LEGISLATIVE COUNCIL

Thursday 6 August 1998

The PRESIDENT (Hon. J.C. Irwin) took the Chair at 11 a.m. and read prayers.

VALUATION OF LAND (MISCELLANEOUS) AMENDMENT BILL

The Legislative Council agreed to a conference, to be held in the Plaza Room of the Legislative Council at 3.30 p.m. today, at which it would be represented by the Hon. J.S.L. Dawkins, Hon. I. Gilfillan, Hon. K.T. Griffin, Hon. Paul Holloway and Hon. C. Zollo.

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

That the sittings of the Council not be suspended during the meetings of the conference.

Motion carried.

ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL) BILL

Adjourned debate on second reading.

(Continued from 5 August. Page 1222.)

The Hon. P. HOLLOWAY: Consistent with the position that the Australian Labor Party put to the people of this State at the election last October, the ALP will oppose at the second reading, and at any other stages, if they eventuate, the sale of ETSA and Optima. The ETSA sale and disposal Bill is a manifestation of the greatest act of political betrayal in this State's history. Is it any wonder that politicians and the whole political process within this country are under such threat, as never before, when a Government is so dishonest to the electorate? Time and again before the 11 October election the Olsen Government denied that it had any intention of selling ETSA. I wish to put on the record some of those promises. This is what the Premier said in the House of Assembly on 11 April 1996:

> . . . as I have said on numerous occasions, the privatisation of ETSA is not on the agenda. It is not on the agenda and has not been considered by this Government. I guess we will see with the electricity industry what we saw with the water industry: do not worry about the truth of the matter, just go out and repeat the lie to the community at large. . . .privatisation has not been and is not on the agenda as it relates to the Electricity Trust of South Australia.

As I have said, that was the Premier in the Parliament on 11 April 1996. Well, we know who told the lie. Days before the election, the Infrastructure Minister, Hon. Graham Ingerson, talked about selling ETSA and was told to pull his head in. On 3 September he denied that the Liberals were going to sell ETSA, and said on National 9 News:

> That is obviously part of a Labor lie campaign.

During the election campaign, (National 9 News, 16 September 1997), John Olsen said:

> We are not pursuing a privatisation course with ETSA.

Later in the election campaign (as reported in the *Advertiser* of 21 September 1997), John Olsen said:

> I have consistently said there will be no privatisation, and that position remains.

The then Infrastructure Minister (Hon. Graham Ingerson) wrote to the Australian Services Union just a few days later, on 30 September, and said:

> The State Government has no intention of selling ETSA.

So that is what the people of this State were told before the election. As I said earlier, is it any wonder that the public of this State are very cynical, not just about politicians within the system but about the whole political process? I must say that, whatever cynicism they have about politicians at large, they are particularly cynical about the Olsen Government, and with good reason, because scarcely had members of this Parliament been sworn into their seats before the Government reversed its election commitment. So indecent was the haste to change its position, that the Government clutched at straws—any straw—to provide the justification for this massive about-face.

The Auditor-General's Report, which was made available to the Presiding Officers of the former Parliament, well before the election, was the vehicle that the Government seized upon. Although legal opinion suggested that the Government could release the Auditor-General's Report before the election, the Government chose not to do so. Of course, all of us now know the farcical situation involving the former Deputy Premier, Mr Ingerson, when he denied being informed by his advisers about the alleged risks involved in the national electricity market. He was lucky to survive on that occasion when he was caught out, although his luck has now finally deserted him: his teflon coating has finally been scraped off.

Honesty with the electorate of this State may not mean much to the Olsen Government. It has treated the electorate with total contempt over the ETSA sale. The Opposition respects our democratic institutions far too much to even contemplate such a brazen betrayal of the electorate. Those of us who regret the recent rise of One Nation need only look at such blatantly cynical and dishonest tactics by the Olsen Government to discover reasons for this rise. That is the first reason why the Opposition will oppose this Bill at the second reading.

The fundamental question in relation to the ETSA disposal Bill before us is this: should we allow our infrastructure monopolies to be owned by private firms—and foreign firms at that? Do we have enough faith in the entirely artificial marketplace which has been created in the electricity industry to believe it can do what was previously considered to be impossible, that is, produce market outcomes from a system which is, at least in part, a natural monopoly?

I would like to quote an article in the *Financial Review* some time back written by Alan Kohler. I think he makes some rather profound comments about this whole push towards the privatisation of our infrastructure monopolies. The article states:

> For a while the firms that own the infrastructure will be tightly regulated by the perhaps slightly guilty politicians [this Government ought to be awfully guilty] doing the selling. Gradually the regulations will relax helping to ensure the big prices now. What happens if unscrupulous operators get their hands around the nation's air transport, telecommunications or energy throats in a less regulated environment is something no-one is too worried about. The worriers have been silenced by an avalanche of cash.

The article continues:

> The fact that the surprises have come about [the surprises about some of the high prices being paid for assets] entirely because private firms and investors understand very well how hard it is to get hold of a permanent infrastructure monopoly, whereas Governments take them for granted, has not been mentioned. . . The discovery by today's politicians that they can not only get away with flogging the Government's fixed assets, including the stuff that can never be duplicated, but also can dress it up as 'reform' and get extra brownie points for selling it has been the revelation of the century. . . In fact,

it is just another way in which the politicians of the present borrow from the future generation to finance their power now.

Then comes the part I most want to reflect on because it is Alan Kohler's conclusion which sums up the debate, and I quote:

> Maybe everything will turn out okay when the power lines, gas pipes, phone lines, airports and railway lines are all owned by private firms that are impregnable monopolies because their assets are too expensive to duplicate. May be those corporations will be benign and won't try to make as much money as possible or else may be the regulators of the day will be sufficiently armed to deal with them if they do not behave the way monopolies always behave, but that's my kids' problem, not mine.

At this stage in the debate there is certainly much you could say about the sale of the Electricity Trust. Much has been said and no doubt much more will be said over the days to come and I guess in any debate we cannot cover it all. I will consider for a moment the national electricity market in some detail, because I believe it is fundamental to the issues before us.

In previous debates in this Parliament I have pointed out that I have supported the establishment of a national electricity market, particularly with the emphasis on the word 'national' because I believe that great savings are to be afforded to the people of this country through having a national approach to the way we operate our energy industries. In particular, as I pointed out in previous speeches, those benefits in the electricity industry arise because we can reduce the amount of overcapitalisation in electricity assets if we operate on a national rather than a State by State basis. This was the basic thrust behind the Hillmer report in 1993, which suggested that if we could move to a national market we could produce considerable benefits for the community, and I think a figure of some $23 billion overall was suggested by that committee—somewhat ambitious, I would have thought but nonetheless something worth striving for. The Opposition supports and at the time supported those goals in principle.

It is important to notice that in that Hillmer report ownership was not an issue. That is an agenda that has been captured by the Treasury, particularly the Federal Treasury, and the National Competition Council and others. I believe we are now seeing an ideological struggle rather than an economic one. There are a number of problems with a national electricity market, and I will refer to some of them. First, some of the studies that have been undertaken about what happens within electricity markets have shown that a break up of the vertically integrated electricity utilities can lead to additional costs. In a speech that I made earlier this year—I think it was the Address in Reply—I referred to a paper written by Stephen King from the Australian National University. He in turn quoted from some other studies which suggested that it had been discovered that an additional cost of anything up to 12 per cent was associated with the break up of vertically integrated electricity companies. So, in other words, any benefits that derive from the national competition policy in the electricity industry have to overcome these additional costs.

The explanation of those costs is simple enough. If you break up the industry and 'ringfence' these entities (which seems to be the common word) so that they are all acting independently, there have to be legal contracts and other forms of formal communication between the various levels of the structure. They inevitably will lead to more costs. Within our electricity industry, whatever one does about the retail and generation sides of electricity, the fact is that the wires and transmission lines remain a natural monopoly. In my speech earlier this year I went into some detail, saying that, whatever one does to try to create access regimes and other devices to try to create a market, one can never get around the fact that the distribution and transmission systems for electricity are a natural monopoly.

Another point I wish to make in relation to the national electricity market is that, when it was originally devised back in the early 1990s, the electricity reforms were supposed to coincide with gas reforms. The idea for this was based on quite simple economic principles: that if one had a proper market operating in both gas and electricity at the same time there would be a proper allocation of resources. In other words, decisions relating to the allocation of those gas or electricity resources would be made on the basis of a proper market, not because of distortions within that market.

Of course, what has happened, as we have seen, is that reforms to the gas industry have been delayed. Indeed, if one reads the papers from the Australian Gas Association and other industry bodies in the gas industry, they are extremely upset at the moment that, whereas there have been some market reforms within the gas electricity to the downstream sector of that industry, reforms to the upstream sector have been lagging behind. There is a view amongst those in the gas industry that such innovations that may be in the economic and environmental interests of this country, such as cogeneration, in other words, the combined use of heat from gas and electricity generation, have been delayed because of the reforms to the gas industry.

