LEGISLATIVE COUNCIL

Wednesday 10 December 1997

The PRESIDENT (Hon. J.C. Irwin) took the Chair at 2.15 p.m. and read prayers.

AUDITOR-GENERAL'S REPORT

The PRESIDENT laid on the table the report of the Auditor-General on the summary of confidential Government contracts, under section 41A of the Public Finance and Audit Act 1987, re: the South Australian Water Corporation.

LEGISLATIVE REVIEW COMMITTEE

The Hon. A.J. REDFORD: I bring up the first report of the Legislative Review Committee 1997-98, and move:

That the report be read.

Motion carried.

The Hon. A.J. REDFORD: I bring up the second report of the Legislative Review Committee.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Reports, 1996-97—
- Adelaide Convention Centre
- Racing Industry Development Authority
- South Australian Harness Racing Authority

By the Minister for Justice (Hon. K.T. Griffin)—

Reports, 1996-97—
- Australian Barley Board
- Dairy Authority of South Australia
- Dog Fence Board
- HomeStart Finance
- Office of Energy Policy
- Phylloxera and Grape Industry Board
- Primary Industries South Australia
- Soil Conservation Board
- Soil Conservation Council of South Australia
- South Australian Research and Development Institute
- South Australian Totalizator Agency Board
- Technical Regulator, Office of Energy Policy

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

Attorney-General's Department—Report, 1996-97

By the Minister for Police, Correctional Services and Emergency Services (Hon. K.T. Griffin)—

Correctional Services Advisory Council of South Australia—Report, 1995-96

Reports, 1996-97—
- South Australia Police
- South Australian Department for Correctional Services

By the Minister for Transport and Urban Planning (Hon. Diana Laidlaw)—

Reports, 1996-97—
- Dental Board of South Australia
- Hills Transit
- Living Health
- Medical Board of South Australia
- Passenger Transit Board
- TransAdelaide.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. L.H. DAVIS: I bring up the annual report of the committee 1996-97.

CORRECTIONAL SERVICES ADVISORY COUNCIL

The Hon. K.T. GRIFFIN (Minister for Police, Correctional Services and Emergency Services): I seek leave to make a ministerial statement on the subject of the Correctional Services Advisory Council.

Leave granted.

The Hon. K.T. GRIFFIN: The Correctional Services Advisory Council has not met since late 1995. Previous Correctional Services Ministers were unaware that an annual report had not been submitted until my predecessor (Hon. Dorothy Kotz MP) was recently advised of that by the Presiding Officer of the Statutory Authorities Review Committee. At that time, Mrs Kotz explained the situation and undertook to have a copy of the 1995-96 annual report prepared from the available information as soon as possible.

An annual report for the 1995-96 year has now been prepared and has just been tabled. Every effort is being made to re-establish the council. It is expected that a restructured council will convene in early 1998. The council has not met at all during the 1996-97 financial year so no annual report is available for that year.

ENVIRONMENT, NATIONAL ISSUES

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement made by the Minister for Environment and Heritage in the other place on the review of Commonwealth and State roles and responsibilities for the environment.

Leave granted.

REPATRIATION GENERAL HOSPITAL

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement made by the Minister for Human Services on the Repatriation General Hospital redevelopment.

Leave granted.

QUESTION TIME

KESWICK RAIL TERMINAL

The Hon. CAROLYN PICKLES: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the Keswick rail terminal.

Leave granted.

The Hon. CAROLYN PICKLES: Recent media reports have speculated as to the proposal by Great Southern Railways and the Adelaide City Council to shift the Keswick railway terminal to the city. A spokeswoman for Trans-Adelaide has gone on record as stating that the general concept has merit and that the Minister is prepared to consider all options. My questions to the Minister are:

1. Has the Minister met and commenced negotiations with Great Southern Railways and the Adelaide City Council

regarding the future of the Keswick terminal, including its relocation to the city?

2. What are the options currently being considered by the Minister regarding the terminal, and was that matter ever raised by the State Government during the sale negotiations?

The Hon. L.H. Davis: And which Federal and State Governments were in office when the initial decision was made?

The Hon. CAROLYN PICKLES: I am sure the Minister is quite capable of answering her own questions. She has more brains than you.

The PRESIDENT: Order! The question has been asked.

The Hon. DIANA LAIDLAW: That was a very positive interjection, or supplementary question, from the Hon. Legh Davis, because the decisions were made by two Labor Governments in the so-called interests of public transport. It is one issue about which all members would be aware because it has really been—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: The Hon. Legh Davis is not stupid. In fact—

The Hon. A.J. Redford: The Leader is very sensitive, though; we would all agree with that.

The Hon. Carolyn Pickles: I am very bad tempered today.

The Hon. DIANA LAIDLAW: The Leader should wear a 'grumpy' sign across her front—

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —so that we all know in advance—

The PRESIDENT: Order! We have a long day ahead.

The Hon. DIANA LAIDLAW: —that she is in a grumpy mood. This issue was first raised in the 1993 Liberal Party transport policy with respect to the central business district in terms of highlighting that we wanted to address issues for better coordination and integration of public transport passenger services with the tramline terminating in Victoria Square, rail services at North Terrace, intrastate and interstate bus services at Franklin Street, the O-Bahn travelling down Currie and Grenfell streets and the interstate rail services operating from Keswick.

Preliminary discussions were held but they were not advanced for a number of reasons. The Adelaide City Council has not focused on long-term issues, whether it be transport, or anything else, over recent years. That has changed substantially with the election of the new Lord Mayor, Dr Lomax Smith, and the new CEO, Ms Jude Munro.

We also have a new arrangement with the sale of Australian National. From my past experience they have sought to justify the investment decisions that were made in terms of Keswick but, with the sale of Australian National and the Great Southern Rail consortium buying that business, some very positive but preliminary discussions have taken place between me and that consortium and the Adelaide City Council and me on this subject. Mr Jim Morgan is the Chairman of the consortium. I have spoken with him at length, and he is preparing a proposal for consideration.

Also, discussions have been held between the General Manager of TransAdelaide and the new General Manager of the National Passenger Business. The GSR is not proposing that all its interstate rail services come into Adelaide station. It is looking at even breaking up some of the services and bringing in only half—for instance, half of the Ghan or half of the Overland services, possibly even the Indian Pacific. However, that is such a long train in terms of the number of carriages that it would be very difficult for people to manage the full length of that platform by coming in from one end.

This is one of the troubles in terms of the layout of the Adelaide Railway Station, namely, that everyone has to enter—at this time, anyway—from the eastern end and walk the distance of the platform. The one 'advantage' with Keswick is that you can approach the train at its middle and move north and south, making it much easier and quicker to locate one's carriage.

We will have to look at GSR's proposal in terms of the number of carriages that it would want to come into Adelaide Railway Station. Mr Morgan is to provide that information to me because that would certainly influence the length of the platform, which may have to be extended.

I am keen for this issue to be advanced quickly in terms of the investigations, but at this moment we are waiting for GSR to provide us with the configuration of the trains and the number of trains that it would be looking at bringing into Adelaide Railway Station. At that point we, with the Adelaide City Council, will certainly look at this positively.

GLENELG SAILING CLUB

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Leader of the Government in the Council a question about the Glenelg Sailing Club.

Leave granted.

The Hon. P. HOLLOWAY: The Opposition has obtained a copy of the agreement entered into by the Government and the Glenelg Sailing Club for the relocation of that club to West Beach. Under the agreement, the Government has committed to build and maintain a protected harbor 3.9 metres deep with crane launching facilities and floating pontoons for keel boats weighing up to 2 tonnes, in addition to facilities for dinghies and catamarans. The Government has also agreed to provide fenced boat storage and hard stand areas, grass rigging areas, sealed car parking and $1 million for the club house. The Government has also agreed to pay a debt owed by the Glenelg Sailing Club to the Holdfast Bay Council, compensation for disruption of $3 000 a month from April to September, plus office facilities and compensation if the facilities are not completed by 1 October 1998. My question is: why has the Government agreed to build the Glenelg and Holdfast Sailing Club new facilities at West Beach which exceed both the scope and size of the club's existing operations at Glenelg?

The Hon. R.I. LUCAS: I never cease to be amazed at the Labor Party. The Hon. Paul Holloway took a fearful pounding yesterday afternoon because of his handling—

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: You were lucky, Tell; if you did, you missed out. The honourable member took a fearful pounding because of his woeful and appalling handling of the Holdfast Quays debate yesterday afternoon. He freely admitted to members that he had been poorly briefed. He is on the *Hansard* record as saying that he had been poorly briefed and as conceding that he was not even aware of the Government clawback of revenues. Yet here he is, the Deputy Leader of the Labor Party in this Chamber—and heaven forbid, in certain circumstances, one of maybe four people who might be governing and who might be providing the leadership for the Labor Party and a potential Labor Government in the future—

The Hon. L.H. Davis: An unlikely prospect!

The Hon. R.I. LUCAS: An unlikely prospect—and, heaven forbid, Treasurer of this State—standing up in this place yesterday and not only saying that he was poorly briefed but also conceding that he did not understand and was not aware that there would be some Government clawback of revenues towards the $10.6 million taxpayer funded commitment to infrastructure as part of this development.

He came back into the Chamber after the dinner break last evening and had to concede that detailed information had been provided to him and to the Opposition. Indeed, he undertook to table that information last evening. It was an appalling example of incompetence from a supposedly senior member of a Labor Opposition in charge of one of the most critical Bills going through this Parliament: a Bill that will provide, in the construction stage, up to 2 300 direct and indirect jobs for working class South Australians. This Government is committed to trying to tackle the jobs problem for South Australians. We have a long-term commitment of 300 direct and indirect jobs as a result of this multimillion dollar investment in South Australia and, as we said yesterday—

The Hon. Carolyn Pickles: Nobody believes that.

The Hon. R.I. LUCAS: The Hon. Carolyn Pickles says that nobody believes it. Let the Hon. Carolyn Pickles (on behalf of the Hon. Mike Rann) get out in public and call the developers and investors in South Australia liars, saying that no-one believes the claims about development, that no-one believes the claims about jobs both direct and indirect here in South Australia. There is an example from the Hon. Carolyn Pickles of the knocking and the negativism that we get from the Labor Party led by Mike Rann on each and every occasion there is a development proposal here in South Australia. This afternoon, when the developers again place on the public record their attitude to the damage the Labor Party's position on this Bill may well cause to the development in Glenelg, the Hon. Carolyn Pickles and the Hon. Mike Rann should look out: we are at crunch time in relation to this development.

As I said last night and yesterday afternoon, the development and investing community in Australia are looking at what is happening here in South Australia with this development. They hear this pious waffle from the Hon. Mike Rann and the Hon. Carolyn Pickles about wanting to embrace the Premier; about wanting to be bipartisan; about wanting to work together for development and jobs. 'Just give me a call any time, John,' says Mike. That is what they said during the election campaign. In the first test of their willingness to support a major development in South Australia they seek to rip the heart out of it through this amendment. As we indicated yesterday afternoon and last evening—and obviously the Hon. Mr Holloway is a very slow learner—the reality is that the Glenelg Sailing Club will not move from its current site unless it is happy with the alternative arrangements.

We challenged the Hon. Mr Holloway yesterday: is he suggesting or is the Hon. Mr Rann suggesting that, if the Glenelg Sailing Club does not move willingly as a result of signing a deal along the lines that has been suggested, the Hon. Mr Holloway and Mr Rann will be compulsorily acquiring their land and turfing out Glenelg Sailing Club members, saying to them 'You can go and fend for yourselves'? And we did not get an answer.

The Hon. P. Holloway: No price is too high.

The Hon. R.I. LUCAS: The Hon. Mr Holloway is saying the price is too high in relation to this investment.

Members interjecting:

The Hon. R.I. LUCAS: Let the Hon. Mr Holloway get up and say what it is that he and the Hon. Mike Rann are suggesting. What are you saying to the Glenelg Sailing Club? Are you saying to them—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I am saying to you: what are you saying if you are not going to support this agreement with the Glenelg Sailing Club? Will you compulsorily acquire their land? Will you turf them out so that the development can go ahead? That is your only alternative, because if they do not move willingly and happily to new and improved facilities somewhere else—and I outlined all the benefits of that—my advice is that they will not move. What is the Hon. Mr Holloway going to do? As a member of the Opposition and as a member of the leadership group, the honourable member cannot sit there and say, 'We do not support this particular agreement; it is too pricey; it is too generous,' and at the same time, when challenged, 'What will you do about the Glenelg Sailing Club?' refuse to say whether they would compulsorily acquire their land and compulsorily move the club—because that is the only other alternative. The Hon. Mr Holloway sits there fat, dumb and happy and does not indicate one way or another what he will do in relation to the Glenelg Sailing Club. The answer to the question is the answer I have just given. If you want to get them to move, they have to do so willingly. Clearly, they will not move. The suggestion made by the Hon. Mr Holloway last night was, 'Well, they could move and they can go down there and launch off the beach—

The Hon. P. Holloway: Like they do now.

The Hon. R.I. LUCAS: They do that, but they also have the capacity to launch out of the protected harbour. Why would they move willingly to a lower quality facility to see this development go ahead if in the process they lose some facilities which they currently have? Mr President, that is the tragedy of the South Australian Labor Party. It is placing at risk hundreds of long-term jobs and thousands of short-term construction-related jobs here in South Australia.

In conclusion, I am delighted to say that a Liberal Government is trying to provide these jobs for working-class South Australians and it is Mike Rann, Paul Holloway and Carolyn Pickles who are the ones trying to stop jobs, both long and short-term, here in South Australia.

TRANSPORT, PUBLIC

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to make a ministerial statement about public transport patronage increase.

Leave granted.

The Hon. DIANA LAIDLAW: I highlight the Government's achievement in partnership with the Passenger Transport Board, TransAdelaide, Serco and Hills Transit in turning around a long-term freefall in South Australia's public transport patronage. Figures recently released by the Australian Bureau of Statistics note a 15-year trend of declining public transport use to August 1996. On census day in 1981, 13 per cent of South Australians identified public transport as their most commonly-used form of transport to get to work. By August 1996 this figure had fallen to 7.6 per cent.

South Australian figures reflect a nationwide and worldwide trend. They highlight changes in the way people the world over have chosen to travel to work since the end of World War II as private motor vehicles have become more

affordable, and, in Adelaide's case, car parking also has become more affordable. What the ABS figures do not show is the slowing of this State's patronage decline and the increases that are now taking place as this Government's public transport reforms take effect. Patronage this year is forecast to be at a steady 44.6 million.

Today, I have tabled the annual reports for the Passenger Transport Board, TransAdelaide and Hills Transit for the year 1996-97. Our other metropolitan operator, Serco, is not required to table a report to Parliament. The report by the Passenger Transport Board provides an overview of public transport patronage figures. It shows that our reforms in metropolitan Adelaide and regional South Australia are not only helping to retain the customers that we have but are attracting people back to public transport from their motor car.

Since January 1997, when all metropolitan bus, train and tram services in metropolitan Adelaide commenced operating under contracts with the Passenger Transport Board, there has been an historic increase in patronage. I acknowledge that our success may seem small to date, but in the context of the ABS freefall figures the result is terrific and a credit to all who work in the industry.

To reinforce this success I note that the *Business Review Weekly* of 27 October 1997 has named TransAdelaide as one of the top 20 transport companies in Australia and, in fact, the highest ranking bus company in Australia and New Zealand. I also highlight that between January and October this year the number of journeys on metropolitan public transport increased by .8 per cent compared to the same months in the previous year.

Meanwhile, the Passenger Transport Board has finalised its contracts with country bus operators. The contracts have seen an increase in service frequency in some areas and the introduction of much needed new services in others, including Aldinga and the Willunga Basin. The development of these services has helped increase the overall patronage on South Australia's country bus services by .6 per cent in 1996-97 compared to the previous financial year.

I refer to the community passenger networks that have been developed over the past year essentially in our regional areas with the assistance of the Passenger Transport Board and the Department of Human Services (HACC) program. These services supply the Willunga Basin, Riverland, mid north, Eyre Peninsula and the South-East with demand responsive, coordinated, flexible transport for the frail, aged, young and those people without access to a car.

There are additional services to those nominated, but they have been running for a longer period than those which were introduced last financial year. South Australia's community passenger networks experienced a 40 per cent increase in patronage in the September quarter this year compared to the same quarter in 1996. The historic patronage improvements of the kind I have outlined can only be explained by the customer focused improvements that are taking place on public transport services across South Australia. Over the past four years there has been a major re-think about the way public transport is delivered. We now put the customer first. We listen closely to what people say they need and we are progressively meeting these needs in innovative and cost-effective ways.

I want to detail briefly some of these improvements. There is Serco's direct Bullet bus services from the northern suburbs to the city; TransAdelaide's Nightmoves bus services (with sponsorship in the Motor Accident Commission) which include in the price of a ticket a taxi ride home from outer metropolitan stops; TransAdelaide's set fare services such as the Crows Express; and the free City Loop bus service linking the city's retail, cultural and educational centres. There are mobile phones on many night time bus services for customers to call relatives, friends or a taxi to meet them at their buses; hail and ride on most services enabling customers to hail buses and alight anywhere along a route to improve customer safety and convenience; use of Passenger Service Assistants and Transit Police on metropolitan rail services in particular which are improving passenger safety and providing a much more user friendly system.

Further improvements include the Lonsdale depot's new Southern Circuit bus service providing improved east-west access across the outer south area; more frequent evening and weekend bus services in the outer south and an extension of the services to the Seaford area; improved inter-suburban links between Stirling, Blackwood, Flinders University and the Marion Shopping Centre and improved services from the city to Flinders University; and dramatically increased O-Bahn bus services including a doubling of week day interpeak services between Paradise and Modbury. Also there are new night time and Sunday bus services with dedicated drivers on various routes in the outer north; a trial of additional Sunday services on the Gawler, Noarlunga and Outer Harbor rail lines; a rail customer panel to give the public a bigger say on rail issues; and the Gawler link small passenger vehicle service to transport people between their homes and the Gawler and Gawler Central railway stations is proving popular.

There are public transport infrastructure improvements including a reduction in pollutants through the expansion of TransAdelaide's natural gas powered bus fleet. This is now one of the largest bus fleets in the world. By the middle of next year we will have 53 extra buses operating, bringing the size of the total bus fleet to 120. Other improvements include a major redevelopment of interchanges at the Noarlunga Centre, Salisbury, Tea Tree Gully-Modbury; extensive customer service training for public transport and information staff; new tram shelters, maps and timetables at tram stops; and large award winning public transport information units are being introduced. There is the bright yellow, fully accessible CityFree buses and their new bus stop stands; and the Passenger Transport InfoCentre has been redesigned and will be open on Sundays until Christmas on a trial basis.

There is also production of a new metropolitan guide, the first comprehensive and free guide to the Adelaide public transport system, with specific guides to tourist attractions. There is the appointment of the full-time coordinator of Adelaide's unique 'Adopt a station' initiative. I should also point out that in the new year the Government intends to introduce measures to give priority to buses on our roads when pulling out of the kerb, and of course there are the cost benefit studies to be completed in relation to tram, train and O-Bahn infrastructure investments. All these initiatives are helping to deliver a user friendly, popular public transport system and helping to arrest the long-term trend of falling public transport use. I am confident that, by the time of the next ABS census, in 2001, South Australia's sustained patronage improvements will more clearly set it aside from the national trend of falling public transport use.

GAMING MACHINES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question about gaming machine addiction counselling services.

Leave granted.

The Hon. T.G. ROBERTS: There is an article on the front page of today's *Advertiser* which is very confusing to me. I bring myself forward to this Chamber to ask a question that might satisfy those people who are as confused as I am about the comments in the paper. The article, by senior political editor Greg Kelton, states:

> The Premier, Mr Olsen, has confessed the introduction of hotel and club poker machines was a mistake—and 'It's time we admitted it.'

Mr Olsen goes on to say:

> 'It has shocked me. . . And the devastation which poker machines have caused in this State has reached a level where we have to say that enough is enough.'

Mr Kelton went on to say:

> Mr Olsen ran out of time. . . Mr Olsen's outburst followed an attack earlier by his predecessor, Mr Dean Brown, the Human Services Minister, who said poker machines should be outlawed because of the devastating impact on problem gamblers.

The Hon. A.J. Redford: You're not going to congratulate us on unity?

The Hon. T.G. ROBERTS: No, but I'm getting to that. The article also stated:

> 'I've always been violently opposed to poker machines,' Mr Brown said.

He goes on to say why he spent his youth in New South Wales, and he was devastated by some of the sites he had seen—

An honourable member interjecting:

The Hon. T.G. ROBERTS: That's right.

The Hon. A.J. Redford: You were obviously touched by it.

The Hon. T.G. ROBERTS: Yes, I certainly was. It is good to see, in this day and age, two senior members of the Liberal Party who are showing some sort of leadership in relation to a question—whether it is the right question, I really do not know. The article continues:

> Despite his views on poker machines, Mr Brown said the Government did not need to spend any of its $133 million in annual tax revenue from pokies on helping gaming addicts. Commenting on a plea from charities for more funds, he said the $1.5 million provided by hotels and clubs for counselling and other treatment was adequate.

There are then comments from the Salvation Army, the Adelaide Central Mission and our resident spokesperson on pokies, the Hon. Nick Xenophon. There is some confusion. If there is a major problem, if the Premier is shocked, and the world as we know it will end because of the introduction of poker machines, I cannot understand why the Hon. Dean Brown would make such a comment as to say enough money was available for counselling. Does the Treasurer believe that the moneys available to charities and counselling agencies are adequate for problem gamblers? If the answer is 'Yes,' does the Treasurer believe that both the Premier and the Hon. Dean Brown have overreacted?

The Hon. R.I. LUCAS: I must say at the outset that I am disappointed that the honourable member and some other members were making fun of the new version of the *Advertiser*. I am a great supporter of the new *Advertiser*.

Members interjecting:

The Hon. R.I. LUCAS: That might actually get in the comment section. I haven't been there for a while.

Members interjecting:

The Hon. R.I. LUCAS: No, I don't know about with a photograph. The article that was referred to by the honourable member in this morning's edition of the *Advertiser* indicated the strongly held views of both the Premier and the Minister for Human Services. That would be no surprise to those members of Parliament who have discussed the issue with both Ministers over the past four or five years, because both men have had a strong personal view about the issue for quite some time. It is not something that has come by them in recent months. I cannot remember exactly whether both members were in the Parliament when the Bill was finally passed in 1992. From recollection, I suspect they might have arrived just afterwards.

An honourable member interjecting:

The Hon. R.I. LUCAS: Yes, I think they might have both arrived just after the debate, although I couldn't swear to that. Again, I am sure that, if they had been here in 1992, they would have opposed the legislation. As with all members in the Parliament, both then and now, the issue of gaming machines is very much an issue for individual conscience. Within the Liberal Party we have members such as the Hon. John Olsen and the Hon. Dean Brown at one end of the continuum who are strong opponents, whilst there are members such as the Hon. Diana Laidlaw and me who are at the other end of the continuum who have been supporters—and I remain a supporter—of gaming machines in South Australia.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Well, substantially it was. To be fair, in 1992 all Labor members in the Legislative Council voted collectively, using their conscience. All Liberals, with the exception of the Hon. Diana Laidlaw and me, voted the other way. Whilst it did rely on individual conscience, the way it divided in the Legislative Council—and I am not sure about the House of Assembly—was such that it was substantially along Labor and Liberal members lines with a small amount of cross-over.

That is the background of the comments made this morning. As I said, for those of us who have known both gentlemen for some time, it is no surprise as they have made those views well known for some time. In relation to what is an adequate level of funding for counselling services, obviously the Minister responsible in this area, the man who would have the most up-to-date advice, would be the Minister for Human Services. He has taken over a portfolio which includes the old Family and Community Services portfolio. Therefore, he is directly responsible for making those sorts of judgments. I place great weight on the Minister's judgments in these areas.

It also is a matter where there can be some differences of opinion. I am sure that, for everyone like the Minister who believes it is adequate, a number of members in the community, particularly amongst some of the non-government agencies, would not share that view and who would believe there should be increased funding. It is a bit like asking what is the appropriate level of funding for education or health. The Government and the Minister may well believe that it is appropriate, but a range of other interest groups may believe it is not and that we should be expending more money in those areas.

The Hon. T.G. Roberts: He is shocked; it's new information to him.

The Hon. R.I. LUCAS: I do not think the Premier was talking about the level of counselling services. The Hon. Mr Roberts should quote him accurately, and I am sure that he would not want to be inaccurate, because the Premier was talking about his judgment on the impact of gaming machines in the general community. He was not talking about being shocked about the Government's commitment to counselling services in South Australia.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: I am sure that, like me, he takes advice from his Minister and, according to the quote to which the honourable member referred, which I do not have with me, he believed it was appropriate or adequate. As always, Cabinet will take advice from the Ministers responsible. We will monitor and review the situation and if at any stage the judgment is different from that which the Minister for Human Services has made, the Government will need to respond if it agrees with that new assessment.

COUNTRY FIRE SERVICE

The Hon. R.D. LAWSON: I seek leave to make a brief explanation before asking the Minister for Police, Correctional Services and Emergency Services a question about the Country Fire Service.

Leave granted.

The Hon. R.D. LAWSON: In the December issue of the *Volunteer*, the publication of the South Australian Volunteer Fire Brigades Association, there appears under the headline 'MFS abuse must stop' details of an apparent dispute between the CFS and the MFS. The publication says that the Metropolitan Fire Service has taken great liberties with its control of the central dispatch system and 'unfair advantage of CFS brigades which had relinquished territory voluntarily', according to the President of the VFBA (Mr Cam Stafford). Mr Stafford is quoted as saying:

> The consensus is that regular assaults on the CFS by the UFU must cease. . . the view from around the State is that the CFS can take on anything, providing the funding imbalance is corrected, and from now on the CFS will be the hunter and not the hunted.

Mr Stafford goes on to say:

> The central turnout system had to be independent of MFS. The abuse of this system by the MFS to gain ground is intolerable. It must be removed from their control before too many volunteers become disillusioned. CFS volunteers as a whole will take political action if the funding issue is not addressed and if any brigade is steamrolled, as in the past.

My question to the Minister arising out of that item is: can he assure the Council that this apparent demarcation dispute between the Metropolitan Fire Service and country fire brigades will not compromise community safety in this area?

My second question arises out of the newsletter which accompanied that publication, once again from Mr Stafford. It mentions a meeting he had with the Minister and refers positively to the outcome of that meeting. However, the newsletter continues on the subject of the 000 emergency number. It says that the dialling of that number from a mobile phone can result in the message being taken in other States and on at least one occasion this has resulted in the dispatch of an appliance to an incident thousands of kilometres away. My question to the Minister arising out of that statement is: what steps, if any, are being taken to ensure that incidents of this kind, which could have very unfortunate results, are not repeated?

Finally, arising out of the Minister's meeting with the Volunteer Fire Brigades Association and the CFS, I ask: has any complaint been made to the Minister about the funding issue which is referred to in a couple of the extracts which I read from the 'MFS abuse must stop' item?

The Hon. K.T. GRIFFIN: When the representatives of the Volunteer Fire Brigades Association came to see me, they raised a number of issues. They represent something like 18 000 Country Fire Service volunteers across South Australia, and I have made the point on other occasions that, if the State had to pay for their services, we would probably be broke, because we depend so very heavily on the involvement of volunteers not only in the Country Fire Service but also in other emergency services. I have always recognised the significant contribution which volunteers make to all our emergency services and particularly to the Country Fire Service.

When the Volunteer Fire Brigades Association came to so me, it raised a number of issues, and one was the issue of funding for the CFS, making a comparison with the Country Fire Authority in Victoria. By comparison with Victoria, we are very much underfunded. I am not sure that the comparison is entirely logical or appropriate for South Australia, but I undertook to consider the funding issues which were not only raised by that association but which had also been raised in other contexts.

The funding arrangements for the Country Fire Service are complicated, with the funding coming partly from local government, partly from the State Government and partly from insurance levies which are set by the insurance companies—ultimately by the Insurance Council—and divided between various companies. In those circumstances, we have to look at how we can address the broader issue of funding of the Country Fire Service.

There is one other area of funding to which I did not refer and that is from raffles, lotteries, fetes and a variety of other voluntary activities organised in local towns or communities, sometimes to buy what would usually be regarded as essential equipment or to pay for essential repairs to equipment. I have indicated very strong support for the volunteer organisation and I indicated that we—the Government and I—intend to maintain the emphasis upon the volunteer service. The issue of funding cannot be resolved easily and it has been around for many years. No Labor or Liberal Administration has been able to properly fix the difficulties that arise.

In terms of the article entitled 'MFS abuse must stop', I am aware that there are tensions between the Metropolitan Fire Service and the Country Fire Service, and more particularly between the United Firefighters Union on the one hand, which represents most if not all of the firefighters in the Metropolitan Fire Service, and the Country Fire Service and Country Fire Service volunteers on the other hand. There are issues of demarcation of physical boundaries, and we are presently considering that issue.

There are also issues about the control of the call dispatch centre and some concerns that the Metropolitan Fire Service controls that centre and appears to be preferring Metropolitan Fire Service units to Country Fire Service units. They are all issues of tension, and I intend to address them all on behalf of the Government in the coming months. They are not issues that can be easily overcome.

In relation to the 000 emergency number and mobile telephones, I have seen reference to this matter. I am not sure what the answer to it is, except to advise that those who make calls from mobile services should identify the State from which they are calling.

On the other hand, I think it is important to recognise that we are doing a lot of work on a computer-aided dispatch system which, hopefully, will overcome some of those sorts of problems. We are also, through a national emergency call-taking working group, and our participation in that, examining the issue of the 000 number with a view to moving to the international emergency number of 112. That is something which is being developed because of current difficulties with 000 dialling, and particularly repeat numbering, which can create a number of calls to the call centres around Australia and which are not, in fact, true emergency calls.

They are all issues that are not easy to resolve, but I can assure the honourable member that none of them is likely to compromise public safety. They are all issues about which we are conscious and are working to endeavour to resolve.

TOBACCO PRODUCTS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, a question about the sale of tobacco products to minors.

Leave granted.

The Hon. SANDRA KANCK: In March this year Parliament debated the Tobacco Products Control Bill, and at that time I filed amendments dealing with penalties for the sale of tobacco products to minors but I was unable to convince either the Government or the Opposition to support me. During the second reading stage I sought details from the Government about the enforcement rate of the current legislative provisions on the sale of tobacco to minors. I was horrified to discover that, in the previous eight years in South Australia, only 55 warnings had been given to retailers and just one prosecution for selling tobacco products to minors.

At that time I referred members to a 1993 survey which showed that in South Australia 22 975 children aged between 12 and 17 had begun smoking. So clearly the law was not being enforced. At that time I gained some private undertakings from the Minister for Health about extra policing—and those private undertakings, of course, do not appear in the *Hansard* record. However, I had hoped that, by now, nine months later, things might have changed but, as a result of a presentation I attended earlier this week, it appears they have not.

On Monday I attended a presentation in Rundle Mall of the work carried out by years 6 and 7 students of the Kilburn Primary School and year 8 students of Enfield High School as part of their health education classes. The local MP, Ralph Clarke, was also in attendance. I was presented with a scroll which displayed a summary of the students' research, and the results are both impressive and shocking. The results revealed—

Members interjecting:

The PRESIDENT: Order!

The Hon. SANDRA KANCK: —that 27 per cent of year 8 students who were surveyed smoke and that 60 per cent of those students purchase their own cigarettes; 28 per cent of the year 10 students surveyed smoked and 100 per cent of those students bought their own cigarettes.

The Hon. A.J. Redford interjecting:

The Hon. SANDRA KANCK: I do not know the size of the sample. The students' research was funded by the Quit campaign. The students found that 70 per cent of the year 11 students surveyed smoked and that 80 per cent of that group bought their own cigarettes. The research revealed that the students surveyed obtained their cigarettes from service stations, cigarette machines, shopping centres, local delis, friends and parents. A further very interesting statistic was that only 20 per cent of local shop owners surveyed were aware of the penalties that could be imposed for providing tobacco products to minors. I indicated to the students that I was shocked by those figures and that I would raise them in Parliament, as I am doing now. My questions to the Minister are:

1. Since the passage of the Tobacco Products Control Act, how many more retailers have been warned or prosecuted for the sale of tobacco products to minors?

2. Are the results from the survey undertaken by health education students at Kilburn Primary School and Enfield High School, especially in relation to retailer ignorance of fines, indicative of the situation in the rest of the State?

3. Does the Government propose to undertake any extra measures to ensure wider knowledge of the applicable fines?

4. Will the Government step up its policing of the sale of tobacco products to minors?

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

FINES AND EXPIATION FEES

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Justice a question about the imposition of fines.

Leave granted.

The Hon. J.S.L. DAWKINS: I was interested in media reports that, at the recent ALP State Convention, a resolution was passed to establish as Labor policy that when imposing fines the Government should means test offenders. The report suggests that this applies also to expiation fees. How practicable is this proposal?

The Hon. K.T. GRIFFIN: There is some difference of view between the organisational and parliamentary wings of the Party. It will be very interesting to see how the parliamentary wing, which is bound by the convention decisions, will get out of ultimately enacting this sort of legislation but, if it does seek to enact it, it will be a shameful mess. I cannot understand how the ideologies of those who moved this actually enabled them, logically and persuasively, to convince the majority of the ALP State Convention that this was a practical way of dealing with fines and expiation fees.

My understanding is that the resolution, which was approved, sought to introduce a sliding scale of speeding fines for motorists, depending on the value of their car or the drivers' incomes, and that will be interesting. Of course, if the resolution was also talking about fines, then what the mover of the motion and the convention did not have regard to was the fact that section 33 of the Criminal Law (Sentencing) Act already contains an issue of principle which seeks to ensure that a defendant's ability to satisfy any order or direction for compensation made or fine is taken into consideration.

In relation to fines, a principle of the law is generally applied which is that the means of the defendants should be considered in determining what the fines should be within the parameters of the maximum fine and zero set by the statute.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: They cannot apply that to expiation fees, and let me give the Leader a couple of illustrations, remembering that most of the expiation fees

result from traffic misbehaviour or even parking offences, and we deal with them. They are not technically fines: they are expiation fees. It is a set fee which you can pay if you believe you are guilty, or if you do not want to go to court; it is a flat fee, and that is it. But, if you apply a kind of means test to the issuance of a parking ticket or a speeding expiation notice, then the way in which the gradation is applied, in terms of the ability and means of the person to whom that parking ticket is issued, becomes a logistical nightmare and, I suppose, defies imagination.

Members can take an example where there is a speed camera offence; how do you determine the means of the defendant? The fact that an expensive car is involved need not tell the hypothetical photograph assessor anything at all about the means of the driver. It may be leased and the owner may have no means by which to pay the fine or no significance means, whereas it may be owned by someone who has paid cash for it and is really quite affluent. You can visualise the assessor of these photographs going through it and saying, 'This is an old car, this person deserves this fine or expiation fee. This is an expensive car, this fee should be imposed.' Members can imagine the bureaucratic nightmare that that will be, a real bureaucratic nightmare. Members can imagine the appeals either to the court, or more particularly to the Police Commissioner or to Ministers of Police saying, 'My constituent was hard done by because the photograph assessor actually made a mistake about judging the means of the offender.'

