's determination. The matter is to be determined by a panel (an industry member, a valuer and a departmental nominee).

PART 6

SPECIAL PROVISIONS RELATING TO BEES

*Clause 52: Reservation of Kangaroo Island for pure Ligurian bees*

This clause makes it an offence to keep in or bring into Kangaroo Island any bees other than Ligurian bees. This is similar to section 12 of the *Apiaries Act*.

*Clause 53: Reservation of other areas for classes of bees by proclamation*

This clause allows the Governor to reserve parts of the State for particular types of bees by proclamation. It is similar to section 13 of the *Apiaries Act*.

*Clause 54: Prohibition against keeping bees in specified areas of State*

This clause allows the Governor by proclamation to prohibit the keeping of bees in specified parts of the State to assist the dried fruits industry. It is similar to section 11 of the *Apiaries Act*.

PART 7
BRANDS

This Part takes the place of the *Brands Act* and the *Branding of Pigs Act*. The provisions are consolidated and simplified. All registrations are to be for limited terms with renewal, to assist in keeping the registers up to date.

*Clause 55: Registers of brands*

This clause requires the Chief Inspector to keep registers for brands for prescribed classes of livestock.

*Clause 56: Applications*

This clause sets out the procedure for applications for registration.

*Clause 57: Refusal to register brand*

This clause contemplates the regulations setting out requirements for registration of brands—for example, brands for sheep must reflect the requirements for the district in which the sheep are usually kept. A brand is also required to be unique.

*Clause 58: Term of registration of brand and renewal*

The regulations are to determine the term of registration.

*Clause 59: Exclusive use of registered brand*

This clause sets out the right of the registered owner to exclusive use of a brand.

*Clause 60: Transfer of ownership of registered brand*

Transfer is to be with the consent of the Chief Inspector to enable the Chief Inspector to be satisfied that the relevant requirements of the regulations are complied with in relation to the proposed new owner.

*Clause 61: Cancellation of registration of brand*

Provisions for cancellation are included to enable the register to be kept up to date.

*Clause 62: Offence to use registered brand of another*

This clause makes it an offence for a registered brand to be applied to livestock not belonging to the owner of the brand. It also makes it an offence to destroy or deface a registered brand mark.

PART 8
ADMINISTRATION AND ENFORCEMENT
DIVISION 1—ADMINISTRATION

*Clause 63: Appointments*

The Minister is to appoint a Chief Inspector, deputy Chief Inspectors and inspectors. The ability to appoint more than one deputy is new and is designed to facilitate exercise of the Chief Inspector's powers.

*Clause 64: Identification of inspectors*

An inspector is required to be issued with an identification card and to produce it for inspection at the request of a person in relation to whom the inspector intends to exercise powers under this or any other Act.

*Clause 65: Analysts*

This clause contemplates approval of analysts by the Chief Inspector for the purposes of the evidentiary provisions of the Bill.

*Clause 66: Delegations*

This clause enables the Minister or Chief Inspector to delegate powers or functions.

*Clause 67: Immunity from personal liability*

This clause is the standard provision providing immunity for acts in good faith to an inspector or other person engaged in the administration of enforcement of the Bill.

DIVISION 2—GENERAL POWERS OF INSPECTORS

*Clause 68: General powers of inspectors*

This clause provides inspectors with powers to search and request information and to seize evidence etc.

*Clause 69: Provisions relating to seizure*

This clause determines what is to happen to seized property. It recognises that property may need to be disinfected or even destroyed for the purposes of the control or eradication of disease or contamination.

*Clause 70: Offence to hinder, etc., inspectors*

This clause is a standard provision making it an offence to hinder or obstruct an inspector etc.

*Clause 71: Self-incrimination*

The privilege against self-incrimination is not to apply. However, if a person objects on that ground, the answer or the fact of producing information cannot be used against the person except in proceedings relating to false or misleading statements.

DIVISION 3—COMPLIANCE NOTICES

*Clause 72: Compliance notices*

This is a new initiative to facilitate compliance with the requirements of the Bill, largely those set out in regulations. It enables an inspector to issue a notice to a person to secure compliance with the requirement. The notice can require the person to take action or to refrain from taking action.