The Gas Industry Association and other bodies have been suggesting that there may, in fact, be a misallocation of resources, the very opposite of what the Hilmer report was setting out to achieve, because of delays in the gas reforms, particularly these delays in the upstream deregulation. Certainly, if one were to go on at length, there are plenty of examples one could quote within those gas industry journals about their concerns on such matters. I wish to record them here as an indication that there are problems within the national electricity market, which I will bring together shortly.

The fourth point I wish to make concerns Riverlink. If we are to have a national electricity market, one would assume that it would need to conform to some actual market in reality; in other words, one would expect that we should be able to move electricity around this country if it is a true electricity market. We had the proposal that was endorsed at the time by the Government some year or two ago to look into a power transmission line from New South Wales to South Australia called Riverlink. The report on that particular project occupies some two large volumes. It is a very interesting exercise to look at this, because it reveals how this national electricity market actually operates.

What happened with the Riverlink study is that, eventually, NEMMCO (National Electricity Market Management Company) did not endorse the Riverlink project as a regulated entity. In coming to that conclusion, as I said, there are two large reports, involving consultants' time. It compared this project with alternatives. One of those alternatives was another power link from Victoria through Heywood. It also compared it against demand and supply management options. It did so under two criteria: a customer benefit test, where the customers in this case were the large electricity purchasers, and it also did a public benefit test.

I want to refer to the outcomes of that exercise. There is a considerable amount of detail in the report relating to discussion about whether the customer benefit or the public interest benefit was better. It states:

> The proponents of Riverlink have asserted that the appropriate criteria for the assessment is that the proposal must maximise the net benefit to customers alone, ignoring any benefit to generators.

It continues later:

> Therefore, it has been argued that a traditional market analysis is equivalent to a public interest analysis and/or that either is equivalent to a customer benefit analysis.

In other words, there was some considerable confusion. The report discusses that over some pages. This study considered the Riverlink project under both a public interest and customer benefit test. It found that under a public interest test Riverlink was a superior option than alternative transmission line options, plus demand and supply options for all cases. In relation to the customer benefit test it found that Riverlink was a superior option than alternative transmission line proposals but that in certain circumstances it may not be superior in relation to alternative demand or supply options.

Then NEMMCO had to make a decision. We have these two tests, what do we do? So it went off and got legal advice from consultants. In the end, it decided that even though under the public interest test this option was clearly better it had legal advice that said it could only choose the customer benefit test. So it had to make its decision on this project based on that advice. The summary of this report makes some reference to that, as follows:

> Those supporting the public interest approach argue that efficient investment in the electricity market will only be achieved if the wider public benefit is taken into account and that ultimately customers will suffer if electricity sector costs are forced up by inefficient investment.

These were some of the warnings that were given. Nevertheless, NEMMCO had legal advice that it had to base its decision on a particular part of the National Electricity Code. The reason I have gone into such detail regarding that decision is to try to indicate that in my view there are problems with the national electricity market.

The Hon. R.I. Lucas: Are you supporting Riverlink?

The Hon. P. HOLLOWAY: No. The point I am making in relation to Riverlink is that when NEMMCO made its decision it had to get legal advice as to what the code actually said. What I am suggesting—and I will come to this in more detail in a moment—is that I think we need to look at the national electricity market and its operations. I have discussed these issues concerning the national electricity market to indicate that, in my view, the national electricity market has flaws. It is my view that we are experimenting with a highly bureaucratic and artificial structure to make the national electricity market look like a free market when it is at least in part a natural monopoly. I believe the examples that I have given should concern us all about the operation of the NEM and its capacity to deliver the benefits promised in the Hilmer report.

It is the receipt of these benefits which is the source of competition payments to the States. If the reforms do not ultimately deliver the expected returns, will the Commonwealth deliver to the States? I believe the Commonwealth must exercise leadership in the operation of the national electricity market and ensure that it is kept on track. In my view, far too many decisions under competition policy are made by non-elected officials too far removed from the political process.

This abrogation of responsibility by elected parliamentarians is yet another factor in the massive disillusionment of the Australian electorate to which I referred earlier. In relation to the national electricity market and indeed competition policy generally, it has taken on a life of its own. Those who are now driving national competition policy, and one of its offspring, the national electricity market, are undoubtedly devotees of privatisation. The original goals of competition policy have been consumed by agendas which have never been properly debated or scrutinised, in my view, in any Australian Parliament. The free market ideologues in the Commonwealth Treasury have had a field day, with approval from the current Federal Government.

The opinion polls in regional Australia, assisted by election results in Queensland, are the only likely source of restraint on the current direction of national competition policy under this Federal Government. The point is that national competition policy and its child, the national electricity market, are being used as vehicles to achieve objectives which were never approved by Parliament.

Members interjecting:

The Hon. P. HOLLOWAY: If the Minister for Transport reads my speech on the republic yesterday, she will see what I thought about Paul Keating. The national competition policy and its child, the national electricity market, are being used as vehicles to achieve objectives which were never approved by Parliament or, indeed, by Bannon, Arnold or Keating in the early days of the national competition policy.

What could never be done by the front door is now being done by the back door. The national electricity market, the ACCC, the NCC, NEMMCO and all these associated bureaucrats are setting an agenda for a privatised electricity industry. There should be no mistake about that.

It is not in my view clear that these objectives will deliver net benefits to the Australian public. They have no direction from Parliament to do so, but they are doing it, anyway. They are doing it by attrition and by the myriad detail encapsulated in the various obscure codes that are out of the mainstream public scrutiny. The more the electricity industry is broken up or disaggregated (the jargon word), the more the benefits of public ownership may be dissipated.

I see no reason why a publicly owned electricity utility should not be able to operate successfully in a national electricity market, that is, a market that delivers efficiency benefits to consumers. However, I am less confident that a number of broken up public utilities, which operate in a market that is distorted by regulators with an ideological predisposition towards private ownership, will deliver the benefits that the public should expect.

I believe there are several key questions that are now before this Parliament, apart from whether or not we should sell ETSA and Optima. Should we allow our public electricity utilities to be further broken up into bits and pieces? It seems that this question has already been decided by the Government and will be beyond the power of this Parliament to prevent. By the time we vote on the Bill to keep or sell ETSA and Optima, this State's public electricity utility, as we know it, will no longer exist.

I note from recent press reports that the Queensland Government has taken steps to aggregate its public electricity industry, reversing moves by the former Borbidge Government to break up the industry. The question is whether we in South Australia will ever be able to unscramble the egg. The other key question is whether the national electricity market in its current form, and given the direction in which it is

lurching, is providing the best outcomes to the people of this country and, if it is not, what we can do about it.

I will now digress to some of the interjections from the Treasurer and the Minister for Transport about what previous Governments have done. There is no doubt that the way national competition policy is operating today is quite different from the way it was envisaged to operate by those who first designed it.

The Hon. R.I. Lucas: They did not understand it.

The Hon. P. HOLLOWAY: No, I think it is the operation of it that has changed; either that or some of them may have had a hidden agenda. However, history will decide that subject. Several weeks ago I asked the Treasurer whether he would table correspondence from the ACCC and the NCC in relation to the electricity market and particularly the question of competition payments. That information has not been forthcoming.

A Government with a predilection for selling assets is dealing with a bureaucracy handled by ex-businessmen who clearly favour its course of action and is advised by those who stand to make huge profits from a successful sale. In this environment information is carefully controlled, as exampled by that inability to provide such key information, and the Government has embarked on an expensive public relations campaign to sell its message. Nevertheless, the public in this State are suspicious of this Government and its motives and they have every right to be.

I want to turn now to the question of price. After all, if we are to sell an asset (and that is what this Government proposes to do), price is the fundamental issue on any sale. Getting the right price is a necessary but not sufficient condition of any sale. If we do not get the market price plus a premium, no sale should ever be contemplated or take place. There is certainly no guarantee that this will be the case.

I would like to draw an analogy with the sale of a private house. If a land agent says, 'I will offer you the market price for your house,' would you sell it? If you like where you are living, I am sure you would not contemplate it for one moment. However, if you were offered more by way of a premium to compensate you for your selling and moving costs as well as the dislocation and risk involved, would you still sell? Perhaps not.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: But the point is that before you would even contemplate making a decision, you would have to be offered not just the market price but considerably in excess thereof to make it worthwhile. If this Government is to go ahead with the sale—and it is the Parliament which will ultimately decide whether it can—at the very least we need to be sure that the price that we receive is sufficient, not just the market price but with a sufficient premium to cover all those associated costs. If we are talking about the sale of our electricity assets, we should also throw in the massive millions of dollars that will go to all sorts of consultants, and so on.