Or you could have, for example, a laser gun. When the police officer picks someone up, stops them by the side of the road and begins to quiz the motorist about his or her means of payment. Again, members can imagine the nonsense and the bureaucracy which would be involved. Even in relation to fines, around the world there have been attempts to put in place a day fine or a unit fine, in Finland in 1921, in Sweden in 1931, in Denmark in 1939, in West Germany in 1975, but practical problems associated with that deterred the Netherlands, France and Britain from ever considering that prospect. The Tasmanian Law Reform Commission in 1985 recommended that that should not be a consideration, that is, what a person's wealth should or should not be considered in determining fines.

The Australian Law Reform Commission in 1987 rejected it. The New South Wales Law Reform Commission in 1996 rejected it. All of them have rejected it on the basis in relation to fines that it is totally impractical, unworkable and, in many instances, unjust and unfair.

MURRAY RIVER FISHERY

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Environment and Heritage, a question about the long-term sustainability of the River Murray fishery.

Leave granted.

The Hon. R.R. ROBERTS: The question is more pertinent today with the announcements of a changed arrangement and a proposition to export native fish from the River Murray fishery. Recently, the Minister for Environment and Heritage responded to a query in the Riverland newspaper, *The River News*, on 19 November 1997. Her letter to the editor was in response to a query from a Riverland constituent on the issue of Liberal election promises in relation to the restoration and protection of the Murray River. In the letter of response the Minister stated:

> . . . it must be clearly stated that the Government has not accepted an expansionist commercial fishery policy.

And later, when referring to the new management plan of the River Murray fishery she said:

> foremost in the plan is the need to ensure the sustainability of fish stocks.

This is particularly relevant because today it was announced that we will probably be exporting 5 tonne of Murray Cod when the records show clearly that only about a tonne per year has been caught. The fishers believe that there are many aspects of the new management plan that should be commended. For example, the reduction of the fishing licences to 30. There are also a number of other concerns that they have raised and one particular concern is the lack of independent research into the environmental consequences of continued long-term commercial fishing. Of course, I have already highlighted other concerns with this new plan in this Chamber last week when I directed a question to the Minister for Primary Industries, Natural Resources and Regional Development. In the light of the Minister's comments in *The River News* my questions are:

1. Does the new management plan propose the maintenance of the same river length for commercial fishing reaches (even though a number of licences have been surrendered) and also propose the taking of unlimited native fish stocks?

2. If so, is the Minister aware that the New South Wales and Victorian authorities do not in fact allow the issuing of new licences to take native fish? Why, then, do we in South Australia allow the unlimited taking of native fish stocks?

3. I am sure that members on both sides would agree that the long-term viability of the River Murray fishery is of concern to all interested parties, that is, the commercial fishers, the recreational fishers, tourism and local government. Will the Minister and this Government commit themselves to an independent biological survey of the River Murray fishery so as to ascertain the number of fish stocks and the environmental effects of long-term commercial fishing in the Murray River?

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

MATTERS OF INTEREST

PORT WAKEFIELD

The Hon. J.S.L. DAWKINS: In my maiden speech I said that it is important that we make use of the best that country communities have to offer and to enhance and encourage them. It is therefore relevant to mention a recent example of journalism which handed out some rough treatment to Port Wakefield as well as the efforts of the residents of that locality in responding. On 19 November Messenger Newspapers included the usual weekly contribution from columnist Des Ryan. On this occasion Mr Ryan criticised the small seaside town in a piece entitled 'Why do all roads lead to Port Wakefield?'

Among a number of negative comments, Mr Ryan referred to Port Wakefield as a 'strategically located children's wee stop' and that it is 'permanently snarled with traffic'. He also spoke of his curiosity as to why so many travellers stop there, particularly mentioning that 'the fast food is hardly likely to be at the culinary cutting edge to die for'. Having ventured beyond the 'facade of service stations' he discovered overgrown frontyards, crumbling stone walls and two men with large bottoms who whispered to each other and scowled at him. Indeed, he commented that he had felt more welcome on the dark and lethal streets of New York than in Port Wakefield.

Mr Ryan's comments have prompted a number of letters to the editor by readers of the various Messenger papers across Adelaide wishing to defend the town. In addition, Port Wakefield postmaster Barrie Thompson wrote a letter to the Balaklava-based *Plains Producer* last week and received frontpage coverage. In an attempt to put Mr Ryan right, Mr Thompson invited him to spend a week in Port Wakefield and included a suggested itinerary, excerpts of which are as follows:

Sunday:

Arrive at the delightful Port Wakefield Caravan Park to be met by caretakers Greg and Teresa Mill.

Monday:

Meet the local postie, Sue Stubing, and follow her on her spare postie scooter (helmet supplied). On his travels he will find a 'perfectly good town populated with model citizens'.

The postie round will give him the chance to see some blocks with grass on them, modern houses (surprise, surprise) and old houses with character.

Whether he will see two men with large bottoms whispering between themselves is debatable.

At lunch time it's off to the main road.

After negotiating the traffic chaos, we can take our pick of the 'culinary cutting edge to die for' and eat our choice under the shades at the swimming pool.

I hope that Des can hit straight, because it's off for a game of golf on the town course covered with 2 500 trees—propagated, planted and lovingly cared for by Gordon Fraser.

For dinner, we can dine at the 'Sun', the 'Wakey' or the 'Schnitzel'.

Tuesday:

A visit to the Army Proof Range, followed by a trip to Clare to pick up some of the excellent wine produced in the area.

Back to 'Wakey for a steaky' and then on to the RSL club for a night of snooker.

Wednesday:

Time for fishing with some of our local fishermen.

Join the night owl bowls competition on the new $12 000 green.

Des will have to dig deep into his pocket for all the $2 chook raffles which are helping to pay for the green.

Thursday:

After gathering all the plastic money together it's off to Kadina, Wallaroo and Moonta.

Dinner will be served at about 7.30 p.m. at a friendly neighbour's home. BYO beer and wine. Friday will include croquet on the local croquet court and a visit to the senior citizens. Friday night is put aside for the 'Des Roast' at the town hall with the locals.

I do not know whether Mr Ryan intends accepting the invitation. However, if he does I am sure that the residents of Port Wakefield will give him the best of country hospitality as they display the above-mentioned attributes of their town and district.

POLITICIANS, PUBLIC PERCEPTION

The Hon. T. CROTHERS: Having been involved in some of the more serious debates in this Chamber over the past year I would simply like to reflect, if I may, on the past year itself and on other matters that arise out of that in this Forty-Ninth Parliament as now constituted. We went to the vote to determine the constitution of this Parliament on 10 October this year, and the Government was returned with a heavily reduced majority. In fact, it does not really have a majority in either of the two Houses now. Nonetheless, by dint of support from other independent members it retained government in this State. I suppose that people can read the swing against the Government in many ways, but it really is a warning from the South Australian electorate, just as we saw in the 1930s, when the heavy hand of the Depression lay heavily across the backs of the people of South Australia.

Every time there was an election then, such were the violent surge swings in respect of change that Governments changed at each election. In fact, in 1938 the 18 Independents who were elected to this Parliament, as you would well know, Mr President, formed the biggest single unit then sitting in the Parliament. I understand that the first task they set themselves on the opening day of Parliament was to have a Caucus in the morning to see if they could form a Government! So much for that lot of Independents. But, true to their independence, they did not succeed in doing that.

Truly, when I reflect on MPs and members of Parliament, we are held in very low esteem by the public in general. Of course, when one reflects on the various different rorts that have occurred in all philosophical areas during the past and previous years, there is little or no wonder that the public, fed as they are by a biased media, has such an ill view of the worth of their politicians.

Given the time of the year, and given the nature of the length of our task in what is the last sitting week of this Parliament in order to try to discharge the people's business to the best extent we can, it is probably fair to say that in the great world outside people do not comprehend how from time to time the parliamentary staff and members have to work inordinately long hours in respect of the discharge of the business of members of the public. I believe that, given the time of year, we should endeavour to try to end this, the opening session of the Forty-Ninth Parliament, on a more jocular note. To that end, I opine the following for the record.

Just to show that we can at times not take ourselves too seriously and can laugh at ourselves, I was reminded of a story that came across my desk the other day of a barber. A priest walked into the barber's shop get a haircut. Having had his hair cut, he reached into his pocket to pay the barber and the barber said, 'Look, father, I can't accept that from you, given the nature of the spiritual work you perform for our community; it's on the house.' The following day, as he went to open up his barber's shop, there was a pile of religious pamphlets and a thank you note from the priest. At that stage, a police officer walked in, had his hair cut and went to pay the barber. The barber said, 'Officer, given the hard, dirty and arduous work you do for our community, I couldn't accept; it's on the house.' The following morning, half a dozen doughnuts arrived with a thank you note from the policeman.

A politician walked in, had his hair cut, reached into his pocket to pay and the barber said, 'Look, given the work you do, it's on the house.' The following morning as the barber went to open up the barber's shop, there were 12 more MPs waiting outside for a haircut!

NATIVE TITLE CLAIMS

The Hon. CAROLINE SCHAEFER: I wish to speak on a matter that I believe has the ability to divide the Australian nation as it has never been divided before, that is, the issue of native title. It is easy to cry racist without looking at the facts, but this is an extremely complicated issue and one to which there are no easy answers. I quote from an article by Kerry-Anne Walsh in the December *Bulletin*. She states:

> The possibility of fighting a domestic poll on the race issue, one wide open to exploitation and scare-mongering with the real prospect of deeply dividing Australia, shocks even the toughest of political operations. The irony is it need never have come to this. All sides agree on the need for some changes to the Native Title Act to comply with the High Court's Wik judgment; but the debate so far has been largely characterised by overblown and outright lies and distortions.

May I say that that is on all sides. At the outset I would like to say that I, like most rural South Australians, freely acknowledge the right of Aborigines to access all lands for traditional pursuits. Indeed, that right is enshrined in the South Australian Constitution and our more recent native title legislation. Perhaps we would not have the problems we now have as a nation if South Australia's example had been followed. I would be the last to deny that our Aborigines were wronged, but I would also ask: should the sins of the fathers be visited upon the sons? My fear is that at the end of this debacle the only winners will be lawyers. Many of the tragic stories I hear are of pastoralists and Aborigines who have lived happily side by side for generations and have worked out their own mutual arrangements—until lawyers stepped in.

One of the things that worries me is what I call the ambit claims that abound. There are currently 600 native title claims, one of which has been settled. Surely, that alone is enough to say that reform to current legislation is vital. We speak of uncertainty, but can anyone imagine the feelings of the family in Western Australia who have 18 separate and competing claims over their lease? While that goes on, they cannot put up a windmill, a trough or a gate and be sure that they do not have to pay compensation.

Most of Eyre Peninsula where I live is subject to at least three separate claims by the Barngalas, the Kokathas and now the Nuo, in spite of the fact that we were taught—and anthropological maps in the museum confirm—that Eyre Peninsula was Pankala country. The Kokatha and Barngala tribes, I was taught, lived to the north and east of Eyre Peninsula: the Nuo I have never heard of.

The country where I live is perpetual lease and, like those on freehold country, I believe we are exempt from native title. But does that give me the right to have no regard for those who are under threat? I think not. As I have previously said, there are no easy answers. There are many wrongs and few rights. I just appeal to people to step back and view the situation with some compassion for both sides, and I end by quoting again from the *Bulletin* article, which cites the fairly controversial MP Ron Boswell, although in this case I agree with him. He points out:

> . . . the heat of the Wik debate has fractured longstanding outback friendships between blacks and whites. Pastoralists have been negotiating on a one-on-one basis with Aborigines for access and rights for years, but the debate has filtered down and is poisoning those previously warm and trusting relationships. Now, Boswell says, one interest is perceived to be set against the other, to the detriment of both. He says that black and white Australia are being forced 'into the white man's legal system, and both will lose.'

TELEPHONE TOWERS

The Hon. T.G. ROBERTS: I would like to raise an issue that is vexing many regional and metropolitan areas, that is, the siting of communication towers for mobile telephones and other telecommunication aids which are now starting to proliferate in the community. Although it is a State problem, generally the Commonwealth has the legislative power to site most of these towers. Even though those involved have to seek permission generally and negotiate some of the circumstances by which they install the towers, if permission is not granted it appears that they can just go ahead and ride roughshod over the needs of local communities, anyway.

At the moment, there are a number of contested sites around the metropolitan area and regional areas. A couple with which I have been involved lead me to believe that some negotiators—and I am not separating Telstra from Vodaphone or Optus, because they all seem to be tarred with the same brush—are more skilled and a little bit more sensitive than others. But it appears that when communities ask questions about the safety aspects or the prospects of unsafe exposure to these rays that are emitted from the microwaves or from the radiowaves, the answers they get are very thin. In a lot of cases they are not substantiated. It is almost a Joh Bjelke-Petersen comment: 'Don't you worry about that; we will make sure that everything is okay.' There is a feeling in the community that some of the information now coming out of the United States is that exposure to these communication towers and the waves that emanate to and from them are dangerous to health. Some of the information from the United States is now starting to indicate a higher incidence of lymphoma and, in some cases, a higher incidence of leukaemia and other unusual forms of tumours, particularly tumours to the brain.

The information coming out of the United States seems to be far in advance of the information available generally in Australia. Some newspapers, magazines and scientific papers are picking up this information and, in general, printing verbatim the information coming from the United States; but it is still not starting a debate in academic circles in Australia for either substantiation or an argument against the claims coming from overseas countries. I suspect that Australia's position is based on the thought that if overseas information is verified and it comes to us that epidemiological studies or surveys can prove conclusively that the siting of these towers does harm to people living close to them, we may do something about it; but at this stage we are sitting on our hands and adopting the position that there are no dangers associated with the siting of these towers.

I would like to see our authorities, particularly the Health Commission and our scientific bodies, work more closely together and independently of some of the Australian standards and the Australian position in terms of looking at some of the overseas information. Perhaps they can start doing their own research, development and testing to try to allay the fears of people in the community who, after all, do not have any other agenda other than health and safety—particularly of young people. When you get young housewives and home husbands during the day picketing these sites and calling for expressions of safety from our authorities, it does not do our authorities any good to remain silent on the issue or to deny it.

WATER RESOURCES

The Hon. A.J. REDFORD: In today's *Border Watch* the front page is entitled: 'Water issue rush, freedom of information, minutes revealed.' There following is an account of the proceedings of the Lower South-East Water Resources Committee meeting of 21 November 1996, which vindicates my attitude towards the approach of the bureaucrats in the Department of the Environment and Natural Resources to water resources and water management in the South-East. I have since received a copy of all the minutes obtained by the journalist. One word describes their conduct at that meeting and, indeed, their dealings with others: 'deceitful'. They were deceitful to the Minister, they were deceitful to small primary producers—in particular broad acre farmers—they were deceitful to this Parliament and they were deceitful to me.

The Hon. P. Holloway: Who are 'they'?

The Hon. A.J. REDFORD: I will come to that. Why do I say that? I say it because during 1996 the staff of DENR underwent a consultation process with the community on whether or not underground water would be the subject of proclamation. During the whole of that process they constantly assured stakeholders in the South-East that the committee and, ultimately, the Minister had not made up their minds whether or not proclamation was an appropriate management method and that they were listening to the public. A detailed analysis of those minutes reveals that they had made up their mind; indeed, they had made up their mind as early as 19 May 1994.

During the course of my contribution on the Water Resources Bill I asked some questions about the responsibility of allocation of water, particularly to members of the committee. I asked whether those persons allocated water to themselves. The answer I got from the Minister was:

> I am responsible for the allocation of water in the Ground Water Border Agreement area, etc.

The minutes reveal something different. They reveal that at the meeting of 19 May 1994 the primary responsibility for allocation of water was their responsibility; in fact, they had a duty to ensure that the allocation was fair. Indeed, I asked for full details of how water was allocated under the border agreement and was told in the answer to my question that the Minister was solely responsible and that it had nothing to do with the committee. The minutes would reveal otherwise.

In the short time I have I will detail a couple of salient points. First, as early as November 1994 a plan for the proclamation of water in the South-East was under way; indeed, that process of planning continued. There was a joint meeting on 15 December 1994 regarding the proclamation of South-East water. Following that, in February 1995 there was further discussion about the administration and resource problems relating to the proclaiming of the whole of the South-East. Following that, at a meeting which occurred on 28 September 1995, there was detailed discussion about the proclamation of water in the South-East and, indeed, the fitting of flow meters in relation to water, an issue that seemed subsequently to have fallen off the agenda.

In December 1995 it was resolved that a presentation be made to the Cabinet. No public consultation in relation to this proclamation commenced prior to 2 May 1996. There were a series of seven or eight meetings which occurred in May 1996 and which led up to the eventual proclamation. What annoys me most is that, when they ultimately came to make a decision, it appears on the basis of the minutes that the proclamation was based not on good management of water but on saving the credibility of the committee. Indeed, it is quite clear that fairness was secondary to the credibility of the committee.

There are some serious issues in relation to rates and local council which have arisen out of this and which I warned this place of. In conclusion, I believe the people deserve better. I hope that the new Minister will listen to the people and not simply take the advice of people which was based on protecting their own credibility.

ADELAIDE FESTIVAL POSTER

The Hon. CARMEL ZOLLO: Following a question asked of the Minister for the Arts and her subsequent reply last week, I believe it is important to place on the record what is a real concern to those people offended by the Adelaide Festival poster and the fact that the ALP is not anti Adelaide Festival of Arts or the State but that its members are willing to listen to their constituencies and speak up for them. My colleague, the Hon. Carolyn Pickles, the shadow Minister for the Arts, is a very strong supporter of the arts and I know would have already singularly spent a great deal of money supporting the Festival, as have many other members.

The Hon. Julian Stefani and I have for some time shared many a platform at various religious celebrations in the Italian community. I am sure that the strong views and objections to the Festival poster of those communities were made to Mr Stefani as they were to me. I know that a previous member of this Chamber raised the issue with the Minister in the last Parliament. Shortly after the election I sent a copy of the Minister's reply to the Secretary of the Holy Mary of Montevergine Committee. I also added that there appeared to be little point in raising the issue with the Minister again, given the board's subsequent commitment to limit the use of the poster.

While it was obvious that the issue was not entirely resolved to the satisfaction of the community that was offended, I was pleased to see that the issue was handled with some sensitivity by the Festival Board. I was therefore very surprised that the Minister had the issue raised again last week and at her attack on my colleague, the member for Spence, who made a passing comment on a radio program over three months ago when he was asked to give an opinion as to how people who were offended by the poster could handle the situation.

The Hon. Diana Laidlaw interjecting:

The Hon. CARMEL ZOLLO: It was a passing comment, Minister. She then went on to imply that those comments had helped boost ticket sales for the Festival. The poster offended many sections of the Catholic community and in particular the Orthodox Christian community whose faith is expressed by and includes the strong worship and revering of icons. Their faith and traditions go back many centuries, and these views I think should be respected by all of us.

I think we would all agree that artistic expression always needs to be responsible. I believe that the Minister has missed the point. The issue has little to do with what two of my colleagues in another place said, but why? I do not believe that it is wrong to listen to and then support community views when I believe they have a valid reason for their complaint.

The Minister's comments were reported publicly and once again caused distress to the members of the community when they read in the media that the uproar over the poster featuring the Virgin Mary cradling an accordion instead of

baby Jesus may have prompted the remarkable sales of tickets. I am still of the opinion that the poster should have been withdrawn. There is nothing wrong in saying a mistake was made. I do not believe for one moment that the so-called boycott or the controversy over the poster itself were responsible for any increase in ticket sales, and I hope that that occurred because of the quality of the program.

If we were to accept that the controversy over the poster has had an impact on ticket sales, does that mean that future Festivals should be encouraged to offend sections of the community? Surely not. For the record, I also happen to believe that it is not a parochial issue. I am sure that people would have been offended whether they lived in Adelaide, Melbourne, Sydney or Perth. The community that is offended believes that it is being used as a soft target, and I believe that it was inappropriate to raise the matter again.

DWELLING APPLICATION TRANSFER SCHEME

The Hon. M.J. ELLIOTT: Although the setting up of the dwelling application transfer scheme was absolutely critical to the fulfilment of key objectives in the Mount Lofty Ranges regional strategy plan, it appears that the Government has done virtually nothing to implement it even though it was proposed some five years ago. The DAT scheme was seen in the strategy plan as fundamental to shifting development from more sensitive sites to less sensitive sites (policy 7.1.10); protecting land in primary production and in watershed areas by only allowing the creation of new allotments to occur in those areas through the provision of DAT (policy 5.1.1); providing an option and/or compensation for those allotment owners who cannot meet the performance criteria and those who wish to voluntarily remove the ability to build a dwelling on their allotments (policy 7.1.10); maintaining agricultural land in existing allotment parcels in order to retain agricultural and financial flexibility for producers (policy 7.1.10); controlling the number and location of dwellings built in the region (policy 7.1.10); more equitably spreading the impact of development constraints against landowners (policy 7.4.4); controlling the development of rural living zones (new rural living zones could only be developed if they could be developed as target areas for the DAT scheme) (policy 7.5.1).

The fact that no action has been taken on dwelling application transfer schemes for the Mount Lofty Ranges and, for that matter, other parts of the State is a planning tragedy for South Australia for it means that nothing is being done about the very large number of allotments which are totally unsuitable for development, for example, because of extreme bushfire hazards, flooding hazards, water pollution risks because of their unsuitability for septic tank effluent disposal, and so on.

If the intention is not to do anything about the introduction of a dwelling application transfer scheme to the Mount Lofty Ranges then an immediate review of the country strategy plan (Mount Lofty Ranges section) is required to replace key policies in the plan which are contingent upon the introduction of a dwelling application transfer scheme with alternative policies which will achieve the same objectives. It is quite remiss of the Government that it has not acted on this matter already.

Hopefully the Government will give serious consideration to the introduction of dwelling application transfer schemes to South Australia because it would appear that their equivalent in other countries, which is transferable development rights schemes, have been working quite successfully with their introduction being planned in more and more places. For example, in the western part of Washington State in the USA, where there have been staggering losses of prime agricultural land, TDR schemes are planned for five counties—Clallam, Clark, Island, Thurston and Whatcom. Transferable development rights schemes are already operating in several states in the United States—New Jersey in Burlington County, Maryland in Montgomery County, Massachussets in King County, Michigan, New York in Washington and Suffolk County, Virginia, Kentucky and several other states.

One has to ask, 'If those schemes are working so successfully elsewhere and are being progressively introduced into more and more places, why here in South Australia has there not been a greater commitment to the scheme?' Those people who have been in this place for some time will remember that the Mount Lofty Ranges development plan was an extremely contentious issue over an extended period of time and that eventually the Environment, Resources and Development Committee became involved. Following its involvement, I believe that a scheme was developed which was at the time welcomed by people from all sides of the previous arguments.

The Minister will need to address some questions which I will bring to her attention in due course. Why has the Government failed with regard to the introduction of a DAT scheme in the Mount Lofty Ranges, as was recommended in the country planning strategy? As the country planning strategy was approved by Cabinet in June 1997, why did not the Government move at that time either to remove all reference to the DAT scheme and replace it with alternative policies which would implement the overall objectives in the Mount Lofty regional strategy plan or, alternatively, proceed with the DAT scheme?

I suppose the public will also need to know the Government's long-term intention. This is an issue of great importance. As I said, it has been debated vigorously in this place on previous occasions and the Government's response so far has been very disappointing.

NATIVE VEGETATION ACT REGULATIONS

The Hon. M.J. ELLIOTT: I move:

That the regulations under the Native Vegetation Act 1991, concerning exemptions made on 4 September 1997 and laid on the table of this Council on 2 December 1997, be disallowed.

These regulations were gazetted on 4 September 1997, after minimal consultation with conservation organisations. This is despite prior undertakings that had been given by the previous Minister David Wotton that interested groups would have plenty of time for discussion and consultation on any changes. The changes that are now before us set a disturbing precedent. The regulations for the first time allow exemptions under the Native Vegetation Act of entire species of plants. The department has also failed to justify the choice of species identified for exemption.

South Australia has one of the lowest levels of indigenous vegetation in Australia. The Native Vegetation Act aims to protect South Australia's indigenous flora and fauna which depends upon it. At a time when this Act should be strengthened to protect the State's diminishing native vegetation, we are seeing increasing examples such as this of moves to

loosen the Act by way of the regulations. Our Native Vegetation Act has been recognised as the best Act of its kind in Australia. It is recognised to have stopped broad-acre clearance in South Australia.

The objects of the Act include the protection of native vegetation; the prevention of further reduction of biological diversity and further degradation of the land and its soil; the encouragement (financial and otherwise) of landowners to protect, manage and enhance native vegetation; and the encouragement of the re-establishment of native vegetation. Clearance is limited to 'particular circumstances, including circumstances in which the clearance will facilitate the management of other native vegetation or will facilitate the efficient use of land for primary production', and research into the preservation, enhancement and management of native vegetation is to be encouraged.

The Act is failing to stop the continuing loss of native vegetation, including many individual trees (sometimes hundreds in one approval), and we had a classic case of that in the South-East in relation to land at Greenways that was purchased by the Forestry Department. Thousands of ancient red gums have fallen and are still falling for vines, yet some of the top vignerons, such as the Henschkes, have proved that this is not necessary. There have also been numerous reports of illegal clearance, and it is common knowledge that some developers cost subsequent fines into their estimates and that the Resource Protection Branch is seriously understaffed and unable adequately to address all breaches of the Native Vegetation Act. In fact, I know that quite clear breaches are reported to it, and that it ultimately fails to act upon them.

Another common complaint is that the courts seem to find it difficult to treat illegal clearance seriously. The Conservation Council of South Australia opposes any weakening of the Native Vegetation Act or regulations. It is asking that these regulations be disallowed pending real consultation with the Conservation Council of South Australia and other stakeholders about appropriate changes to strengthen the Act.

I have been told that in early 1997 the previous Minister assured the Conservation Council that he did not intend to open the Native Vegetation Act but was going to make necessary changes through the regulations. He assured the council that it would be consulted before this was done.

Conservation Council members understood that this would include an opportunity to make a submission and to discuss changes which would strengthen the Act. However, in fact, the changes were presented to them twice just prior to their gazettal, and very little opportunity was given for contribution or comment. The then Minister, David Wotton, assured them that following the election he would hold a 'round table' conference where stakeholders would work together to overcome the current impasse. They say that their recommendations are negotiable as long as the spirit of the Act—the protection of native vegetation—is honoured.

The regulations we are discussing today did not include any amendments that were previously under discussion by the Native Vegetation Council, or the native vegetation conservation section of the Department of Environment, Heritage and Aboriginal Affairs. It is interesting to note that regulations that have been promulgated were not subject to any discussion with the Native Vegetation Council or the native vegetation conservation section of the Department of Environment. It ignored changes proposed over several years by the Conservation Council of South Australia and the Nature Conservation Society of South Australia, along with the Native Vegetation Council itself. These have sought to tighten and improve the Act. This was the result of an internal review of the operation of the Act, then in force for five years. The feeling was that enough time had passed for a good understanding of its operation, advantages and shortcomings to emerge.

Simon Lewis, a senior scientific officer with the native vegetation conservation section of the department, was in charge of coordinating the review. After various discussions with section staff and the Native Vegetation Council, he presented proposed amendments to the regulations to the Native Vegetation Council in March this year. In June, Mr Lewis sent a letter to the Native Vegetation Council stating that the Minister, David Wotton, had decided not to proceed with the recommended changes to the regulations, which had been endorsed by the Native Vegetation Council.

Members should note that that council is a quite conservative body. It is certainly not stacked with greenies, or the like. While there are conservation representatives, there are also farmer representatives and other people deemed to be totally impartial. They had recommended changes, and they were endorsed by the Native Vegetation Council, but the Minister did not proceed with them. Instead, he decided to go ahead with the changes which were gazetted on 4 September.

It is important to note that the changes to the regulations which went ahead do not appear anywhere in the list of recommended changes suggested by either the Native Vegetation Council or the native vegetation conservation section of the department. The changes that went ahead, therefore, represent completely new exemptions, the origins of which, as stated earlier, are shrouded in some mystery.

It is quite alarming that changes proposed by the relevant responsible groups within the Government could so easily be ignored while at the same time these retrograde exemptions could so easily be implemented without proper consultation. One can understand people being annoyed that the changes proposed by their groups over several years have been consistently ignored. There is a growing suspicion that the real source of these gazetted changes is the Government's backbenchers' committee and that they had vetoed any other changes that were being proposed, and this set of regulations has emerged from that group.

Conservation groups have said that they would like the opportunity to speak further with the new Minister about these issues. As well as the lack of consultation, concern has been raised with me about the nature of the changes raised in the regulations. The regulations increase the amount of native vegetation that can be legally cleared without application to the Native Vegetation Council. The working details of the changes are contingent upon guidelines yet to be released by the Native Vegetation Council. Therefore, the exact extent of the damage to nature conservation is not yet clear.

At this stage, conservation groups have seen draft guidelines which give an indication of the nature of the details. The core of the changes have clear implications—a substantial loosening of the Act, with the opening of new, broad loopholes that will result in increased clearance of native vegetation.

Clearly, a major concern is that the Government had already printed the documentation, which is about to be distributed, telling farmers that there had been a change in the regulations. This would be distributed to farmers, but the guidelines as yet have not been drafted. That is clearly a ludicrous thing to do, even if the changes in the regulations, combined with new guidelines, worked properly. You simply do not distribute something that is telling people that now

there have been changes, without providing the guidelines that spell out what those changes are.

The following is a summary of the gazetted changes and the concerns that are being expressed about them. The first change relates to species exemptions. The changes exempt a number of native species from the Act; for example, it allows clearance of these species subject to guidelines issued by the Native Vegetation Council. The changes purport to facilitate good land management by enabling clearance when native species are recolonising land that has been previously cleared for primary production.

However, most possible land management problems arising from recolonisation by native species can be dealt with under an existing exemption under regulation 3(1)(q). Basically, regrowth of native species can be cleared from land that has been used for cultivation, pasture or forestry in the past five years.

If more than five years has elapsed and a property has a problem with native species recolonising, this suggests poor land management which should not be abetted by introducing generic exemptions under the Act. The choice of species to be exempted has not been justified and the basis of their selection appears peculiar, according to some experts.

There are few genuine land management problems relating to the listed species that are not covered by the existing exemption. Also, most of the species exemptions were introduced in response to very localised problems, which should best be dealt with through a regional or district management plan approved by the Native Vegetation Council. There is no need for generic exemptions. The new approach will move South Australia away from rigorous planning and scrutiny in land management.

I will now highlight some of the concerns raised about particular exempt species. The first species is *Acacia victoriae*. The main habitat of the nationally rare plant species *Maireana rohrlachii* is *Acacia victoriae* shrublands, including degraded habitats. The vulnerable butterfly Lithochroa blue, otherwise known as *Jalmenus lithochroa*, uses *Acacia victoriae* as a food plant. The conclusion of a South Australian lepidopterist was that *Acacia victoriae* needs special conservation treatment. However, under these regulations, the plant is being treated as something which can be cleared by way of exemption, but a nationally rare plant species lives within it which in turn is fed upon by a rare butterfly.

The rare butterfly Icilius blue, which is *Jalmenus icilius*, also uses *Acacia victoriae* as a food plant. *Acacia victoriae* provides important habitat for nesting bird species. In March 1996, the native vegetation conservation section of the Department of Environment and Natural Resources advised the Native Vegetation Council that *Acacia victoriae* was not considered to be an excessive problem to warrant changing the Native Vegetation Act. That advice was given by the Government's own department in relation to that particular species.

The next species in question is *Phragmites australis*. The only known population in the world of the endangered plants species *Agrostis limitania* occurs under *Phragmites australis* near Spalding. *Phragmites australis* is a key component of many of the swamps inhabited by the endangered Mount Lofty Ranges southern emu wren, of which only a few hundred remain. It provides habitat for many other flora of conservation significance: the orchid Australian ladies tresses, also known as *Spiranthes sinensis subsp. australis*, which is rare in South Australia; water horehound, also known as *Lycopus australis*, which is rare in South Australia; native *Epilobium* species; numerous sedges; and a number of other species listed by Lang and Kraehenbuhl as being of conservation significance. It provides habitat for many fauna such as the brown quail, vulnerable in South Australia, spotted crake and the spotless crake.

The next plant species is *Acacia colletioides*, the prickly foliage of which provides protection from cats and foxes. Therefore, the species provides a particularly important habitat for nesting bird species. It is very difficult for untrained people to distinguish between *Acacia colletioides* and *Acacia nyssophylla*. As I understand it, the response of the department, recognising that it was difficult to distinguish between the two species, is that the exemption might be extended to both, which is quite an extraordinary reaction.

The next species is *Nitraria billardierei*, which also provides habitat for birds, small mammals and reptiles. The *Typha domingensis* species is important for anchoring banks of creeks and rivers, including the Murray, and preventing erosion. It provides critical habitat for protections against predators for breeding waterbirds and it provides habitat for fauna such as the reed warbler and the golden headed cisticola. It is difficult for untrained people to distinguish between *Typha domingensis* and *Typha orientalis*, but both will be cleared.

As for *Amyema miquelii*, it has been pointed out many times that mistletoe provides important feeding and breeding habitat for many species of birds and huge numbers of invertebrates, especially moths and butterflies, flies, bees and wasps. It is very difficult for untrained people to distinguish between the species *Amyema miquelii* and *Amyema pendulum*.

The next species listed is *Acacia longifolia var. sophorae*. This taxon is to be exempt in the South-East outside of its natural distribution. The Nature Conservation Society of South Australia disputes this distribution as mapped in the draft guidelines and is concerned that this will result in clearance of indigenous populations. This taxon can be invasive. However, a management plan for the problem in the South-East has already been prepared by the South-East Local Government Association and approved by the Native Vegetation Council. Exemption under the Act is unnecessary.

The final category is 'Any other species'. This is a very significant change because it gives the Native Vegetation Council the power to declare any species exempt under the Act if the council considers that a land management problem exists. This has profound implications, particularly if the composition of future native vegetation councils is unsympathetic to biodiversity conservation.

Aside from exemptions in relation to particular species of plants, exemptions will also be granted on the basis of pest animal and plant control. This exemption allows clearance 'where it is not reasonably practical to comply with an obligation under the Animal and Plant Control Act' without clearing native vegetation. The wording of the draft guidelines is considered to be loose, leaving a large number of problems. For example, up to 20 plants or 100 square metres may be cleared without reference to the Native Vegetation Council. No measure is included that will prevent this being used cumulatively to clear large areas under the guise of pest control, so a landowner could clear a whole series of these plants—up to 20—or up to 100 square metres, claiming it as a method of pest control.

Current exemptions are already being abused. For instance, an exemption that allows the cutting out of trees for tree posts is used by one vigneron to justify cutting down

some very large and very old *Eucalyptus camaldulensis* in the Mount Lofty Ranges.

I turn now to the delegation of authority to animal and plant control officers. Generally, these officers do not have the required training and experience in the identification of sensitive vegetation and in native vegetation management. Important issues such as whether sensitive vegetation is involved or whether burning should be used are to be referred to an animal and plant control officer. However, the Nature Conservation Society does not consider that these officers have the expertise required to make such decisions.

The third area for exemption is clearance associated with fire prevention. The implications of these changes will be unclear until the release of the guidelines by the Native Vegetation Council. Some problems are possible in this category of exemption. For example, a new exemption allows clearance to protect a dwelling or other building from the threat of fire. The definition of a building is critical to this and may feasibly encompass a caravan being moved around the scrub or any rundown sheds on a property. There is no specification with respect to how much clearance is allowed under this exemption.