PART 9
APPEALS

*Clause 73: Appeals*

An appeal to the Administrative and Disciplinary Division of the District Court is provided for decisions related to registration and compliance notices.

*Clause 74: Operation and implementation of decisions subject to appeal*

Decisions are to continue to have effect despite an appeal, unless the court orders otherwise.

PART 10
MISCELLANEOUS

*Clause 75: False or misleading information*

This is a standard provision making it an offence to provide false or misleading information under the Bill.

*Clause 76: Statutory declarations*

This clause allows the Chief Inspector to require information to be verified by statutory declaration.

*Clause 77: Telephone warrants*

This clause facilitates the obtaining of warrants by telephone in urgent circumstances. Warrants are required to break into premises or anything on premises or to destroy certain types of property.

*Clause 78: General defence*

This clause provides that it is a defence if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid commission of the offence.

*Clause 79: Vicarious liability*

This clause provides that employers and principals are responsible for the acts of employees or agents in the course of the employment or agency.

*Clause 80: Offences by bodies corporate*

This is a standard provision providing that each director of a body corporate is guilty of an offence if the body corporate is guilty of an offence.

*Clause 81: Continuing offence*

This is a standard provision providing further penalties for continuing offences.

*Clause 82: Prosecution period*

Prosecutions are to be able to be commenced up to 5 years after the alleged offence to take account of biological factors. After 2 years the Minister's authorisation for the prosecution is required.

*Clause 83: Recovery of technical costs associated with prosecutions*

The court is required, at the request of the prosecutor, to make an order for the reasonable costs of analysis against a convicted offender.

*Clause 84: Evidence*

This clause provides evidentiary aids.

*Clause 85: Service*

This clause provides for the method of service of notices and orders under the Bill.

*Clause 86: Incorporation of codes, standards or other documents*

This clause authorises the incorporation of codes etc. as in force from time to time in regulations, notices, orders or codes of practice.

*Clause 87: Gazette notices*

This clause enables Gazette notices under the Bill to be varied or revoked and contemplates that it may be necessary for discretions to be granted in the notices (*eg* an inspector's approval may be necessary for movement of certain items in the strategy for control of an exotic disease).

*Clause 88: Regulations*

This clause expressly contemplates regulations about identification of livestock, vaccines and hormonal growth promotants and a new regulatory scheme for waybills for movement of livestock. It also contemplates regulations providing for transitional matters.

SCHEDULE 1

*Requirements for control or eradication of disease or contamination*

This schedule sets out examples of requirements that may be imposed by Gazette notice or individual order for the purposes of controlling or eradicating disease or contamination.

SCHEDULE 2

*Repeal and transitional provisions*

The Acts to be repealed are: *Apiaries Act 1931, Branding of Pigs Act 1964, Brands Act 1933, Cattle Compensation Act 1939, Deer Keepers Act 1987, Foot and Mouth Disease Eradication Fund Act 1958, Stock Act 1990, Swine Compensation Act 1936*.

Transitional provisions are included for the positions of the Chief Inspector and Deputy Chief Inspector. New appointments are to be made for inspectors. Arrangements are made for the continuation of orders, licences and registration of brands. Necessary notices and proclamations will be remade. The transitional provisions require the existing funds to be maintained pending payment into a corresponding fund or other application in accordance with the regulations.

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

## BULK HANDLING OF GRAIN (DIRECTORS) AMENDMENT BILL

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

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

*That this Bill be now read a second time*.

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

Leave granted.

The *Bulk Handling of Grain Act 1955* was designed to meet strong imperatives for the substitution of an archaic system of bagged grain with a system of bulk handling. The measure was most appropriate to the conditions then in existence.

To strategically position itself for the changing economic and competitive environment now affecting the Australian grains industry, South Australian Cooperative Bulk Handling Limited (SACBH) wish to make a number of non contentious amendments to their Memorandum and Articles of Association. This Bill aims to accommodate those wishes.