It has been suggested that the value of ETSA is probably somewhere between $4 billion and $6 billion. The great bulk of the value of our Electricity Trust (70 to 80 per cent) lies in the transmission and distribution systems, in other words, the poles, the wires and the transformers. Most of the value lies in the natural monopoly part of the system, which of course is the part that private buyers would dearly like to get their hands on. They can see that, in the longer term, if they can hang around for long enough, once all the fuss dies down about Independent Regulators and their scrutiny starts to wear off, they will be able to get monopoly profits.

I would like to draw another analogy with that domestic situation because it illustrates clearly many of these issues. Would you sell your house to remove your debt? The main thrust of the debate is that we need to sell ETSA to pay off our debts. Most members in this Chamber would have a mortgage on their house. If they want to remove that debt, they could always sell their house and pay off the debt. The only problem is that they would not have anywhere to live. You could adopt the attitude that, if you sell your house, reduce the mortgage and rent a place for less, you would be better off. But would you? There are certain benefits that come with ownership.

Again, I think we can draw an analogy with our electricity system. Even if we could be certain of the figures that we have been given and that we could reduce our debt payments by an amount that exceeded the dividends we were given—I think those dividends need to include the retained earnings, and I will refer to that in a moment—there are still other benefits associated with ownership. For instance, there is the benefit of having a head office in this State. There is the benefit of employment in this State. We saw a classic case of that in this morning's newspaper where the new operators of our water system have now decided to use someone else to make their water meters.

If we are to sell our electricity industry, will those foreign owners—and it is almost certain that it will be taken over by foreign owners—provide the same level of employment through our service industries in this State, or will they, in turn, use the service providers from their head office, whether it be in Sydney, New York, London, Tokyo or wherever? Experience suggests that they will. So, this is another cost that needs to be put into the equation.

Much has been said about the economic analysis of the case for selling ETSA. Other reports such as the Sheridan, Quiggan and Spoehr reports have been discussed in detail. I will not go through them all here. The economic case for such matters is complicated because of the assumptions that it is necessary to make, particularly about the discount rates for future earnings or future payments. They are complicated further by the volatility of interest rates. The point I make is that in any economic case for the sale of our electricity assets we must get a substantial premium on the sale to make it worth while.

We should also be very wary about trusting the salesmen, who stand to make a substantial bonus or success fee on the sale of our assets, to tell us what is an acceptable price. How could we ever trust this Government to do anything? Over recent weeks there has obviously been a bit of a campaign organised by the Government, or those who stand to benefit from the sale of our assets, to try to talk up the benefits of this sale. Yesterday, I received a letter from, I think, the Engineering Association. By and large I thought it was a pretty well argued letter suggesting that we should sell our electricity assets. The only problem is that it did not include the caveat 'at any price'.

I can understand some of these organisations suggesting that we should sell our assets, but I should have thought that they would at least suggest some sort of a price. If someone offers you a price for your house, it is one thing to decide to sell it given that price, but it is another thing to say, 'I will sell my house regardless of what I get for it.' That issue has been overlooked the most in this whole debate.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: Perhaps the Minister can tease out some of these issues later. I will be interested to hear his contribution. Nevertheless, all the factors must be brought into it. Whether or not he likes it, getting an acceptable price including a premium must, at the very least, be a basic condition before any sale takes place. It is not sufficient, but it is certainly necessary.

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: I said that it is necessary but not sufficient, and I am sure the Minister knows what I mean. I would like to comment on a few of the other issues that have been raised. As I have said, there are many points that one could make in the debate on ETSA, and I have already spoken for a considerable amount of time. However, I would like to rebut a few of those issues. First, the argument has been used that because the New South Wales Labor Government is contemplating the sale of its electricity assets that is somehow a lesson for South Australia. However, I make the point that the New South Wales electricity market is considerably different from ours. There are three main reasons for that.

First, New South Wales has surplus generating capacity, whereas South Australia has deficit capacity, importing as we do 30 per cent of our electricity. Secondly, New South Wales is the largest market in the country, whereas South Australia's is the smallest mainland market.

So, in New South Wales I am sure that competition is far more likely to occur given the size of the market than may necessarily be the case here. After all, that is why Sir Thomas Playford nationalised our electricity industry 60 years ago. The third reason is that New South Wales has large reserves of low cost high quality black coal. In this State, we do not have such rich resources. The point I make is that the decision facing the New South Wales Government is, I suggest, somewhat different from the one that faces this State.

The second point I make which has been raised during the debate relates to the Government's advisers. It needs to be pointed out that they stand to make many millions of dollars in success fees from a successful sale. After all, they are being paid to bring about a sale, not necessarily to advise the Government on what is in the best interests of this State. So, I think we all need to be somewhat sceptical about their advice when such a huge success fee is at stake.

Thirdly, there is the issue of risk. In another speech earlier this year I spoke at some length about the Auditor-General's Report in relation not only to the electricity risk but also to the risks that the Auditor-General pointed out in our information technology industry because it has been outsourced. It is quite remarkable that the Auditor-General says that the Government may not even be able to function because of some of the problems with that outsourcing contract.

There are all sorts of risks in the modern world. Most of the risks in the national electricity market—and I referred to this earlier—appear to be artificially created. They are being almost deliberately created within the national electricity market by, I suggest, those who are promoting privatisation. The NEMMCO report on Riverlink, to which I referred earlier, refers to the fact that transmission and distribution are considered by the industry as low risk industries. This is where 70 to 80 per cent of the asset value in our public electricity utility lies. It lies in the low risk area, and it is low risk because it is a natural monopoly.

However one might artificially structure a market to sell electricity, that electricity still must pass through the transmission lines and the wires belonging to the owner of that distribution system. It is a natural monopoly; it will not be replaced. That is where most of the value lies. It is low risk. I do not think that anyone will convince the public or anyone else about that matter. As I said, I have covered that issue in some detail in previous speeches, so I will not go over it again.

I conclude by saying that it appears that in this State we have a Government that does not want to govern: it just wants to hand the reins over to others rather than deal with some of the difficult decisions that it faces. The problem is, of course, that Governments can never really escape their responsibilities. Sooner or later, as we have seen in New Zealand and other places, those problems always come back to haunt the Government.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No. You are getting rid of the responsibilities—or at least you think you are. Selling something is never really a solution when you are dealing with fundamentally profound State assets.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I have just made the point in relation to risk that 70 or 80 per cent of our asset is in the distribution system.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: There is very low risk associated with it. That is conceded by NEMMCO in the Riverlink report. It is actually referred to there and it is generally accepted. Of course, that is why they are regulated. They are regulated because there is the risk that private owners could screw out large rates of return from what is a natural monopoly. How could there be risk?

Here, we have a Government that is reluctant to govern. Recently, I read a paper by the Hon. David Lange, who was a former Prime Minister of New Zealand, and he made the point that people in New Zealand had kept on electing Governments hoping that they would govern but nothing ever happened. They had more and more of the same economic policies which left it to the market to determine outcomes. People over there were desperate to get a Government which would take decisions and which would actually govern rather than leaving it up to market forces to determine outcomes. I believe the same thing is happening here.

The problem facing this Council with the ETSA sale Bill is that we are dealing with two options, one of which is totally unacceptable and the other of which in my view is undesirable. It seems that ETSA and Optima will be further broken up into parts and there is nothing Parliament can do to stop it. The benefits of an integrated publicly owned infrastructure monopoly will substantially be dissipated by the Olsen Government, regardless of this Bill. There is little doubt in my mind that if this Bill is rejected the National Competition Council will in due course threaten competition payments to South Australia using the argument that there cannot be genuine competition if the shareholders of the three generating companies remain the same, that is, the taxpayer.

That could effectively shift the whole ETSA sale decision into the hands of the Federal Government. The retention of ETSA in public hands will then become, in my view, very difficult to sustain regardless of the merits of the case for public ownership which I have outlined today. I believe the vast majority of South Australians who have placed their faith in this Parliament to prevent the sale of ETSA should be aware that the defeat of this Bill may win the battle but not necessarily the war.

The Olsen Government is determined that any victory on this issue will be a Pyrrhic victory. It will effectively destroy anyway what it cannot sell. By the time this Bill is voted on, ETSA will no longer be there to dispose of or to save. Instead, we will have a lot of small companies. The real winners will be the architects of competition policy in the inner recesses of the bureaucracy who have long wanted to play out their economic fantasies on the real world.

Even if this Bill were to pass the Council, the tragedy is that nothing will guarantee that the people of South Australia will get value for their asset. The Olsen Government now so badly wants to sell ETSA it will do so at a discount if necessary. Professor Cliff Walsh, the Premier's adviser, has already publicly expressed the view that ETSA should be sold even at a loss. Even at a discount, the accumulated earnings of our electricity industry over six generations are likely to provide the Olsen Government with sufficient revenue to paper over the cracks in our economy for the next three years. The problem for our children is that their inheritance will be gone. While it wishes to sell the accumulated assets of past generations, what new wealth is the Olsen Government creating for our children? What happens to the garage sale when the garage itself is sold?