An existing exemption allows clearance for a firebreak of up to 5 metres width. A new exemption has been introduced which allows clearance for a firebreak if a management plan has been prepared without stipulating a maximum possible width.

The timing of the passage of this disallowance motion is critical as new booklets have been printed covering aspects of the Native Vegetation Act which contain the new exemptions but which do not contain guidelines for their application. I understand that the guide has been distributed widely over the past month without explanation that it must be read in conjunction with guidelines which have not yet been written. In other words, many farmers have in their hands a booklet telling them that they can clear up to 100 square metres for reasons of pest control. Not all people who have been handed booklets will be aware of this, although I am told that some who have been sent the booklet will be sent an explanatory letter.

Having spoken to a number of people who have expressed concern about this regulation, I think that, for the most part, they have conceded that issues that require addressing have been addressed by these regulations.

Their concerns, just to reiterate, are, first, the release at all of these regulations without the necessary guidelines; and, secondly, that most of what has been done was capable of being done in another way. It is disappointing that the undertakings that were given by former Minister Wotton before the election have not been complied with since. Again, the Government fails to learn the lessons available to it from the election, and I urge all members in this place to support this motion of disallowance, not because the issues covered by the regulations are unimportant but because the way in which they have been carried out are likely to undermine the Native Vegetation Act unnecessarily.

The Hon. T.G. ROBERTS: I support the motion. I will make a short contribution; I do not wish to delay the Council. The Hon. Mike Elliott's motion is probably the best researched contribution I have heard as to why a regulation ought to be disallowed. I only wish that I had the staff support and facilities available to the honourable member, or the capabilities of the individual who has put it together, in addition to the honourable member's own personal knowledge in relation to the subject matter. The point-by-point arguments in relation to the disallowance would explain to anyone reading the *Hansard* the logical reasons why the regulation ought to be disallowed, as well as the politics behind the shift in the Government's attitude to consultation processes when introducing regulations that affect the outcome, particularly with respect to the environment, and negotiating with only one section of the community.

It is quite clear that the Government's emphasis on joint responsibility and the responsibility for negotiation in trying to bring about a consensus between primary industry participants and environmentalists has gone out the window. The only option left to us to try to put a brake on some of the worst aspects of introducing this regulation have been explained quite fluently by the honourable member. The Opposition supports the Hon. Mike Elliott's motion, and would also wish to express the same concerns as the honourable member in relation to the reasons why. I will refrain from making a long and detailed contribution and say only that the reasons explained by the Hon. Mike Elliott on this occasion, I think, need to be explored by the Government.

It needs to look at the negotiating process with respect to changing the regulations which have such an impact on the environment. I am sure that many landholders who are moving towards a sound environmental practice in relation to the management of their own farmlands would be aghast to see the regulation introduced by the Government that will have such a wide impact on the management of their own properties. Some people within the Liberal Party would probably be a little surprised to see the impact of a regulation such as that being introduced by the Government.

With those words of caution to the Government in relation to how it proceeds in the future with the introduction of regulations that impact both on landholders and environmentalists, I suggest that, perhaps, this disallowance might bring about a different negotiating climate and attitude by those framing regulations, particularly for exemptions of native species and their impact not only on landholders but also the surrounding environment. Perhaps more notice will be taken of the conservation movement, conservationists and sensitive landholders to any future regulation that might be introduced.

The Hon. IAN GILFILLAN secured the adjournment of the debate.

RETAIL AND COMMERCIAL LEASES (TERM OF LEASE AND RENEWAL) AMENDMENT BILL

The Hon. IAN GILFILLAN obtained leave and introduced a Bill for an Act to amend the Retail and Commercial Leases Act 1995. Read a first time.

The Hon. IAN GILFILLAN: I move:

That this Bill be now read a second time.

The original intention of the Bill was to correct what, for a long time, the Democrats have seen as an injustice in the earlier legislation, in that current lease holders in large shopping centres will not benefit from the amendments made to the earlier Bill that enable some justice at the termination of lease, namely, the right of renewal. A lot of concern has been expressed by lease holders in shopping centres within the metropolitan area and also in the large rural cities, particularly Whyalla, both to the Hon. Mike Elliott, who dealt with this matter when it was previously before the Council, and to me.

The Bill, as members will note, simply amends the section that did not allow current leases to be embraced with the provision for right of renewal so that it does, and the substitute wording with respect to section 20C(1) states:

> This Division applies in relation to a retail shop lease of premises in a retail shopping centre whether entered into before or after the commencement of this Division.

There is then a transitional provision, which was thoughtfully inserted by Parliamentary Counsel, to ensure that, should a lease be terminating within six months of the date of the Division commencing, that particular lease would also be included because there would be an instruction to the lessor to begin negotiations with the existing lessee as soon as practicable. It also recognises that, in certain circumstances, the lessee through the current lease does not have a right of reference as required under that division and that also must be notified as soon as practicable.

Since this matter has been the focus of the Bill and, quite clearly, the most significant amendment which we sought to make, it has been astounding how widely other matters have caused discontent and concern with the small retailers (the leaseholders) and, in particular, with the Law Society. I have had conversations with a lawyer who is directly relating his practice to dealing with leasing legislation, Mr Alan Branch. In fact, I spoke to him earlier today. I will mention in due course a couple of matters on which he focused. I will also refer to an extensive analysis of the effect of the current Act by Mr Don Gilbert who is a professional in the area of retail leasing and retail rental valuations and determinations. It is my intention to read to members part of a memo which he sent to me in relation to this legislation. The memo in part states:

> My research shows $10's of millions of $'s are being misappropriated by some landlords and managing agents. . . Many honest landlords are being ripped off by one or two managing agents (including the State Government who is also a property owner—that could be your super fund).
>
> The important point is that outgoings and the management of those monies, puts a landlord/property managing agent in a fiduciary position (position of trust). The rent is the landlord's money when it is due and payable, but the outgoings is the tenant's, but it is being managed on the tenant's behalf by the landlord or managing agent as the case may be.

He makes specific references to the amended legislation and states:

> 1. Part 3, section 12(f)—disclosure covers whether a tenant is required to pay a profit margin on outgoings. This was never in the new Act introduced in 1995. Why has this Government once again introduced another area that can create confusion and for landlords/management agents to legally manipulate money? Whoever thought this up must be commercially naive. Do they think for one moment a managing agent would reveal to a landlord, that they may be misappropriating moneys by producing false invoices [a widespread practice in the industry]? Hiding profit is the easiest thing in the world, employ a family staff member and pay them the difference and it is instantly hidden. Introduce another management tier at head office and the profit is gone. This section should be deleted once again and other areas strengthened. . . Included, profit on electricity (the difference between the bulk billing price to a large landlord and the ETSA price on-charged at a smaller consumer's high rate) a practice in South Australia should be forbidden once and for all. The State Premier's ETSA reductions promised to small business is simply profit and has simply gone into the pockets of the landlords.

He observes:

> Well done Mr Olsen because this Government does not fix properly the first time, it plays games;
>
> 2. Part 5, sections 27 and 28 referring to capital costs and depreciable costs not being recoverable are now covered in part 3, section (13)(2) and (3). This is another major area being hidden by owners and managing agents and recovered, because tenants have no right to call for proof of payment and invoices. Neither can they call for three/four competitive tenders and for the service provider to match the keenest price being paid. . . ;
>
> 3. Part 5, sections 31 to 34 are very weak. The outgoings may be audited, invoices are being revealed by the property owner/agent to the auditor, but there is no way a tenant or merchants association (or consultant) is able to enforce competitive pricing, competitive tendering or scrutinise invoices. Big property managing companies are loading management fees by including expensive head office managements costs for running Sydney based offices and the South Australian tenant is paying. In Western Australia, management fees have to be paid by the property owner and the legislation is being improved in Victoria, Queensland and New South Wales, yet in South Australia (despite the findings and recommendations of the Fair Trading Inquiry), the State Government sought ways for owners and their managing agents to hide/confuse/misappropriate tenants' monies. Tenants need to be able to call for proof of payment and where costs are excessive/not competitive, they should have a mechanism whereby they can request four competitive tenders to be called from any reputable company (they nominate) and the best price be taken on a like for like basis. When it is found that monies have been wrongfully spent, tenants should be repaid at 150 per cent of the amount by which they have been overcharged;
>
> 4. Part 6, section 38(3), minimising or preventing a claim for compensation for disturbances. This is a significant weakening of the legislation and what was available to a tenant and common law. Delete it.

They are some observations made by Don Gilbert on the situation as it is working currently. I believe that members of Labor Party are well aware of many of these abuses and I look forward to their support eventually to expand the ambit of this Bill with amendment to cover at least some of these areas of what could be regarded as extortion from the big landlords (necessarily the big landlords) on the lessees, the tenants. Most of those points were highlighted in a Labor Party article by the shadow Attorney-General Michael Atkinson. I do not intend to read that into *Hansard* but I stress that I believe it is not just members of the Democrats who have become aware of the current injustices still rampant in the relations between landlords and tenants in the shopping centres.

I will mention one point that was raised by Mr Alan Branch who is a lawyer with Tindall Gask Bentley specialising in commercial leasing law. It arose from a seminar. They organised a seminar on 11 November. It was an attempt to inform people of the changes, the issues and the challenges of business lease and how to secure it. Mr Branch told me that it was not only an exercise in education and distributing information about the legislation but also an opportunity to hear and discuss at first-hand some of the anomalies and the injustices which still continue. Mr Branch has undertaken not only to advise the Democrats but any other Parties or members of this place who would like to have at first-hand further detail of where, in his opinion, the legislation should be amended.

Apparently, as a result of that legislation now there is an awkward anomaly in that the lawyer's certificate, which is required for the leasing arrangement—the actual negotiation and then the settlement of that document—is mandatory that it be a five year term. So, it is having the effect of converting short term leases to five years because there is no flexibility and it does not take into account that the circumstances may not be best served by a five year lease.

I will seek leave to conclude because other matters will come forward as a result of discussions I am having. However, at this stage I remind the Council that when this matter was discussed earlier my colleague the Hon. Mike Elliott had made it plain that, if current leases were not embraced by this

legislation they may, in certain circumstances, not be covered until 10 years and possibly 15 years if the clause has an automatic right of renewal.

At that stage the lessee then gets hit with the impact of a totally unprotected climate for renewal, if possible, of the lease. So, as the Parliament determined, it was quite clearly a just amendment that was introduced in the legislation to enable the right of renewal to be a fair and proper right of a lessee, and that the lessee can be protected from manipulation and exploitation—in some ways one could describe it as arm twisting—where an unscrupulous landlord uses those sorts of devices to force out tenants whom the landlord, for some reason or other, does not want to continue. If it is just that the legislation that we now have in place should be made available to lessees, why should it not be made available to those tenants who have current leases that will expire within the next few years?

We (the Democrats) and others whom we have consulted are very concerned that this protection be afforded to all lessees currently holding leases in shopping centres and other areas, and this Bill simply seeks to achieve that. In seeking leave to conclude, I would like to signal that between now and when the House resumes in February 1998 I will be looking to finalise further amendments that could deal with the problems that are coming to the surface now in discussions we are having with lawyers in the field and with professional consultants. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

STATUTORY AUTHORITIES REVIEW COMMITTEE: ANNUAL REPORT 1996-97

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

That the report be noted.

The Statutory Authorities Review Committee report for 1996-97 sets out the activities for that financial year. I should report that two members of that committee are no longer serving, and I would like to pay public tribute to their efforts: to the Hon. Anne Levy, who is currently discovering no doubt that there is life after politics; and to the Hon. Angus Redford, who has achieved higher office. The Hon. Carmel Zollo and the Hon. John Dawkins will, I am sure, be more than adequate replacements. The committee had a busy year last year with six major reports, including the wrap-up report on its long-running inquiry into the Electricity Trust of South Australia. In fact, the Electricity Trust was restructuring more quickly than the committee could write its report, and that was like trying to grab a tiger by the tail. But it was a worthwhile first-up inquiry for the committee.

Probably one of the more satisfying reports for the year was our two stage inquiry into the Legal Services Commission. The commission at the time was under severe financial pressure because of the Commonwealth Government's decision to slash legal aid, but the committee's inquiry resulted in a unanimous finding that it was most efficiently managed and well run: in fact, arguably the most efficient and effective legal services commission in any Australian State. That report was timely in that it assisted the State Attorney-General—or, as he is now styled, the Minister for Justice—the Hon. Trevor Griffin, in his successful efforts to increase funding from the Commonwealth Government for the Legal Services Commission.

If I can be partisan for one moment, it should be noted that it was the Liberal Government that committed itself to establishing a Statutory Authorities Review Committee when it came to government in 1993. Committees, I have found in my time in Parliament, have often provided the most satisfying and stimulating work. Invariably, committee members are *ad idem* on many matters. Indeed, for the four years that this committee has been meeting, all recommendations have been unanimous although there are sometimes very healthy—if not acrimonious—debates on the substance of the reports. But the give and take that is an essential part of committee life always provides a solution that is endorsed at the end of the day.

One of the other interesting reports that the committee prepared during the year was its comprehensive survey of South Australian statutory authorities, in what proved to be the fruitless task of trying to establish exactly how many statutory authorities there were in South Australia. I think we have got closer to the answer, but no-one is yet sure. We released that survey and made a very strong recommendation that there was an urgent need to establish a comprehensive public register of statutory authorities. We also highlighted the definitional difficulty that we had that statutory authorities, as defined, did not necessarily cover all public bodies. We have sought from the Government a mandate to widen our authority, to be called the Statutory Bodies Review Committee rather than the Statutory Authorities Review Committee, so that all statutory bodies could be brought under our purview. The Government is yet to respond to that request, but I am sure that my colleague the Hon. Treasurer will look favourably on that in due course.

We also proposed a report on boards of statutory authorities: on the issue of accountability; the issue of composition of boards; the gender balance on boards; the level of fees and the apparent inconsistency that may exist between board members; and the argument that there should be public accountability and public disclosure of fee levels on statutory authorities. I am pleased to say that in June 1997 Premier John Olsen committed the Government to make an annual list of all Government boards and committees, so that the Government is moving down the path towards establishing a register of interest. That uses what is known as the BCIS (Boards and Committee Information System) data base. That is not a comprehensive list of all Government boards and committees, but it is certainly a step in the right direction.

The last report, which, to be truthful, was issued after the end of the financial year, involved the timeliness of annual reporting by statutory authorities. That was released in July 1997, although it was for the annual reports of 1995-96. The committee was most concerned that one-third of all bodies identified by the committee did not table their 1995-96 annual reports within the time required by law. We also established that there were great variations in requirements for tabling of annual reports. Most statutory authorities are required to provide their Minister with an annual report within three months of the end of the financial year, that is by 30 September, because the vast bulk of statutory authorities do sign-off their accounts on 30 June and, subsequently, the Minister is given generally 12 sitting days to table that report in Parliament. But there are other statutory authorities where legislation requires them only to provide a report to the Minister as soon as practicable after the end of the financial year.

We discovered that some statutory authorities did not report for seven or eight months after the end of the financial

year. In that report on timeliness the committee highlighted the disparity between standards in the public sector and in the private sector. For instance, if you are a company listed on the Australian Stock Exchange you are required to report within a specific time frame. If you have not provided preliminary final accounts to the Stock Exchange within three months of the end of the financial year, the company faces automatic suspension. I am not suggesting for one moment that that is what we would do to a statutory authority, but it is a tempting thought. I do not know what would be the implications for the electricity trust—

The Hon. R.I. Lucas: Or the consumers.

The Hon. L.H. DAVIS: Or the Government! But it is a matter that does need addressing. In speaking briefly to this report, the Government should be well pleased with the way in which the Statutory Authorities Review Committee has tackled its charter in the 12 months to 30 June 1996-97. It has specific functions as set down under the Parliamentary Committees Act. It has approached its work with great professionalism, diligence and effectiveness. In closing, I pay particular tribute to the efforts of Andrew Collins, who was the research officer to the committee, and Ms Anna McNicol who, until 26 September 1997, was secretary to the committee.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

WATERFRONT MERCENARIES

The Hon. T.G. ROBERTS: I move:

That this Council—

I. Condemns the Federal Liberal Government for fostering a strike-breaking mercenary group of current and former serving members of the Australian Defence Force to undertake an overseas training program designed to allow those persons to scab on members of the Maritime Union of Australia, who may, in the future, be engaged in industrial action to defend not only themselves but organised labour in general; and

II. Calls on the Federal Liberal Government to immediately recall all current serving members of the Defence Force involved in this program.

The motion is moved in this way on the basis of information made available by the media. I will explain some of the confusion that exists because of the lack of information and detail being given by the Federal Government in terms of its role in this strange and bizarre exercise. I have framed the second paragraph of the motion on the basis that we are not quite sure whether the trainees sent to Dubai are current serving members of the Defence Force, retired members of the Defence Force or on special leave from the Defence Force. It appears that most of those people undertaking training programs—and I understand that more than one contingent has been flown to Dubai—responded to an advertisement placed in a services magazine directed at either current, retired or serving members of the Defence Force who may be on special leave or who may want to apply for special leave. The other acknowledgment that the motion makes is that the Parliament does not have any direct control over private sector mercenaries. Australia has supplied mercenaries trained by private companies into—

The Hon. R.I. Lucas: Are these industrial mercenaries?

The Hon. T.G. ROBERTS: They were not so much industrial mercenaries before, but the mercenaries to which I alluded were supplied and trained in Australia but sent overseas to obscure theatres of war which did not involve Australia but which involved two other foreign countries or civil disturbances—

The Hon. R.I. Lucas: Real mercenaries.

The Hon. T.G. ROBERTS: Yes. I would describe the recruitment of people from the Defence Force to train for strike-breaking activities on the waterfront as mercenaries employed in a civil action against their country's own people. Normally, a defence force is just that: people trained to defend a country's residents from outside aggression. Sometimes Australia has deployed its Defence Force in defending Australia's shoreline in other countries. I am not sure whether I agree with all the decisions made by some Federal Governments in the way they have deployed our Defence Force over the years but, nevertheless, most of our Army, Air Force and Navy are trained in defence tactics and strategies. However, in this case it is where defence turns into attack and where the Commonwealth Government appears to be involved—either tacitly or actively—in assisting the training of so-called Defence Force personnel in what could possibly be bloody confrontation with our workers on the waterfront.

It is quite clear that the challenge for waterfront reform, particularly in the ports of Brisbane, Sydney and Melbourne, is outside the abilities of the Federal Government in terms of achieving a consensus around what microeconomic reform would call 'enterprise bargaining' which has been able to restructure the wharf stevedoring and labour components into a form that pleases the conservative elements of this country. It appears that, although nothing is very clear from the advertisement, it is calling for defence personnel to protect only the ports of Brisbane, Sydney, Melbourne and Perth. Adelaide appears to have been left out, as do the regional ports.

Recently a stevedoring company, in conjunction with the Federal Government, was set up in Brisbane to try to break the strength of the Maritime Services Union there, and the Government came away with a bloodied nose. The stevedoring company, which I understand was American financed, withdrew and the port of Cairns in North Queensland was left to local waterfront labour without too much confrontation. Although there was some industrial disputation, it was settled amicably. If there was to be a real problem in the labour market in these ports, I am sure that there would be other ways to obtain the required reforms without setting up a strikebreaking force.

I suspect that what has happened is that people have been sitting around in their clubs saying to themselves, 'What a jolly good show it was when the mercenaries employed by Sandline and the PNG Government were paraded through PNG at a time when the Bougainville dispute was on.' There are two unconnected events: one was the expulsion of the Sandline forces out of PNG and, of recent times, a solution to the Bougainville dispute between Bougainvillians, the PNG Government and the major mining company in Bougainville which had to close its mine and leave.

One would have thought that the good sense and negotiating ability of the PNG Government, the Bougainvillian people and their representatives and the good sense of the owners of the mine might have been able to bring about a solution to the problem based on the same principles as enterprise bargaining—that is, that the stakeholders agree that the owners of the mine have a right to make profits to return investments back into the mine and to pay shareholders, and that the workers in those mines have a right to a fair day's pay for a fair day's work and are able to work in safe and as

good conditions as the mining industry can provide. However, that was not the case. The environmental damage which that mine caused and the confrontation that it caused in Bougainville led to a confrontation between the Bougainvillians, the companies and the PNG Government.

As I said, Sandline was employed as a mercenary group to go into Bougainville to use force to try to change that situation. A settlement was produced after the Sandline mercenaries were defeated and expelled from the country, and the Prime Minister fell basically on the issue of introducing mercenaries into a domestic situation. As I said, the people in Australia who would be attracted to that sort of settlement in an industrial sense have no perspective of what is required in an enterprise bargaining situation, no perspective on how to deal with disputation and no understanding of the implications of introducing such an accelerant into an industrial relations scene.

In Australia over the years there have been attempts by employers to employ strikebreakers, but in the main they have been over local disputations, wages and conditions, stoppages and strikes. Strikebreakers have been employed as scabs and have been financed either out of competing working-class groups or groups outside work environments to break strikes and are generally paid by a third party. That has been the history of strikebreaking—a simple rundown on the strikebreaking methods employed in Australia to try to break the stranglehold that unions may have over disputations in particular areas.

But this takes strikebreaking to a different level. Despite the motions which members move in this Chamber (and we have had a couple recently involving the AWU and the Transport Workers Union), by the time they have been debated and are off the Notice Paper, disputes have generally been settled through the normal process of negotiation between the parties involved. The stakeholders sit around tables and work out solutions to problems, generally with both sides making concessions. Not long after, unless there are paybacks on the site through escalation as a result of the introduction of scabs, or because of strikebreaking activities that do not follow the norm, most strikes are finished and the employees go back onto the job and pick up their roles as if nothing had happened. Generally, management and unions, on-site and off-site, are able to get back to normal relations within 24 to 36 hours.

In the case where scabs or strikebreakers are introduced, the climate in which the workers return to work, particularly if violence is involved, is never the same. In the mining and waterfront industries, and for other blue collar workers, there is the mythology of who was involved in the disputes, and the family connections of the strikebreakers are known. If you go to Port Adelaide or the Peninsula you will find family links that go back 40 or 50 years for people who have been involved in strikebreaking. Generally they are cajoled into it by fear of losing their job or their home, and they unfortunately involve themselves in activities that bring about a break of respect between them and the community. Those sorts of disputations generally are manageable but they have residual bad effects.

When there is introduced into a campaign a group of people with military background, their skill is required by the management for one purpose—to physically confront and intimidate the workers who are going about their legitimate gripes. It is their legitimate right in Australia to withdraw their labour if the negotiations break down. In all free countries in the Western world, industrial relations laws permit legitimate industrial action. As I said, it is a last resort rather than a first resort. Australia's history for lost time with regard to industrial disputes is probably as low as that of the rest of the Western world. Certainly it would be no higher. In fact, over the last 10 years I suspect that it is much lower than in most other industrialised countries.

The home of private enterprise and capitalism in the United States, it has enforced contracts through negotiations in most industrial areas that are unionised. Having been there myself, I know that one dispute on the waterfront went for 12 to 13 weeks. Those sorts of disputes when contracts have been renewed in the United States are not uncommon. Of recent years there has never been any threat, fear or intimidation of physical confrontation within those disputed areas using troops or anyone employed by the Government to break those strikes.

Certainly in the 1930s and 1940s Pinkertons were used to physically confront striking picketers and were employed as physical combatants to combat the unified unions and to physically intimidate, and they usually did so. They used firearms and other instruments to bludgeon workers in order to intimidate them into going back. Those sorts of confrontations I would not say were commonplace but they happened regularly in the United States and Australia, and in some cases those sorts of tactics were employed. Generally they were groups of competing employed and unemployed who were pitted against each other for scarce opportunities to employ their labour.

This is an entirely different scene. Here we have the Minister for Workplace Relations, Mr Reith, first denying any Government knowledge of the mercenaries, saying that he did not know that this was all happening, and we also have people acting on behalf of the company that was employing the mercenaries. Mr Mike Wells, of Fynwest, also denied any Government involvement in relation to recruitments. Here we have the exposure by Lindsay Tanner in the Federal Parliament and we had denials by—

The Hon. R.I. Lucas: Is he a good lefty or a bad lefty?

The Hon. T.G. ROBERTS: He is a lefty; I will not put any tags or adjectives in front of Mr Lindsay Tanner's credentials. He raised the issue in Federal Parliament. As I said, there were denials from the Minister about any connection with the Federal Government. We then had a bit of a change by the Federal Government as more details were released. It was exposed that there was some knowledge within Government's circles as to what was going on. The Army denied knowledge of what was happening and, again after more information was leaked out, it was known that people inside the armed forces were aware that their personnel were involved in these training programs.

The *Australian* of 8 December 1997 drew attention to links between the Victorian Premier Jeff Kennett and one of the organisers, a Mr Kilfoyle, who happened to be employed as the security officer for the protection of Jeff Kennett in a visit to Ballarat. On reading the report in the *Australian*, I think it is hard to work out whether Jeff Kennett was aware that this individual was involved in the mercenary organisational structure. There was a photograph of Mr Kennett being ushered into a car with an umbrella over his head, with Mr Kilfoyle holding it. Whether you could draw a conclusion that the Hon. Mr Kennett, leader of the Liberals and the Premier of Victoria, actually set out to provide employment to this individual is difficult to ascertain. Indeed, a member of his own Party who came to his defence in Parliament said that it could have been Brer Rabbit holding that umbrella, so

it is very difficult to draw a conclusion about whether there are any links between the Premier, Mr Kennett, and the strike busters or the mercenaries.

However, it is quite clear that there is a lot of knowledge about within senior circles of the Federal and State Governments as to what the role and function of the mercenaries will be when they have whatever training they are to get when they go overseas. There is a view about that that a compound will be set up on the waterfront, within Melbourne, Sydney and Brisbane and possibly Perth, where these mercenaries will be based. I am not quite sure who is paying the bill, but I am sure that they will not be coming cheaply, and these people who are to be trained will be on standby if there is a circumstance where organised labour is confronting organised capital.

One then gets out of that the point that I was making earlier: an escalation of activities such that in some activities it is hard to withdraw from. If you have a normal dispute, the normal processes and procedures go through: you have an industrial court, commissioners, union organisational structures with organisers and leadership and, indeed, you have management structures with organised leadership who are able to sit down and talk rationally about settlement.

If you introduce mercenaries, physical intimidation and physical acts of violence into that process, I will defy anybody to be able to control those circumstances and to stop that disease from spreading not only through the whole of the waterside workers area but also industrially into Australia and poisoning sections of the community against each other. It is unAustralian and it is not the way we do business. I hope that sounder minds prevail, that the mercenaries are withdrawn from Dubai, and that a broad explanation is given to the Australian people as to what are the intentions of either Mr Wells or the Rambo tin soldier Mr Peter Kilfoyle—as he is described—and what circumstances brought these conditions about.

One of the problems that we have in Australia is that we have a growing reliance on private security firms. We have a lot of security firms specialising in what could only be regarded as dangerous confrontation processes or procedures in dealing with problems that they could potentially call confronting on a daily basis. Young people are experiencing it in the entertainment industry, where undue violence is being unleashed on them in non-provocative circumstances that become provocative and dangerous, not because of the young people themselves but because of the people who are set up to secure the areas in which they have been set out to be entertained. The so-called defenders of democracy, people trained in defence, have been trained to attack.

I am sure that members who want to acquaint themselves with this matter and find out more about it will find enough information in the public arena via the print media to expose their games. Television cameras have captured many of them departing Australia on flights to Dubai, but I just hope that the people who have been trained in these activities are never deployed and that the people who have deployed them lose their money, that they do not get employment when they return to Australia. If they are deployed in those circumstances, I do not give Australia much hope in being able to put together a decent, harmonious working relationship. It is a totally unnecessary escalation of a problem that simply does not exist.

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

OUTSOURCING

The Hon. M.J. ELLIOTT: I move:

1. That a select committee be appointed to investigate outsourcing of State Government services;
2. That the select committee pay particular attention to the outsourcing contracts on State Government information technology, the functions of the EWS Department, the Modbury Hospital and the Mount Gambier Prison;
3. That Standing Order No. 389 be suspended as to enable the Chairperson of the committee to have a deliberative vote only;
4. That this Council permits the select committee to authorise the disclosure or publication, as it thinks fit, of any evidence or documents presented to the committee prior to such evidence being reported to the Council;
5. That Standing Order No. 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating;
6. That the minutes of proceedings and evidence to the Legislative Council select committees on—
   State Government Information Technology Outsourcing;
   Proposed Privatisation of Modbury Hospital;
   Outsourcing Functions Undertaken by EWS Department; and
   Tendering Process and Contractual Arrangements for the Operation of the New Mount Gambier Prison,
   be referred to this select committee; and
7. That the Government provide copies of the relevant contracts to the select committee.

During the last Parliament, select committees of this Council examined four separate outsourcing contracts: Mount Gambier Prison; Modbury Hospital; EDS; and the functions of the old EWS. A number of issues associated with these committees deserve further attention, but they can be adequately addressed by a single committee rather than by establishing four separate ones, so I am seeking to establish a single committee to look at outsourcing.

While under paragraph 2 of the motion the committee will pay particular attention to the four contracts that were being examined during the term of the last Parliament, it is my intention that it will look at outsourcing more generally as well. It would be foolish to suggest that this committee should start from scratch, so paragraph 6 seeks to apply the sensible provision that the minutes, proceedings and evidence of those select committees should be made available to this committee. I understand that at least one of those committees was very close to or had already started preparing a report, so it would be a shame for that work to be lost.

A number of aspects of outsourcing could be addressed through this committee. It is not just a question of whether or not each contract was the best deal possible. There is much to be learnt for future contracts by examining the contracts that have already been established and to look at the different methodologies that were used. Each of the outsourcing contracts has substantial differences and it would be worth while to examine the different ways in which outsourcing was attempted in those four contracts and, if there were deficiencies, to identify them.

I hope that the committee will comment on the processes involved in the development of the four contracts and determine whether or not the State got a good deal out of them. More importantly, I hope that it will point any future outsourcing contracts that might be contemplated by the Government in the right direction, that is, (a) whether or not such a contract would be worth while, and (b) if worth while, under what circumstances it would be carried out.

I do not need to go into this issue in great depth because the Council went through a separate, detailed debate when each of the committees was set up. At this point, I argue that we could sensibly bring them under one committee. As a former member of the EDS committee, I have to say that the provision of the contracts would make life a lot easier in terms of those committees being able to get on with their work.

I note today that the Auditor-General has released a summary in relation to the water contract. I have only flicked through it very briefly and, because it does not fall within my portfolio areas, I am not sure that I have developed a real appreciation as to the value of that summary. However, it has arrived at last, and I understand that the EDS summary was more or less complete some time ago, perhaps even before the election, so I presume that we will see that in the not too distant future, as well.

I believe that the Government can facilitate the work of this committee by making sure that it provides that information, and I think that the Government will find it far more productive to provide the contracts than to continue going through the charade of withholding the contracts. I urge all members to support the motion.

The Hon. P. HOLLOWAY: The Opposition supports the motion moved by the Hon. Mike Elliott. I have had some discussions with Mike Elliott about this matter. Previously we have had four select committees. I believe that they provided a very valuable role to this Parliament in drawing attention to many matters in relation to the outsourcing contracts of this Government. It was perhaps unfortunate that those committees were not able to make as many substantive reports as I would have liked. That was not the fault of the committees, I hasten to add, but occurred as a result of some delays in, first, getting the contracts and, then, after the agreement was made, providing contract summaries. It took a long time for those summaries to be made available, and that is why the four separate committees were not able to make the progress I am sure they would have liked.

However, I was a member of two of those committees: the Select Committee on the Proposed Privatisation of Modbury Hospital and the Select Committee on Contracting out of State Government Information Technology which investigated the EDS contract. I know that, certainly in relation to the select committee investigating the privatisation of the Modbury Hospital, it was very close to producing a report. It needed only to tidy up a few loose ends and to receive some relevant information from the Government departments to finalise its report.

I believe it is a very sound idea to bring together the committees because, as I said, having been a member on two committees I am aware that many of the lessons that have been learnt from one committee also apply in many respects to the other committees. I am sure we can learn some general lessons from the outsourcing process that will flow across to the outsourcing of any Government service. As well as releasing some reports on individual outsourcing contracts under consideration, I would also like this committee to bring together some general lessons in relation to the process. I am sure that if one were to go to the Ministers responsible for those particular outsourcing contracts that, with hindsight, they would have to say that they could have done things better.

I do not make that comment necessarily as a criticism, but I just believe that we can always learn some lessons. The scale of contracting out under this Government has been a new phenomenon, but many lessons can be learnt if the Government is to proceed down that track in the future. The Opposition certainly supports the motion of the Hon. Mike Elliott. We believe that through bringing the four former committees together and making the evidence of those committees available to the one committee we will achieve a more efficient use of resources. We can perhaps bring together some of the lessons from the outsourcing contracts to the benefit of the community while, at the same time, ensuring that adequate scrutiny of any future outsourcing contracts under this Government takes place.

The Auditor-General in his recent annual report has made a valuable contribution to our knowledge in relation to outsourcing. He stressed again how important it is for this Parliament to fulfil its role in adequately scrutinising some of those contracts. I believe it is essential that such a committee be established by this Parliament to complete the very valuable work that was undertaken in the previous Parliament. The Opposition supports this motion and hopes that it will be speedily adopted so that this one committee can pick up the work undertaken by the previous four committees.

The Hon. R.D. LAWSON secured the adjournment of the debate.

PARLIAMENTARY COMMITTEES (MEMBERSHIP OF SOCIAL DEVELOPMENT COMMITTEE) AMENDMENT BILL

The Hon. NICK XENOPHON obtained leave and introduced a Bill for an Act to amend the Parliamentary Committees Act 1991. Read a first time.

The Hon. NICK XENOPHON: I move:

That this Bill be now read a second time.

The length of my second reading explanation will be commensurate with the extent of my amendments to the Act. This Bill seeks to increase the membership of the Social Development Committee from six to eight. It is envisaged that each House will provide an additional member. I introduce this Bill having regard to the committee's current inquiry into gambling. It is an issue of great community concern and debate. It is certainly an issue of great concern to me. Members might recollect that, last week, I offered my nomination to that committee and I was spectacularly unsuccessful; in fact, I do not think my nomination was even seconded.

However, from discussions with a number of members I understand that that may be partly because membership is allocated according to a fairly strict formula between the Parties, and I respect that. The allocation of two additional members will give the committee an additional input and, I hope, speed up its deliberations. I commend the Bill.

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

SPARROW, Ms C.

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

That Catherine Sparrow, an 11 year old, year 5 student at Christies Beach Primary School be congratulated on her outstanding achievement on becoming the year 5 national winner of the Nestlé Write Around Australia Competition 1997.

Catherine is 11 years old. She is a great library user. She enjoys that pastime with her whole family who are active users of the Noarlunga, Woodford and Seaford libraries. Catherine spends almost every spare minute searching for other wonderful books that she can read and enjoy.

Up to now I am told that Catherine has always wanted to be a doctor, but she was now rethinking her career (aged 11) and is contemplating a career as an author. I would suggest to Catherine and her family that she may be able to do both, be a doctor, which generally generates a reasonable income, and then use that as a base to write. Doctor Peter Goldsworthy based in South Australia is a doctor in general practice and also a writer now involved in writing for opera and film. He has been able to combine both occupations, doctor and author, and it would be wonderful to think that Catherine may be able to follow in his great footsteps. She reads anything from Tolkein to *The Babysitters Club*. I am told that she saw an advertisement about this competition in the local Messenger Press.