The Bill would see the deletion of section 5 (Directors), 6 (Director's remuneration), and 7 (Disagreement between Directors) from the Act. The inclusion of these as amendments to SACBH's Articles of Association under the *Corporations Law* was approved at an Extra-ordinary General Meeting of the Company on 29 October 1996. That approval was prefaced by 14 meetings around the State seeking growers' permission to make such changes.

SACBH was originally established as an unlisted public company limited by guarantee and registered under the *Corporations Law*. It has no authorised or issued share capital.

Legal advice is that with deletion of the above sections from the Act the behaviour of directors would be guided by corporate law. The proposal is of no great significance from a Government view point.

For the longer term the government has scheduled a review in 1997-98 of the *Bulk Handling of Grain Act*, to meet the Government's obligations under the Competition Principles Agreement. The review will explore the need for an Act which in light of those principles, is highly contentious and will take some time to sort out. As a consequence, it has been agreed with industry to proceed with a bill to delete the less contentious sections of the Act, that is to say sections 5, 6 and 7.

In conclusion it is pointed out that passage of the bill holds no financial implications for the Government.

Explanation of Clauses

*Clause 1 : Short title*

*Clause 2: Commencement*

Clauses 1 and 2 are formal.

*Clause 3: Repeal of ss. 5 to 7*

Clause 3 repeals the sections in the principal Act that deal with Directors, their remuneration and disagreement between them. These matters will now be covered by the *Corporations Law*.

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

## GAS (APPLIANCES) AMENDMENT BILL

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

**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 sets out proposed amendments to the *Gas Act 1988*. The amendments will enhance safety for consumers purchasing gas appliances and make provision for installation work to be done in accordance with appropriate standards.

I would first like to give some background leading to the amendments and then outline the proposed amendments.

In August 1995 the Australian and New Zealand Minerals and Energy Council (ANZMEC) supported proposals to implement common safety regulatory arrangements. The aim of the proposals was to enhance safety for Australian consumers purchasing household appliances with the intention that the necessary arrangements be in place by the end of 1996. The South Australian Government has agreed to give effect to this ANZMEC agreement, by ensuring that gas appliances using either LPG or natural gas are tested, approved and marked to meet the requirements of nationally recognised gas appliances standards.

This enhancement is consistent with legislation already in place for proclaimed electrical products under the *Electrical Products Act 1988*.

The Bill will ensure that no domestic gas products can be sold in South Australia unless they comply with appropriate product codes. Over many years the Australian Gas Association (AGA) and the Australian Liquefied Petroleum Gas Association (ALPGA) have developed industry codes which are accepted and supported by gas appliance manufacturers and gas fitters and distributors. Both the AGA and the ALPGA have developed testing, approval and marking procedures over many years and these are widely accepted by the gas industry. The legislation will recognise approval by these organisations and provides for approval by other bodies approved by the Minister.

The benefits of introducing common safety standards at the point of sale or hire are—

- It will prevent the sale of substandard gas products, particularly those that are imported and may not be suitable for Australian conditions.
- It will protect the consumer against the purchasing of substandard gas appliances which the gas fitter will refuse to connect to the gas supply system with subsequent economic loss to the consumer.
- It will establish common safety standards throughout Australia at the point of sale, which will assist manufacturers in design, manufacture and testing.

Further, to protect the general public, these amendments will ensure that the installation of gas appliances in consumers' premises is carried out according to the relevant standards and safe for users. The Bill therefore empowers the making of regulations to regulate the standard of gas fitting work and for certification of compliance. Preliminary discussions have been held with the Gas Company and the ALPGA and extensive consultation before regulations are made with respect to procedures for the certification of compliance.

Finally, the Bill makes provision to enable authorised persons under the *Gas Act* to take necessary action to examine gas appliances and installations to ensure safety is maintained and to take immediate and appropriate corrective action if an unsafe situation occurs.

In summary, this Bill proposes to ensure that:

- gas appliances purchased or hired out by consumers meet national safety standards;
- gas fitting work carried out in consumers premises is in accordance with national safety standards and safe for use; and
- authorised persons can act to maintain safety, particularly in an emergency.