The Hon. J.S.L. DAWKINS: I rise to speak on this important piece of legislation, the first in a series of Bills in this area. In indicating my support for the Bill, I wish to make some comments particularly regarding the interests of South Australian rural and regional communities. In the past few months, since the South Australian Government announced it intended to sell ETSA and Optima, it has become clear to me that there is some understandable confusion in the rural community. Generally, it appears there is little understanding of what changes are caused for rural South Australia through joining the national electricity market. What are the effects to rural South Australia from restructuring the State's power industry, as we must do to meet competition policy requirements; and what occurs through the sale of our power utilities?

All these matters have been confused so it seems that the sale of ETSA and Optima is wrongly named as the reason for everything. First, let me say that joining the national electricity market is not a matter of choice for South Australia. The bottom line is that we are obliged to do so by Federal competition policy. If we do not, we stand to lose up to $1 000 million in Federal grants. The national electricity market deregulates the power industry and effectively removes South Australia's borders. It makes us part of a power market which initially includes Victoria, the ACT and New South Wales and which will also grow to include Queensland and possibly Tasmania. Within this market, all power is pooled and wholesale power prices are set every half hour of every day.

This market also enables the much larger power companies in the eastern States to set up here to generate power and to sell power into the State as well. Let us make no mistake: those companies intend to do that and they are lobbying industry right at this moment. This in turn strips ETSA and Optima of their captive market of something over 1.4 million people and some 600 000 homes, industries and farms. Suddenly, they will have to fight for the consumers' custom. They are no longer a monopoly.

The latest figures interstate show that around 50 per cent of customers when offered a new power supplier will leave their former company. It is expected that exactly the same will happen here. In this State, 27 major companies take around 17 per cent of South Australia's power. Many of these companies have indicated that they will seek better deals—deals which will stop them paying some 30 per cent more for their power than their interstate competitors. Alternatively, they can generate their own power and sell any surplus into the national market, and this may happen. These large local customers are demanding the cheaper prices that the intense competition of a deregulated market will bring.

South Australian power customers can begin to choose a power supplier starting with the largest customers in November this year and gradually working down to all South Australian homes by January 2003. The unarguable facts are that the risks of this new market are massive for ETSA and Optima. They will have to fight for market share against some of the largest, most sophisticated and most successful power companies in the world. They are tiny utilities which have operated only in a quarantined monopoly. The market view is that they do not stand a chance. That may be harsh judgment, but the point is that we as a Government, or anyone else in the community, do not know whether that will be true.

All we do know is that the dividend stream we currently receive cannot be sustained in such a competitive market. It could well turn into massive losses, especially if the wrong purchasing decisions are taken on a very hot or very cold day of maximum power usage. On such days the price of power per megawatt hour in the past years has risen from $14 to more than $4 000. If bad decisions are not hedged or protected then losses to power companies of such bad decisions could be as much as $12 million an hour.

The dividend stream to this Government in this market could perhaps be maintained, but only if ETSA and Optima cut back drastically on staff and maintenance and posted huge price rises for their power. None of the above is acceptable, either to the Government or to consumers. The Government wants out. It wants the private sector, the power professionals, to take the risk. They are used to it—it is what they do—and they have the massive financial backing to withstand any bad decisions: this State does not.

Even if this State had no debt, the Government would still be keen to divest itself of the risks of producing and selling power in the new market. It is an extremely important point to get across. It is also important to note that after 2003, even if we make the decision that ETSA and Optima should stay in Government hands, power over transmission pricing passes from State Governments to the ACCC. Technically, this means that the national market has created a situation where consumers are on their own at the mercy of decisions taken within that market. State Governments lose control to the ACCC.

In deciding to sell Optima and ETSA the South Australian Government has been able to put in place safeguards for rural consumers that it would not otherwise be able to deliver. The sale process will deliver us the funds to be able to ensure that rural customers do not suffer from the market forces of a deregulated power market in Australia. The Government would not be able to go down this road if we were stuck with ETSA and Optima in public ownership, with diminishing dividends in a State with a high debt level. That is the harsh reality. In other words, it is the sale process which is looking after the rural areas, the only way that we can do so. It is the national electricity market and the changes post 2003 which are leading to some rural customers throughout Australia—not just in South Australia—being charged more for their

power than are city consumers. The market looks at it in real terms, that is, that it costs more to transmit power to some parts of rural South Australia, and it says that that should be reflected in the price. We are legislating to deal with that.

The Government demanded that the structure to be developed had to allow the current $123 million cross subsidisation to continue. It has been able to do this by keeping the distribution arm of ETSA as one unit, and the ACCC has agreed that this can happen. By keeping ETSA distribution as one, the structure will keep the price differential between city and small country customers at a minimum after 2003. It also means that in some country areas such as Mount Gambier, which is close to the Victorian interconnector, prices could even be lower than in the city after 2003. Most small rural customers will either pay the same as Adelaide or no more than $1 in $100 more on their power bill. However, even allowing for the $123 million cross subsidy and the industry structure that would most protect rural customers, it became obvious that a few distant network customers may end up paying slightly more than the 1.7 per cent cap which the Government has set. To ensure that these customers are protected a $10 million fund from the sale proceeds of ETSA and Optima has been allocated to pay any additional charges for them. The Government calculates that this should last until the year 2013.

The Government has also agreed to legislate to continue this protection after 2013 by using the annual budget savings which will be achieved through the sale of ETSA and Optima. The flexibility to look after country customers through the new industry structure also comes from knowing that we will have a much stronger financial situation in this State without our massive debt levels. So, really it is selling ETSA and Optima that offers rural customers the highest level of protection possible. The possibility of additional costs to non-metropolitan consumers comes not from the sale but rather from the entry into the national electricity market.

It is worth remembering that the national electricity market was set up by the Hawke and Keating Governments to deliver lower prices and better service, and where it is already operating interstate it is doing exactly that. Prices are down by between 20 per cent and 40 per cent. Disconnections are down by more than 50 per cent. Blackouts from most power companies are down and from every power company they are of a shorter duration. Times have been reduced significantly for repairs and maintenance. The Government expects no less in South Australia. For the very first time power customers will see customer codes. These codes will have strict service standards. They must be adhered to or the Independent Regulator has the power to fine companies heavily and even revoke their licences—and of course consumers can vote with their feet.

For the first time consumers in South Australia will be able to change power supplier. There is nothing to keep a company more on its toes than the threat of competition and losing customers. I should say here also that the legislation ensures a commitment from power suppliers to keep connected every customer who is on the network, no matter how isolated, and the level of maintenance must also be kept up. As a further safeguard for rural consumers an energy ombudsman will be appointed. In addition, a community consultation committee will be formed which will include representatives from the South Australian Farmers Federation. This committee will advise the Regulator on all aspects of power supply and service. In other words, country South Australia will be represented within the industry structure.

I cannot stress enough that the Independent Regulator will be exactly that—independent. The Regulator will have power over industry charges and service and will publish an annual report exactly as Victoria's Regulator does. This report will ensure transparency in the industry. All problems will be detailed and companies' performance charted and compared with previous years. None of this has been available before to electricity consumers in this State. In this new industry we will find suppliers willing to work with rural communities to overcome what has been a scourge of farmers and other people, and that is the blackout. I believe we will have far more protection and guarantees of better service. Selling ETSA and Optima is in the best interests of all South Australians, or we as a Government would not be going through this process.

In conclusion, comments have been made to me that it was a Liberal and Country League Government which established ETSA many years ago, and that organisation has served this State very well.

The Hon. T.G. Roberts: Thomas would roll in his grave.

The Hon. J.S.L. DAWKINS: I do not know whether Sir Thomas Playford would roll in his grave; he established ETSA in an environment that existed half a century or more ago. As I said earlier, it was Federal Labor Governments that initiated the changes leading to the weakening of State boundaries and the creation of national markets, and the contrast between those national markets and the monopoly situation enjoyed by ETSA is stark. I support the Bill.

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

STATUTES AMENDMENT (MOTOR ACCIDENTS) BILL

Adjourned debate on second reading.

(Continued from 9 July. Page 1009.)

The Hon. P. HOLLOWAY: The Statutes Amendment (Motor Accidents) Bill is one of the most miserable measures this Government has introduced during my time in the Parliament. This Bill seeks to amend the Motor Vehicles Act 1959 and the Wrongs Act 1936 and, according to the claims of the Government, has been introduced in order to contain increases in the costs of third party bodily injury claims. It is the Government's position that the effect of this Bill will be to prevent a 4.9 per cent increase in compulsory third party insurance premiums. The Opposition is very cynical about this position, as indeed we are cynical about most things this Government does—and with good reason. It is clear that the Government really has no concern with the costs to motorists.