I want to refer briefly to the competition because it is the second year that South Australia has participated in this program. The Nestle Write Around Australia Competition is a national literary program for primary school students in years 5 and 6, or the interstate equivalent. It is sponsored by Nestle and coordinated by the State Library of New South Wales. It combines a writing competition with a series of practical creative writing workshops conducted by well-known children's authors in selected public libraries. In addition to the coaching provided at the workshop, Australian books to the value of $500 are provided for individual winners and their school libraries. They are generous prizes and much sought after.

This year the program (as last year) was coordinated in South Australia by the Communications Unit at the State Library of South Australia. Five public libraries across the State hosted the competition and are as follows: the City of Adelaide, Mitcham, Playford, Burnside and Port Lincoln. In each instance I and the Government acknowledge the effort of the librarians at those libraries in encouraging such a wonderful participation from South Australian students. Around Australia 50 public libraries in all States and territories participated in the host programs. The Write Around Australia promotes public libraries as centres of writing as well as reading and in this way libraries are able to increase their profile within the community and to strengthen links with local schools. I highlight that the first part of the Nestle Write Around Australia program is a writing competition for children in the years 5 and 6 (or 6 and 7 in some other States).

These competitions are held early in the year and this program encourages involvement from primary schools, teachers and librarians, parents and the local public libraries. Each zone then selects 20 finalists who are given a unique opportunity to attend an extended practical creative writing workshop within their own zone with a published children's author. This year over 27 000 students from across Australia entered the competition and a further 19 000 attended the creative workshops. At this point I have to acknowledge the parents of so many kids. Some parents drove 500 kilometres to take their children to the workshops. The authors travelled many thousands of kilometres to country areas to provide this opportunity for young Australians.

I attended the State finals this year and it was overwhelming and a thrill to see so many South Australians across the State in the finals. I remember they came from Port Lincoln, Mount Gambier and the Riverland. These kids with the support of their parents, teachers and librarians and that of the authors at workshops had written glorious stories about a whole range of experiences. They had really fertile imaginations and a lot of fresh insights to subjects. It was a joy to attend. On that occasion there were two winners from South Australia. Catherine Sparrow was one. After winning the year 5 State award she then went into the national award and to the delight of every member in this place and South Australians generally went on to win the national award for year 5 in the Nestle Write Around Australia Competition.

I have not spoken to Catherine since the State finals but Ms Janet Worth has spoken with Catherine's mother and I have permission today to share with members Catherine Sparrow's story which won the year 5 award. It is called 'Nanna' and reads:

My mother, my grandmother and I were very close until nanna died two years ago. Sometimes mum and I sit on our verandah listening to the cicadas and watching the sun go down. Then my mother picks out the brightest star in the sky and tells me that it is my nanna looking down on us from heaven. When I was younger it used to make me feel better. Like maybe nanna wasn't quite so dead after all if she could see and watch over us. But lately I've been seeing my grandmother around me every day and as the King of Siam said, 'It's a puzzlement.' If nanna is a star, how come I feel safe and warm in the blanket she crocheted for me, just like when she used to hug me?

And when mum teases me with nanna's song—

'O Catherine's a funny 'un

Got a face like a pickle onion

Got a nose like a bruised tomato

And eyes like green peas.'

Why do mum's eyes crinkle like nanna's used to when she laughed and why do I feel good inside even though it is a bit of a mean song? Nan came from the north of England and her father, my great-grandfather was a Scottish highlander. 'Not Scotch,' nanna used to say, 'that's a drink.' My nan loved beautiful things but her favourites were her family, roses, bingo, Tom Jones, England and her wee bonny Cassie, which is me. Sometimes when I remember how funny she was it makes me cry. Isn't that weird?

At Christmas I knew she was here by my stocking. None of my friends got fruit and nuts in their stocking, or silver coins. And right in the toe where nanna always put it there was a small lump of coal. I knew for sure then. My mother might think that nanna is a star in the sky but I am sure she is still with us. Because all through my life every time I smell a rose I'll think of her. And every time I'm concentrating on something and poke out the tip of my tongue, I know it is something I got from my nanna. I can never glance quickly at a painting any more because of her. She always pointed out the little things I never noticed before, like birds flying in the distance, a dog hiding under a chair or a small spider hanging from the ceiling.

My great-grandmother made her apple pie with one pastry leaf in the centre to decorate it. Nanna made hers with two leaves and my mother with three. Last weekend I made my first apple pie and I put four leaves, one for each of us. And now I know that my grandmother gave to everyone that she loved a piece of herself to remember her by. My nanna truly is a star. And that star SHINES.

I wanted to share that beautiful story about a granddaughter's love for a grandmother who had passed and how she remembers her every day. It is a beautiful story in its own right. It is a story that has gone on to win a national award for Catherine and it is an award which we share with Catherine. I hope that all members will join with me in celebrating and congratulating Catherine's success and wishing her well not only in her ambition to be a doctor but also to write for our pleasure in the future.

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

HIGHWAYS (MISCELLANEOUS) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning) obtained leave and introduced a Bill for an Act to amend the Highways Act 1926. Read a first time.

The Hon. DIANA LAIDLAW: As it is not my intention that this debate should be progressed further until we return in February, 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.

There are two proposals contained in this Bill to amend the Highways Act 1926. The first is a proposal to impose meaningful penalties on motorists who drive on outback roads which have been temporarily closed following rain, thereby damaging them. In this part, it is proposed to amend section 12a of the Act to replace the Commissioner's discretion to delegate his powers or functions to any officer of the Department, with the discretion to delegate to any person; to amend section 26(3g) to increase the penalty from $100 to $1 250; to add a penalty of $2 500 for second and subsequent offences; and to give the court the power to order a person guilty of a contravention of this subsection to pay to the Commissioner the amount of any damage caused.

The second proposal is to improve the operation of the Act regarding controlled-access roads. It is intended to amend Part IIA of the Act to clarify the Commissioner's powers to control access to these roads, from and to private property; to increase the penalties for illegal access to $1 250; to give the Commissioner power to require a person to remove an illegal access and to restore the land to its former condition, with a penalty of $1 250 for failure to do so; and to introduce a maximum penalty of $125 per day for each day the illegal access continues to exist; and to give the court power to order the person to pay compensation for loss or damage arising from an offence.

Turning first to the temporary closure of roads. The Commissioner of Highways has the power to close a road temporarily if he or she is of the opinion that it is unsafe for vehicles or pedestrians or if it is likely to be damaged if used by vehicles or a class of vehicles. He or she may also erect barriers and warning devices as necessary for public safety. Interestingly , the only two parts of the Highways Act 1962 which carry penalties are this section and the sections on controlled-access roads, dealt with in the other part of this proposal. The penalty for contravening a road closure is $100. The penalty has not been changed since it was introduced into the Act in 1963 at 50 pounds.

After heavy rain, unsealed outback roads can be slippery and dangerous to drive on. They are also susceptible to damage if driven on in this condition. The damage often takes the form of heavily rutted roads. These conditions can cause vehicle accidents resulting in personal injury or even death. There is also the cost of repairing the roads to make them safe. After heavy rains at the end of winter this year, 3 vehicles rolled driving on the Birdsville Track. Re-grading of damaged roads costs $160 per kilometre, a cost which rises to $500 per kilometre if the road is rutted.

When such damage is caused by deliberate flouting of road closure signs and a disregard of the possible consequences on other road users, I believe it is time to act to impose penalties which recognise the seriousness of the breach and which bring them into line with penalties in other, more recent legislation. The resulting improved deterrence of this behaviour will have significant benefits for public safety and reduced road maintenance costs.

The Bill also contains a provision to allow the court to order the defendant to pay compensation for any damage caused by driving on a closed road.

In order to give greatest protection to both road users and the State's roads it is essential to have an authorised officer close enough to assess the condition of the road and exercise the Commissioner's discretion to close it and place warning devices (fences, barriers, notices, lights, etc.) as soon as possible. Currently, the Commissioner may only delegate his or her powers and functions to officers of the Department. This has caused delays in closing roads in remote areas. This is why the Bill proposes to give the Commissioner the ability to delegate his or her powers and functions to any appropriate person, for example park rangers, local council or Police officers.

The second proposal in the Bill concerns controlled-access roads. Part IIA was included in the Act in 1960 to enable the Commissioner of Highways to control where road users entered and left the State's major highways. The Main North Road between Pooraka and Gawler was the first stretch of road to be controlled (in 1960), followed by a portion of the South-Eastern Highway in 1964. At that time there was no requirement for the control of access proclamation to specify the routes and means of access whereby people may enter or leave the road: a notice accompanying the proclamations stated that all existing access points at the time of proclamation were deemed to be lawful.

Amendments to the legislation were made in 1972 to require routes and means of access to be specified on proclamations. The Crown Solicitor has advised that it could be interpreted that for controlled-access roads proclaimed prior to 1972, the Commissioner does not have the power to control access to and from private property, only from road junctions. The provisions should be amended to remove ambiguity which may lead to challenges to their validity. As road works are continuing, designed on the basis of the road being access-controlled, it is necessary to clarify the legislation.

The penalty for offences in relation to controlled-access roads was originally $100 and has never been increased. There is no provision for continuing offences or the payment of compensation for damage caused in committing an offence. The former Department of Transport has experienced difficulty with repeated destruction of property by people gaining access to controlled-access roads through unapproved places. Increased penalties and powers to recover damages will indicate that the offences are serious and act as a deterrent.

In its totality, this Bill will improve road safety and reduce damage to essential infrastructure.

This Bill will lie on the table until February.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 12A—Commissioner may delegate

Clause 3 amends the power of the Commissioner to delegate set out in section 12A. The provision is modernised and expanded to include all public sector employees, members and employees of councils or any other persons.

Clause 4: Amendment of s. 26—Powers of Commissioner as to roads and works

Clause 4 increases penalties under section 26 and includes a provision that will enable a court when convicting a person for an offence under section 26 to order him or her to pay compensation to the Commissioner for the damage caused.

Clause 5: Amendment of s. 30A—Power to proclaim controlled-access roads

Clause 5 amends section 30A of the principal Act to make it clear that a proclamation under subsection (1)*(b)* can declare that part of a controlled-access road will cease to be part of a controlled-access road.

Clause 6: Amendment of s. 30DA—Access to property

Clause 6 amends section 30DA to make it clear that the Commissioner can close both lawful and unlawful means of access to a controlled-access road.

Clause 7: Amendment of s. 30E—Offences in relation to controlled-access roads

Clause 7 amends section 30E of the principal Act. Part 2A of the *Highways Act* was designed to provide for control of access between private land and controlled-access roads. Provisions included in the Part (*eg* section 30B dealing with compensation) only make sense on the premise that access to and from private land is controlled. The Crown Solicitor feels however that there may be an argument that the control of access only applies between the controlled access road and side roads. The purpose of new paragraph *(a)* of subsection (1) is to make it quite clear that this is not so. The other paragraphs of this clause provide for increased penalties, continuing offences and compensation arising from an offence.

Clause 8: Amendment of s. 39D—Regulations

Clause 8 increases the penalty that can be imposed by regulation under section 39D.

Clause 9: Insertion of s. 42A

Clause 9 inserts a general service provision into the principal Act.

Clause 10: Amendment of s. 43—Regulations

Clause 10 increases the penalty that can be imposed by regulation under section 43.

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

CRIMINAL LAW (FORENSIC PROCEDURES) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to provide for carrying out forensic procedures to obtain evidence relevant to the investigation of criminal offences; and for other purposes. Read a first time.

The Hon. K.T. GRIFFIN: In view of the fact that it is not to be debated until the new year, I seek leave to have the second reading explanation and detailed explanation of clauses incorporated in *Hansard* without my reading them.

Leave granted.

Introduction

Sherlock Holmes may have been the most famous early fictional character to popularise and advocate scientific approaches to the detection and solution of crime. There have been many since, up to and including Patricia Cornwall's fictional forensic pathologist and the very non-fictional techniques of psychological profiling pioneered by Mr J Douglas of the United States Federal Bureau of Investigation. One of these more modern developments has been the use of DNA profiling as a technique for incriminating—and exculpating—those suspected of criminal offences.

The development of a truly scientific approach to criminal investigation must be accompanied by a recognition of the need to apply novel scientific techniques in a fair and responsible manner. The lessons of the past include the Chamberlain and Splatt cases, which revealed very clearly the limitations and controversy that can surround the collection and use of scientific evidence. In addition, of course, the law must keep up with defensible scientific and legal progress in the detection of crime or be left floundering in its wake.

Social attitudes to the scientific investigation of crime have followed social attitudes to applied science generally and so have waxed and waned from the enthusiastic to the doubtful. Scientific evidence in criminal trials has always been controversial. Two main areas are involved. The first is the scientific validity of the evidence itself—that is, its probative force or value. The second is the ever difficult balance between the rights and liberties of the individual and the coercive powers of the state in the obtaining of scientific samples for the purposes of analysis. This Bill is concerned with that second area of law. With one exception, related to the enforcement of the rules of investigation that it lays down, it leaves the admissibility and probative value of the evidence to the general rules of evidence as currently applied by the courts.

In the case of DNA evidence, the courts have developed rules and standards of admissibility and appropriate ways of dealing with the evidence in criminal trials in specific decisions such as *Tran* (1990) 50 A Crim R 233; *Gordon* (1995) 1 Cr App R 290; *Baptiste* (1994) 88 CCC (3d) 212 and *Pantoja* (1996) 88 A Crim R 554 and have begun to formulate the appropriate general principles of law in such cases as *Jarrett* (1994) 73 A Crim R 160; *Doheney and Adams* [1997] 1 Cr App R 369 and *Milat* (1996) 87 ACR 446

'Forensic procedures' is a convenient short hand reference to the power of police to require a person suspected of committing a criminal offence to provide bodily samples or information which can be used for scientific identification purposes. For example, fingerprints, footprints and palm prints have been used by police investigators for many years, and, more recently, blood type matching has been used. More recently still, there has been a deal of investigative enthusiasm for the modern technology of DNA matching. Initial enthusiasm for DNA results has, however, been tempered recently by those who are sceptical of the more extravagant claims of DNA matching infallibility.

South Australian Law

At common law, there was no power to take bodily samples, such as fingerprints, for example. Between 1901 and 1928 every Australian State except Victoria passed legislation concerning the medical examination of persons in custody. The South Australian provisions date from 1928. The current powers of South Australian police are contained in the *Summary Offences Act*. Section 81 deals generally with powers to search, examine, and take particulars of persons in lawful custody. Section 81(2)says that, where a person is in lawful custody, and there are reasonable grounds for believing that an examination of his or her person will afford evidence as to the commission of the offence, a legally qualified medical practitioner may make 'an examination of the person'. The section allows the person in custody to nominate the doctor. Sub-section (4) permits the taking of photographs, prints of hands, fingers, feet and toes, dental impressions, voice recording and handwriting samples.

The powers granted by sub-section (4) do not apply to compel a person unless either (a) that person is in custody and has been charged with an offence or (b) an authorisation has been obtained from a magistrate for the purpose. There is no requirement for magisterial authorisation for the medical 'examination' under sub-section (2), which simply requires the person to be in custody and to have been charged. Succeeding sub-sections of section 81 contain the procedure for getting a magisterial authorisation, the destruction of records and an offence of failing to comply with the magistrate's order. These provisions apply to the procedure under sub-section (4) but not sub-section (2).

The power of police to take a blood sample either for blood type matching or DNA analysis rests solely on judicial interpretation of the power to make what to 81(2) calls 'an examination of the person'. In *Franklin* (1979) 22 SASR 101, the South Australian Court of Criminal Appeal decided that 'an examination of the person' could be external—taking a hair sample, for example—or internal—taking a blood sample. Blood samples have been taken on that basis ever since. In *Fernando v Commissioner of Police* (1995) 78 A Crim R 64, the New South Wales Court of Criminal Appeal decided that *Franklin* was wrongly decided and refused to follow it. But in *Dyson* (1997) 68 SASR 156 a specially constituted Full Court of five judges of the South Australian Supreme Court decided, in effect, to follow *Franklin* in preference to *Fernando*. The High Court has yet to rule on this apparent conflict of judicial views.

Events Elsewhere in Australia

There has been a deal of consideration of, and reports on, the use of forensic sampling as a tool of criminal investigation in Australia over the years since the original legislation in the early part of this century. In 1975 the Australian Law Reform Commission commented on the likely value of the then emerging DNA technology and noted that there was a need for enforceable safeguards to be built into the law. Perhaps the most influential report on the subject was delivered in 1989 by the Victorian Consultative Committee on Police Powers of Investigation (known as the Coldrey Committee) in a report entitled 'Body Samples and Examinations'. In 1991, the matter was again considered and made the subject of recommendations in the Fifth Interim Report of the Review of the Commonwealth Criminal Law. All of these reports recommended more detailed legislative provision for a balancing of the rights of suspects and investigators in the obtaining of forensic samples.

In 1992, the Standing Committee of Attorneys-General referred the matter to the Model Criminal Code Officers' Committee. The Model Code Committee is made up of the nominees of Attorneys-General from each Australian jurisdiction. In 1993, the Australian Police Ministers' Council considered a report by the National Institute of Forensic Science into the use of DNA technology (The Esteal Report) and resolved to set up a committee, chaired by the Chief Justice of Victoria, to make recommendations to APMC. The reference included the adequacy of existing legislation. The Model Code Committee and the Esteal Committee worked together on the common issues. Both Committees concluded that new legislation was required and that it should be consistent across Australia.

The Model Code Committee prepared a set of Model Provisions in the form of a Bill. Two drafts were successively produced and circulated for comment to about 600 groups and individuals across Australia. In each case over 60 submissions were received, analysed by the Committee, and the result incorporated into the Bill where that was appropriate. The Model Provisions have thus been subjected to very considerable consultation. The Model Provisions were submitted to the Standing Committee of Attorneys-General, which approved them in principle. They were introduced into Parliament by the previous Commonwealth Government as the *Crimes Amendment (Forensic Procedures) Bill*, 1995. That Bill lapsed with the 1996 election. The new Commonwealth Government reintroduced the Bill, with minor changes, and it has now reached the Senate, having passed the House of Representatives. Very recently, the Victorian Government has introduced its *Crimes (Amendment) Bill*, 1997 which, among other things, amends the Victorian

provisions enacted after the Coldrey Report to conform more closely to the Model Provisions approved by the Standing Committee.

General principles

The essence of the law in this area is to set a balance between a number of civil rights and liberties inhering to the individual citizen—in this case, notably the interests of privacy, the privilege against self-incrimination, and bodily integrity—against the rights of the general community in the effective and efficient investigation of crime and bringing the perpetrator to justice. The debate is not new, neither in criminal investigation generally nor in this part of it. In Parliamentary Debates on the original South Australian legislation in 1928, views were expressed ranging from the necessity of medical examinations to provide corroborative evidence in sexual crimes to concern over the possible abuse of police power and the danger that such evidence might give credibility to an otherwise false accusation of sexual criminality.

This balance changes in time as society and its needs and aspirations change. In *Dyson*, upholding the power of the South Australian police to take blood samples for DNA match purposes via the statute of 1928, the Chief Justice said:

> 'These aspects of contemporary legislation illustrate the undoubted desirability of a more discriminating and carefully thought out approach. I accept that s 81 should, having regard to contemporary standards, be reviewed by Parliament. One cannot imagine that such a provision would be enacted in these terms today.'.

This balance is notoriously difficult to achieve and it is not possible to reach a balance which satisfies everyone. The extremes of this argument will be illustrated when discussing consultation. In general, however, the Model Provisions and the Bill permit the compelled provision of forensic samples, their storage, use and destruction, subject to safeguards such as judicial scrutiny, informed consent, and the protection of those who can be regarded as the more vulnerable groups in the community.

The provisions in South Australia require replacement for a number of reasons.

- The current provisions are not very satisfactory, as the Chief Justice has pointed out. The law has lagged behind advances in science and technology as well as modern legislative principles and techniques. For example, it is not clear why detailed protections apply to the taking of fingerprints and footprints but not the 'medical examination'.
- The current police power to take some forensic samples is based on a disputed interpretation of an old legislative provision which was not designed for the purpose. The High Court has yet to rule on what appears to be conflicting authority. Absent a legislative base, it is possible that the High Court will hold that SA police have no power to take blood samples, and a prosecution may be lost;
- The current provisions are insufficiently comprehensive in relation to the powers of investigating police and the rights of persons suspected of committing crimes;
- There must be legislative provision for the employment of DNA technology in criminal investigation;
- The validity of results obtained by DNA technology requires the creation of a large data base, which means, in Australia, that the data base must be national, as it is in England and the United States. Therefore, nationally consistent legislation is required. This Bill represents a large step to that end. The Commonwealth Bill is on its way through Parliament. Victoria has introduced matching amendments to its existing scheme. Current inconsistency has led to major problems with Commonwealth prosecutions (see, for example, *Grollo* (1994) 75 A Crim R 271).

Summary of provisions

In general terms, the Bill adopts the following policies:

- The Bill distinguishes between intimate, non-intimate and intrusive procedures. More rigorous protections apply to intimate and intrusive procedures. These include examination and taking samples from genital areas, the taking of blood and/or saliva and intrusion into bodily orifices;
- In general, unless a suspect gives informed consent to the taking of an intrusive sample, an intrusive sample can be taken only by order of a magistrate;
- Again, in general terms, non-intrusive samples may be given by informed consent, or may be required to be given by a police officer, provided that certain criteria are met, but a court order will be required where the suspect does not or is unable to give informed consent;
- There are special procedures to protect children and adults incapable of giving informed consent;
- The Bill allows for the making of urgent orders by electronic means where the taking of the sample must be done without delay. These are called interim orders. A case in which the sample sought is perishable, or a case in which it is feared that the suspect might destroy the sample are examples of cases in which such a power could be used;
- The Bill does not require, in every case, that the suspect be under arrest to be subject to the regime imposed by the provisions. This is controversial and will be dealt with in more detail below;
- The Bill grants a number of rights to the suspect including:
  - (a) the right to have full information about the relevant procedure and why it is required;
  - (b) the right to be present and to make submissions at an application for an order that the sample be provided;
  - (c) the right to have legal representation and, where the suspect is a 'protected person' an 'appropriate representative';
  - (d) the right to be treated humanely and with a minimum of physical harm, embarrassment or humiliation;
  - (e) the right to have a chosen medical practitioner present at most procedures; and
  - (f) limitations on the number and sex of people present when intimate samples are being obtained.

The Bill states that, where forensic sampling has taken place in violation of the provisions, the evidence is inadmissible against the suspect in court, unless the court is satisfied that it should be admitted. The Bill lists a number of factors which the court can take into account and specifically provides that the probative value of the evidence does not by itself justify admissibility.

There are also comprehensive provisions relating to the storage and destruction of forensic material. Lastly, the Bill provides for the taking of blood samples and fingerprints in certain circumstances following conviction of an offender for a serious offence.

Consultation and controversial provisions

The comprehensive consultation process carried on in relation to the Model Provisions on a national basis provided valuable practical and theoretical opinions informing the drafting of the provisions. It also clarified the controversial aspects of the Model Provisions. There were extremes. Some argued in effect that police should be able to take forensic samples without let or hindrance. Others argued that they should never be allowed to do so. Leaving such general comments aside, some specifics were controversial. The leading examples are as follows:

- The Provisions and the Bill do not require arrest as a pre-condition to the taking of all forensic samples. A number argued against this on civil liberties grounds. This has not been done because:
  - (a) the criteria which control the right of the police to request and enforce the obtaining of a sample are clear and set a high standard. They do not permit, for example, a fishing expedition by police. Adding arrest adds nothing useful;
  - (b) arrest should be a step of last resort, and the law should not tempt police to arrest in marginal cases in order to be able to try to obtain a forensic sample; and
  - (c) an aim of the provisions which is often overlooked is to facilitate the exclusion of suspects from the case. It would be ironic that the suspect would have to be arrested (with all that entails) in order to be proven innocent.
- Some objected to the fact that the Provisions permit the police to require the taking of non-intimate samples without first going to court. This objection was not agreed to for the purposes of the Model Provisions or the Bill because:
  - (a) requiring a court order for every occasion in which police want to, for example, remove a paint flake from the arm of a suspect or take a hair sample is impractical and would bring perfectly proper criminal investigation to a halt;
  - (b) the approach of distinguishing between intimate and non-intimate samples in this respect is consistent with, for example, legislation in all comparable jurisdictions, including in the United Kingdom and the recommendations of expert reviews of the area such as the Review of Commonwealth Criminal Law; and
  - (c) there are very adequate protections in the scheme designed to aid the vulnerable and assist the innocent.
- Law enforcement authorities were critical of the strict rule of inadmissibility that is contained in the Model Provisions. The

approach taken there and in the Bill is, however, consistent with current law. It requires the prosecution to satisfy the court that, despite the fact that the standards set down by Parliament have been broken, the evidence should still be admitted. It is also provided that the probative value of the evidence is not by itself sufficient to warrant admission. The reason for this is that the Bill deals with real evidence and the temptation to break the rules in order to get the vital piece of hard evidence must be high. In reality, it is no defence to breaking the law to say that the evidence actually obtained proves guilt—the end does not justify the means.

· The idea that samples from unconvicted people should be destroyed if there is no conviction of criminal proceedings on foot after a fixed time may be thought to be controversial. Any period fixed for the destruction of forensic evidence is bound to be arbitrary, but there should be one. Such a limitation is contained in the legislation in Victoria, the United Kingdom, Canada and the Commonwealth Bill—in short, in all modern comparable legislation. It cannot be argued with any real plausibility that all suspect's samples should be retained indefinitely. That is particularly so where the suspect has given informed consent in relation to the investigation of a particular case, but also applies where an order has been made, again in relation to a particular case. Neither is done for general criminal investigation purposes. If police want to keep the samples for longer than 2 years, they should provide some realistic time in which it is reasonable to believe that the investigation will be pursued actively and not just be shelved. Where such a reason or reasons can be supplied, there is a mechanism in the Bill for the time limit to be extended and there is no arbitrary limit on that—so long as good reason can be shown.

Honourable members may wish to note that the Coldrey report was even less compromising. It called for the destruction of all such evidence if no charge had been laid within six months of the taking of the sample [cl 6.195]. The Victorian legislation reflects that recommendation (plus a power in the Magistrates Court to extend). The Commonwealth Bill allows a period of 12 months with the possibility of judicial extension. The Canadian DNA legislation also has a destruction/judicial extension requirement and, again, the period is 12 months. The UK legislation has no fixed limit but calls for destruction "as soon as practicable" after the proceedings are discontinued (and like decisions). This is, if anything, a more stringent criterion. The Bill here provides a period of 2 years with a possibility of judicial extension. In addition the Bill provides (as does the Commonwealth Bill) for the retention and use of unidentified samples for the purposes of creating and maintaining a data base against which samples can be tested.

DNA Technology

A major reason for the enactment of the Bill is to make legislative provision for an effective regime for the use of defensible DNA analysis in the courts. This is so, not only in relation to the collection of samples from a suspect which may yield DNA information, but also to provide the for the necessary national DNA data base which will give those DNA readings some real meaning. The advent of the use of DNA technology has caused legal and legislative action both in this country and overseas. As has been noted, the issue of the admissibility and weight of expert opinion evidence as to the meaning and evidentiary value of DNA evidence has not been addressed in this Bill and is left to the ordinary rules of evidence. However, the technical rules governing the collection of genetic material from suspects is not only a matter of genuine public concern in terms of the balance between individual liberties and effective criminal investigation, it is also crucial in facilitating the consideration of the worth of such evidence by the courts on its own substantive merits, and not simply on the basis of the technical question of police powers.

Interaction With Other Police Powers

The result of the decision of the Full Court in *Dyson* to the effect that s 81(2), (3) of the *Summary Offences Act* authorises forensic sampling of almost any kind poses structural problems for the Bill. In fact, police deal with the bodily integrity of a suspect for at least four purposes. They are (a) search; (b) forensic sampling; (c) identification and (d) medical examination of the health of a person in custody. The problem is that, while there is no neat dividing line between any of these four purposes, the Bill tries to deal with one of them only. That being so, the Bill must draw some very difficult lines.

Some are comparatively easy. For example, consider the issue of x-ray or ultrasound examination of a suspect. The only real purpose for any such procedure falls under the heading of 'search' and therefore falls outside the scope of the Bill. But others are more difficult. The photograph of a tattoo or wound may be for identification purposes or for a combination of search and forensic sampling—or all at once.

Currently, these distinctions are made, albeit by default and not in a very rational manner, within the context of the *Summary Offences Act.* Section 81(1) is clearly a power of search, s 81(4) and following is about identification and s 81(2), (3) is about "medical examinations".

The decision in *Dyson* confirmed that s 81(2), (3) is about forensic evidence and other medical examination and is not confined to medical examinations in the health sense. It is positively undesirable to have two forensic powers running concurrently. Therefore, s 81(2), (3) will have to be repealed insofar as they authorise forensic sampling. Police have advised that, although it is not common, s 81(2) is sometimes used for body cavity search purposes. It is not the intention to affect police search powers in any way by this Bill and so the sections are amended by the Schedule to allow for this kind of search.

The overlap with identification procedures is more difficult. The same photograph of, say, a wound, could be taken for identification or forensic purposes. The solution that adopted in the Bill is to say that identification procedures could come either under the remaining sub-sections of s 81 or under this Act—that is, the two run in parallel. In addition, the Bill is not intended to regulate in any way the taking of photographs by video camera surveillance (such as video cameras in the Mall, at graffiti hot spots or to catch defaulting drivers/parkers)—that sort of activity is analogous to a power to search really. The Bill has to try to draw those lines.

This is not an easy thing to do. There is no simple and utterly principled way around it. For example, as a general rule the Bill says that if a suspect's clothing is to be disturbed, then it is a "forensic procedure" but if not, then it is not under the Bill at all. We have tried to keep this sort of line as simple as possible so that operational police can learn it.

The legislative mechanism by which this is done can be seen in cls 5 and 6 of the Bill. In both cases, Parliamentary Counsel has taken pains to spell out clear and simple rules for the guidance of police officers, members of the public and other interested people as precisely as possible the scope of the provisions sought to be enacted.

Conclusion

For a number of reasons, this Bill has considerable importance. It seeks to codify the powers of the police to collect forensic samples and thus to facilitate the production of scientific evidence in a criminal trial. In so doing, it seeks an appropriate balance between public values which are commonly in conflict in the criminal investigation process.

The Bill has been drafted using the Model Provisions as a basis for the policy decisions involved and the areas of law to be negotiated. As I have said, the Model Provisions have received wide exposure, comment and agreement. This form of the Provisions has been the subject of extensive discussion and consultation within Government but has not been exposed to external scrutiny until now. The purpose of introduction today is so that the Bill can lie on the table, exposed to public gaze and comment. I urge members of Parliament and anyone else interested in the subject to consider the Bill, and make such response as they consider appropriate to my office. I assure honourable Members and the public that all responses to this sensitive area of law and policy will be carefully considered.

I commend the Bill to the House.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause defines various terms used in the measure. In particular, a 'forensic procedure' is defined to mean—

· the taking of handprints, fingerprints, footprints or toeprints; or
· an (external) examination of the suspect's body; or
· the taking of a sample of hair from the suspect's body; or
· the taking of a blood sample; or
· the taking of a sample by buccal swab, or a sample of saliva; or
· the taking of a sample of fingernail or toenail, or material from under a fingernail or toenail; or

- the taking of a sample of biological or other material from an external part of the body; or
- the taking of a dental impression; or
- the taking of an impression or cast of a wound.

Clause 4: Suspicion of criminal offence

Certain Parts of the Act only apply in relation to persons who are under suspicion of committing a criminal offence. This section defines what it means to be 'under suspicion' and, in particular, specifies that for the purposes of the Act a person will only be taken to be under suspicion when the suspicion is based on reasonable grounds.

Clause 5: Non-application of Act to certain procedures

This clause provides that the measure does not apply to—

- breath and blood samples taken under any other law requiring persons to submit to breath analysis or alcotest; and
- searches.

PART 2
FORENSIC PROCEDURES GENERALLY
DIVISION 1—PRELIMINARY

Clause 6: Application of this Act

This Part of the Act applies to forensic procedures generally (subject, of course, to the exceptions specified in clause 5). The rest of the Act, however, does not apply to forensic procedures carried out under any other law or forensic procedures carried out (by consent) on a person who is not under suspicion.

Clause 7: Authority required for carrying out forensic procedure

This clause provides that a forensic procedure can only be carried out on a person who is not under suspicion if the person consents or if the procedure is authorised by a court under Division 8 of Part 3 (which provides for the taking of certain samples from a person who has been dealt with on a charge of an indictable offence) or in accordance with any other law.

A forensic procedure can only be carried out on a person who is under suspicion with the person's consent under Part 3, with the authorisation of an appropriate authority (which is defined in clause 16) under Part 3 or in accordance with any other law.

DIVISION 2—GENERAL PROVISIONS ABOUT CONSENT

Clause 8: How consent to be expressed

A person's consent to a forensic procedure must be express or otherwise unequivocal.

Clause 9: Withdrawal of consent

Consent may be withdrawn at any time. A withdrawal of consent may be express or implied by conduct.

DIVISION 3—GENERAL PRINCIPALS FOR CARRYING OUT FORENSIC PROCEDURES

Clause 10: Forensic procedures to be carried out humanely

A forensic procedure must be carried out humanely, must not be carried out in the presence or view of more persons than are necessary and, if it is reasonably practicable, an intimate forensic procedure must not be carried out on a person in the presence or view of persons of the opposite sex.

Clause 11: Duty to observe relevant medical or other professional standards

A forensic procedure must be carried out in accordance with appropriate medical or other professional standards.

Clause 12: Taking samples of hair

If a sample of hair is to be taken, the root of the hair must not be removed without specific authorisation.

PART 3
AUTHORITY FOR CARRYING OUT FORENSIC PROCEDURES DIVISION 1—APPLICATION OF THIS PART

Clause 13: Application of this Part

This Part of the measure applies to persons who are under suspicion and (in Division 8) certain persons who have been dealt with by a court on a charge of a criminal offence.

DIVISION 2—CONSENT

Clause 14: Preconditions of request for consent

This clause limits the circumstances in which the police can ask a person under suspicion to consent to a forensic procedure. There must be reasonable grounds to suspect that the forensic procedure may produce evidence of value in relation to the suspected offence, the person must not be a 'protected person' (which is defined to mean a child or mentally incapable person) and, if the proposed procedure is intrusive (which is also a defined term), the suspected offence must be an indictable offence.

Clause 15: Requirements for informed consent

This clause outlines the explanation that must be provided to a person under suspicion before he or she is asked to consent to a forensic procedure. The person must also be allowed a reasonable opportunity to communicate with a legal practitioner (if available) before consent is given or refused. A record of the explanation, the request for consent and the person's response to the request must be made by videotape, audiotape or, if neither of those methods is reasonably practicable, by writing and a copy of the record must be provided to the person. A fee may be fixed by regulation in relation to videotaped records.

DIVISION 3—ORDERS AUTHORISING FORENSIC PROCEDURES

Clause 16: Order against person under suspicion

An order under this Part authorising a forensic procedure may be made by an appropriate authority. The Magistrates Court (in its Criminal Division) is an appropriate authority for the purposes of the measure. A senior police officer is an appropriate authority only if—

- the officer is not involved in the investigation; and
- the suspect is in custody and is not a protected person; and
- the proposed procedure is non-intrusive.