I commend this Bill to the Honourable Members.

Explanation of Clauses

*Clause 1: Short title*

*Clause 2: Commencement*

*Clause 3: Amendment of long title*

The Bill extends the scope of the Act to safety and technical standards for gas appliances and installations (whether or not associated with a gas reticulation system) and the amendment reflects this in the long title.

*Clause 4: Insertion of Part 4 GAS APPLIANCES AND INSTALLATIONS*

This clause inserts a new Part providing for approval and labelling of gas appliances and regulations governing the carrying out of certain gas fitting work.

New section 21 establishes a scheme under which gas appliances of a class declared by the Minister must be approved by a body declared by the Minister (or by the Minister) and labelled to indicate that approval.

New section 22 contemplates regulations stipulating safety and technical standards for gas fitting work on fixed gas appliances, pipes and associated equipment and providing for certificates of compliance or notification of work.

New section 23 is a complementary provision providing enforcement powers in relation to the new Part.

*Clause 5: Amendment of s. 34—Regulations*

The amendment enables the regulations to incorporate or operate by reference to a specified code or standard as in force from time to time.

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

## DEVELOPMENT (PRIVATE CERTIFICATION) AMENDMENT BILL

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

**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.

The *Development Act 1993* which came into operation on 15 January 1994, introduced the framework for private certification in South Australia. The Development Act integrates the planning and building assessment systems. A number of consents, including a provisional building rules consent, are required before the relevant authority can issue a development approval.

The Act allows for an applicant to appoint a private certifier as an alternative to submitting an application to a Council to assess a development against the Building Rules. The private certifier then issues the provisional building rules consent, with or without conditions. In addition, private certifiers may carry out a number of associated functions such as assignment of a classification to a building, the modification of an application of the Building Rules and the issue of a schedule of essential safety provisions.

Private certifiers have only operated in South Australia since the end of April 1995. At this time an amendment to Regulation 93 of the Development Regulations removed a requirement for the private certifier's policy of professional indemnity insurance to have a 10 year run off cover after the completion of building work. The insurance industry had not been able to provide such a policy.

The Legislative Review Committee of Parliament, in reviewing the amendment to Regulation 93, took submissions from a number of interested parties. There was a strong perception in that evidence that the Development Act did not provide adequate consumer protection, where private certifiers were employed.

The *Development (Private Certification) Amendment Bill* addresses a number of issues identified by the Building Advisory Committee, a statutory committee which advises on the administration of the Development Act with respect to building matters. As a result of the concerns raised by the Legislative Review Committee, the Building Advisory Committee was requested to provide advice to the Government on consumer protection, liability and any other key issues relating to private certification of building work.

The Building Advisory Committee undertook an extensive review of the operation of private certification in its first six months, and consulted widely with local government and the construction industry. One of the guiding principles for the Committee was the need for a level playing field for relevant authorities, Councils or private certifiers, and a number of inequities in statutory powers and processes were noted.

In December 1995 the Building Advisory Committee submitted a report to the Government which made a number of recommendations in relation to private certification of building work that were considered to be essential to ensure that the current system will be more efficient, effective and equitable. These recommendations were circulated for industry comment and were widely supported.

A number of the Building Advisory Committee recommendations formed the basis of the amendments to the Development Regulations which were gazetted on 24 April 1996 and took effect from 1 May 1996. Following successful negotiations with the insurance industry, all private certifiers in South Australia are now required to be registered and to hold a policy of professional indemnity insurance which has a run off cover for 10 years after the completion of the certified building work.

The Development (Private Certification) Amendment Bill introduces amendments to the Development Act 1993 relating to private certification of building work which are necessary to clarify the legislation and to ensure that building rules assessment procedures are equitable and efficient, address consumer protection and limit the liability exposure of local government. The Bill further implements the Building Advisory Committee's report.

The Bill seeks to extend the powers of a private certifier to issue a Certificate of Occupancy, where he or she has issued the building rules consent, and will also allow an appeal against a decision of a private certifier. Most importantly the Bill seeks to provide indemnity against errors and omissions made by a private certifier, for councils when inspecting building work.