Let us put this Bill, which will supposedly reduce costs, into some perspective. It has been introduced at a time when stamp duty on motor vehicles has increased from $15 to $60 a year, a huge increase of 300 per cent. The Treasurer has also announced that we are about to suffer an increase in motor vehicle registrations of 4.6 per cent. We have before us on the Notice Paper an emergency services funding Bill, which will impose a levy on mobile property, in other words, cars, caravans, boats and trailers, of at least $10 per property. Also, we have already had, without this Bill, an 8 per cent increase in compulsory third party property premiums. In addition, we have also had increases on stamp duties that relate to insurance. Given all these massive increases in recent days, it is a bit rich for the Government to say that it

is concerned about the costs to motorists. I suspect that there has never been a time in this State's history when motorists have been under such sustained attack as far as their hip-pockets are concerned. Under these circumstances, I fail to see how the Government can continue the charade that it cares about these costs to the motoring taxpayer.

We should also consider the history of this measure. In about April or May 1997—not long before the election was called—the Government received a recommendation from the Motor Accident Commission to increase premiums by 8.3 per cent. The then Treasurer Stephen Baker issued a direction to the Motor Accident Commission to cut the premium to 5 per cent. The justification for this obvious political manoeuvre to keep down the increase before the election was that a legislative package would be introduced to reduce costs. This Bill is the result of that political contrivance. So, the Treasurer would like us and the public to think that this Bill is in some way a thoughtful response to spiralling increases in the costs of third party personal injury claims, but according to the information with which the Opposition has been provided the opposite is true.

In 1996-97 the total number of claims was the lowest in 10 years. The average cost per claim in 1996-97 was the lowest recorded. What exactly is the saving to the taxpayer by the passage of this Bill? A maximum of $11 per year per registered vehicle. What do we get in exchange for this saving? In exchange for this saving the Bill will remove common law rights, including the rights to benefits, of many road accident victims. In fact, in relation to one of them—and I will refer to this in more detail later—83 per cent of compulsory third party insurance claims will be wiped out under this measure. If this Bill were passed, 83 per cent of claimants for pain and suffering would lose those rights. These are the cost savings that the Government talks about—

The Hon. R.R. Roberts: Bashing the victims.

The Hon. P. HOLLOWAY: Indeed—bashing them very heavily. It is nothing to do with saving costs: it is to do in large part with cutting benefits. The Opposition will move a series of amendments to this Bill at the Committee stage, but at this point I would like to spend some time looking at the different sections of the Bill that highlight its inadequacies and inequalities. First, I refer to clause 9, which is the offset of compensation against an amount recoverable by the insurer. Clause 9 allows the Motor Accident Commission to reduce an injured person's entitlement to damages as a result of the debt due to the Motor Accident Commission arising out of another accident. This is the intention; however, the section can be read to mean a debt due to the Motor Accident Commission by the injured person as a result of the same accident in which the person was injured.

This could cause a situation where a motorist injured in an accident who may have infringed a policy condition placed on them, such as forgetting to renew a licence or registration, could then have their right to claim for compensation extinguished by the Motor Accident Commission offsetting against such damages any amount payable to other injured people as a result of the same accident. It is my understanding that the Government does not intend this to be the case; however, the legislation is not clear on this point, and I will move an amendment in relation to that.

The next matter I wish to raise relates to prescribed medical services. Clause 11(4) and (5), deal with medical charges resulting from treatment rendered to a motor accident victim. Currently, the injured person receives treatment from the medical practitioner, who then bills the insurer. The amending clause restricts costs of medical services to a prescribed limit and gives authority to the insurer to seek to have charges made by a practitioner reduced or disallowed retrospectively. If the charge has been paid by the insurer, it must be repaid by the medical practitioner.

The medical fraternity—and this includes not just general practitioners but people such as physiotherapists and others who deal with these unfortunate people who are the victims of road accidents—have expressed great concern with these provisions. No-one in this Parliament—and not many medical people outside—would argue that we should in any way tolerate fraud or overcharging in relation to the treatment of road accident victims. However, these particular provisions may have the effect of causing medical practitioners to refuse to treat motor accident victims for fear of being taken to court by the insurer.

I spoke to some physiotherapists a few days ago, and one of their great concerns is that the actual fees that they would be allowed to charge under this Bill are about 15 per cent less than the standard fees that physiotherapists charge. If an injured person comes to these people for treatment, how is the person treating them supposed to know whether or not that person will ultimately be successful in receiving payment from the Motor Accident Commission? After all, it is a fault-based system, and a lot of these practitioners are very worried that, if they were to charge patients attending for treatment the standard fee that they charge to anybody else coming through their office, they might end up inadvertently being prosecuted under that section. I think they have a reasonable case, and it is a matter that we need to consider.

The next matter I wish to raise relates to clause 12, which provides for amendments to section 35A of the Wrongs Act. This is the most objectionable feature of a generally objectionable Bill. The main thrust of the amendment to section 35A of the Wrongs Act deals with changes to eligibility for claiming compensation for economic and non-economic loss. Clause 12(a) seeks to amend the current legislation by restricting the ways in which an injured person can claim for non-economic loss as a result of a motor vehicle accident. Currently, the law states that an injured person can make such a claim after suffering a significant injury as a result of a motor vehicle accident after a period of seven days has elapsed or, alternatively, if after $1 400 has been spent on medical expenses.

The amendment before us in this Bill—a miserable amendment—extends not only the time limit required to claim for non-economic loss but also the extent of the injury. From a significant injury of seven days, we now are faced with a serious and significant injury of six months. According to the figures with which the Opposition has been supplied, about 83 per cent of all injured people will be excluded from claiming for non-economic loss, that is, compensation for pain and suffering, if this clause is passed.

We are talking here about people who may suffer great pain and loss of enjoyment of life for an extended period of time through no fault of their own. Indeed, if they are to receive compensation they would have to be the innocent victims of a road accident. They will not be able to claim compensation for that loss if this provision goes through, and we will strenuously oppose it.

The Bill also seeks to increase the requirement for incurred medical expenses. So, if they do not get you under this change from seven days to six months for a significant injury they will get you through increasing the cost of medical expenses from $1 400 to $2 500, which is another

restricting factor. Incidentally, that is one of the great concerns that people have, that if you remove the capacity for 83 per cent of road accident victims to claim for pain and suffering because you have increased the time limit it may inadvertently or as a consequence make people try to qualify for a claim under the medical clause by increasing their expenses to the $2 500 threshold.

This Bill also contains provisions for the Motor Accident Commission to limit, fairly arbitrarily I suggest, claims for medical expenses. No-one is arguing that there should not be some restraint on excessive medical treatment. However, we believe that this provision is likely to exacerbate the situation and create extremely unfair circumstances. Who are the people who will suffer most from this change? They will be victims of road accidents, naturally, but children, the unemployed and the elderly will now be excluded from any claim unless they can meet the stringent guidelines set out in the Bill. Because those in this category—the elderly, children and the unemployed—suffer no economic loss, that is, loss of earnings, their medical expenses will be covered by Medicare; but in spite of whatever great pain they may suffer unless they are seriously and significantly impaired for half a year they will, under this provision, have no entitlement to compensation because that will have been removed.

After looking more closely at the words 'seriously and significantly' I question the wisdom behind adding the further restriction. The law currently states that a 'significant' impairment is required before a claim for non-economic loss can be made. Why add the word 'seriously'? I would like the Treasurer to address this question when he sums up. I can only imagine that it is one further way to make the process of claiming for non-economic loss more difficult and, once again, those most unable to afford good legal advice will miss out. I foresee a backlog of court cases that this supposedly simple phrase, with the word 'seriously' added, will engender. So instead of saving costs we will have more going in lawyers' fees and less going to the victim of the accident.

I turn now to clause 12(b) of the Bill which relates to nervous shock, which is a legally recognised illness. The clause seeks to restrict claimants for nervous shock to those people who are 'a parent, child or spouse' of the motor accident victim and who were at the scene of the accident when the accident occurred or shortly after the accident occurred. This clause takes away any entitlement that a close family member may have because of witnessing the injury caused to a loved one at a place other than the accident scene.

This clause is mean spirited and totally unnecessary. It is my understanding that claims for nervous shock are carefully restricted by common law and that there is no need for this clause to be included in the Bill. I think that for this and all other measures in the Bill it would be helpful if the Treasurer in his summing up could indicate what savings will come from each clause. It was my understanding that, as regards the pain and suffering provision which was meant to reduce claims for 83 per cent of all victims injured in car accidents, about half the savings were from that area. It is my understanding in relation to this clause on nervous shock that the savings are fairly insignificant, and I would like the Treasurer in his reply to provide that information.

I turn now to clause 12(c), which relates to the contributory negligence category. This clause requires the court to find, in relation to assessing damages for loss of earnings capacity, that there must be at least a 25 per cent likelihood of that loss of earnings occurring. This clause creates a standard of proof which is totally artificial. As far as I can see, the only result from it becoming law is a great deal of unnecessary litigation. I will read it into the record because I think it will illustrate to any reader of *Hansard* just how convoluted it is. New paragraph (ca) provides:

> In assessing possibilities for the purpose of assessing damages to be awarded for loss of earning capacity, a possibility is not to be taken into account in the injured person's favour unless the injured person satisfies the court that there is at least a 25 per cent likelihood of its occurrence.