Clause 17: Classes of order

Both interim and final orders are provided for in this Part.

DIVISION 4—APPLICATION FOR ORDER

Clause 18: Application for order authorising forensic procedure

An application may be made by a police officer in charge of a police station, the investigating police officer or the DPP.

Clause 19: General formal and procedural requirements

This clause prescribes the procedure for making an application.

Clause 20: Representation

The person under suspicion (here called the 'respondent') is entitled to be represented by a legal practitioner. A protected person must be represented by an 'appropriate representative' (which is defined in the clause) and may also be represented by a legal practitioner.

DIVISION 5—DETERMINATION OF APPLICATION FOR INTERIM ORDER

Clause 21: Hearing of application for interim order

This clause provides that a hearing for an interim order may be informal and may be held by telephone. Both the applicant and the respondent are to be allowed to make representations at the hearing.

Clause 22: Making of interim order

The appropriate authority may make an interim order if satisfied that evidence (or the probative value of evidence) may be lost or destroyed unless the forensic procedure is carried out urgently and that there are reasonable grounds to believe that the grounds for making a final order will ultimately be established.

An interim order may only be made in relation to a person (other than a protected person) if the person has refused or withdrawn informed consent. An interim order for carrying out an intrusive forensic procedure may only be made if the suspected offence is an indictable offence.

The evidence obtained by carrying out a procedure under an interim order is inadmissible against the respondent unless a final order has been made confirming the interim order.

DIVISION 6—DETERMINATION OF APPLICATION FOR FINAL ORDER

Clause 23: Respondent to be present at hearing of application

This clause provides that the respondent must be present at the hearing for a final order (unless the appropriate authority is satisfied that reasonable grounds exist for dispensing with this requirement) and provides for securing the presence of a respondent at such hearings.

Clause 24: Procedure at hearing

This clause outlines the procedures to be followed at the hearing for a final order.

Clause 25: Making of final order for carrying out forensic procedure

An appropriate authority may make a final order if satisfied that—

- there are reasonable grounds to suspect the respondent has committed a criminal offence and that the forensic procedure could produce material of value to the investigation of the suspected offence; and
- having regard to factors outlined in the provision, the public interest in obtaining evidence tending to prove or disprove the respondent's guilt outweighs the public interest in ensuring that private individuals are protected from unwanted interference.

A final order may only be made in relation to a respondent (other than a protected person) if the respondent has refused or withdrawn informed consent. A final order for carrying out an intrusive forensic

procedure may only be made if the suspected offence is an indictable offence.

Clause 26: Making of final order confirming interim order

An appropriate authority may confirm an interim order if satisfied that proper grounds exist for making a final order. If an interim order is not confirmed, the authority must order the destruction of forensic material obtained by carrying out the procedure (but destruction must not occur until the time for an appeal has expired or until an appeal has been heard and has been unsuccessful).

DIVISION 7—DUTIES OF APPROPRIATE AUTHORITY ON MAKING ORDER

Clause 27: Action to be taken on making order

The appropriate authority must, on making an order, make a written record of the order and the reasons for the order (a copy of which is to be provided to the respondent) and inform the respondent that reasonable force may be used to carry out the order and that, if the respondent obstructs or resists a person in connection with the carrying out of the order, evidence of that fact may be admissible in proceedings against the respondent.

An order may include incidental directions.

DIVISION 8—FORENSIC PROCEDURES AFTER COURT HAS DEALT WITH CHARGE

Clause 28: Application of this Division

This Division applies where a person has been found guilty of a charge of an indictable offence or where a person charged with an indictable offence has been declared to be liable to supervision under Part 8A of the *Criminal Law Consolidation Act*.

Clause 29: Order authorising taking of blood samples and fingerprints

This clause allows the police or the DPP to apply for an order authorising the taking of fingerprints or a blood sample from a person to whom the Division applies. A blood sample may, however, only be authorised if the person has been dealt with on a charge of an indictable offence punishable by imprisonment for 5 years or more (a 'major offence'). The court is required to take into account various matters before making an order.

DIVISION 9—MISCELLANEOUS

Clause 30: Obstruction

It is an offence to intentionally obstruct or resist a forensic procedure being carried out pursuant to an order under this Part. The maximum penalty is imprisonment for two years.

PART 4
CARRYING OUT FORENSIC PROCEDURES
DIVISION 1—PRELIMINARY

Clause 31: Application of Part

This Part applies to forensic procedures authorised under Part 3 by consent or by order of an appropriate authority. The provisions of the Part (except Divisions 5 and 6) also applies to procedures authorised under Division 8 of Part 3.

Clause 32: Who may carry out forensic procedure

A forensic procedure must be carried out by a medical practitioner or a person who is qualified as required by the regulations.

Clause 33: Assistants

A person carrying out a forensic procedure may be assisted by other persons.

DIVISION 2—USE OF FORCE

Clause 34: Use of force

A person authorised by an order under the measure to carry out a forensic procedure, or a person assisting, may use reasonable force to carry out the procedure and to protect the evidence obtained.

A police officer may use reasonable force to prevent a person from destroying or contaminating evidence until an application for an interim order is made and, if an interim order is made, until the forensic procedure is actually carried out, but in such a case the police must ensure that the application is made as soon as reasonably practicable.

Clause 35: Use of force does not constitute arrest

If a person is forcibly detained in accordance with this Division, that detention will not, by itself, constitute an arrest.

DIVISION 3—RIGHT TO HAVE WITNESS PRESENT

Clause 36: Right to have witnesses present

A person on whom an intrusive forensic procedure is to be carried out must be allowed a reasonable opportunity to arrange for the attendance of a medical practitioner to witness the procedure.

An appropriate representative must be present to witness a forensic procedure being carried out on a protected person.

A witness may however be excluded if he or she attempts, unreasonably, to obstruct the forensic procedure.

DIVISION 4—RECORDING OF FORENSIC PROCEDURE

Clause 37: Videotape recording to be made

Video recordings of forensic procedures (other than the taking of prints of the hands, fingers, feet or toes) must be made where that is reasonably practicable and the person on whom the procedure is to be carried out does not object. A copy of any video recording made must be provided to the person (on payment of a fee). If no video recording is made, the forensic procedure must be carried out in the presence of an independent witness.

DIVISION 5—HOW FORENSIC MATERIAL IS TO BE DEALT WITH

Clause 38: Person to be given sample of material for analysis

A part of any forensic material obtained from a person's body must be set aside for the person as soon as practicable after the material has been analysed and, if the person wants to have the material analysed, reasonable assistance must be given to ensure that the material is protected from degradation until it is analysed.

The clause does not apply if it is not practicable to obtain sufficient material to allow for division into separate parts for analysis.

Clause 39: Person to be informed of the results of analysis

A copy of the results of an analysis must, on payment of the fee fixed by regulation, be made available to the person on whom the procedure was performed.

Clause 40: Photographs

A copy of any photograph taken of a part of a person's body must, on payment of the fee fixed by regulation, be made available to the person.

Clause 41: Analysis of material obtained under interim order

Forensic material obtained under an interim order must not be analysed until a final order is made confirming the interim order, unless the material is likely to perish before that time. It is an offence to intentionally or recklessly disclose the results of analysis of forensic material obtained under an interim order until the interim order is confirmed. The penalty is imprisonment for two years.

DIVISION 6—DESTRUCTION OF FORENSIC MATERIAL

Clause 42: Destruction of forensic material

Forensic material obtained from a person as a result of a forensic procedure must be destroyed if—

- the material was obtained under an interim order that was not confirmed;
- proceedings for an offence to which the material is relevant are not commenced within 2 years (or, if special reasons exist, such longer period as the Court may allow) after the material is obtained, or are discontinued;
- the material is declared to be inadmissible in court proceedings; or
- the person is acquitted of the offence to which the material relates (unless the person is declared to be liable to supervision under Part 8A of the *Criminal Law Consolidation Act*).

DIVISION 7—MISCELLANEOUS

Clause 43: Exemption from liability

A person who carries out or who assists in a forensic procedure that the person genuinely believed was authorised is exempted from civil or criminal liability for any reasonable act or omission.

PART 5
EVIDENCE

Clause 44: Effect of non-compliance on admissibility of evidence

Evidence obtained as a result of a forensic procedure performed in contravention of the measure is not admissible against the person on whom the procedure was carried out unless the person does not object to the admission of the evidence or the court is satisfied, having regard to matters outlined in the provision, that the evidence should be admitted despite the contravention.

Forensic evidence will be inadmissible beyond the time that it is required under the measure to be destroyed.

Clause 45: Admissibility of evidence of denial of consent, obstruction etc.

Evidence that a person denied or withdrew consent to a forensic procedure is inadmissible in criminal proceedings against the person unless he or she consents to admission of the evidence. Evidence that a person obstructed or resisted the carrying out of a forensic procedure is, however, admissible subject to the ordinary rules of evidence.

PART 6
MISCELLANEOUS

Clause 46: Confidentiality

This clause sets out the limited circumstances in which information obtained through the conduct of forensic procedures under the measure may be disclosed.

A person who intentionally or recklessly discloses information in contravention of the clause commits an offence punishable by a fine of $10 000 or two years imprisonment.

Clause 47: Restriction on publication

This clause makes it an offence to publish a report of any proceedings under the measure that includes information tending to identify a person under suspicion unless—

- the person consents to the publication or has been charged with the suspected offence or a related offence; or
- the appropriate authority authorises the publication.

The maximum penalty for contravention of this provision is a fine of $5 000 or imprisonment for one year.

Clause 48: Databases

This clause provides for the maintenance of a database of information obtained from carrying out forensic procedures under the measure. A DNA profile may, however, only be stored on a database if the person from whom the material was obtained was found guilty of the offence in relation to which the forensic procedure was carried out or was declared to be liable to supervision under Part 8A of the *Criminal Law Consolidation Act*.

The Minister may enter into an arrangement providing for the exchange of information recorded in the database kept under this clause and a database kept under a corresponding law.

Clause 49: Access to information stored in database

This clause limits the circumstances under which a person may have access to identifying information about DNA profiles stored in a database. In addition, identifying information derived from forensic material must not be retained on the database beyond the time the destruction of the forensic material is required.

Clause 50: Reciprocal registration of orders

The Minister may enter into an arrangement providing for the reciprocal registration of orders made under the measure and a corresponding law. The Minister may also register an order made under the law of the Commonwealth or of another State or a Territory of the Commonwealth that is registrable under criteria prescribed by the regulations.

An order registered under this clause may be enforced as if it were an order made under the measure.

Clause 51: Regulations

This clause provides for the making of regulations.

SCHEDULE 1

Transitional

This schedule provides that the measure only applies in relation to forensic procedures proposed to be carried out after its commencement.

SCHEDULE 2

Amendment of Summary Offences Act 1953

This schedule makes consequential amendments to section 81 of the *Summary Offences Act 1953*. Under the amendments that section will only relate to searches and the carrying out of certain minor procedures aimed at identification where a person is in custody on a charge of committing an offence.

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

LIQUOR LICENSING (LICENCE FEES) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Liquor Licensing Act 1997. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

Since the Liquor Licensing Act 1997 came into operation on 1 October 1997 it has become clear from the reaction of many clubs that the small volunteer club industry believes that the cost of complying with the requirements of the Act in relation to the approval of persons in a position of authority and the approval of responsible persons is unreasonable given the nature and scope of these clubs.

To the industry's credit, clubs do not disagree with the Act's requirements that clubs must be fit and proper or with the responsible service and harm minimisation objects of the Act.

The Liquor Licensing Act 1997 resulted from an independent review of South Australian liquor licensing laws conducted by Mr Tim Anderson QC. Mr Anderson QC sought written submissions by public notice in the *Advertiser* and received 78 submissions including submissions from the Licensed Clubs' Association, the South Australian National Football League Inc, Surf Life Saving South Australia and several licensed clubs. The Anderson QC review recommended the adoption of all of the recommendations of the Licensed Clubs' Association with the exception of the right to sell liquor for carry-off.

In his report Mr Anderson QC stressed that 'responsible service principles must be an integral part of my proposed new licensing scheme.' He went on to recommend many responsible service and harm minimisation initiatives including a recommendation that 'at all times when the licensed premises are operating the premises must be personally supervised or managed by the licensee or an approved manager' and that 'an approved manager must, while carrying out his or her duties on the licensed premises, wear an identification card'.

In making these recommendations Mr Anderson QC had the benefit of submissions from all sectors of the industry and the general community and personal knowledge of other Australasian jurisdictions. There is no doubt that the Anderson QC recommendations reflect as he put it that 'it is a fact of life that the community as a whole suffers emotionally and financially from the abuse of liquor'.

The Liquor Licensing Act 1997 and Regulations were subject to extensive and on going consultation with a working group comprising industry, health and regulatory agencies on which the club industry was represented by the Licensed Clubs' Association.

The Act had total support from all sectors and the club industry more than any other sector of the industry has benefited significantly from the new Act. Clubs now have identical trading rights as hotels for on premises consumption without the obligations required of a hotel. Clubs can now purchase liquor either retail or wholesale and can trade with the general public. The club industry in general, not just the Licensed Clubs' Association, has been agitating for these changes through local members for many years and Mr Anderson QC supported the club industry's submissions.

However, it is clear that not all clubs want the liberal trading rights which have been won for clubs, preferring to continue trading with members and guests only.

This Bill recognises that distinction and provides for a limited club licence which is deemed to be a club which does not hold a gaming machine licence and which will only trade with members and a limited number of their invited guests. A club with a limited club licence will not be required to have its committee of management approved but will be required to advise the Liquor and Gaming Commissioner of the composition of its committee and must remove a committee member if the licensing authority determines that a committee member is not fit and proper. In addition there will be no application fee for the approval of responsible persons or the manager of a limited club licence. It should be recognised that the concession in terms of costs is significant. Revenue foregone is at least $600 000.

There has also been some opposition to the responsible persons provisions of the Act from the holders of other licensed classes, particularly small wineries who operate cellar door sales outlets, who contend that the style of their operations is such that the requirement to have an approved responsible person on the premises at all times the business is open to the public is unduly onerous.

Again there has been no criticism of the underlying principles.

The Government has listened to this criticism and is concerned that the key message of the Act of harm minimisation and responsible service which has been genuinely embraced by all industry organisations is being overshadowed by this concern over the financial burden of compliance. This is not in the interests of the community or the industry and therefore this Bill also provides the licensing authority with discretionary power to exempt a licensee from the requirement to have the business personally supervised and managed by a responsible person at all times it is open to the public where in the authority's opinion the limited scope of the business is such that the grant of the exemption will not compromise the responsible service and consumption principles of the Act.

It is intended that there will be continuing consultation with all relevant stakeholders over the Christmas—New Year period to ensure the basic principles upon which the new Act is based are upheld but with minimal, if any, hardship to small businesses. It is hoped that those who have concerns will take the opportunity to make a contribution to the consultation process.

The last thing the Government wants is to place unreasonable burdens on small business—on the basis of the wide ranging consultations in developing the Act and the Regulations the Government did not believe it had placed unreasonable burdens on those businesses.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clause 3: Amendment of s. 4—Interpretation

This clause strikes out the definition of manager in light of the amendments to section 97. The meaning of the term is to be left to the context of the provision in which it appears.

Clause 4: Amendment of s. 36—Club licence

The amendment establishes a further category of club licence—a limited club licence. The licence is for a club that does not have gaming machines and is not open to the general public. The club is required to provide personal details about members of the committee of management of the club to the Commissioner and is required to remove a person from the committee if the Commissioner is of the opinion that the person is not a fit and proper person to be such a member.

Clause 5: Amendment of s. 71—Approval of management and control

The amendment provides that no fee is payable for approval of a manager of a club subject to a limited club licence.

Clause 6: Amendment of s. 97—Supervision and management of licensee's business

The amendment enables the licensing authority to allow a licensed business (in view of the limited scope of the business conducted under the licence) to be managed in a way that does not involve constant personal supervision and management by the licensee or a director or a person approved as the manager. Another person may be approved for the purpose or alternative arrangements may be approved if the licensing authority believes that the arrangements will not compromise the responsible service and consumption principles.

Clause 7: Amendment of s. 98—Approval of assumption of positions of authority in corporate or trust structures

Section 98 currently requires approval of each person in a position of authority in a trust or corporate entity that holds a licence other than a limited licence. The amendment extends the exemption to holders of limited club licences.

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

LEGAL PRACTITIONERS (QUALIFICATIONS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Legal Practitioners Act 1981. Read a first time.

The Hon. K.T. GRIFFIN: 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.

South Australian lawyers are admitted to practice by the Supreme Court. A person who wishes to be admitted to practice must satisfy the Supreme Court that he or she has complied with the Supreme Court's *Rules of Court Regulating the Admission of Practitioners 1993*. The rules set out the academic and practical requirements for admission. The Board of Examiners, a body established by the Rules and composed of the masters and a number of practitioners, enquires into every application for admission and reports to the Court upon suitability for admission. The academic and practical requirements for admission reflect largely the standards set by the Council of Chief Justices, as recommended by a subcommittee of that council, the 'Priestly Committee'. The monitoring and maintenance of those standards in South Australia is currently the function of the Board of Examiners.

The judiciary and the legal profession have, for some time, been concerned about the administration of the admission rules and the conduct of courses of instruction for the acquisition of the academic and practical qualifications required by the rules.

The Supreme Court Judges are of the view that they are not able to monitor to any appropriate extent the compliance of academic subject content with the standards set out in the Rules. The Board of Examiners does not have the capacity to satisfy itself as to academic content and standards. The Board of Examiners' duties have changed little in the last thirty years. They reflect the needs of a much smaller profession when there was only one university, the only practical requirements were articles of clerkship and when the profession was a far more domestic profession than it is today. The evolution of practical legal training has, over the last twenty years, left the Board unable, to a large extent, to discharge its responsibilities adequately.

In September 1995 the Supreme Court Judges approved in principle the establishment of a single representative body to determine the academic and practical requirements for admission to legal practice, as well as to ensure the provision of post-admission practical legal training. The catalyst for this was concern over the immediate future of one of the courses available for post-admission training, but took place against the background of concern about the current system.

The Chief Justice then established the Admissions Procedures Review Committee ('the committee'). This widely representative committee reported to the Chief Justice in May 1996. It recommended that there should be a single body to control the academic and practical requirements for admission. The committee made detailed recommendations for a scheme to regulate admission and post-admission requirements.

In every other jurisdiction in Australia overall control of the profession is vested in a body outside of the Supreme Court, being representative of the profession, including the Attorney-General or his or her nominee.

This Bill implements the scheme recommended by the committee, subject to some minor variations.

A new body called the Legal Practitioners Education and Admission Council (LPEAC) is established. This is an overall controlling body responsible for policy and other broad issues. A Board of Examiners subordinate to LPEAC will process and vet applications for admission. The committee was of the view that it would be unwise to expect one body to deal effectively with the myriad of policy issues and the defining of standards of qualification, whilst also dealing with the day-to-day examination of individual applications.

The composition of LPEAC is set out in new section 14B. The membership is drawn from the judiciary, the executive, legal practitioners, and legal educational institutions. A non-voting law student is included in the membership of LPEAC.

LPEAC's functions are set out in new section 14C. The body's functions can be described to be to set the requirements for and standards to be met for admission as a legal practitioner. LPEAC will have control over all aspects of admission and post-admission training and qualifications. This will include being able to require any practitioner to attend and complete any courses of post-admission study as a pre-requisite for admission or renewal of a practising certificate. However, LPEAC will only be empowered to impose such courses for the first two years after the issuing of a practising certificate, with discretion to extend that period in individual cases. Any other requirement for post admission education will require the Attorney-General's approval.

LPEAC will have the power to make rules necessary for carrying out its functions.

On occasions, LPEAC may require more extended advice or consultation and has been given the power to appoint advisory committees to provide it with expert advice.

The accountability of LPEAC is an important consideration that has been addressed by:

- representation by or of the Attorney-General;
- a requirement that LPEAC furnish an annual report to the Attorney-General to be tabled in Parliament;
- the requirement under the *Subordinate Legislation Act* 1978 that any rules promulgated by LPEAC be placed before each House of Parliament; and
- a right of appeal to the Supreme Court where LPEAC makes decisions that affect an individual's right to practice.

A new Board of Examiners is created. The function of this body, which is subordinate to LPEAC, is to examine each application for admission and report to the Supreme Court, as it does now, as to the eligibility and fitness for admission of an applicant and compliance with the admission requirements.

The Board of Examiners is subject to any rules of LPEAC and to any advice or direction by it as to any matter of policy or practice. When considering individual applications it can, if necessary, refer to LPEAC for guidance on standards and the like.

The committee recommended that the Board of examiners be comprised of a Master of the Supreme Court (as chairperson), a person appointed by the Attorney General and six legal practitioners appointed by the Chief Justice.

However, the Chief Justice, on behalf of the Judges, recommended that the number of practitioner members of the proposed new Board of Examiners should be no less than twelve. Given the nature of this body's duties, this is a desirable alteration. To ensure balance, the Attorney-General appoints two nominees. A quorum of the Board of Examiners is the presiding member and five members. It is essentially a body of practitioners. Whereas LPEAC is a policy body and requires a broad-based membership, the Board of Examiners is an examining body, the expertise for which is to be found squarely in the domain of the profession.

The Supreme Court will remain the admitting authority. The Supreme Court will receive reports from the Board of Examiners as to the qualification and fitness of any applicant for admission. The Supreme Court will continue to maintain the roll of practitioners. There has been no change in the Supreme Court's disciplinary role, including the inherent power to strike off.

Practising certificates are issued and renewed by the Supreme Court, under Part 3 of division 2 of the *Legal Practitioners Act*, and the Supreme Court maintains a register of practising certificates. However, it is the Law Society that carries out the bulk of the work and its staff are engaged in most of the administration. The Law Society also administers the trust account inspection system that includes auditing.

The committee recommended that the functions presently discharged by the Supreme Court concerning the issue and renewal of practising certificates be transferred to the Law Society of South Australia. The committee concluded that the Law Society is best placed to ensure that the compulsory insurance procedures and auditing requirements are met before practising certificates are issued or renewed.

The responsibility for the issue and renewal of practising certificates has been left with the Supreme Court but the Supreme Court has been given clear power, in new section 52A, to make rules assigning these functions. It is expected that the Supreme Court will assign all of these functions to the Law Society.

The advantage of the proposed new structure is that the specific functions necessary for sound administration of the admissions process are to be placed with bodies that have the greatest expertise in discharging them. This is to be contrasted with the present system where those functions are poorly ascribed to bodies inappropriately constituted to deal with them.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 5—Interpretation

This clause makes consequential amendments to the definitions contained in section 5 of the principal Act.

Clause 4: Insertion of Part 2A

This clause inserts a new Part 2A into the principal Act as follows:

PART 2A
THE LEGAL PRACTITIONERS EDUCATION AND ADMISSION COUNCIL
AND THE BOARD OF EXAMINERS
DIVISION 1—THE LEGAL PRACTITIONERS EDUCATION AND ADMISSION COUNCIL

14B. Establishment of LPEAC

The Legal Practitioners Education and Admission Council ('LPEAC') is established as a body corporate and the membership of LPEAC is specified.

14C. Functions of LPEAC

The functions of LPEAC, which relate to determining the qualifications necessary for legal practitioners in the State, are set out in this clause.

14D. Conditions of membership

This clause provides for terms of office of members of LPEAC.

14E. Procedures of LPEAC

This clause deals with procedural matters such as the quorum and voting requirements for LPEAC.

14F. Validity of acts and immunity of members

This clause provides for the validity of acts of LPEAC, notwithstanding any vacancy in membership, and immunity from liability for members of LPEAC.

14G. Advisory Committees

LPEAC may appoint advisory committees as it sees fit.

14H. Annual report

LPEAC must present an annual report to the Attorney-General to be laid before both Houses of Parliament.

DIVISION 2—THE BOARD OF EXAMINERS

14I. Establishment of Board of Examiners

The Board of Examiners is established as a 15 member body.

14J. Functions of Board of Examiners

The Board of Examiners is to have the functions and powers conferred under the principal Act or by LPEAC.

14K. Procedures of Board of Examiners

This clause sets the quorum for meetings of the Board of Examiners and provides that other procedural matters are to be determined by LPEAC or the Board.

14L. Validity of acts and immunity of members

This clause provides for the validity of acts of the Board of Examiners, notwithstanding any vacancy in membership, and immunity from liability for members of the Board.

Clause 5: Amendment of s. 15—Entitlement to admission

This clause amends section 15 of the principal Act (which deals with admission as a barrister and solicitor) to require compliance with rules made by LPEAC relating to qualifications for admission and to provide for referral of each application for admission to the Board of Examiners for its report and recommendation.

Clause 6: Substitution of s. 17A

Proposed section 17A deals with the issue of conditional practising certificates. Under the proposed provision, a practising certificate will, if the rules made by LPEAC so require, be issued subject to conditions as to education, training and experience. LPEAC may exempt a practitioner or class of practitioners from any such requirements and the provision provides a right of appeal to the Supreme Court against decisions of LPEAC under the provision.

It should be noted that under proposed section 14C a rule requiring legal practitioners with more than two years experience to undertake further education or training may only be made with the concurrence of the Attorney-General.

Clause 7: Repeal of s. 20A

Clause 8: Amendment of s. 29—Alteration to memorandum or articles of association

Clause 9: Amendment of s. 33—Audit of trust accounts, etc.

These clauses remove specific provisions allowing the exercise of Supreme Court powers by the Registrar. Proposed section 52A may be used to delegate any Supreme Court functions to the Registrar if appropriate.

Clause 10: Insertion of Division 14

This clause inserts a new section 52A specifying that the Supreme Court may make rules assigning functions or powers under Part 3 of the Act.

Clause 11: Amendment of s. 57—Guarantee fund

The proposed amendments to section 57 would allow money from the Guarantee fund to be used to cover expenses incurred by LPEAC.

Clause 12: Amendment of s. 95—Application of certain revenues

This clause amends section 95 to provide for payments to the Law Society in respect of any functions assigned to the Society by the Supreme Court under the Act and for payments towards meeting LPEAC's expenses.

Clause 13: Further amendments of principal Act

This clause provides for the making of further amendments to the principal Act set out in the schedule.

Clause 14: Transitional provision

This clause provides for the continuation of conditions imposed on practitioners under the current section 17A of the principal Act and for the enforcement, by LPEAC, of such conditions.

SCHEDULE

Further Amendments of Principal Act

The schedule makes a number of amendments to the principal Act of a Statute Law Revision nature.

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

STATUTES AMENDMENT (CONSUMER AFFAIRS) BILL

The Hon. K.T. GRIFFIN (Minister for Justice) obtained leave and introduced a Bill for an Act to amend the Building Work Contractors Act 1995; the Business Names Act 1996; the Consumer Transactions Act 1972; the Conveyancers Act 1994; the Land Agents Act 1994; the Land Valuers Act 1994; the Plumbers, Gas Fitters and Electricians Act 1995; the Residential Tenancies Act 1995; the Retirement Villages Act 1987; the Second-hand Vehicle Dealers Act 1995; the Security and Investigation Agents Act 1995; and the Travel Agents Act 1986. Read a first time.

The Hon. K.T. GRIFFIN: 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 *Statutes Amendment (Consumer Affairs) Bill 1997*, proposes amendments to various legislation in the Consumer Affairs portfolio.

The amendments are mostly of a minor nature and are largely concerned with bringing consistency in the legislation dealing with licensing. In some cases, the amendments are for uniformity of administration, providing the Office of Consumer and Business Affairs with certain housekeeping changes.

A comprehensive review of all legislation in the Consumer Affairs portfolio has taken place over the last 3 years.

The Legislative Review Team which was established to review the legislation saw through the process of the enactment of new legislation or the amendment of existing legislation which was to be retained. The Legislative Review Team completed its review and was disbanded late in 1995.

The new legislation and amended legislation has now been in operation for varying lengths time and in the administration some anomalies, inconsistencies and minor oversights have become evident. The amendments in the *Statutes Amendment (Consumer Affairs) Bill 1997*, seek to address those matters along with other minor amendments which are required for effective administration of the legislation concerned.

There has been a process of consultation during the preparation of the Bill and a draft copy of the proposed amendments were distributed for comment to relevant industry and consumer groups.

The key amendments in the Bill are as follows:

In the former Builders Licensing Act and Commercial and Private Agents Act, there were provisions which prevented persons disqualified from working in industry by using for example, another person, such as a family member, as the license holder, while the disqualified person worked as an employee of the licence holder. The Bill carries froward that requirement to the transitional provisions in the new Acts. A similar provision has recently been reinserted into the *Second-hand Vehicle Dealers Act 1996*. The provisions in essence, restore the status quo to prevent persons disqualified from working in the building or security industries from operating *de facto* in those industries in any capacity.

Building Work Contractors Act 1995

Under Section 33, the builder is required to take out insurance where a person enters into a building work contract for renovations/alterations costing in excess of $5 000 in order to give the home owner a warranty. To avoid the need for insurance, the builder may split the contract into two components—labour and fixtures, and the owner is billed for both. The building owner misses out on building indemnity insurance when the work contractor splits the contract into two components. The Act is amended to close this loophole.

Business Names Act 1996

This Act is amended to allow for a Postal Address for a business name or other relevant information to be disclosed on the Register. Many rural businesses have requested that they be allowed to include their postal as well as their residential address on the public register. At present there is no provision for a postal address to be recorded.

Consumer Transactions Act 1972

It is proposed to repeal section 6AA inserted by the Consumer Transactions (Miscellaneous) Amendment Act 1995. The section extends the provision concerning consumer leases under the Act to leases outside the jurisdiction of the Consumer Credit Code, such as leases of an indefinite period or where the cost of the hire does not exceed the value of the goods.

A number of credit providers have complained that this provision is unworkable and have raised concerns that this provision has altered the uniform nature of the Code. Hire agreements which are outside the Code are presently protected in the same way as other consumer transactions through the Fair Trading Act 1987, and the Consumer Transactions Act 1972. As a result of these concerns, the provision was not proclaimed. It is repealed by this Bill.

Land Agents Act 1994 and Conveyancers Act 1994

An amendment inserts a provision to allow for an appeal to the Administrative and Disciplinary Division of the District Court from a refusal by the Commissioner to grant a licence or registration.

There is no current provision for an appeal if it is needed and these appeal provisions appear in all other licensing Acts administered by the Commissioner.

Residential Tenancies Act 1995

This amendment to section 36 removes a reference to the Magistrates Court and substitutes it with 'the appropriate court' as many retirement village matters involve sums of money which exceed the Magistrates' Court jurisdiction.

A new provision (s. 105A) is inserted in the Residential Tenancies Act enabling the Governor to make regulations prescribing terms which must be included in every rooming house agreement.

The provision in the Residential Tenancies Act for Codes of Conduct for rooming houses were not brought into operation with the new Act. The main concern about the draft Code was that it imposed criminal sanctions on residents in inappropriate circumstances and a penalty of $200.00 was set. The draft Code required, among other things, that residents keep their rooms clean and pay rent on time. These requirements meant that a rooming house resident could be liable to a criminal penalty when a tenant is not.

It is considered that this concern is best met by setting out some standard terms in rooming house agreements which would attract civil sanctions (action for breach of a rooming house agreement) rather than criminal sanctions.

Retirement Villages Act 1987.

Under the Retirement Villages Act 1987, residents have a charge over the property of the village under Section 8, in order to secure the (often large) entry fee. The Bill amends Section 8 to ensure that nothing in the Real Property Act affects the residents' priority charge over the property of the village.

In Brown v Commonwealth Bank, the Supreme Court recommended that this charge be reconciled with the principles for the Torrens Title system in the Real Property Act.

Second Hand Vehicle Dealers Act 1995

Under Section 23 of the Act a dealer has certain duties to repair vehicles within a specified warranty period, provided the vehicle was sold for a price greater than $3000 or if the vehicle is less than 15 years old. Where a vehicle is sold for less than $3000 but is not road worthy, the dealer is obliged to repair the vehicle to a road worthy standard. The present wording of the Act imposes no duty to make road worthy vehicles sold which are more than 15 years old for which the purchase price exceeds $3001.

The Bill clarifies the roadworthiness requirement to ensure the same protection for all vehicles. Consequently, every second-hand motor vehicle sold by a dealer to the public must be made road worthy.

Security and Investigation Agents Act

This Act is amended to include a provision from the former Commercial and Private Agents Act requiring persons who employ security and investigation agents to employ appropriately licensed employees. Where a person is employed to do work defined by the Act, it is necessary for them to be licensed to undertake that work. The provision will ensure there is an onus on the employer to employ persons who hold the necessary licence for the work to be performed.

Jurisdictions which provide for assessors to the Courts

In jurisdictions which require the appointment of assessors to the Courts, technical amendments have been made to clarify that it is either 'a judicial officer of the Court' or, 'a Judge of the Court' who determines whether assessors will sit with the Court. Currently the wording of the section in various jurisdictions refers to the judicial officer who is to preside at proceedings. In certain instances, a matter brought to the Court may first be proceeded with by an officer of the Court before being brought before the judicial officer or a Judge of the Court. The amendment clarifies the determining of the presence of assessors in Court proceedings.

I commend this bill to Honourable Members.

Explanation of Clauses

The provisions of the Bill are as follows:

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

PART 2
AMENDMENT OF BUILDING WORK CONTRACTORS ACT 1995

Clause 4: Amendment of s. 3—Interpretation

This amendment provides that for the purposes of Part 5 of the Act a series of contracts for domestic building work is to be regarded as a single contract. Consequently, building indemnity insurance will be required under Part 5 if the total value of work under the contracts is $5 000 or more.

Clause 5: Amendment of s. 24—Participation of assessors in disciplinary proceedings

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to determine whether the Court is to sit with assessors and leaves this matter to any Judge of the Court.

Clause 6: Amendment of s. 39—Participation of assessors in proceedings

This amendment removes the requirement for the judicial officer who is to preside at proceedings in the Magistrates Court (or District Court under section 40(2)) relating to domestic building work to determine whether the Court is to sit with assessors and leaves this matter to any judicial officer of the Court.

Clause 7: Amendment of Sched. 1—Appointment and Selection of Assessors for District Court Proceedings under Part 4

Clause 8: Amendment of Sched. 2—Appointment and Selection of Assessors for Magistrates Court Proceedings under Part 5

These amendments are consequential.

Clause 9: Amendment of Sched. 3—Repeal and Transitional Provisions

This amendment ensures that people who were at the commencement of the Act disqualified from being licensed or registered cannot be employed or engaged in the business of a building work contractor in any capacity while they remain disqualified.

PART 3
AMENDMENT OF BUSINESS NAMES ACT 1996

Clause 10: Amendment of s. 11—Register and inspection of register

The amendment enables the Commission to include additional information in the register at the request, or with the consent, of the person to whom the information relates (eg post office box addresses of rural businesses).

PART 4
AMENDMENT OF CONSUMER TRANSACTIONS ACT 1972

Clause 11: Repeal of s. 4

Section 6AA was inserted into the Act by a 1995 amendment Act and then renumbered as section 4. It extends Part 10 of the Consumer Credit Code to a consumer lease within the meaning of the *Consumer Transactions Act*. The commencement of the section inserting new section 6AA was suspended when the amendment Act was brought into operation. This amendment strikes out the inserted section.