Explanation of Clauses

*Clause 1: Short title*

This clause is formal.

*Clause 2: Commencement*

The measure will come into operation by proclamation.

*Clause 3: Amendment of s. 4—Definitions*

The definition of "repealed Act" under the Act only refers to the *Planning Act 1982*. However, the provisions where this definition is used (section 84 and 85) should logically also be capable of application in cases involving the *Building Act 1991* and *City of Adelaide Development Control Act 1976*. The definition is therefore to be revised accordingly.

*Clause 4: Amendment of s. 33—Matters against which a development must be assessed*

It is intended to make it clear when a development can be taken to be "approved" for the purposes of the Act.

*Clause 5: Amendment of s. 36—Special provisions relating to assessment against the Building Rules*

This clause relates to three issues under section 36 of the Act. Firstly, it has been decided to revise (to an extent) the principles that will apply in respect of a proposed modification to the Building Rules. In particular, the substitution of paragraphs *(a)* to *(d)* of subsection (2) with a new paragraph is intended to provide that any modification for proposed building work is warranted having regard to the objects of the Development Plan or the performance requirements of the Building Code of Australia, and would achieve the objects of the Act as effectively, or more effectively than if the modification were not to occur.

Secondly, it has been decided to increase the protection from liability afforded to a relevant authority where a private certifier has given a certificate in respect of building work. This matter will be dealt with by amendments to section 89 of the Act. A consequential amendment is required in relation to section 36(5).

Thirdly, it is intended to require that if a modification is made to the Building Rules, then the relevant authority (which may include a private certifier) will be required to specify the modification, and the grounds on which the modification is made.

*Clause 6: Insertion of s. 68A*

New section 68A will enable private certifiers to assign classifications to buildings, and to grant certificates of occupancy (or temporary occupancy) under Division 4 Part 6 of the Act in respect of building work for which the private certifier has granted provisional building rules consent.

*Clause 7: Amendment of s. 84—Enforcement notices*

This amendment is connected with the revision of the definition of "repealed Act" to include the *Building Act 1971* and the *City of Adelaide Development Control Act 1976* so as to allow an enforcement notice to be issued in relation to a breach of either of those Acts (together with the *Planning Act 1982*).

*Clause 8: Amendment of s. 85—Applications to the Court*

This amendment will allow applications to be made to the Court to remedy or restrain breaches of any of the "repealed Acts" (consistent with the amendment to section 84).

*Clause 9: Amendment of s. 89—Preliminary*

It is intended to ensure that private certifiers are able to require additional information (similar to the powers of relevant authorities under section 39(1)*(b)* of the Act), and to ensure that a standard form of application is used to provide consistency across the scheme under the Act. Furthermore, it is proposed to provide greater protection to a relevant authority when a certificate is given by a private certifier under the Act. Accordingly, subsection (6) is to be revised to ensure that a relevant authority incurs no liability if it relies on the certificate of a private certifier, or acts (or decides not to act) in relation to a matter within the ambit of a certificate given by a private certifier.

*Clause 10: Amendment of s. 93—Authority to be advised of certain matters*

It is intended to delete the requirement under the Act that a private certifier must furnish a relevant authority with evidence of the taking out of a policy of insurance of a prescribed kind whenever the private certifier makes a decision in relation to a prescribed aspect of building work. The requirement for insurance that complies with prescribed standards has now been incorporated into the registration scheme for private certifiers under the regulations and so the requirement of section 93*(b)*(ii) is superfluous.

*Clause 11: Revocation of s. 98*

It is now proposed to have no restriction on rights of appeal against decisions of private certifiers under the Act.

*Clause 12: Amendment of the Statutes Repeal and Amendment (Development) Act 1993*

This is a technical amendment to ensure that private certifiers can act in the same manner as other relevant authorities under section 28 of the *Statutes Repeal and Amendment (Development) Act 1993*.

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

## ADJOURNMENT

At 6.35 p.m. the Council adjourned until Thursday 6 February at 2.15 p.m.