The lawyers to whom I have spoken do not seem to be any more clear on what that means than I am, and I suggest that, again, all we will get is a lot more legal action and nothing at all in terms of benefits for the victims of road accidents.

I turn now to clause 12(e). This clause deals with claims for consortium and limits a claim so that it may not exceed four times the State average weekly earnings. Again, I would say that that is an unnecessarily mean and restrictive provision. It is another aspect of the Bill that we will oppose.

Clause 12(f) and a number of related clauses refer to cumulative measures. One of the major inadequacies of the Bill is its failure to do justice to motor accident victims through its use of cumulative measures and it increases the apportionment of blame to an injured person where they have breached the Act. Whilst we do not oppose increases in apportionment against injured persons where alcohol, the non-wearing of seat belts and so on is involved, we oppose the power granted to the court to increase this apportionment.

This clause could lead to a situation where defence lawyers argue that the person could be 90 per cent to blame because of a breach of the law. This will lead to extended court cases and unnecessary litigation. While apportionment may be necessary, further increases beyond those set out in the Bill are not. The Opposition is opposed to the cumulative apportionment of blame as set out in the Bill. This could entirely extinguish an injured person's entitlement regardless of the severity of their injury (and I refer here to clause 12(g) and new subsection (3)).

Clause 12(h) relates to a determination of the issue of drink driving. At the moment I believe there is a contradiction between two sections of the Bill which deal with the same issue, that is, the finding of a court as to the concentration of alcohol present in a driver's system.

Clause 12(h) strikes out section 35A(5) of the Wrongs Act and substitutes a whole new subsection. Proposed new subsection (5a) provides that a finding of a court in proceedings for an offence as to the concentration of alcohol in a driver's system or the incapacity of the driver to control a motor vehicle because of the influence of intoxicating liquor will be treated as 'determinative of the issue' for the purposes of subsection (1)(i) or (jb) in proceedings for damages as a result of a personal injury arising from a motor vehicle accident. Paragraph (jb) relates to an injured person being a passenger in a motor vehicle and provides that if the injured person was aware, or ought to have been aware, that the driver of the vehicle had consumed alcohol in such a quantity as to be over the limit then damages awarded to the injured passenger must be reduced by the prescribed percentage.

There is an apparent contradiction between these two sections. Proposed new subsection (5a) provides that any decision of a court as to the drunkenness of a driver shall be 'determinative of the issue in respect to any claims for damages for personal injury'. Taken as read, this would also relate to damages claimed by a passenger. Therefore, this section could be taken to mean that any judgment that a court makes as to the drunkenness of the driver, as per new

subsection (5a), will be determinative on the issue of not only the drunkenness of the driver, as per paragraph (jb)(ii) but also whether or not the passenger was aware of this fact, as per paragraph (jb)(iii). Read on its own, paragraph (jb)(iii) gives some leeway to a court when deciding the amount of compensation to award for personal injury to decide on the merits of the individual case whether or not a passenger knew or ought to have known whether or not a driver was drunk. Read together with proposed new subsection (5a), the decision has already been made. I will be seeking in Committee to remove this contradiction.

I would now like to make some reference to the contribution of the Hon. Angus Redford. On this occasion the Hon. Angus Redford did identify some of the problems in the Bill—

The Hon. R.R. Roberts interjecting:

The Hon. P. HOLLOWAY: —and I will be certainly looking with interest at the answers to the questions he asked about the effect of the Bill. As my colleague the Hon. Ron Roberts interjects, I will be looking with even more interest as to whether he supports the amendments which I will be moving and which seek to address some of these issues.

The Government has stated publicly that, if this Bill is not passed, motorists will face an increase of up to 50 per cent in compulsory third party insurance premiums. I will rephrase that: it is 4.9 per cent in compulsory third party premiums. However, we need to recognise that—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I made that slip because the head of the Motor Accident Commission has referred in the press over the past few months to the likely outcome of increases, regardless of whether this Bill is passed, in relation to compulsory third party premiums. The head of the Motor Accident Commission has predicted that there will be steady increases, in excess of 10 per cent a year over the next few years, as the most likely outcome regardless of whether this Bill is passed.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If this Bill is passed, we are talking about 5 per cent. If every single measure in this Bill is passed, according to the Treasurer's figures, it is equivalent to a 4.9 per cent increase in premiums. The head of the Motor Accident Commission is talking of ongoing increases to the order of 10 per cent over the next few years.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: That may be so, but if the premiums still have to go up by 10 per cent per year that will greatly outweigh any impact that this might have.

The Hon. R.I. Lucas: Are you happy to accept that?

The Hon. P. HOLLOWAY: No, indeed I am not happy to accept it and, if the Treasurer wants some suggestions about what he should do, I suggest that he should stop slugging motorists in the way that he has with his budget this year, where he increased—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: When motorists go to pay their registration fees after 1 September they will see that they have a $45 increase in stamp duty imposed on their compulsory third party premiums. That will absolutely dwarf any increase relating to this Bill, and that is the point I made earlier. The Opposition believes that there are ways in which the cost—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, we don't believe in any magic pudding. A number of suggestions have been made during this debate about alternative ways that we might look at meeting—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, the Treasurer is correct: I have not made any suggestions yet because he will not let me do it as he keeps interjecting. I am suggesting that a number of people who work in this field have suggested that one area we should look at is the excess paid by the guilty party in accidents. The compulsory third party scheme is not a no fault scheme but a fault scheme. At present any person who has a claim made against them must pay a $300 excess. If one were to consider as an alternative increasing the excess for those people who have claims successfully made against them, in other words, because they are guilty in some way of contributing to a motor accident, it may be one alternative that may be looked at as a far preferable one: in other words, having the guilty person pay, rather than having the innocent victim suffer.

We are talking in the Bill about the reduction of benefits to people who are the victims of accidents, and it really raises the question whether the Government wants to see the compulsory third party insurance scheme remain as an insurance scheme. It ceases to be an insurance scheme if you remove all the possible claims. If we take this to its logical conclusion, the Government could reduce premiums to zero if you give nothing at all to people who are innocent victims. We are not talking here about a tax raising measure. This is the whole problem with the Bill: the Government appears to be using—

The Hon. R.R. Roberts: We are not talking about it—the Government is.

The Hon. P. HOLLOWAY: The Government is interested in using this as a revenue raising measure.

The Hon. R.I. Lucas: How are we raising revenue?

The Hon. P. HOLLOWAY: If you can reduce the premiums, you can hide the fact that you have jacked up the stamp duty by 300 per cent in the $45 increase that motorists will see when they go to pay their registration fees after 1 September.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: You have done it, anyway. I am saying that you want to disguise it. We are talking here about an insurance scheme. The compulsory third party insurance scheme was set up and has developed over the years to provide compensation to victims of motor accidents, and we should never forget that. That is what the scheme is all about. The Government seeks to remove restrictions so that in relation to pain and suffering, for example, 83 per cent of claimants would lose their entitlement. It is scarcely insurance anymore.

With any consideration of the compulsory third party scheme, we must ensure that we provide benefits that the public expects. After all, the public will decide whether or not they are prepared to pay the premiums to support an adequate insurance scheme, but we must ensure that the public has access to the benefits they want, and that is the judgment we have to make here.

There are a few measures left in the Bill which the Opposition is prepared to support and which actually do deal with cost. They deal with cutting costs. However, the Bill is largely about cutting benefits.

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: There are a number of benefits here.

The Hon. R.I. Lucas: Name one.

The Hon. P. HOLLOWAY: There are some in the early sections of the Bill: recovery by the insurer, duty to cooperate with the insurer, and so on. There are a number of measures in the Bill which could be described as genuine cost cutting measures, but most of the Bill is about cutting benefits to the victims of motor accidents. That is the core point of the Bill and members should not forget that.

I suggest that there are likely to be increased premiums in relation to the Motor Accident Commission because of the investment decisions that will have to be made rather than any increase in claims. I mentioned at the start of my speech the figures in relation to claims, but the Motor Accident Commission, like most if not all insurance companies, depends on investment income for a significant source of its operations.

I conclude by saying that the people who will suffer most from the changes outlined in this Bill are those who are least able to afford them: pensioners, the unemployed and those who do not earn an income, whose only chance of getting any compensation for being involved in a motor accident would be through a pain and suffering claim. Once again, the Government has shown its total disregard for those who are least able to defend themselves.

For all motorists, there will be a heavy increase in costs in the coming year. The passage of this Bill will not affect that. If this Bill becomes law, the cost will not be decreased. However, the benefits will be decreased and all injured motorists will bear the brunt of the draconian measures before us.