PART 5
AMENDMENT OF CONVEYANCERS ACT 1994

Clause 12: Amendment of s. 7—Entitlement to be registered

Currently, the educational qualifications for conveyancers are set out in the regulations. This amendment enables the Commissioner, subject to the regulations, to determine alternative qualifications considered appropriate. It also removes the reference to the qualifications being educational and so provides greater flexibility.

Clause 13: Insertion of s. 7A—Appeals

This amendment enables an applicant who is refused registration as a conveyancer to appeal to the District Court against the decision.

Clause 14: Amendment of s. 48—Participation of assessors in disciplinary proceedings

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to determine whether the Court is to sit with assessors and leaves this matter to any Judge of the Court.

Clause 15: Amendment of Sched. 1—Appointment and Selection of Assessors for Court

This amendment is consequential.

PART 6
AMENDMENT OF LAND AGENTS ACT 1994

Clause 16: Amendment of s. 8—Entitlement to be registered

Currently, the educational qualifications for land agents are set out in the regulations. This amendment enables the Commissioner, subject to the regulations, to determine alternative qualifications considered appropriate. It also removes the reference to the qualifications being educational and so provides greater flexibility.

Clause 17: Insertion of s. 8A—Appeals

This amendment enables an applicant who is refused registration as a land agent to appeal to the District Court against the decision.

Clause 18: Amendment of s. 46—Participation of assessors in disciplinary proceedings

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to determine whether the Court is to sit with assessors and leaves this matter to any Judge of the Court.

Clause 19: Amendment of Sched. 1—Appointment and Selection of Assessors for Court

This amendment is consequential.

PART 7
AMENDMENT OF LAND VALUERS ACT 1994

Clause 20: Amendment of s. 10—Participation of assessors in disciplinary proceedings

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to determine whether the Court is to sit with assessors and leaves this matter to any Judge of the Court.

Clause 21: Amendment of Sched. 1—Appointment and Selection of Assessors for Court

This amendment is consequential.

PART 8
AMENDMENT OF PLUMBERS, GAS FITTERS AND ELECTRICIANS ACT 1995

Clause 22: Amendment of s. 23—Participation of assessors in disciplinary proceedings

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to determine whether the Court is to sit with assessors and leaves this matter to internal Court arrangements.

Clause 23: Amendment of Sched. 1—Appointment and Selection of Assessors for Court

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to select assessors to sit with the Court and leaves this matter to internal Court arrangements.

PART 9
AMENDMENT OF RESIDENTIAL TENANCIES ACT 1995

Clause 24: Amendment of s. 36—Enforcement of orders

This amendment provides that where the Tribunal makes an order for a monetary amount that exceeds the jurisdiction of the Magistrates Court the order may be registered in the District Court and enforced as an order of that court.

Clause 25: Insertion of s. 105A—Implied terms

The proposed section contemplates regulations prescribing terms of rooming house agreements. Terms included in the regulations will be able to be enforced by the Tribunal.

It is envisaged that codes of conduct for rooming houses will be made covering matters for which a criminal sanction is appropriate.

Clause 26: Amendment of s. 119—Tribunal may exempt agreement or premises from provision of Act

This amendment is consequential to new section 105A and contemplates the Tribunal granting exemptions in relation to the terms of rooming house agreements in appropriate circumstances.

PART 10
AMENDMENT OF RETIREMENT VILLAGES ACT 1987

Clause 27: Amendment of s. 9—Contractual rights of residents

The amendment ensures that the contractual rights of residents are given effect through a priority charge despite any provisions of the *Real Property Act* to the contrary.

PART 11
AMENDMENT OF SECOND-HAND VEHICLE DEALERS ACT 1995

Clause 28: Amendment of s. 23—Duty to repair

The amendment ensures that vehicles over 15 years old or driven over 200 000 km remain subject to the roadworthiness requirements although they are not otherwise subject to the duty to repair.

Clause 29: Amendment of s. 25—Participation of assessors in proceedings

This amendment removes the requirement for the judicial officer who is to preside at proceedings in the Magistrates Court related to

the duty to repair to determine whether the Court is to sit with assessors and leaves this matter to any magistrate.

Clause 30: Amendment of s. 30—Participation of assessors in disciplinary proceedings

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to determine whether the Court is to sit with assessors and leaves this matter to any Judge of the Court.

Clause 31: Amendment of Sched. 1—Appointment and Selection of Assessors for Magistrates Court

Clause 32: Amendment of Sched. 2—Appointment and Selection of Assessors for District Court

These amendments are consequential.

PART 12
AMENDMENT OF SECURITY AND INVESTIGATION AGENTS ACT 1995

Clause 33: Insertion of s. 12A

A new section is inserted to make it an offence for a person to employ an unlicensed person as an agent.

Clause 34: Amendment of s. 28—Participation of assessors in disciplinary proceedings

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to determine whether the Court is to sit with assessors and leaves this matter to any Judge of the Court.

Clause 35: Amendment of Sched. 1—Appointment and Selection of Assessors for Court

This amendment is consequential.

Clause 36: Amendment of Sched. 2—Repeal and Transitional Provisions

This amendment ensures that people who were at the commencement of the Act disqualified from being licensed cannot be employed or engaged in the business of an agent in any capacity while they remain disqualified.

PART 13
AMENDMENT OF TRAVEL AGENTS ACT 1986

Clause 37: Amendment of s. 18A—Participation of assessors in disciplinary proceedings

This amendment removes the requirement for the judicial officer who is to preside at disciplinary proceedings to select assessors to sit with the Court and leaves this matter to any Judge of the Court.

Clause 38: Amendment of Sched.—Appointment and Selection of Assessors for District Court

This amendment ensures that people who were at the commencement of the Act disqualified from being licensed cannot be employed or engaged in the business of an agent in any capacity while they remain disqualified.

SCHEDULE

The schedule contains further amendments converting divisional penalties removing obsolete provisions declaring offences to be summary offences and altering the provisions for prosecution periods for summary offences to bring them into line with the *Summary Procedure Act* as amended by the *Summary Procedure (Time for Making Complaint) Amendment Act 1996*.

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

INTERNATIONAL TRANSFER OF PRISONERS (SOUTH AUSTRALIA) BILL

The Hon. K.T. GRIFFIN (Minister for Justice) obtained leave and introduced a Bill for an Act to Act relating to the transfer of prisoners to and from Australia. Read a first time.

The Hon. K.T. GRIFFIN: 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 idea of allowing persons sentenced to imprisonment in foreign countries to serve part of their sentences in their own countries has been widely discussed in the past 20 years or so. Many countries have concluded bilateral prisoner transfer treaties and some are party to multilateral regimes. The primary multilateral prisoner transfer convention is the Council of Europe's Convention on the Transfer of Sentenced Persons that was signed in 1983. The Commonwealth Scheme for the Transfer of Convicted Offenders is another multilateral transfer regime.

The principal argument in favour of the international transfer of prisoners is humanitarian. The deprivation of liberty can be harsh for prisoners imprisoned in foreign countries because of absence of contact with and support from relatives and friends, language barriers, differences in diet and health care, alienation from local culture, intolerance of religious practices, ineffective vocational training and general prejudice against foreigners. A prisoner can be adversely affected both psychologically and physically, and his or her rehabilitation may be impaired. The international transfer of prisoners is said to enhance the prospects of rehabilitation of prisoners and their reintegration into the community. Rehabilitation is thought to depend on the prisoner having the benefit of family or community support. This support is more likely where prisoners are in the same country as their families.

The principal argument mounted against the international transfer of prisoners is that the transfer of prisoners would weaken the integrity of penal systems and undermine the effort to fight serious crime, particularly drug crime.

In July 1992 the Standing Committee of Attorneys-General agreed to develop a scheme to provide for the international transfer of prisoners. In 1995 the Standing Committee agreed that provision should also be made to enable war crimes tribunal prisoners to be transferred to Australia.

The scheme agreed to by the Standing Committee is that the Commonwealth will administer the scheme, pass legislation to bring treaties into effect, provide an administrative structure for transfers and regulate the status of prisoners who are to be transferred. States and Territories will pass legislation providing the necessary authority for the transfer of State and Territory offenders out of the jurisdiction and to permit the detention within their prisons of persons from outside their jurisdictions.

The Commonwealth legislation will only operate in those States and Territories that enact complementary legislation and enter into administrative arrangements relating to the scheme. Another step in the process is that Australia must enter into transfer arrangements with other countries.

The Commonwealth Parliament has now passed the *International Transfer of Prisoners Act 1997*. The House of Representatives Standing Committee on Legal and Constitutional Affairs examined the Commonwealth legislation. The Committee received both written and oral submissions on the bill. The Committee strongly supported the bill and made no recommendations for substantive amendment.

Humanitarian and rehabilitative reasons suggest that South Australia should participate in the international transfer of prisoner scheme established under the Commonwealth Act.

The State legislation is quite short. It provides for the necessary authority for the transfer of State offenders out of the State and permits the detention within South Australian prisons of persons from outside the jurisdiction. It also provides for the Governor to enter in to arrangements with the Governor-General. The State legislation by itself does not provide a picture of how the scheme will operate. Accordingly the Commonwealth Act is appended to the State Act so that anybody reading the State Act can understand how the scheme operates. The Commonwealth Act is not part of the State Act and cannot be amended by the Parliament.

The Commonwealth Act contains separate schemes for two types of prisoners: general prisoners and prisoners convicted by the international war crimes tribunals of war crimes in former Yugoslavia and Rwanda ('Tribunal prisoners'). The Act provides for transfers to be considered on a case by-case basis.

For general prisoner transfers between Australia and other countries, the transfer scheme is to apply to all offences without exception. It covers persons who have been convicted of a crime and sentenced to imprisonment or other deprivation of liberty, and includes persons who have been released on parole. Transfers will be consensual, requiring the consent of the person to be transferred, the Commonwealth Government and the Government of any State or Territory where the person will be held and the other country. A prisoner will not be eligible for transfer unless imprisoned under a final order and at least six months of the sentence remains to be served (unless the Attorney-General determines that transfer for a shorter period is acceptable). The crime for which the person is sentenced to imprisonment must be a crime in both the sending and receiving countries. A prisoner can only be transferred to Australia if the prisoner is an Australian citizen or is permitted to travel to, enter and remain in Australia indefinitely under the *Migration Act*

1958 and has community ties with a State or Territory. The prisoners will be Commonwealth prisoners and the Commonwealth Act provides for the determination of sentences of transferred prisoners. Two methods of sentence enforcement are provided for. The first is that the sentence will be adapted only so much as is considered necessary to ensure consistency with Australian law. The second is converted enforcement where a different sentence will be substituted.

There are some differences in relation to Tribunal prisoners, which take account of the different nature of Tribunal prisoners. Prison cells in various countries have to be made available if persons convicted by the two international war crimes tribunals established by the United Nations Security Council are to serve their sentences. A Tribunal prisoner will not be transferred to Australia unless he or she has some connection with Australia and the Australian Government has consented to the transfer. Consent to the transfer by a Tribunal prisoner is not a mandatory requirement.

Participating States and Territories are to pay for the cost of incoming general prisoners. These costs include sending escort officers, returning prisoners (including air fares) and the cost of maintaining prisoners during the terms of sentences in Australia. The Commonwealth Act allows for recovery of costs and transfer expenses to be included in the terms of transfer, where appropriate. This costing arrangement is consistent with international practice that receiving countries bear the cost of transfer. The Commonwealth will be responsible for all costs associated with transfers of Tribunal prisoners.

If there is a net outflow of prisoners there may be significant savings to the State. However, no one really knows how many prisoners are likely to be moved in and out of South Australia (or Australia) each year under the scheme. It should be noted that under the scheme no prisoner can be transferred to or from South Australia unless the South Australian Government agrees to the transfer.

I commend the Bill to honourable members.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure.

Clause 3: Object of Act

This clause provides that the object of the measure is to give effect to the scheme for the international transfer of prisoners set out in the *International Transfer of Prisoners Act 1997* of the Commonwealth (the Commonwealth Act) by enabling such prisoners to be transferred to and from this State.

Clause 4: Definitions

This clause contains interpretative provisions.

Clause 5: Notes

This clause provides that notes in the text of the measure do not form part of the measure.

PART 2
CONFERRAL OF JURISDICTION

Clause 6: Powers and functions of Minister

This clause empowers a Minister of this State to exercise and perform any function conferred or expressed to be conferred on the Minister by or under the Commonwealth Act.

Clause 7: Powers and functions of prison officers, police officers and others

This clause empowers a prison officer, police officer and any other official of this State to exercise and perform any function conferred or expressed to be conferred on the official by or under the Commonwealth Act or a corresponding law or in accordance with the arrangements referred to in clause 8.

Clause 8: Arrangements for administration of Act

This clause empowers the Governor to enter into arrangements for the administration of the Commonwealth Act.

PART 3
ENFORCEMENT OF SENTENCES OF IMPRISONMENT OF TRANSFERRED PRISONERS

Clause 9: Prisoners transferred to Australia

This clause provides that any relevant Australian law or lawfully observed practice or procedure concerning the detention of prisoners applies to and in respect of a prisoner transferred to Australia under the Commonwealth Act in the same way as that law, practice or procedure applies to and in respect of a federal prisoner serving in this State a sentence of imprisonment that is imposed under a law of the Commonwealth.

Clause 10: Prisoners transferred from Australia

This clause provides that the laws of this State relating to the enforcement of a sentence of imprisonment by a court of this State on a person cease to apply to a prisoner on whom such a sentence has been imposed who is transferred from Australia under the Commonwealth Act to complete serving such a sentence of imprisonment.

PART 4
MISCELLANEOUS

Clause 11: Regulations

This clause empowers the Governor to make regulations.

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

SEXUAL OFFENCES

The Hon. K.T. GRIFFIN (Minister for Justice): I seek leave to make a brief ministerial statement on the Model Criminal Code Discussion Paper on Sexual Offences.

Leave granted.

The Hon. K.T. GRIFFIN: As members may be aware, the Model Criminal Code Officers Committee Discussion Paper on Sexual Offences was released for public discussion and comment in November 1996. The discussion paper contained a number of controversial recommendations. By early 1997, some of these recommendations were causing a great deal of public comment. That is as it should be. It is the principal purpose of a discussion paper. On 18 June 1997, in answer to a question from the shadow Attorney-General in the Estimates Committee, I said, among other things:

> . . . the fact is that I recognise there is concern in some parts of the community about some of the recommendations, but I also recognise that there are a number of persons and bodies who have supported both the process and even the recommendations.

Among those I named the Woman's Christian Temperance Union. That statement was correct and factual when I made it. I had received a copy of a letter from the Woman's Temperance Union of New South Wales, which said:

> Dear Sir,
>
> As the legislation officer of the Woman's Christian Temperance Union of New South Wales, on their behalf I submit the following comments on the discussion paper regarding sexual offences against the person.
>
> We commend the Model Criminal Code Officers Committee for the work done in the presentation of the Sexual Offences Discussion Paper and support the overriding principle of the Model Criminal Code project that Australia should have a uniform approach to criminal law so that all Australians have similar protection.
>
> Our woman's organisation is deeply concerned regarding the welfare of all women and children, especially paedophilia and the sexual abuse of women. We support the Key Recommendations and Summary of the Model Criminal Code Sexual Offences Discussion Paper.

The letter is dated 28 April 1997 and signed by Mrs C.A. Palmer. I have since received correspondence from the Woman's Christian Temperance Union. It now appears that the letter from Mrs Palmer was a mistake. The Woman's Christian Temperance Union wants me to place on the *Hansard* record the fact that they oppose the recommendation that incest between consenting adults be no crime, and they are of the opinion that the age of consent should be raised to 18 years of age. I have now done so.

[Sitting suspended from 6.4 to 7.45 p.m.]

SPARROW, Ms C.

Adjourned debate on motion of Hon. Diana Laidlaw (resumed on motion).

(Continued from page 199.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): I am very pleased to support the motion, which was moved by the Minister for Transport and which relates to Catherine Sparrow, who is to be congratulated on her absolutely outstanding achievement on becoming the year 5 national winner of the Nestle Write Around Australia competition. It is wonderful that one of the children from our public schools can be the proud winner of this award.

I have also been asked to pass on congratulations from the member for Kaurna in another place, Mr John Hill, who spoke to me over the dinner break about this young student. He was made aware of her wonderful award and was very pleased that the Minister had moved this motion. I believe that all members in this place would be thrilled to think that we can have such a high achiever from a State school.

I am very sad that Catherine did not come into the Parliament. It would have been nice to meet her, but I understand that she was feeling somewhat overcome. Perhaps at some later stage we can invite her into the Parliament. I am sure that the Minister and I, together with other members, will be very pleased to welcome her in here.

Because I was out of the Chamber when the Minister read into *Hansard* some of Catherine's writings, the Minister has agreed to let me have a look at it, and I will be very pleased to read it. On behalf of the Opposition, I pass on my hearty congratulations to Catherine. I am sure that in the years to come we will see a lot more of this young woman's work.

Motion carried.

ROXBY DOWNS (INDENTURE RATIFICATION)(ABORIGINAL HERITAGE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 December. Page 74.)

The Hon. T.G. ROBERTS: I rise to indicate that the Opposition will reluctantly support the passage of the Bill. We understand that negotiations have been in progress and that an understanding that is acceptable has been reached between the parties. I also believe that there are some doubts, if the passage of the Bill facilitates the process, whether the Western Mining Company will back out of its obligations. That fear is a genuine belief that is held by one of the stakeholders. Because of the time frame into which the negotiating process has been squeezed, it makes it very difficult for us as legislators in the Legislative Council with any certainty to support the process and the facilitation of the Bill while those doubts still remain.

While I speak, the shadow Minister responsible in the Lower House is talking to a delegation, and that makes it quite difficult to make a confident contribution in relation to a position. However, I will facilitate the second reading of the Bill. I hope that, by agreement with the Minister for Justice, the Democrats (although they will state their position) and ourselves, we will be able to get some guarantees that the ratification of the Bill into legislation will not allow for a change in the position that has been agreed to this point.

I understand that the Aboriginal negotiators are feeling a little nervous. Their view is that the previous history of negotiations has brought about this lack of faith, and the complicated way in which the reconciliation process and the carriage of the negotiations at a local level will be carried out makes it all that much more difficult. I think the Government would agree that the process is very complicated and that it would be very difficult to negotiate a process of reconciliation around any issues on-site because of the complicated process of that operating under at least three pieces of State legislation and with the current Commonwealth negotiations progressing around Wik and Mabo. I do not want to complicate the contribution by bringing the Federal negotiations into play, but it is an overriding umbrella that we must take into account when dealing with State Acts.

The Bill we have before us is an unproclaimed Bill that was put together in 1979. It was introduced by the previous Labor Government but was not ratified. A subsequent Bill was introduced in 1988 and certain agreements were put together in 1982-83 which made the legislation very difficult to understand and apply at ground level, peculiarly for the Aboriginal people in the area. They could not understand the relationship between legislation that would apply to certain geographical areas under the 1979 unproclaimed Bill and the 1988 Act. However, my understanding is that they have worked their way through that with the Western Mining negotiators and that an agreement has been reached in principle so as to protect both the mythological and archaeological sites in the area where the expansion of Roxby Downs will occur.

I congratulate the negotiators if, through those difficult negotiations that have been compacted together over a shortened time frame, they have come away with an agreement with regard to those difficult issues. It would be tragic if all that work that has been done by the Government, the Attorney-General, the Western Mining negotiators and the representatives of the Aboriginal groups in that area fell over and if the legislation was only being used as a ploy, as a legislative stick, in a conciliatory process. I hope that is not the case.

I ask the Attorney, during the Committee stage or in reply to the second reading debate, to give a guarantee that the faith of the negotiators will not be broken by the passage of this legislation. The Aboriginal negotiators are negotiating on behalf of their people, and in the absence of major contributions because of geographical and negotiating difficulties their responsibility is to report back to the people to whom they are responsible. We certainly do not want to break faith with the negotiating team and their people.

I hope the Attorney can allay the Opposition's fears that that process may be interfered with and overturned. If he can, I am sure that we can facilitate the process without resorting to any further delays or complicating the process by amendment. At the moment we believe that the best possible outcome is a solution through negotiations that lines up with the principles surrounding at least an informal Wik process which allows for Aboriginal people to negotiate on behalf of their respective peoples to get the best possible outcomes.

We prefer certainty through negotiations, that is, that the mining companies negotiate with the legitimate leadership, the legitimate elders of the Aboriginal people and their legal representatives. We see that as a far better process than trying to legislate for certainty.

I have a metal worker background. I am not a lawyer and I have trouble trying to tie down the legislative responsibilities for certainty using the 1979 Act. The 1988 Act was certainly a little clearer. If we tried to legislate for certainty using the 1979 Act without the conciliatory and negotiating process, it is my contention that we would not get the certainty that the legislation is trying to determine. I would

hope that, in conjunction with the legislative program, the integrity of the Western Mining company and the Aboriginal negotiators is maintained through the relationship that they have built up through that negotiating process.

In relation to the Bill itself, I cannot see how I could comment on or make application about the process that has been set down. I could certainly make more sense of the 1988 Act. The Bill before us is to facilitate a process, to get agreement and to hold faith with the Aboriginal people and the mining company. We need those guarantees that they seek, because of the lack of confidence they have in the legislative process we are now going through. I have a lot of sympathy for them in relation to having some faith in the 1979 Act.

The Hon. SANDRA KANCK: I would like to put on record a little of the history associated with this legislation, because it has not been with us very long. I first became aware that we were to have something introduced to this Parliament on 20 November when my office received a phone call from the Attorney-General's office, asking whether he would be able to brief me next day on legislation to amend the Roxby Downs (Indenture Ratification) Act. I met with the Attorney-General on the Friday morning. He said that Western Mining Corporation would be willing to brief me if I required such a briefing, which I sought, and on the Friday afternoon I met with Richard Yeeles from Western Mining Corporation.

By Monday morning I had typed up my notes from the two meetings, and my office faxed that to an anthropologist friend who in turn sent it on to Andrew Collett of Johnston Withers who acts for the Kokatha people. Monday afternoon I received a phone call from Andrew Collett who, by sheer coincidence, happened to be in his car driving up to Glendambo for a three day meeting with the native title claimants on the area. He was quite angry about finding out about the legislation in this way.

He also said that, in terms of what I had been told, which was that about 60 or 70 Aboriginal sites that were not of ethnographic significance were to be destroyed, I had not been told about a clay borrow pit that Western Mining wanted to use or was using for a short time to help line the retention dam with clay. I make a slight observation about that. The language that miners use is very cute on occasion. When you have taken clay from a site quite some distance away, and you put it in a tailings dam to line it, it is hardly borrowing. I cannot see them taking it back in years to come, but that is the word that is used. As time went on, I found out that that is a quite significant dreaming site for the Aboriginal women; it is part of the Seven Sisters Dreaming. Andrew Collett asked me whether I could get it put on hold.

My next action was to ring the Attorney's office and leave a message there that I had received information that this involved a significant site. Obviously, the Attorney's office was quickly in touch with Western Mining Corporation because on that afternoon I received a fax from Richard Yeeles, and I would like to read part of what he said in that:

> Excavation work in the area claimed to have been disturbed began in January 1995. The area is being used as a source of clay to line the tailings retention system as a means of seepage minimisation. Before the excavation began, the area was further surveyed by the Andamooka Land Council which confirmed the outcome of the Hagen-Martin report that in the area proposed for excavation, there were no heritage sites of significance.

He then goes on to describe who the Andamooka Land Council is, as follows:

> The Andamooka Land Council represents a group of Kokatha people who claim traditional affiliations with the land on which the special mining lease is located. Members of the Andamooka Land Council who have undertaken heritage survey work at Olympic Dam in recent years participated in the initial site recording undertaken in the early 1980s, including for the Hagen-Martin report. Accordingly, there has been continuity since the development of Olympic Dam began in the provision of information about sites of interest to those claiming traditional custodianship of the relevant land.
>
> In recent years, there has been a dispute between the Andamooka Land Council and the KPC about who represents traditional custodians in the Olympic Dam area. WMC's position has been to continue to seek heritage information from those who have demonstrated custodianship for a particular area. In this respect, in relation to the Olympic Dam area, we have respected that Max Thomas, who is the accepted authority on all Aboriginal traditions and customs relevant to the Olympic Dam area, and who is actively involved in the provision of the early heritage information, including for the Hagen-Martin report, appointed successors to his custodianship role before his death in 1995. WMC has continued to deal with his successes on heritage issues.
>
> At the same time, we have also dealt with other Aboriginal groups, including the KPC. For example, the KPC has been involved, as a member of what is known as the Port Augusta working party, in heritage survey work for a corridor for a new powerline from Port Augusta to Olympic Dam. It was in the course of this work that representatives of the KPC advised WMC of its concern about the area being excavated for clay.
>
> In response, WMC has agreed to suspend any further excavation work pending further discussions with the KPC.

Some people have actually suggested to me that the Andamooka Land Council is a construction of Western Mining Corporation. I am not in a position to assess whether that is correct, but what happened in that instance shows that certainly something was not going right with the negotiating.

The Hon. L.H. Davis: Of course, you'd just prefer Roxby Downs not to be there, wouldn't you? That is your real position.

The Hon. SANDRA KANCK: Yes, I think being involved in the uranium economy is a real negative. In this chronology of what happened, having received Richard Yeeles' letter I advised Dave Noonan of the Australian Conservation Foundation, who quickly contacted Opposition members urging them to put things on hold. The ACF also gave this some media attention last week, as I did on Friday, when I spoke to the launch of the Nuclear Issue Coalition's report on uranium mining.

On Monday of this week, I met with the representatives of the Aboriginal people. Discussion with them and a phone call to the Opposition left me feeling that the Opposition was about to cave in on this, so I decided that I would go for media coverage to make sure that the public knew what was happening. The subsequent radio coverage on Tuesday morning resulted in a further fax from Richard Yeeles. Again, for the record I will read what Richard Yeeles had to say:

> You said that I had not told you about this matter—

this is the matter of the clay borrow pit and the women's site—

> in my meeting with you on 21 November. I trust you do not believe there was any attempt to mislead you. When I became aware of your interest in this particular matter, I wrote to you on 27 November.
>
> The reason it was not raised at our meeting on 21 November is that it is not relevant to the introduction of the legislation, which was the subject of our meeting.
>
> As advised, the Government—

and I stress 'Government'—

> has proposed the introduction of the legislation so it can deal with issues associated with the tailings area expansion.

I am willing to accept what Richard Yeeles said, but—

The Hon. L.H. Davis: What is the point of that?

The Hon. SANDRA KANCK: The point is that he made a decision that it was not relevant for me to know about that site, when in fact the reason that this legislation is before us is to allow the construction and extension of the tailings dam to begin before Christmas. As part of that, it will require clay. This particular site is very much involved in this legislation. Following the media interviews that I had on Monday, I had quite a number of phone calls from members of the public who were very angry about what is happening, urging me to stand my ground.

The Hon. L.H. Davis: How many? One or two?

The Hon. SANDRA KANCK: I had three people call within 20 minutes, which is quite significant. Part of what concerns me in this is the process. The Aboriginal people who are most directly affected by it found out about this indirectly, and I have a copy of a letter that Andrew Collett wrote to the Attorney-General, as follows:

> We advise that we act for the Kokatha native title claimants in respect of their native title claim over an area of South Australia which includes the Olympic Dam mine. We have also been instructed and authorised by the other native title claimants over land in that region who comprise the Port Augusta Region Native Title Working Group (Barngala Aboriginal Consultative Council, the Nukunu Peoples' Committee and Kuyani Association) to raise with you a matter of great concern to all members of the working group and to the Aboriginal Legal Rights Movement Incorporated.
>
> On 24 November the working group became aware, for the first time, that the Government was proposing amendments to the Roxby Downs (Indenture Ratification) Act 1982 which would have the effect of ensuring that the heritage legislation which applies to the Stuart Shelf region and the Olympic Dam special mining lease is the Aboriginal Heritage Act 1979.
>
> We became aware of this proposed amendment neither from the Government nor from Western Mining but from the Australian Democrats who, we understand, were recently briefed by you and Mr Richard Yeeles of Western Mining.

Further on, the letter states:

> The working group was quite unaware of the amendment, misled by Western Mining about the contents or apparent urgency of proposed amendments to the Roxby Downs (Indenture Ratification) Act 1982. All that the working group had been advised by Western Mining was that 'WMC is and will continue to advance with the State Government the amendment of the Roxby Downs (Indenture Ratification) Act 1982 to accommodate the working party's concerns about the application of the 1979 Aboriginal Heritage Act regime along the powerline route outside the Stuart Shelf area.'

I also received a letter from the Aboriginal Legal Rights Movement this afternoon, and I will read a few paragraphs of that, as follows:

> The Government and WMC attempted to put this legislation through Parliament without any consultation with Aboriginal people, or ALRM as the representative body in South Australia. Aboriginal people should have been consulted prior to any debate in Parliament regarding this Bill. . . It is ALRM's view that the policy justification should be for Aboriginal heritage protection, that is, the preservation of Aboriginal culture for the benefit of the State as a whole and not merely Aboriginal people, and therefore should be no variation in the standard of protection between groups because of the existence of a mine or any other project.
>
> The 1988 Aboriginal Heritage Act allows for decisions by Government not to protect sites in favour of development. It also allows for entailment of development in order to preserve cultural heritage sites. This provides a reasonable balance between the interests of developers and the preservation of Aboriginal heritage. If the Bill is passed, the relevant Aboriginal groups will not be treated on the same bases as other Aboriginal groups in South Australia. They will not receive equivalent protection for their sites as other groups.

This is quite a conundrum for me because I do not have access to Crown Law and to the legal advisers that the Attorney-General and Western Mining Corporation have, but I wonder whether it is possible for Western Mining to operate under an Act which was assented to but which was ultimately repealed and certainly was never proclaimed. That seems to be legal nonsense.

It seems to me that section 9 has never been in operation because subsection (12), which is to be removed, provides:

> This section shall come into operation on the date of commencement of the Aboriginal Heritage Act, whether or not it comes into force in the form referred to in subsection (10).

As I read it, it never came into force. In the process of deleting section 9(12), it appears to me that we will be reinventing history.

I pose the question publicly whether it is discriminatory to allow Aboriginal heritage in the area of the Stuart Shelf to be dealt with in a less sensitive way than it is anywhere else in the State. I heard the Attorney-General respond to my comments on the radio, and he claimed that there would not be any breach of the Commonwealth Racial Discrimination Act. However, it is quite clear that, as a result of this legislation, Aboriginal people in one location will be treated differently from Aboriginal people in another location. I am not familiar with the Racial Discrimination Act and I would be interested to know whether Crown Law has given any opinion on this.

If I return to the issue of whether or not the 1979 Aboriginal Heritage Act applies, it appears that Crown Law and WMC's lawyers have conflicting opinions. I anticipate that it might be fairly easy to get an opinion that says that the RDA was being breached by this. I also wonder how it fits in with the Native Title Act. The Minister said that we are fixing up an administrative oversight. It is clear to me that the 1982 Act is a past act in terms of native title, but if we attempt today to remedy what the Attorney-General calls an administrative oversight that involves a past act, is that action today still a past act? Again, I do not have access to legal people to tell me whether or not we would be breaching the Native Title Act.

Has the Attorney-General considered whether, if the legislation passed and there was disagreement over this aspect, it would end up in the courts? My view is that, if the rights of Aboriginal people as a group are reduced compared with another group, it is only fair that they be given an opportunity to negotiate an agreement with WMC so that they can replace the rights that are being taken from them. No other mining company in this State would be allowed to negotiate with Aboriginal people in the way that this legislation allows. Nowhere else in South Australia are Aboriginal people being asked to give away rights like this.

It is a very complex issue. We are dealing not just with the Roxby Downs (Indenture Ratification) Act but we are also dealing with the 1979 Aboriginal Heritage Act, the 1988 Aboriginal Heritage Act, potentially the Commonwealth Racial Discrimination Act, and native title.

Given the time frame and the available resources, it is very difficult to undertake the necessary consultations. About this time yesterday I intended asking for further discussion of the Bill to be postponed until February, during which time WMC and the interested parties would be able to negotiate an agreement. Following a meeting with Aboriginal representatives on Monday, I had a very firm belief that such an agreement would be able to be negotiated if the parties were given the time. It has been my view at all times that I would be guided by any agreement the Aboriginal people could reach with WMC, but today things have moved very quickly.

I received a telephone call from Andrew Collett shortly before we assembled this afternoon. He told me that an agreement had been reached between the traditional owners and the mining companies and that it would not be necessary to seek an adjournment. I understood that the essential agreement was that, over the next 14 weeks, the respective parties would continue to negotiate until they reached a suitable agreement, and I will wait for the Attorney-General to elaborate on that matter in his second reading reply.

However, matters suddenly became very confusing just 10 minutes before we re-assembled this evening. I met with a delegation from the Aboriginal Legal Rights Movement and was asked to seek that adjournment until February. I am working on two lots of conflicting opinions as to which way we should go. There is also the issue of whether or not one trusts Western Mining Corporation to reach an agreement, and I specifically look for some reassurance from the Attorney-General on this. The agreement is that the parties will work on an agreement. If Western Mining Corporation comes back in 14 weeks and says that it could not reach an agreement, where does this leave us? That is of primary concern to me.

What role would the Government then play in further negotiation with the Aboriginal people, because I am aware that the Government is not keen to be involved in that negotiation. If an agreement is reached between the traditional owners and WMC, how quickly would we see legislation in place? Also of strong importance to me is the certainty that proper consultation has occurred. I realise that, over the past couple of weeks, I have probably given the Attorney-General a heavier load than he anticipated on this legislation, and that certainly was not my intention.

I believe that during the process of these negotiations over the past two weeks we have been able to progress the matter. I support the second reading. My support of the Bill will be subject to the Attorney's answers to my questions. However, in response to ALRM, my view is that, because of the publicity this issue has attracted, WMC would not be seen as very good corporate citizens if, at the end of 14 weeks, it reneged on the agreement. I tend to think that I will operate within that framework knowing that WMC knows that the public will be watching the outcome of this issue. It is in WMC's interests to ensure that an agreement does eventuate within the next 14 weeks.

The Hon. CAROLINE SCHAEFER: I am basically a fairly reasonable person and, most of the time, I get on reasonably well with the Hon. Sandra Kanck, but every now and again the honourable member sorely tries me, and tonight is one of those nights. I fear that the honourable member is making what is proverbially called a mountain out of a molehill.

The Hon. L.H. Davis: I think it's a case of fairies at the bottom of her garden.

The Hon. CAROLINE SCHAEFER: As long as the garden is green. Basically what we are talking about tonight is ratifying an agreement that has been understood and adhered to by the Aborigines who live in the area, Western Mining Corporation and all the proponents who live and work in the area. It is an agreement under which they have all worked. They have all believed, until now, that the 1979 Aboriginal Heritage Act applied. Only recently did they discover that that Act was never proclaimed. They have, in fact, been working and working well under that agreement, but we now have the Hon. Sandra Kanck telling us that the Aboriginals have had their rights reduced.

How can that be, when they have been working under exactly the same set of rules that we are hoping to legislate tonight? The honourable member says that the Aboriginals have been asked to give rights away, but how can that be if, in fact, they are working under the same set of rules to which they have agreed since they signed the original documents? The honourable member says that she will be guided by the Aboriginal people, yet the next minute she says agreement has been reached but she cannot trust the Western Mining Corporation. It seems to me that it would not matter what Western Mining Corporation did or said, the honourable member would still refuse to believe it because, basically, the Democrats do not want mining of uranium to occur in the north of the State.

The Democrats do not want development in the area and they will do everything they can, however pernickety, to prevent what is one of the biggest and most ambitious pieces of development in this State. Over the past few years Roxby Downs has provided work for approximately 2 000 people. We keep hearing about jobs, jobs, jobs. This is one development, outside the city area, that will provide jobs for 6 000 people in its development and 2 000 people permanently for the next 100 years, yet the Hon. Sandra Kanck cannot see beyond that which is at the end of her nose. The honourable member cannot see any good at all in the Western Mining Corporation. That does not seem to me to be an unbiased view. I support the second reading.

The Hon. L.H. DAVIS: I join with my colleague the Hon. Caroline Schaefer in rounding on the Hon. Sandra Kanck who, of course, gave herself away, as she always does, in response to an interjection by saying, 'Well, I would prefer it if Roxby Downs was not there at all.' The fact is that members, even those on the other side of the Chamber who perhaps in the past might have been dead against the Roxby project, would recognise that Roxby Downs, even as we speak, is currently engaged in a $1.4 billion expansion program, which is the biggest capital investment program anywhere in this nation of 18 million people. That fact in itself is, of course, confirmation of the success of the project, which was bitterly opposed by the Labor Party when it was introduced in legislation in 1982.

The Hon. G. Weatherill: What about Stormy Normie?

The Hon. L.H. DAVIS: He resigned from the Labor Party to support it. The honourable member is absolutely right. The Hon. George Weatherill obviously remembers the history all too well. It is worth putting on the record once again what Roxby Downs has meant to this State. It was first discovered in 1975 by Western Mining and BP, its then joint venture partner. It took 13 years to bring into production, and seven years after the initial discovery we had legislation that only went through the Parliament because the Hon. Norm Foster crossed the floor after resigning from the Labor Party.

It is worth reminding members opposite that at that time in 1982 Mike Rann, who then was a staffer with the then Leader of the Opposition (Hon. John Bannon), was absolutely feral against the development and prepared a blistering attack on Roxby Downs in a 32 page booklet, called 'Uranium: Play It Safe'. That booklet was by Mike Rann for the ALP (SA) Nuclear Hazard Committee. Just to remind members opposite how right he was, the fabricator in action, Mike Rann, said:

In South Australia, the Liberal Government has got itself into a tangle over the proposed Roxby Downs copper and uranium mine.

Since the September 1979 election, Premier Tonkin has pinned his Government's political hopes on a development he has described as eventually being as big as Mount Isa.

Faced with record unemployment, the South Australian Liberal Government has painted itself into a corner over Roxby Downs.

Members interjecting:

The Hon. L.H. DAVIS: Just listen to this: this is your Leader talking. He continues:

No serious commentators are now likely to join the Premier in trumpeting—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: Just listen to this and learn because members opposite are very slow on it and certainly the Hon. Sandra Kanck remains unconvinced. She still believes, as John Bannon did at the time, that it was a mirage in the desert. That is what John Bannon, the then Leader of the Opposition, described it as, 'a mirage in the desert'. Mike Rann further states:

No serious commentators are now likely to join the Premier in trumpeting the economic impact of Roxby. Even Western Mining. . . will not publicly commit itself to actually mining the ore body despite its insistence that the Government pass an indenture Bill for the project.

Mike Rann concludes:

With depressed uranium sales likely to continue throughout the 1980s (and probably beyond)—

this of course is Mike Rann with his economic and financial knowledge which we have all come to love and know and laugh about—

The Hon. A.J. Redford: And have to pay for.

The Hon. L.H. DAVIS: And have to pay for—

the Government was in a weakened bargaining position. To put it crudely—

and this is the Hon. Michael Rann speaking and that is how he generally puts things—

the Roxby partners had Premier Tonkin over a barrel and the indenture publicity hype—full of 'ifs' rather than 'whens'—smacked of a political stunt.

There is the work of a man who was famously wrong.

The Hon. A.J. Redford: Did he say 'political stunt'?

The Hon. L.H. DAVIS: Yes, he called Roxby Downs 'a political stunt'. Since Olympic Dam has been developed, 560—

The Hon. G. Weatherill interjecting:

The Hon. L.H. DAVIS: I should have thought you would have kept quiet after that little burst, George! Olympic Dam is situated 560 kilometres north north-west of Adelaide and it is producing high grade copper, uranium, gold and silver. As I have said, it was discovered in 1975 and since that time an enormous amount of money has been spent on its development. For instance, $750 million was spent evaluating the Olympic Dam deposit and developing the mine, the plant and the town; another $60 million was spent to complete a further stage in 1992; another $88 million to increase the production in 1994-95; and then we have the further upgrade of $1.4 billion which will bring the Roxby Downs copper production to more than double its current production level of 85 000 tonnes, increase the uranium mining which already boasts to be the biggest uranium mine in the world, as well as substantially increasing the gold mining and the silver mining from Olympic Dam.

It is regarded by mining engineers as one of the great mines of the world, but that, of course, is something that Sandra Kanck does not appear to understand. The honourable member made an extraordinary contradiction (as she always does in her speeches) when she said that in her discussions with the ALRM it had claimed there had been no consultations at all between the Aborigines and Western Mining. Yet later she contradicts herself by saying that in fact there are agreements about which she had heard just minutes before rising to speak in the Chamber and that agreement had been reached. Her speech was full of contradiction, full of denial of the reality of Western Mining that is centred around the township of Roxby Downs, which now boasts something around 3 000 people.

I would have thought that a township of 3 000 people where there were none little more than a decade ago might even cause the Hon. Sandra Kanck to admit that something had happened in the area, something that might have been beneficial. After all, the Australian Democrats who are bleating about lack of jobs are staring at one of the biggest job creating projects this State has seen in the last decade at Roxby Downs, yet they deny its very existence and the very fact that it will be expanded with thousands of additional jobs being created in this massive $1.4 billion expansion and then more permanent jobs created through the expansion of the Olympic Dam mine.

It is also true to say that it is regarded as a model town. It is also true to say that Western Mining, or WMC as it is now called—it has changed its name from Western Mining—has been a model corporate citizen in terms of caring for its environment. In fact it is said—and the Hon. Sandra Kanck would not want to know this because it would spoil otherwise a good story—

The Hon. Sandra Kanck: Just because you don't want to know about the spillage.

The Hon. L.H. DAVIS: Just listen to this. The flora and fauna in the area is better off with WMC's presence than it was before. It has a battery of people working on the environment constantly monitoring it and bringing back very valuable information.

The Hon. Sandra Kanck: It is a tribute to the environment movement and the pressure they put on—

The Hon. L.H. DAVIS: So, the Hon. Sandra Kanck, rather than saying that WMC might be a good corporate citizen, is saying, 'Well this is a tribute to the environmental movement.' This is a case of the big bad boys exposed, trapped in the blazing spotlight thrown on them by the Hon. Sandra Kanck and friends and that WMC is reacting to the pressure.

The Hon. Sandra Kanck: Of course they are.

The Hon. L.H. DAVIS: That may well be true. The world is changing. Environment is a mainstream issue. The Hon. Sandra Kanck may recognise that. It has marginalised the Greens movement around the world and it has focused the attention of major Parties—the Labor Party, the Liberal Party and indeed the Democrats—on the importance of the environment, whether we are talking about built heritage or whether we are talking about natural heritage. I have had a consistent view on that and I have made many speeches on it, so I am not a late convert to that proposition. For the Hon. Sandra Kanck to not even accept that WMC is doing a good job is a canker on the Democrats. It is so churlish and so small-minded when they are in this luxurious position where they can wake up every morning and think, 'What can we do today to grab a headline? What can we do today to throw a spanner in the works? What can we do today to make jobs more difficult to create in South Australia?' That is the role of the Democrats in this Chamber and I deplore it, I really do.

Turning to the matter before us, I suggest that the gratuitous remarks of the Hon. Sandra Kanck in reinventing what I would have thought was a fairly straightforward proposition into something major and complex is typical of the Democrats beating something up out of nothing. I remind the Hon. Sandra Kanck that the Hon. Trevor Griffin in his very pithy second reading speech explaining this amendment Bill made the point—

Members interjecting:

The Hon. L.H. DAVIS: Mr President, they are choking with laughter on the other side because they understand the word 'pithy' as an insult. Can I direct them to the *Oxford Dictionary* in the library because with their ignorance they would not understand that what I am saying is that this Minister for Justice, this Attorney-General, who stands tall and proud and is arguably the finest Attorney in the land, is not only good at what he does but he is also very constructive and very precise in his language—and that is exactly what 'pithy' means. There should be no laughter from the other side.

The Hon. R.R. Roberts interjecting:

The Hon. L.H. DAVIS: I must get that into *Hansard.* The Hon. Ron Roberts said that he did not think he had his teeth in.

The Hon. A.J. Redford: That was going to let the—

The Hon. L.H. DAVIS: I know that the Hon. Ron Roberts, as a former distinguished Deputy Leader of the Labor Party in this place, is on a roll at the moment and, in fact, has done extraordinarily well in recent days, even though he has not made a speech. He has looked very good, even though he has not made a speech, and his replacement, the Hon. Paul Holloway, is running on empty after making just one or two speeches. So, we will watch developments on that side of the House in a moment. Having been distracted, I will return to the Bill.

The Bill simply seeks to correct two matters: first, to remedy the omissions, the failing to bring the Aboriginal Heritage Act of 1979 into operation, which was always the intention of the Parliament when the joint venturers, WMC and BP, set out to mine Olympic Dam. The second purpose of the Bill, of course, is to look at that original Roxby Downs Indenture Bill of 1982, which passed with the support of the very honourable Norm Foster after he resigned from the Labor Party, and to amend section 9 to provide that the Aboriginal Heritage Act 1979 does not apply to any land outside the Stuart Shelf or the Olympic Dam area which may be the subject of operations by the joint venturer pursuant to the Indenture. I do not know how anyone could get too upset about that proposition: it was simply to limit the scope of the original Act and the Indenture.

I would have thought there was a consistency there that might appeal even to the Hon. Sandra Kanck. But I have said enough: I want to reiterate that Roxby Downs stands as a testament to what can be done in South Australia if development is allowed to proceed. We have seen in this Chamber in the past 24 hours extraordinary attempts to frustrate one of the biggest and most exciting developments this State has seen for many a long day; and the same frustration and the same blocking tactics are occurring from people who have not learnt the lesson of what can be achieved from Roxby Downs, the legislation relating to which passed only because of the defection of a Labor member who could see the magnificent economic benefits that would flow from the establishment of that great underground mine. I salute Norm Foster.

The Hon. K.T. GRIFFIN (Minister for Justice): I thank members for their indications of support for the second reading and hope that in my reply I am able to persuade them also to support the third reading. This is an important Bill, and I appreciate that members have not had a long period within which to give consideration to the issues, which are important, but I want to indicate my appreciation for the way in which they have been prepared to give consideration to the essence of the Bill in the short time frame that has been available.

The Government became aware of concerns about the legal issues affecting the Aboriginal Heritage Act 1979 in respect of the Indenture and of the concern that, if this was not remedied in some way or other, it would seriously impact upon the time frame within which the substantial expansion project at Roxby Downs would be concluded.

The Government was informed that, if the issue had not been resolved by Christmas, those substantial delays would occur. Having considered the issue, the Government took the view that it was important to put the matter beyond doubt. We looked at various ways of trying to achieve that objective and concluded that, because all the parties had believed that the 1979 Aboriginal Heritage Act applied to the Indenture, that it was an administrative and technical oversight that the 1979 Act had not been properly addressed in respect of the Indenture when the 1988 Aboriginal Heritage Act was involved, the most appropriate way of dealing with that issue was to ensure that the 1979 Act applied and to deal with it in the way in which this Bill now provides.

I made the point in my second reading explanation, as well as in some public comments that I have made from time to time, that there was no doubt that, in negotiating the agreement, it was intended that the 1979 Act or an advancement on that at the election of the joint venturers (of whom Western Mining Corporation was one) would apply to the development. Therefore, as I said in my second reading explanation, the Bill seeks to remedy the administrative omission of failing to bring that 1979 Act into operation.

The second purpose of the Bill—and it is an important one—is to amend the original operation of section 9 of the Roxby Downs (Indenture Ratification) Act 1982 in order to provide that the Aboriginal Heritage Act 1979 does not apply to any land outside the Stuart Shelf area or the Olympic Dam area which may be the subject of operations by the joint venturers pursuant to the Indenture; in other words, to limit the scope of the original Act and Indenture.

I gave an example that section 9 in its original form would apply to land outside those areas on which the joint venturers have considered a powerline, pipeline, road or other infrastructure necessary for the purpose of their mining activities. That was an issue of concern which was focused on by those who represented relevant Aboriginal interests. So, that issue is an important modification that has to be recognised. As I said, all parties—both Labor and Liberal Administrations, as well as all relevant parties, including representatives of Aboriginal people—believed that the 1979 Act applied.

There is still legal advice which suggests that the proposition is arguable that the 1979 Act applies or does not apply. So, one should not imagine that the issue is clearly beyond doubt. For that reason, too, I think it important to try to get the issues resolved.

I know that there have been some negotiations between Western Mining Corporation and representatives of Aboriginal people, and I know that there are assertions on the part of representatives of Aboriginal people that those

consultations have not been as full and frank as they may have been. I do not wish to make any judgment about that. Observations have been made by the Hon. Sandra Kanck regarding some of the speculation about the Andamooka Land Council and, again, I make no judgment about that, except to say that, on the advice I have received from Mr Andrew Collett and a letter from the representatives of the Andamooka Land Council, it now appears that both they and the Kokatha and other people are now working in unison in relation to the heritage issues affecting this development.

I had meetings with both parties but subsequently took the view that I ought to chair a meeting between the representatives of Western Mining and their legal representatives, on the one hand, and the representatives of the Aboriginal people on the other hand. That was several weeks ago. I indicated that, whilst the Government was moving to enact this piece of legislation, with the support of the Parliament, it hoped, I thought that the most desirable outcome was that, if the legislation was enacted, there should at the same time be an agreement from the relevant parties that that should occur.

I must say that that has really acted as a catalyst for some fairly frenetic activity, which has resulted in an agreement referred to by both the Hon. Terry Roberts and the Hon. Sandra Kanck. It is important for me to indicate what information I have received from Mr Andrew Collett, who represents the relevant Aboriginal interests.

In fact, I have received two letters from him—one which I will now read, and then a subsequent one to which I will also refer. Again, I appreciate the way in which both he and his clients as well as Western Mining and its legal representatives have endeavoured to work with such frenetic pace over the last couple of weeks to try to reach a satisfactory outcome. This letter is dated today from Mr Collett, as follows:

> I confirm my advice that the native title claimants who are members of the Port Augusta Regional Native Title Working Group have reached agreement with Western Mining in relation to this matter which should enable the Bill to proceed.
>
> The agreement has been reached by way of a consultative agreement in which both parties reserved their positions in relation to the Bill but have agreed a way to progress the matter by means of an agreement to negotiate a heritage agreement which will address the heritage interests of Aboriginal people in respect of the Olympic Dam and Stuart Shelf areas.
>
> I enclose herewith a form of notes which may assist you in relation to the agreement which has been reached. The content of these notes has been agreed by WMC, the claimant groups and the Aboriginal Legal Rights Movement. If you have any queries please do not hesitate to contact the writer.

It is important to put those notes on the record, as follows:

> The Port Augusta Region Native Title Working Group and Western Mining have reached agreement about mechanisms to deal with all Aboriginal heritage issues on the Olympic Dam special mining lease and the Stuart Shelf area. The agreement was reached today between representatives of Western Mining and the Port Augusta working group (which represents the Kokatha, Barngala, Nukunu and Kuyani native title claimants).
>
> The agreement results from discussions between the parties over the last eight months relating to Aboriginal heritage, native title, community development and related issues. The agreement establishes the mechanism to resolve uncertainties and differences between the parties concerning the appropriate heritage legislation for the Olympic Dam and Stuart Shelf area.
>
> The agreement provides for: the establishment of an Aboriginal Heritage Management Plan to enable the working group and WMC to deal with all issues between them relating to Aboriginal heritage in the Olympic Dam and Stuart Shelf areas; a time frame of 14 weeks for the negotiation and finalisation of the plan; and a mechanism for incorporation of the agreed heritage plan into legislation.
>
> The Attorney-General has been informed by a spokesman for the Port Augusta Region Working Group, Mr Fred Tanner of the Aboriginal Legal Rights Movement, that 'This agreement has given the native title claimants the means to negotiate a heritage plan which will address the needs of Aboriginal people with heritage interests in the area and the needs of Western Mining. It is an example of the value of long-term consultation and the development of relationships between Aboriginal and industry groups.'

There was a subsequent letter from Mr Collett which is in similar form to that to which I have referred and which also refers to the notes, but I wanted to make sure that it was on the record what the respective parties' views might be in relation to the Bill so that there could be no misunderstanding about it. If I read the subsequent letter it will put that into perspective. The letter states:

> I confirm my advice that the native title claimants who are members of the Port Augusta Regional Native Title Working Group have reached agreement with Western Mining in relation to this matter—

that is, the Roxby Downs (Indenture Ratification)(Aboriginal Heritage) Amendment Bill 1997—

> The parties have agreed that the Bill can go forward, although reserving their positions in relation to the merits of the Bill. (See the annexed recital 24 to the agreement.)
>
> The agreement has been reached by way of a consultative agreement which requires the parties to negotiate a heritage agreement which will address the heritage interests of Aboriginal people in respect of the Olympic Dam and Stuart Shelf areas. I enclose herewith a form a notes which may assist you in relation to the agreement which has been reached. The content of these notes has been agreed by WMC, the claimant groups and the Aboriginal Legal Rights Movement. If you have any queries please do not hesitate to contact the writer.

There is a reference to recital 24 to the agreement. I have not seen the full agreement, but it reads:

> The parties have not been able to agree on the following question relating to the Roxby Downs (Indenture Ratification)(Aboriginal Heritage) Amendment Bill 1997, namely, whether the Aboriginal Heritage Act 1979 does or should apply to the Olympic Dam area and the Stuart Shelf area (as defined by maps A and B annexed to the Roxby Downs (Indenture Ratification) Act 1982). The parties have resolved their disagreement on this question in the manner set forth in clauses 1.3, 1.4 and 1.5.

I regret that I do not have those particular clauses, but I have accepted the assurance of Mr Collett that the issue has been satisfactorily resolved. I think that, considering the long history of negotiation in relation to the Roxby Downs area, that agreement is very significant. I would think that, subject to a satisfactory resolution of the negotiations for a heritage agreement, this will be seen to be a very progressive and, in fact, a landmark development in South Australia in the relationship between a mining company such as Western Mining and relevant Aboriginal interests.

I suppose one has to be cautious rather than being unduly optimistic, but I have always been optimistic when it comes to being able to negotiate issues in relation to whether it is native title or Aboriginal heritage or, in fact, a variety of other matters, because if there is goodwill and an appropriate mediator at times it is my view that issues such as this, which can be contentious, can be worked through to a satisfactory solution.

The question is: where to from here? We have heard some observations raising the possibility that one may not be able to trust Western Mining; what happens if this does not reach a satisfactory outcome? As the Hon. Sandra Kanck observed, this issue is in the public arena. Western Mining Corporation has a major development which is there in the interests of all South Australians. I do not believe that the public interest would be served by this not being satisfactorily resolved, and I do not believe that either Western Mining or the Aboriginal interests have that view, either.

The negotiations will be tough. In relation to native title and regardless of Western Mining, I had some meetings some time last year with some Aboriginal groups. I think the Aboriginal Legal Rights Movement might have been one of those. I said, 'Look, there will be occasions when we are on opposite sides of the fence, but I would hope that we adopt a mature approach to that.' Whilst our being on opposite sides of the fence in, say, a native title claim may create its own tensions, if we can act responsibly and maturely and continue to talk to each, that will be the best way by which we achieve long-lasting results.

I make the same observation in relation to this particular matter involving Western Mining. In my view, the parties have shown a maturity in their approach. It is my view that, if they continue to demonstrate that maturity and a measure of goodwill, even though the bargaining may be tough, provided they keep talking to each other—and from time to time if necessary have representatives of the Government involved to help to relieve either some of the tension or work through some of the points of contention—that will ultimately be in the best interests and in the interests of longer-term working relationships not only for that community but for the whole of South Australia.

I have indicated to both parties that, for so long as I remain Attorney-General, I am prepared to endeavour to facilitate the resolution of any points of contention so that we get to a satisfactory outcome. That is an offer that I have made. It is a matter for the parties whether or not they accept it. I can tell members that it is not in my interests or the interests of the Government to see this whole thing crumble into a heap.

It has also been proposed that the Aboriginal Heritage Agreement be recognised in legislation. I can give a commitment to the Council that, subject to the agreement being in a form which the Government is satisfied is in the public interest and is, in a sense I suppose, an appropriate outcome for the negotiations—and I cannot personally believe that it will not be—I will facilitate legislation on behalf of the Government to reflect that agreement.

One might ask, 'Well, what's in the public interest?' I cannot give a definition of that nor can I responsibly say that there will be a *carte blanche* agreement to legislate come what may. On the basis of what has occurred so far and where I believe this will ultimately end up, I can see that there will be no basis upon which the Government will have reservations. Of course, ultimately it is a question for the Parliament, as it is with any legislation, as to whether or not the Parliament accepts that. I certainly give my commitment on behalf of the Government that we will facilitate the process of appropriate recognition.

The Hon. Sandra Kanck asked how quickly would we see legislation in place. It depends to some extent on when the negotiations conclude. The parties have set a time frame of 14 weeks. I must confess in the hurly-burly of today I have not had a chance to calculate the date to which that takes us. Perhaps that is about Easter. If it is, it will depend upon how quickly we can get the legislative framework to recognise that agreement, draft it and put it in place. Looking at the parliamentary sitting time, I would expect that most probably, if all goes well, it would be the budget session next year when this would be dealt with. That is probably as far as I can take it. I think I have answered all the questions and issues raised by members.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: The Hon. Sandra Kanck reminds me that there are issues about the Racial Discrimination Act and the Native Title Act. The advice which I have is that this legislation does not infringe the Commonwealth Racial Discrimination Act because it is not racially discriminatory. I suppose that it is open to anybody to test the validity of that opinion by litigation. I would hope that, if there were an agreement which is concluded between the relevant parties and, as I say, is in the public interest—there may be other Aboriginal people who are not part of the working group who claim an interest and whose interest may need to be in some way protected—we can cover those sorts of issues and that there would not be that test. But the advice I have is that it is not a breach of the Racial Discrimination Act.

In relation to the Native Title Act question, my advisers who have had a lot to do with native title assure me that it is not in breach of the Native Title Act. I suppose we could debate all the issues and connotations of past Acts, but all I can do is repeat to the Council the advice which I have, that it is not in breach of the Native Title Act or the Racial Discrimination Act. I act in good faith in therefore indicating that that is the position which the Government relies upon.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: I think that is the only other issue, and if there are others members can raise them during the Committee stage. The honourable member asked, 'What happens within the 14 weeks if the negotiations are not satisfactorily concluded?' I tried to deal with that in perhaps an optimistic way by saying that I did not believe that in the context of the public exposure which this issue has that it was likely that that would be the outcome. In offering to be involved in any of the sticky points—and I might regret that offer later; it all takes so much time, but if it gets a satisfactory outcome that in itself gives one a sense of satisfaction—all I can say is that if there is not a satisfactory outcome the Government would be very concerned and would use its power of persuasion as much as it is possible to do so to ensure that the parties meet, work through the issues and reach a final resolution. I can do no more than indicate that that is my hope and intention.

Again, I repeat my appreciation to members for the way in which they have dealt with this matter and for their indications of support for the Bill. I repeat my commitment and the Government's commitment to ensuring—as much as it is ever possible to give such commitments—a satisfactory outcome to the negotiations.

Bill read a second time.

In Committee.

Clause 1.

The Hon. SANDRA KANCK: I asked a question in relation to section 9(12) in the second reading debate which has not been answered. I wanted to know whether it was the Attorney-General's view that this means, as it currently is worded before we take out subsection (12), that section 9 has never come into effect?

The Hon. K.T. GRIFFIN: I did try to deal with that, but perhaps not by specifically referring to that, in saying that there are conflicting points of view. There is advice to me which is that it has not come into effect. There is other advice which suggests that, notwithstanding that the 1979 Act was not proclaimed, nevertheless, the intention which would be reflected in any legal interpretation of the indenture and the indenture Act would be that the Aboriginal heritage issues are dealt with under the 1979 Act. There is that conflicting view. As I said, the advice to me is that it was not brought into

effect. I suppose one could ultimately go to court to test it, but I do not think that is in anybody's interest. It was certainly everybody's intention that the 1979 Act apply, and that was believed to be the position up until a relatively short time ago. In those circumstances, the Government is seeking to try to reflect what it is believed was the intention of the parties as well as of the Parliament by enacting this amending Bill in the form in which it now comes before us.

The Hon. T.G. ROBERTS: I gather from that answer that, in the next 14 weeks, while negotiations around the heritage agreement and the current on-site issues continue, it is this Bill, involving the 1979 Act, that will cover the identified sites in the intervening period.

The Hon. K.T. GRIFFIN: That is my understanding.

The Hon. T.G. ROBERTS: The next question asked by the negotiators would be: would our negotiating rights be diminished in any way? While the umbrella of the 1979 legislation applies, there is flexibility built into the conciliatory or negotiating processes. Could they be diminished in any way if WMC fell back on the protective cover of the 1979 Act?

The Hon. K.T. GRIFFIN: That is certainly arguable. Certainly, I have heard on radio, by those who are protesting against the legislation—the Australian Conservation Foundation for example—that it diminishes the Aboriginal people's rights. That may be the outcome. I prefer to think of it, though, in these terms, that the parties have reached an agreement which is binding upon them. Quite obviously there is already an extensive agreement they have been able to get to in principle and now it is a question of putting the flesh on the bones. That would very largely determine the outcome of any dispute in relation to heritage issues. It is arguable. I will not mislead the Council by saying it is clear cut; it is not clear cut. Because of the way in which these things have been occurring over the past couple of weeks, and parties have been coming together and working hard to get some resolution, ultimately a satisfactorily negotiated Aboriginal heritage agreement will come out of it.

The Hon. SANDRA KANCK: If the agreement that is ultimately negotiated by the parties was, for instance, to approximate the 1988 Aboriginal Heritage Act, would that be acceptable to the Government?

The Hon. K.T. GRIFFIN: I cannot give a final answer to that. If the parties were to get to that point, I could indicate that most probably it would be, but I have not given any consideration to the form. I do not know what they have negotiated so far. It may be that there is something which is far in advance of the 1988 legislation. The honourable member would know that all the Ministers for Aboriginal affairs around Australia are currently working through an upgraded Aboriginal heritage regime, under which Aboriginal heritage issues will be dealt with. I recollect that a draft Bill has been out for the past six or eight months, or longer. I do not know where that will lead.

When I indicated that there are issues of public interest which have to be taken into consideration, I was really looking to those issues that might affect others who might be claimants, for example, beyond those who are part of the Port Augusta working group. I have not made a study of the detail. I would be less than frank with you if I told you that, 'Yes, it would be acceptable,' when I honestly do not know what has been negotiated so far, other than what has been put before me, and now before the Council, or the extent to which they hope to go in having a framework in place to resolve disputes, for example, to recognise sites, to support continuing cultural activity and community development in the area. I can really take it no further than that. I would like to be able to say 'Yes.' I would say 'Most probably yes,' with a cautionary note, because I do not know what the final outcome will be.

Clause passed.

Clause 2 and title passed.

The Hon. K.T. GRIFFIN (Minister for Justice): I move:

That this Bill be now read a third time.

The Hon. T.G. ROBERTS: I rise to indicate that the Opposition will support the third reading. As I indicated in my second reading contribution, there is a degree of nervousness about the process and using 1979 provisions to bring about what a lot of people who are close to the negotiating table believe is perhaps an anachronistic part of an Act and applying it with a certain amount of discomfort—I guess that is probably the best word to use—in the hearts and minds of those who are negotiating. The Attorney has given what is probably as close to a personal guarantee as you can get. I suspect that he may be getting his sunscreen and his sunhat ready to jump on a plane, if need be.

I know it might be difficult for people to understand that the Opposition would be prepared to put our reputations on the line in representing the interests of Aboriginal people in this State, particularly at this very sensitive stage of negotiations, given that a Federal Bill has been moved through Federal Parliament with a lot of acrimony. In this State, the bipartisanship we have had on Aboriginal issues, Aboriginal land rights, and now reconciliation, builds some confidence in our minds that at a political level there is a certain amount of trust, which on this occasion we are banking on.

Representatives of the Aboriginal people, certainly at the coal face, are exposed to a lot more of the rough and tumble of negotiations, where both sides have to take issues to the wire and then negotiate compromises to suit them both, and I suspect that WMC is in that category as well. Where there are unequal weightings of power within a relationship, it is vital that we put our weight behind the less powerful to try to balance the scales, and I am satisfied in my own mind that it is the Government's intention to make sure that the goodwill to which the Minister referred remains around the table in relation to Western Mining's intentions. Knowing the Aboriginal negotiators who are involved, I suspect that the goodwill will remain on their side as long as the goodwill remains with WMC.

I am relatively confident that umbrella legislation or punitive measures in legislation will not be required and that the conciliatory approach to equal weightings for negotiated outcomes will be successful. Like the Minister for Justice, in the next 14 weeks I look forward to getting some satisfaction if an agreed determination comes out of the negotiations where both sides are happy with the heritage agreement and with the associated outcomes. If that is the way it goes, the Opposition will also breathe a sigh of relief.

If a satisfactory outcome is concluded, it will be something about which this State can be proud with respect to how it handles its indigenous people and their rights. If we can put around the table the key negotiators, those responsible for outcomes and the WMC negotiators, and if they come away with a political and negotiated outcome that many other States cannot secure, then we as a State can feel proud. The trust is a little bit feathery at the moment but, if we can cement it, we can move forward with some confidence in

many other areas around the negotiating table, and people can hold faith rather than break faith so that the outcomes are the best that we can achieve.

The Hon. SANDRA KANCK: At the conclusion of my second reading speech, I said that I would listen to the Attorney-General's responses to determine which way I would vote, and I must say that I have been impressed by his sincerity in this matter. I always have a residual fear about what will happen if it does not work, but given that the Attorney-General is committed to making himself available to get it to work I will support the legislation.

I know that representatives of the Aboriginal Legal Rights Movement are present in the gallery and they will be a little disappointed by this. I have spent the last two weeks working very solidly on this issue, talking to lots of people about it, in an attempt to get to the truth. I have reached the point at which I do not think that I can take in much more or make any more judgments. On that basis, in the belief that all those who are involved are doing this in good faith, I indicate that we support the legislation. However, I assure members that, if Western Mining reneges in any way, it means that all bets are off when any further amendments to Roxby legislation are introduced to Parliament.

The Hon. K.T. GRIFFIN (Minister for Justice): I thank members for their indication of support for the third reading. I have already indicated my hopes for the outcome of this measure, and I only hope that they are not misplaced. I remind members that we have a pretty good record in this State. I was involved with the negotiation of the Pitjantjatjara Land Rights Act of the early 1980s; in Opposition the Liberal Party supported the Maralinga Land Rights Act; and in relation to native title we legislated in this State in a way that was not racially discriminatory with the support of the Opposition and the Australian Democrats.

We were the only jurisdiction in Australia to have State-based legislation recognised by the then Federal Labor Government on the basis that we believed there was a better way of achieving satisfactory outcomes, although we were constrained by the Federal Native Title Act as to what we could do in this State. Since then, as a Government, we have led the way in endeavouring to provide a basis for negotiation for dealing with native title claims through, first, the draft agreement relating to access arrangements for pastoral leases, which we took the initiative in circulating last year. That was applauded by the national Native Title Tribunal and, although not resolved, it certainly provided the basis for further consultation. More recently the Government was responsible for the draft area agreements which have gained a significant amount of publicity as a basis for discussion.

The Government has taken the view that, if we can resolve these issues by negotiation, we ought to take that course, recognising that, ultimately, as I said earlier, we may well end up in court on opposite sides in relation to native title claims, but we are doing our utmost to endeavour to avoid that consequence, not only in the interests of pastoralists but also in the interests of Aboriginal people, miners and developers, to provide a framework of certainty for all of them.

It is still my hope that one day we will be able to achieve that goal, but in the meantime we keep talking to each other about ways in which we can resolve some of the points of contention. There is goodwill, we act in good faith, and I hope that will result in the satisfactory outcome of this matter. Again I thank members for their indication of support for the third reading.

Bill read a third time and passed.

GAS PIPELINES ACCESS (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 3 December. Page 53.)

The Hon. P. HOLLOWAY: On behalf of the Opposition I rise to support this legislation. My colleague in the House of Assembly, the shadow Minister for Mines and Energy (Annette Hurley), has placed on the record in that House the Opposition's views with respect to this piece of legislation, and I will therefore not speak to it in great detail. We have before us a quite substantial piece of legislation. The Bill comprises more than 174 pages, most of which is an agreement that will apply across this country to cover the question of gas pipeline access. This Bill is the latest stage in the development of a national competitive market for gas which arose originally from the Hilmer reforms.

When an amendment was moved to the Gas Bill earlier this year I placed on the record my views about the developments in that particular area. I will not reiterate those views. As an update, this most recent piece of legislation is the result of a communique from the Council of Australian Governments meeting held in Canberra on 7 November. The Heads of Government signed a Natural Gas Pipeline Access Agreement, which will further deliver competition in the natural gas sector.

For many years it was thought that natural gas pipelines were a natural monopoly. If you want to foster competition within the gas industry, then clearly you must allow for third party access to those pipelines, and that is what this Bill is all about: ensuring a regime under which that third party access can take place. This communique, issued as a result of the COAG meeting, states:

> National access arrangements will foster competition in the delivery of gas leading to lower prices, greater choice for consumers and environmental benefits. Implementation of the national access regime will provide the certainty required to encourage additional investment in resource exploration and development and in pipeline infrastructure leading to an integrated gas pipeline network.

The communique further states:

> Lower prices through competition reform will also increase the competitiveness of our gas consuming industries, thereby stimulating investment and generating jobs. To the extent that competition in gas stimulates energy substitution, increased gas usage could also contribute to the reduction in Australia's carbon dioxide emissions.

Certainly our moving to this greater competition in gas will mean potential benefits. As I indicated in my second reading contribution to the Gas Bill earlier this year, along with any form of competition there are also risks, and it is important that, within this State, we make the right choices because, while we certainly have the potential to gain benefits, we must also cope with risks. I will say a little more about that when we talk about the electricity industry where the question of risk has received a more public airing in recent weeks. The reason why this Bill needs to go through at such short notice—it is one of a raft of Bills we have had to put through in this two week session at the end of the year—is that South Australia will introduce the lead legislation establishing the third party access regime. It is necessary to get this in place by 31 December this year—

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: —because other States and Territories will introduce legislation establishing similar arrangements that will follow from the South Australian legislation. I did not catch the interjection from the Hon. Legh Davis, but perhaps—

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: Yes, indeed.

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: Perhaps we can discuss that at some other time. I am sure we will have the opportunity to do that and I would welcome it. However, at the moment we have a number of pieces of legislation to get through. When I was the shadow Minister for Mines and Energy I was aware of some concerns within the gas industry that, whereas there was plenty of competition coming into play in the downstream sector of the gas industry, there was a fear that, perhaps, in the upstream sector it was not quite as competitive as it might be.