I make one final point. Some weeks ago, I tabled a number of amendments to this measure. In relation to some of those amendments, I indicate that, if the matter proceeds to a conference, the Opposition is prepared to discuss the details of some of those issues which are at the margin. However, regarding the main provisions of this Bill which would remove up to 83 per cent of all claimants, the Opposition will not negotiate.

There are some matters on which we believe the Government should negotiate not just with the Opposition but with the other parties to see whether there are ways in which the cost of motor accident insurance can be reduced without necessarily affecting the benefits of victims of motor accidents. In summary, the Opposition does not oppose the second reading of the Bill. However, it will move extensive amendments in Committee.

The Hon. T. CROTHERS secured the adjournment of the debate.

STATUTES AMENDMENT (FINE ENFORCEMENT) BILL

Adjourned debate on second reading.

(Continued from 5 August. Page 1218.)

The Hon. IAN GILFILLAN: This is an important and very extensive piece of legislation, and the Democrats will support the second reading. I have not been able to analyse the Bill in detail, so I have lent largely on what I believe to be an excellent second reading explanation given by the Attorney-General when he introduced the Bill. It was unfortunate that he inserted in *Hansard* without his reading it the latter part of his speech because it demands detailed reading. It sets a philosophy and, in my view, a substantial change from what has been identified previously as the strict letter of the law: the hardline approach adopted to fine defaulters of throwing them into gaol. So, it signals a significantly enlightened and changed approach to dealing with these rather vexed matters.

My contribution will pick up some of the points that I think are significant to identify from the Attorney-General's second reading explanation. The first involves a quote from the Australian Law Reform Commission which indicates the nub of the purpose of the Bill, as follows:

> The practical difficulties involved in the courts having to determine accurately an offender's ability to pay [a fine] are too great. Not only would the time involved be excessive, especially in magistrates' courts, but possibly the only method of obtaining the necessary data with complete accuracy would involve access to the offender's taxation records. This would raise privacy problems. The existence of artificial taxation schemes might lead to white collar offenders being able to conceal their financial position from the courts.

That highlights the inequity between various people getting a straight line fine as a punishment or, as we go further through the Bill, an expiation of an offence. The actual degree of the penalty depends enormously on the capacity of the person to pay, as the Australian Law Reform Commission states.

The second point I make relates to where the Attorney details the problems that we have experienced in this State. I will not go through all his arguments, but one stands out, as follows:

> Imprisonment is the primary sanction for default. This is an outdated and inappropriate sanction. For many defaulters it is not seen as a deterrent and they are prepared to erase the debt of unpaid fines by going to prison rather than paying. The consequences are that fines are not collected, people are imprisoned, not for a serious crime but for what is essentially a debt, and the State is required to maintain expensive custodial services.

How aptly that is put. This is something that has been dear to my political heart for a long time: that prisons really are counterproductive. The imprisonment of people for virtually any offence in the long run proves to be counterproductive. It may satisfy the conscience of the State because it feels that 'those bastards are being made to pay', but the anomalous situation is that we are actually bound to pay probably as much as, if not more than, those people whom we believe are being punished.

So, it is refreshing to see that the clear indication from the introductory speech on this Bill is a strong move away from imprisonment. It has always seemed ridiculous to imprison people for fine defaulting when statistical data has established the fact that prisons are virtually a school for further crime.

There have been experiments in the past with alternative ways of applying a sanction for the failure to pay a fine. The Attorney-General, in his second reading explanation of the Statutes Amendment (Fine Enforcement) Bill, stated:

> The Department of Transport was supposed to give effect to the will of Parliament and produce a system by which the registration of an offender's motor vehicle could be suspended on conviction and unpaid fine for a vehicle related offence. It apparently could not be done without major expenditure of resources, so it has not been done.

Clearly, from this information, even the best intention in moving away from the imprisonment option is fraught with difficulties. That is where I suspect the Bill will need to be teased out in quite specific detail.

I noted with some, but not complete, satisfaction that the Attorney has given an undertaking to have a complete review conducted in 12 months. Coupled with that is the rather regrettable fact that he has recognised that there has been virtually no public consultation on this matter. I have not had

the resources or the time to get an independent assessment on this measure, so we tend to be flying blind. It does beg the question, 'Why the hurry?' Why should we have to push through this legislation without going through a much wider consultative process before introducing legislation into this place and then putting it into effect?

In the text relating to expiation notices, which the Attorney-General had inserted into *Hansard* without reading it, he said:

> The recipient of an expiation notice has not been found guilty of any offence and can, if he or she so chooses, opt to go to court. The expiation notice is not a new invention—in fact, South Australia was the first to use the idea in 1938—and it is now very common all over Australia.

That little bit of historical detail may be of interest but, for us, today, in 1998, the situation is somewhat bemusing in trying to determine the difference between an expiation and a fine, because I think it is a slender, if somewhat smudged, line between them and in some cases the expiation has been used because it has appeared to be a more convenient, less onerous, more effective way of getting the 'fine' paid.

In a similar frame of attempting to analyse the distinction, if any, between civil debts and fines and expiation notices and the degree of offence which attaches to them, I go further into the Attorney-General's speech under the heading of 'The proposed reforms', and I quote:

> The contemplated reforms consist of administrative changes and legislative changes. It is a scheme based on models currently in force in Western Australia and New Zealand and accepted for implementation in New South Wales and Queensland. In general terms, the essence of the scheme is to discard what has been described as the criminal enforcement method of fine enforcement and instead to align the fine enforcement process close—indeed very closely—with that used in the collection of civil debts. A very general description of the proposal follows. . .

So it does. Again, he highlights the rather confusing distinction, if there is one, relating to the degree of criminality which attaches to not paying an expiation charge. Is it a fine? Is a fine a penalty for an offence? Does one only become a criminal in not paying that money? It may be an argument which is more semantic than significant. It is interesting to note that what is proposed is based on experiences in other States and locations. I think it is a pity that we have not had a chance to have broader consultation. It may have been a subject of wide interest, and public fora could have been held in which the whole matter was put up for discussion and debate with interested members of the public, legal profession and, possibly, the police. I repeat that I feel the haste with which this is being introduced is regrettable and I am not persuaded it had to be done at this pace.

In the explanation of the description of the proposal which followed in the Attorney-General's speech, he introduces the major entity, the Penalty Management Unit, which will have a manager of statutory rank. He said:

> The unit will have a singular and specific focus on the collection of fines. It will manage the complete collection process and will be responsible for its outcomes. The function of the PMU will include the facilitation of payment by people by various means, the reference of those who are unable to pay to the Magistrates Court (or Youth Court) for alternative sentence, the pursuit of offenders who fail to keep agreements to pay, and the tracing of offenders who have debts outstanding. The unit will develop appropriate business rules and methods of operation designed to balance with sensitivity the obligation to pay the debt to society imposed by order of the court with a personal plight that such an obligation may cause in any individual case. Particular attention will be paid to the special needs of people who live and work outside the metropolitan area, particularly in relation to suspension of the licence to drive.

It reads well and, in fact, I commend it, but it is setting up what appears to be a *quasi* sentencing court. It does beg the question of what sort of costs will be involved. If this unit is doing its job diligently and thoroughly, will there be a cost saving? If we are looking at the dollars and cents involved, I would be interested to hear if the Attorney-General has got, from these other jurisdictions where this has taken place, some idea of the performance of a higher percentage of fines collected or expiation fees collected. That is one set of data which is useful and which seems to be desirable but, if it is at a considerable cost, may be an increased cost, we need to know that in making a cost effective assessment of this procedure.

Having said that, I want to emphasise that I believe that the direction and the tone of the approach is correct. It is the right approach at this stage of law reform in looking at the ongoing problems in society as far as the failure to collect fines and the throwing of people who default into gaol. The Attorney's speech continues:

> But, in addition, there will be adequate options available for those who are genuinely unable to pay at once and on time. They will be identified through a process of examination and means assessment conducted by expert staff from the Penalty Management Unit.

How many expert staff? What degree? What sort of salaries are those people on? They are questions which should be answered for us to have a balanced and thorough background to consider this legislation. Certainly, user friendly payment methods will be introduced. I note that payment can be made by credit card, post, and telephone. Reference is made to Penalty Management Unit officers. That would be very convenient, but how many friendly Penalty Management Unit officers will there be? Will one be able to go quietly around the corner and unostentatiously slip in and pay your fine?

EFTPOS facilities will be available but no cash withdrawals—certainly not to start with—and one can arrange voluntary periodic deductions from bank and credit union accounts and voluntary deductions from wages. They are all various options to make it easier, but the voluntary deduction from wages does open another area of concern to me, that is, the garnishee and the imposition of some form of right to realise or borrow on assets—a very dangerous area in which to move for the satisfaction of unpaid fines or expiation fees.

I must re-emphasise how pleased I was to see this reference, and it is spelt out in the unread part of the speech:

> The current standard imprisonment for default will be abolished entirely in favour of alternative enforcement orders, being driver disqualification by licence suspension (even for non-vehicular offences), cessation of the ability to do business with the Registrar of Motor Vehicles, warrants authorising the seizure and sale of property and garnishee orders.