For some time we have had in place a review of the Cooper Basin Indenture, and we have received some criticism from the Australian Competition and Consumer Commission in relation to the progress of that review. I ask the Minister whether he could give us a progress report on that review. Perhaps the Minister might also indicate—and I will perhaps raise this in Committee—whether this legislation applies to the production aspect: those pipelines that feed into the processing units in our major gas fields. I am aware that the view abroad is that, as our gas fields cover a large area, if you were to have more competition with respect to the production side to bring smaller less economic fields on stream, access to that infrastructure would be necessary to get the most benefit. That is an issue that we clearly need to address.

To some extent all this national competition legislation is really removing the power of this Parliament to have any say in what is happening in the development of these industries. Part of this Bill will mean that there can be no possibility for this Parliament to disallow any changes to the gas pipeline access codes which are a schedule to this agreement. I know that the Legislative Review Committees of this country have been paying some attention to this growing trend. I do not know the answer. As I indicated in my second reading contribution on the Gas Bill, I think it is inevitable and desirable that we move to a national market in gas and our other basic energy commodities. We have no real choice.

If we are to get the most benefit from it, it is inevitable that that will, to some extent, remove parochial State interests. Nevertheless, we need to accept that these sorts of agreements will, in the future, reduce the States' say in what happens with this legislation. In Committee I will ask a couple of questions in relation to that aspect, as well as a number of other measures. I will not delay the Council any further. We have gone a long way down the track of a national competition policy with respect to gas. This is just a further step along that path. It brings benefits, it also brings risks, but we are on the train now and it is a bit late to get off. The Opposition supports the legislation.

The Hon. R.D. LAWSON: I support the second reading of this Bill. However, I will record a couple of points in relation to it. The Hon. Paul Holloway has mentioned the legislative mechanism by which this national scheme is being implemented and I, too, wish to refer to that. The means of giving legal effect to the national access code is an application of laws approach. Fortunately, on this occasion South Australia is the lead legislator for this gas pipelines access law. The law is a schedule to the Bill presently before the Council.

Other jurisdictions, excepting Western Australia, will apply the South Australian law in their jurisdiction. It is my understanding that the Western Australian Parliament takes the view that it is inappropriate to adopt this mechanism and that that Parliament will introduce mirror legislation similar to that being implemented in this Bill.

In Western Australia they have a robust distrust of the legislative mechanism that is being adopted in this State, namely, adoption of laws statutes. In Western Australia it has been found, as indeed in some cases it was found in this State, that the sovereignty of the Parliament was severely undermined by adopting mechanisms which prevented the Parliament of a local jurisdiction to effect any amendment or change to a scheme once implemented but, more particularly, subjected a particular State jurisdiction to alterations to that law without the Parliament of the State either being aware of or having any cognisance of, or being given notice of, the amendment, and it follows, without giving to that Parliament, the opportunity to either object or to amend the proposal. There is no doubt that these national schemes of legislation are having the effect of undermining the sovereignty of the Parliaments of the Australian States.

However, this scheme has been implemented pursuant to an agreement signed at the Council of Australian Governments last month. The Gas Reform Implementation Group has been made up of representatives of this State Government as well as the Governments of other States, Territories and the Commonwealth, as well as industry associations such as the Australian Gas Association, the Australian Petroleum Production and Exploration Association, the Pipeline Industry Association and the Energy Users Group of the Business Council; and, as in so many of these things, the National Competition Council and the Australian Competition and Consumer Commission have had their fingers in the pie.

Notwithstanding the fact that such high level groups have been involved in the implementation of this scheme, I still feel that it is appropriate for there to be some form of parliamentary scrutiny of this type of legislation. Once legislation of this kind is brought into the Parliament, there is no opportunity to amend it or reject it. The Bill must be passed as it is or the integrity of the whole scheme is undermined. In this case that means that this Parliament is very much a rubber stamp for what has gone before.

Notwithstanding that, I support the principles underlining the Bill. I draw members' attention to a couple of provisions in the Bill because they are not terribly satisfactory from my point of view. Clause 10(4) provides that the Subordinate Legislation Act of this Parliament does not apply to any regulation made under the gas pipelines access law. Such a regulation is made by the Governor on the unanimous recommendation of the relevant Ministers of the scheme participants.

One would hope that the requirement for unanimous recommendation would mean that serious consideration had been given to all aspects of any particular regulation that was introduced. However, I think that the erosion of the principle that all subordinate legislation should be subjected to parliamentary scrutiny is to be deprecated and, unless mention is made of these occasions as they come forward, it is likely that the erosion will continue.

Similarly, clause 24 of the Bill provides that the Subordinate Legislation Act of this Parliament does not apply to the National Third Party Access Code for Natural Gas Pipeline

Systems, which is referred to in the Bill. Once again, it seems to me a retrograde step.

I am concerned by the provisions in clause 45 which provide that the powers and procedures of the South Australian Gas Review Board include a power to require any person appearing before the board to answer any relevant questions put by a member of the board or by a person appearing before the board.

The legal requirement under pain of penalty to require questions to be answered is not a provision that is found in the common law, and whilst it is true there are a number of pieces of legislation which do require persons appearing especially before courts or quasi-judicial bodies to answer questions, whilst not numerous, they are not uncommon. However, in the case of a board of this kind it does seem to me to be a very wide power to give to a body such as the Gas Review Board. When it is borne in mind that the maximum penalty for refusing to answer a question of this board is $10 000 it is no trivial matter.

In relation to part 2 of schedule 1, clause 6 deals with the National Third Party Access Code for Natural Gas Pipeline Systems, and it provides for the amendment of that code and such amendments can be made by a two-thirds majority of the relevant Ministers. Once again, such an amendment is made without reference to the Parliament of this State, and amendment of the code has immediate effect upon being published in the South Australian *Gazette*. All conditions and preliminary steps required for the making of an amendment are presumed to have been satisfied unless the contrary is proved.

Once again, that is a fairly draconian erosion of the powers of this Parliament. There is some amelioration of some of the stringent provisions of the code in clause 33, which provides that criminal proceedings do not lie against any person by reason of a number of things. However, very heavy civil penalties do apply. For example, clause 33 of this schedule says that criminal proceedings do not lie against a person who has conspired with others to contravene a provision of the code. That is a fairly extraordinary release from what would otherwise be regarded as a very serious matter, namely, conspiracy to contravene a provision of the code. It is not made criminal. However, notwithstanding these arrangements, I support the principle of the Bill, as I said, but feel that it is appropriate to record on this occasion the reservations that I have about aspects of it. I support the second reading.

The Hon. SANDRA KANCK: This Bill is part of the microeconomic reform process of the energy sector, which is being driven by COAG. The process of transforming the traditionally State-based Government monopolies to those of an open market has required a series of Bills both in this Parliament and other State and Territory Parliaments around the country. The purpose of this Bill is to provide a legislative framework for third party access to natural gas pipelines in South Australia, and it emanates from an agreement signed at a COAG meeting on 7 November 1997.

I was quite delighted to hear the comments of the Hon. Mr Lawson, because I raised similar concerns last year, I think with the electricity Bill, and I felt that it was falling on deaf ears. There is no doubt that with this sort of legislation we are diminishing the power of our State. But the agreements have been signed by representatives of the Federal Government and each of the State and Territory Governments.

This very much a procedural Bill. It is a very thick Bill, 174 pages long. I must say that I have never seen anything quite like it. It has 54 clauses in the main part of the Bill. There are two schedules, one of which has 43 clauses; then there is an appendix to schedule 1, with 42 clauses; schedule 2 has 10 clauses; and then there is an attachment to schedule 2, called attachment A, and a schedule A to schedule 2. So, from a technical point of view, it is quite complex.

This is a technical Bill but, given that we are giving away some of our powers in the process, I want to take the opportunity to talk about some of the power that we are giving away and why the Democrats are concerned, and to introduce perhaps a little bit of philosophy into a Bill that is essentially based on economic rationalism.

We in the Democrats do not have blind faith in the market to deliver good outcomes in terms of jobs, prices and certainty of supply. It is very clear that in the process of the restructure of the energy sector in Australia a great deal of pain is being caused, especially to those people who find themselves without a job. We consider that it ought to be binding on Government to ensure that people who will greatly benefit from these changes should contribute towards alleviating the pain of others.

As a small regional economy, we must be sure that South Australia is not disadvantaged in this change. At least, that is the theory. Although politically South Australia is an entity equal to other Australian States, such as New South Wales and Victoria, in economic terms South Australia is a regional economy. Its economic significance is dwarfed by the larger States such as New South Wales, Victoria and Queensland.

Laissez faire market forces provide greater returns for the big players in the market than for the smaller players. It is the role of Government (in this case at both State and Federal levels), we believe, to ensure that all Australians have access to any returns that come from these changes. When changes to South Australia's gas industry were first debated in this Chamber two years ago, when I was standing up for the interests of South Australians, some in this Chamber accused me of being parochial. I was told that I ought to consider the benefits for Australia as a whole.

However, as a South Australian politician it is my responsibility to consider the consequences to my constituents. South Australians should not be left in an inferior position just because we are a small player in the national economy.

The underlying principle of microeconomic reform is that competitive markets will lead to greater consumer choice and subsequent cheaper prices. One of the stated primary objectives of this Bill is to promote a competitive market for gas, so that customers can choose to purchase the cheapest energy available. In South Australia gas and electricity are closely related. Natural gas is used for generating half of our electricity in this State. Given this, and the fact that competition aims to reduce prices, one might conclude that South Australian consumers would have access to cheaper electricity. However, the Government, through its own publication *Energy Reform in South Australia*, explicitly states that:

> Realistically, South Australia does not expect energy reform to bring about the order of electricity price reductions experienced recently in the Eastern States under competitive market conditions.

This document states that this is because:

> Price reductions interstate are partly the result of a substantial oversupply in generating capacity. Such oversupply does not exist in SA, either in the gas or electricity sectors.

So, in the short term, at least, the Government has specifically expressed a view that the price of electricity to South Australian consumers, even though half of it is based on natural gas, is not expected to be reduced. We believe that we will lose more jobs under this new regime, and we would like the Government to come clean on this. There is a lot of rhetoric about industry booming as a result of cheaper energy costs, implying that job growth will emanate from this boom, but there really is nothing concrete.

The application of competition policy rules in the energy sector has seen the corporatisation, and in the case of Victoria the privatisation, of State electricity enterprises. This has resulted in a massive reduction in the number of people employed in the industry. Since the Victorian electricity industry has been privatised, it has produced greater profits for shareholders and cheaper energy costs to consumers, but this has occurred at the cost of massive job losses. Once competition policy comes into full effect and Victoria can sell its cheaper electricity into other States, such as South Australia and New South Wales, pressure will then be put on our enterprises also to shed jobs to compete. There is nothing more certain.

The focus of competition policy has been on lower prices, but not enough has been said about jobs. The extent to which the expected gas boom will provide jobs for Australians depends on other Government decisions. For instance, in early 1996 the takeover of an Australian company, Ampolex, by Mobil, a US multinational company, was approved by the Federal Government. Until that takeover, Ampolex was the only Australian shareholder in the north-west oil and gas field, which is currently in its construction phase. But Mobil already has its own preferred contractors. They favour modularisation, whereby segments of the plant are manufactured in Asia, where labour is very cheap, and put together on site. So, not only will shareholder profits bypass Australia but also Australians will miss out on jobs.

While an argument backing a Government decision to remove State-based monopolies could carry support, unwise decisions wherein we allow our companies to be taken over by US-based multi-nationals, resulting in the export of profits and jobs, can never be justified—especially in an important industry such as energy.

One of the main aims of competition policy is to dismantle State-based monopolies and bring about cheaper prices to consumers, but the Ampolex-Mobil case brings to light another problem. The Federal Treasurer's approval for the giant US-based company Mobil to takeover Ampolex results in fewer players in the industry. Like monopolies, oligopolies have higher prices than competitive markets.

The energy sector is the world's most powerful and most wealthy industry. The oil cartels of the 1970s proved just how powerful and influential these oligopolies can be. Unless the Government is prepared to protect Australian businesses from being swallowed up by giant multinationals, there is a danger that competition policy will result in State-owned Government monopolies being transferred to national and global monopolies. At least State-owned monopolies keep jobs and profits in the State.

The introduction of our electricity industry into the national market has resulted in Dr Armitage, the Minister for Government Enterprises, calling on South Australians to reduce their electricity consumption because of lack of supply. Are we to expect more of the same once natural gas is opened up to competition? Ironically, the reason Premier Playford established a Government-owned electricity corporation all those years ago was to ensure certainty of supply. It is interesting that, once again, as we move towards a market-based system of energy we are once again faced with uncertainty of supply.

It is anticipated that the demand for gas will rise rapidly once the new competition rules come into effect. It is generally agreed that there are about 40 years of known gas reserves in Australia; however, as the demand for gas increases there will be more incentive to increase drilling in search of more gas. The recent find by Santos in the Barrolka field in south-west Queensland was the biggest onshore find in 25 years. However, the biggest known reserve is offshore from which an abundant supply comes, that is, the Timor Gap.

It is predicted that next century a pipeline from the Northern Territory will be built to link into the existing system, and we need to be aware just what it is we will be linking into. East Timor was invaded and taken over by the Indonesians in December 1975 with the tacit approval by the Australian Government. The annexation of East Timor by Indonesia is not recognised by the United Nations, yet Australia does not respect this. Australia has signed an agreement with Indonesia to mine oil and gas in the Timor Sea.

Australia's recognition of Indonesia's invasion of East Timor and our willingness to sign an agreement with Indonesia about a resource that actually belongs to the East Timorese people means that the agreement has been purchased at the cost of the lives of thousands of East Timorese people. The East Timorese have continued to fight for self determination over the years, which has resulted in much bloodshed.

Australian officials have chosen conveniently to disregard the plight of the East Timorese. As an annexed State of Indonesia, East Timor remains one of the poorest areas in the region. However, if Australia had not supported Indonesia's annexation we could have had an agreement with East Timor about its oil and gas and it could have been a source of income to them. Instead, Australians find themselves in the shameful situation of contributing greater misery to one of its nearest neighbours. So, in a decade's time when we start using gas from the Timor Gap we should be cognisant of the real cost of that fuel.

The opening up of the gas market does provide an opportunity for there to be a shift away from the reliance upon energy generated from coal, but this of course will not happen overnight. There are a number of factors which will ensure the survival of the coal-based energy into the future. First, Australia has an abundant quality of coal reserves. At the 1991 rate of usage, current reserves are estimated to last over 800 years. Secondly, Australia's differentiation policy at the Greenhouse Conference in Kyoto is aimed at keeping the pressure off the coal industry. Thirdly, the oversupply of coal-powered power stations in New South Wales and Victoria and their abundant supply of coal, together with their expected fall in price of electricity following privatisation, will secure demand for their product for some time. Fourthly, gas is much cheaper to excavate than coal. Coal requires a capital investment in the order of $1 billion to $2 billion, whereas a gas-fired power station merely requires a jet engine to be bolted into the ground.

However, before large volumes of gas can be made available to Australians, new infrastructure would need to be constructed across Australia. Not only would new pipelines need to be constructed, but existing pipelines would need to

be replaced. Although natural gas is far superior to coal in terms of the greenhouse gases it emits, it is also a fossil fuel and, subsequently, does have greenhouse repercussions.

Another energy source which is being promoted at the moment and which does not emit CO_2 is nuclear energy; however, this is not a viable option. First, the construction of a nuclear power station is in itself a highly energy intensive process taking somewhere from between five to seven years for construction. Secondly, there is no acceptable solution for the storage of radioactive waste and there is not likely to be in the foreseeable future. Thirdly, there is always the risk of nuclear disaster, be it caused by an accident, natural disaster or political events, and it is extremely destructive as the Chernobyl disaster demonstrated.

In the not too distant future the world will be forced to make a transition to renewable sources of energy. I believe it is necessary for our Governments to lead the way in this regard. Not only is energy a most vital resource, particularly for the modern world, but the current sources of fossil fuel energy are both finite and ultimately destructive to the environment. Renewable energy is the only viable, long-term solution. The general consensus among mainstream economists is that the market will ensure supply of energy on the basis that, as a natural resource such as gas runs out or becomes more costly to excavate, it is at that point that renewable energy sources will develop.

When we allow major decisions to be determined by market forces, we also allow environmental disasters, such as Indonesia's forest fires, to occur. It is incumbent upon the Government to support the development of renewable energy sources, simply because as yet the market has not gone down this path. Perhaps in a true market system where a premium is paid by users or abusers of the environment, renewable energy would be economically viable. For instance, in that regard I note that, if you take in the real costs in the case of coal energy, at Leigh Creek if you had added the cost of shifting a whole town from a site so that it could be open-cut mined and included that in the cost of the coal, the alternatives such as solar and wind would suddenly become very viable.

It appears that the Government has agreed to these competition policy principles without giving the guarantees which we are looking for in terms of ensuring that constituents in South Australia benefit from the deal. It is all very well to argue that the nation will benefit, but the points I have made highlight the concerns with the new system. This State Government should be looking after the interests of South Australians.

The Hon. Robert Lawson mentioned the Western Australian situation, and I remind members that Western Australia is not joining the national electricity market until a later stage simply because the timing is not convenient to them. Currently, the West Australian Government is in the process of selling off one of its pipelines which has a monopoly, and the Government wants this pipeline to continue being a monopoly, so there is a shift from a public monopoly to a private monopoly and it can secure a better price.

It appears that jobs will continue to be lost in the energy sector overall. Certainly, there will be more job losses in this State as a result of an open market. The Government has told us in its very own publication that energy prices—both gas and electricity—are not expected to fall, and now we also find that there is no certainty of supply. Although I recognise that it is a technical Bill, the Democrats do not see this as being a particularly positive move for South Australia.

The Hon. K.T. GRIFFIN (Minister for Justice): I thank all members for their consideration of this Bill. I pick up a couple of points. The Hon. Robert Lawson has raised the question of the appropriateness of template legislation. Even though South Australia is the lead legislator, I share his concerns about template legislation. The difficulty with this Bill is that the battle was lost when the eastern seaboard States put the weights on and our officers were not able to resist. The clear instructions in the early stages were to go for consistent legislation but, as I say, the eastern States carried the day, and their market is extensive.

I would personally prefer to have legislation which comes before this Parliament and which is subject to debate and possible amendment in order to retain the sovereignty of this Parliament. Regrettably, with the sorts of pressures that come through competition policy and also from the two major States of New South Wales and Victoria, it is frequently not possible to achieve the goal. I am disappointed with that but, nevertheless, with South Australia as the lead legislator, at least there is South Australian legislation which comes before the Parliament to be amended from time to time. I recognise the concerns raised by the Hon. Robert Lawson about this sort of legislation. In this instance the battle was fought but lost.

In relation to the Hon. Sandra Kanck's observations, the Government is of the view that there does need to be a greater level of competitiveness in the gas industry. In saying that, I can indicate that we have endeavoured to protect the interests of South Australia and South Australians. Quite obviously there is a balance to be realised: on the one hand a balance between a competitive environment and competition payments and on the other hand a less rigorous approach to competition and the risk that very substantial payments to South Australia will be denied by the Commonwealth through the advice given by the National Competition Council.

So it is always a question of judgment as to what is in the best interests of the State. So far as competition policy is concerned, we were locked into all the issues relating to competition policy back in 1992-93 when previous Labor Administrations at both State and Federal levels were in place, and now we are endeavouring to work through those issues with respect to particular activities and legislation. Whilst recognising the reservations that some members have expressed, I indicate my appreciation for their indications of support.

Bill read a second time.

In Committee.

Clause 1.

The Hon. P. HOLLOWAY: I did ask the Minister—he might have been distracted when I raised it during the second reading speech—about the progress of the Cooper Basin Indenture Review. I pointed out earlier that there had been some concern in the industry that most of the competition being injected is in the downstream, the distribution side, of the gas industry, but in the upstream area progress has not been quite as rapid. Has the Minister any idea what progress has occurred in looking at that indenture and also in ensuring that that competition spreads to the production side of the gas industry?

The Hon. K.T. GRIFFIN: I am sorry that I did not answer the questions; I was distracted at the time they were raised. I will endeavour to do my best with the answers on the basis that I did not bring any officers down. Maybe I should have. My understanding is that there are continuing discussions within Government in relation to Cooper Basin issues.

There was the exercise by Santos of its rights under the Cooper Basin Indenture in relation to the Nappermerri Trough. There is some planning in relation to the exploration of petroleum exploration leases five and six. A report was prepared by a Mr Dyki in relation to issues of competition policy.

Also there was the challenge by Santos with regard to the Australian Competition and Consumer Commission's determination in relation to some aspects of the agreements between the various unit holders in the Cooper Basin. As a result of the appeal by Santos, the decision of the ACCC was overturned. There are complex issues there. Because I am not the Minister with the responsibility for those issues, I can indicate to the honourable member that I will raise the issues with the Minister and, after the legislation is passed, ensure that he is provided with answers by correspondence.

Clause passed.

Remaining clauses (2 to 55), schedules, preamble and title passed.

Bill read a third time and passed.

GAS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 December. Page 53.)

The Hon. P. HOLLOWAY: I indicate that the Opposition will support this Bill. It involves a fairly small amendment. It is certainly much smaller than the legislation we were considering on third party access to natural gas pipelines. This measure proposes several amendments to the Gas Act, largely to clarify the policy intent of that legislation. It is interesting that this legislation brings in the idea of contestable consumers, which is a rather interesting concept. When I studied economics some years, they used to talk about contestable markets, and from my memory a contestable market was a market in which competition could be introduced. The classic example is airports. Even if only one airline was flying to an airport, if the price was too high it would be possible to introduce other competitors, because there would be no significant barriers to entry to prevent competition. Now we have this new idea of contestable consumers, which I must say is a rather bizarre concept. The Bill provides a rather interesting definition of exactly what a non-contestable consumer is. It is a consumer other than:

> (a) consumers classified by regulation as contestable consumers; or
> (b) consumers classified by the Minister under subsection (2) as contestable consumers;

I do not know that that really helps us a great deal in determining exactly what contestable and non-contestable consumers are. I am afraid that my understanding ends with contestable markets. Nevertheless, the Opposition supports the legislation. As I said in relation to the previous legislation, we are in era where we now have moved towards greater competition within our utility markets, and I guess it is inevitable that we have to maintain all the structures within these markets to enable them to work correctly. The Opposition will support this legislation.

The Hon. SANDRA KANCK: Sometimes the briefings that we are given on Bills can be much more interesting and revealing than the second reading reports that Ministers give. Certainly, this Bill, the earlier Gas Pipelines Access Bill, and the electricity Bill raised some interesting concepts. I just thought for the record it would be interesting to at least bring in one of them, and that was the concept that in the future there will probably be energy retailers rather than gas retailers or electricity retailers. Even at present we have Telstra as a communications utility, I guess you would call it, perhaps being able to retail electrical energy using communications infrastructure. Certainly, the energy market is going through some quite interesting reforms at present.

The Democrats are supportive of the power that is given to the Minister so that the Minister will have some say about who is classed as a contestable consumer. If this is not done, a fast-food chain could aggregate all its outlets. By doing so, they could get an opportunity to buy gas at cheaper rates and get an advantage over a local fish and chip shop. I note also the Government's commitment in the second reading speech to ensure that gas consumers gain the benefits of competition. I refer members to the speech I have just made and indicate that, although the Government might have that commitment, I doubt that anything will happen as a result of that stated commitment.

In terms of commitment, one of the things I would like to see coming from the Government is a commitment to encouraging large consumers of energy to use gas rather than electricity, because we generally get our electrical energy from the Torrens Island Power Station through the burning of gas, at about 25 per cent efficiency of the original gas. I would really like to see the Government giving us a commitment that it will do all in its power to get the large consumers to use gas rather than electricity. I indicate the Democrats will support this Bill.

The Hon. K.T. GRIFFIN (Minister for Justice): I thank members for their indication of support. I am not able to give the commitment to which the Hon. Sandra Kanck referred, but I will ensure that it is referred to the Minister for appropriate response.

Bill read a second time

In Committee.

Clause 1 passed.

Clause 2.

The Hon. SANDRA KANCK: I am sorry that the Attorney does not have an officer with him to answer questions tonight but, if he is unable to answer these questions now, I assume that he will be able to get some answers to me later. There is obviously a lot that is unsaid in this legislation because a great deal will be sorted out in the subsequent regulations. What will the date of commencement of this legislation be? I imagine that it will depend on the regulations, so I just wonder how far down the track we are as regards the development of the regulations.

The Hon. K.T. GRIFFIN: I am sorry that I do not have the answer to that. I should have been more perceptive and had an officer here to answer those questions. I give an undertaking to draw the matters to the attention of the Minister and arrange for correspondence to provide the answers to the honourable member.

Clause passed.

Clause 3.

The Hon. SANDRA KANCK: I am following up some of the observations that the Hon. Paul Holloway made about this strange entity, the contestable consumer, and in this regard I have been doing a bit of cross-referencing on Bills. In this clause, we support the idea of the Minister being able to classify contestable consumers, but I note that in clause 3 of the Electricity (Miscellaneous) Amendment Bill, which we

will debate next, it defines what is meant by 'contestable customer'.

Why have these two Bills taken a different approach to what appears to be the same thing? I might be confusing it and they might be different entities completely, but, if they are not different entities, it would seem a strange way to approach this matter. If there is no difference between the two entities, why does the legislation define it in different ways?

The Hon. K.T. GRIFFIN: The two regimes for gas and electricity are not identical. It may well be that a different draftsperson is involved with each Bill. Again, all I can do is give a commitment to the honourable member that I will endeavour to have the answer provided.

Clause passed.

Remaining clauses (4 to 6) and title passed.

Bill read a third time and passed.

ELECTRICITY (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 December. Page 95.)

The Hon. P. HOLLOWAY: The Opposition supports this amendment to the Electricity Act. As has been indicated in the two previous Bills on gas, we are now in a national competition regime and, as the lead legislator, this State will be dealing quite frequently with amendments to these pieces of legislation. It amazes me that, the more competitive we get, the more bureaucracy we get to deal with that competition. All these amending Bills seem to be setting up regulators and systems to ensure that this competition works smoothly. However, that is just a little aside.

The more serious point that I want to make is that it should be recognised that, at the moment, the electricity generating industry in this State is at something of a crossroad. It was interesting to note that, in Question Time in another place today, the Government indicated that the board of ETSA has commissioned a report from a merchant bank to consider selling ETSA. That is an interesting development. As I said, our electricity industry is at a crossroad and, in his recent report, the Auditor-General has alerted us in considerable detail to the problems that we face, because as we move to towards a more competitive environment we will face more risks.

It seems to me that the big issues in the electricity industry now do not so much concern the Electricity Act and some of these bureaucratic amendments but the future commercial viability of our electricity industry, and I suspect that that is where most of our focus will be over the next few years. On page A.3-35 of his report, the Auditor-General states:

> A matter not discussed specifically under competition arrangements, but which is of interest to Audit, related to the transition to 'contestable' customers. An issue relating to the concept of 'ring-fencing' is whether operations and accounting for contestable customers will be 'ring-fenced' from franchise customers to prevent such practices as cross-subsidisation. Similarly, the previous arrangement of having uniform tariffs for all consumers, despite their geographic location, is a matter that will be reviewed as competition unfolds.

It is worth noting that, inevitably, as we move towards this competitive regime, the concept that has served this country well for many years, that is, cross-subsidisation to maintain uniform tariffs for all customers, will be removed.

In my role as the shadow Minister for Rural Affairs, the sting behind that rather gentle sounding statement from the Auditor-General somewhat concerns me, because he is saying that, under these regimes, people in more remote regions will be facing a lot higher tariffs, and that is an issue which we will have to address. The Auditor-General, at page A.3-37 of his report, states:

> It is not Audit's role to second-guess the strategic industry-wide decisions made by the South Australian Government in the implementation of reforms to the ESI. However, Audit notes that South Australia is a net importer of electricity and it is predicted that it will need to find new sources of supply by the turn of the century. Consequently, the financial performance of the ETSA Corporations and Optima must be considered in the context of an industry requiring expansion of generation, transmission and possibly distribution capacity.

However, I note that over recent years this Government has been drawing increasingly heavily upon ETSA to prop up its budget. At the moment, ETSA is experiencing somewhat of a squeeze: on the one hand the Government is taking more capital out of the organisation; and it is being forced to run harder, cut costs, and so on. In recent times a number of problems have faced our electricity system which seem to suggest that there is a lack of investment in providing the distribution systems necessary to provide us all with a secure electricity supply. While I have always supported in principle the national electricity market, I think we need to recognise that some costs come with it.

We need to think very carefully about where our electricity industry is going in the near future because electricity is a basic, essential commodity to the people of South Australia. It is folk lore in this State that, all those years ago, Sir Thomas Playford privatised the Adelaide Electric Supply Company to overcome the lack of security of supply in this State at that time. It would be rather ironic if, about 50 years later, we started to come across problems as we moved to a more competitive and private system. I will not make any further comments.

The Bill largely deals with bureaucratic measures to assist in the operation of the national electricity markets within this State. The Opposition supports those measures, but again makes the point that much broader issues exist within the operation of our electricity system at the moment which, I am sure, will be taking the attention of this Parliament over the coming years.

The Hon. SANDRA KANCK: Those members who were in this Chamber 12 months ago when we dealt with the Electricity Bill and set up the national electricity market will know that the Democrats are no great fan of these concepts. Many of the things that we said 12 months ago are now coming to fruition. Interestingly, the magazine *Energy Reform in South Australia* (a new broad sheet, No. 1, September 1997) displays a column apparently written by the Hon. John Olsen (it bears his name and photograph) which states:

> Next year, the electricity and gas industries in South Australia will enter a new era of reform in which the forces of competition are harnessed to increase the efficiency of energy supply and provide greater choice to energy consumers.

It is an interesting assertion, particularly in the light of the blackouts that South Australia faced a few weeks ago. An article in the *Advertiser* of 27 November 1997, under the headline 'Blackout risk rises as electricity demand leaves SA. . . At the mercy of the grid', in part, states:

> The national electricity grid has made South Australia more vulnerable to blackouts, ETSA has warned.

The article further states:

ETSA's Group Manager of Corporate Services, Mr Terry Parker, said that as SA progressively entered the national grid during the next four years its power supply would be subject to Eastern States' demands as well as local demand.

Yet the Premier, in this article, states that this policy will increase the efficiency of energy supply. The *Advertiser* article further states:

More suppliers would come into the market during the next year and, subject to market forces, ETSA could find itself diverting power to the Eastern States in the event of a crisis there.

However, the Premier tells us that we will be harnessing the forces of competition to increase the efficiency of energy supply. I do not think the Government can have it both ways. When we were dealing with similar legislation 12 months ago, I predicted that 'brownouts' could be one consequence of South Australia's becoming part of the national electricity market. Reduced energy prices will encourage a more profligate use of energy. After all, when you can use more energy for the same price why should you bother conserving? Because of the way in which the national electricity market works, we will see the high carbon-emitting coal fuel power stations—particularly the worst stations from Victoria that operate on brown coal—operating at a maximum capacity 24 hours a day, seven days per week while, quite feasibly, Torrens Island could be on stand-by, despite the fact that it is fuelled by gas and is therefore the better alternative from the viewpoint of alleviating greenhouse.

The market alone will determine that (a) we will use more fossil fuel based power and (b) that the fossil fuel used will probably be that from the highest contributors to global warming. This is a very good example of why we should not have faith in the market. The real damage, as far as this Bill is concerned, was done last year when we passed the Electricity Bill and the Bill to set up the national electricity market. The Democrats placed our many concerns with respect to that on the record at the time. The comments that have now been made by ETSA's Group Manager of Corporate Services confirms our concerns.

We believe that it will be a backward step but, again, in this case we are dealing with a Bill that is secondary to what has previously been passed. It is putting technical mechanisms in place, so I indicate that the Democrats support the second reading.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2.

The Hon. SANDRA KANCK: This is one of the Bills which the Government advised us a few weeks ago required urgent treatment to get through in the two weeks of sitting. The urgency exists because the Government wants to get everything in place for South Australia's participation in the national electricity market. Again I am interested in how quickly the Bill will be proclaimed. In relation to competition, I would be interested to know what the situation is at the present time with competition payments.

The Hon. K.T. GRIFFIN: In relation to competition payments, the first tranche has been met by the Commonwealth. I think the next tranche is some time in 1998 but, as I am not sure, I will get the detail for the honourable member on that. In relation to how quickly this will come into operation, again I will have to obtain some advice and make sure that the honourable member is informed by letter. I think it is early in the new year. I do not think it is 1 January but fairly soon after. However, I will get the detail and ensure that the honourable member is informed.

Clause passed.

Clauses 3 to 5 passed.

Clause 6.

The Hon. SANDRA KANCK: My questions relate to the pricing regulator, with whom all of division 2 deals. It says that the pricing regulator may be a Minister of the Crown or some other person. I would like to know, if the pricing regulator is not to be a Minister of the Crown, whom it is likely to be. Is it likely to be someone from the public sector or the private sector? What sort of qualifications and expertise would that person be expected to have?

The Hon. K.T. GRIFFIN: Again I apologise to the honourable member for not having someone here who can give me advice before answering, but I will make sure that the questions are answered by letter.

Clause passed.

Clauses 7 to 9 passed.

Clause 10.

The Hon. SANDRA KANCK: I am very pleased that the immunity being applied to ETSA is no longer going to be total. I would be interested to know whether energy utilities in other States have similar immunity. If they do not, at some stage will we have to amend this legislation to bring it into line so that it meets competition policy principles?

The Hon. K.T. GRIFFIN: It is a good question because quite obviously issues of liability do affect a comparison for competition purposes. I do not know the answer to it. I will find out and we will make sure that the honourable member is informed of that by letter.

Clause passed.

Title passed.

Bill read a third time and passed.

GAMING MACHINES (GAMING VENUES IN SHOPPING CENTRES) AMENDMENT BILL

Returned from the House of Assembly without amendment.

UNCLAIMED SUPERANNUATION BENEFITS BILL

Returned from the House of Assembly with the following amendment:

No. 1. New clause, page 3, after line 5—Insert new clause as follows:

Treasurer to refund certain amounts

7. (1) If—

(a) an unclaimed superannuation benefit has been paid to the Treasurer under this Act; and

(b) the Treasurer is satisfied, on application made by a person in a form approved by the Treasurer, that, if this Act and Part 22 of the Commonwealth Act had not been enacted, that person would have been paid that unclaimed superannuation benefit by the trustee by whom it was paid to the Treasurer,

the Treasurer must pay an amount equal to the amount of that unclaimed superannuation benefit to that person.

(2) If the trustee of a fund, after paying an amount to the Treasurer under this Act, satisfies the Treasurer that the amount so paid exceeds the amount that the trustee would have paid to the person concerned, the Treasurer must refund to the trustee the amount of the excess.

(3) The Consolidated Account is appropriated to the extent necessary for the purposes of this section.

Consideration in Committee.

The Hon. R.I. LUCAS: This is the money clause which was in this particular provision and which has been certified by the House of Assembly. It is standard practice for money Bills. I move:

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

Motion carried.

DEVELOPMENT (BUILDING RULES) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 10.59 p.m. the Council adjourned until Thursday 11 December at 11 a.m.