I go back to the point that this is a major and significant step of enlightenment and a reform to abolish entirely imprisonment for enforcement orders for fine payment. What happens when the offenders really cannot pay? This is dealt with in the second reading speech and it does need to be looked at closely, and I quote:

> However, there will, of course, be some, perhaps not a few, who simply cannot pay or cannot pay anything like a substantial amount of their obligation. In that case, logic and justice says that the fine was and remains the incorrect sanction for their wrong-doing [again, another piece of very perceptive wisdom]. The objective of the fine as a sanction for a criminal offence cannot and will not be met.

I am not sure of the distinction between a fine for a criminal offence and a fine for any other offence. Is it the interpretation that if an offender is fined they have committed a criminal offence and technically stand as criminals? Is that

different from someone who has not paid an expiation fee? The quote continues:

> In such a case, logic and justice says that the person should go back to court and have the whole matter reconsidered. And that, in essence, is what the new system will provide. The Penalty Management Unit will have the power in such cases to refer the matter to the Magistrates Court (or Youth Court) for reconsideration of sentence.

'Sentence' does imply criminality—in fact, guilt in a criminal matter. How does that line up with expiation? Are they to be treated exactly the same in all these contexts or will a different category and different language be used about the collection of unpaid expiation fees? This procedure emphasises again my claim that the Penalty Management Unit seems very close to a *quasi* court; it will have quite extraordinary powers of determination. It may not make the change to the sentence, but it will have done the assessment and made the recommendation, so it certainly seems very close to having the power, if not the final determination. In recognition that members are probably facing a desire for food rather than the wisdom of my words, I seek leave to conclude my remarks.

[Sitting suspended from 1 to 2.15 p.m.]

QUESTION TIME

ARTS, MELDRUM REPORT

The Hon. CAROLYN PICKLES: I direct my questions to the Minister for the Arts. I understand the Meldrum report is now finalised and that arts industry people are very keen to examine it. My questions are:

1. When will it be publicly available?

2. Did the terms of reference include a requirement for Mr Meldrum to consult industry stakeholders? If so, who was consulted and is the Minister prepared to table a list or is it contained in the report?

3. If the Meldrum report is investigating legal structures, does it not mean that the ADT review is purely a repetition of this exercise?

4. What does the report recommend regarding the grant allocation role of the South Australian Country Arts Trust, the History Trust, the South Australian Youth Arts Board and the SA Film Corporation?

The Hon. DIANA LAIDLAW: The honourable member knows full well about, but never seems to know quite what she is looking for in relation to, the review that has been instituted by Arts SA of the Meryl Tankard Australian Dance Company, because now she is suggesting it is just legal structures and therefore a repetition of the Meldrum report exercise. Yet I went to some length yesterday to outline the range of issues that that review will be—

Members interjecting:

The Hon. DIANA LAIDLAW: No; I have explained that it is my father's seventy-fifth birthday, on which I suspect you would all wish him well, and there is a party for family and friends.

The Hon. T.G. Roberts: BYO?

The Hon. DIANA LAIDLAW: No, I think alcohol is supplied. If it is my sister's normal standard, it will be particularly good quality wine.

The Hon. T.G. Cameron: You wouldn't drink anything less.

The Hon. DIANA LAIDLAW: No, that is so. I am going to the performance on Saturday evening, which is my first free evening after the opening this evening. That advice has been given to everybody because of all the misunderstandings that may have been generated in this place and everywhere else. Everybody around Adelaide knows that it is Dad's seventy-fifth birthday and that I cannot be with Meryl tonight. Now, everybody can be relaxed—

The Hon. T.G. Cameron: She will be very disappointed.

The Hon. DIANA LAIDLAW: I know she will be devastated, but she is very much looking forward to my going on—

Members interjecting:

The Hon. DIANA LAIDLAW: She didn't ask me whether my father had a party tonight—

The Hon. T.G. Cameron: You said that everyone knows.

The Hon. DIANA LAIDLAW: No. She didn't ask me whether my father had a party tonight when she organised the opening for this evening. So, that was pretty inconsiderate but, nevertheless, I am going on Saturday and I am looking forward to it very much, as I have attended every other performance of the Meryl Tankard Australian Dance Theatre that has ever been performed in Adelaide or the Barossa Valley. However, I have never had the opportunity to travel as extensively as the company has to attend any of the performances overseas.

An honourable member: You're jealous.

The Hon. DIANA LAIDLAW: Yes, I am just a little bit jealous that I did not have that opportunity. Anyway, she always has travelled with my best wishes. Returning to the question, this report has been commissioned by Arts SA. I have not yet received a copy of the report. I will ask the Executive Director whether he has received and assessed it and when it will come to me. I imagine that a number of people were consulted, but I do not know the terms of reference. I shall be able to get all this information for the honourable member by Tuesday of next week, because the Executive Director, Mr O'Loughlin, will be available to provide that information quite readily; I just do not have it at hand.

The Hon. T.G. Cameron: Wish your Dad 'Happy Birthday' for me.

The Hon. DIANA LAIDLAW: I will.

Members interjecting:

The PRESIDENT: Order!

ABORIGINES, AGED

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for the Ageing a question about aged Aboriginal care.

Leave granted.

The Hon. T.G. ROBERTS: There has been some community debate—and I understand a report was given to the Government—in relation to aged care generally. Sections of the community have been raising the issue as it is now accelerating upon us in terms of the number of people in this State who will need aged care, for example, people with English as a second language who do not have the family support care that many of us have. There are some people in isolated communities and regional areas where shortages of accommodation are upon us now, and it is a matter of juggling regional shortages with some of those areas that do have some surplus.

The situation in country areas is critical, and a lot of regional people have to be moved from their home towns and regions into other areas away from their family support

services. I heard a proposal on ABC Radio this morning in relation to the shortages of accommodation in the Coober Pedy region.

The Hon. Caroline Schaefer interjecting:

The Hon. T.G. ROBERTS: Yes, I listened to an ABC regional. The case that was being made was fair and reasonable, and the manner in which the case was stated was very convincing. The situation is that ageing Aboriginal people, particularly in remote areas, have special needs and requirements—as do other minority groups in this State. The Minister may want to refer this question, in part, to the Minister for Aboriginal Affairs. However, one of the points being raised on regional radio this morning was that, in relation to being cared for, many of the Aboriginal elders face the difficulty of being isolated. A part of their culture is that the elders are revered people who need to be in contact with their people to pass on a lot of the benefits of their age and experience through their own cultural development.

Given those problems that face South Australia, will the Minister provide details of what funding arrangements are in place for aged Aboriginal people in regional, remote and metropolitan areas? Can the Minister provide details of any programs which are being planned or which are in place that are specific to the needs of aged Aboriginal people and people from isolated positions who have English as a second language?

The Hon. R.D. LAWSON: The needs of older Aboriginal people have been recognised in the State's 10 year plan for ageing that was released in April 1996. At that time the Aboriginal community was recognised as a priority target group in the Home and Community Care Program. Since that recognition, the funds made available to Aboriginal programs have increased. In the last round of HACC funding, additional funds were made available. The total program is about $70 million per annum, but we are now distributing to Aboriginal-specific programs recurrent expenditure of about $2.7 million. The needs of the Aboriginal community are recognised particularly in relation to the isolation of many members of the community, and also the fact that in many cases the traditional residential care arrangements for Aboriginal people are not particularly attractive to that group.

A large number of innovative programs have been developed by Aboriginal communities and are funded in that $2.7 million. Specifically in the country and in the Coober Pedy region I shall refer to a program which was funded earlier this year. But $103 000 is paid to the Aboriginal Elders and Community Care Services Incorporated, which provides community support, home help and respite services across the metropolitan area, and it does have a focus on people with mental health needs in the Aboriginal community; $80 000 to the Nganampa Health Council for two Aboriginal communities in remote South Australia; and $43 000 to Ceduna-Koonibba Aboriginal Health Service for home supports.

The Mount Gambier Community Health Service in the South-East receive $79 000; and the Coorong receive $32 000 for the Raukkan community. One-off funding was provided to the Umoona Community Incorporated Age Care Services based in Coober Pedy. That community is employing a trainee to develop skills in assessment, coordination and administration. It is very important in these programs that we do involve families and communities rather than impose the sort of service we might adopt in the community here. More than $150 000 is being provided for culturally appropriate aged care on the Fleurieu Peninsula. There may be a number of other programs that I have not mentioned, and I will obtain further details and give the honourable member the complete details.

The Hon. T.G. Roberts interjecting:

The Hon. R.D. LAWSON: I did mention the $30 000 for the specific grant for the employment of the trainee at Coober Pedy for the purpose of developing a service that is appropriate. We are obviously looking at that, but there is no point in devoting substantial funds to a program unless there has been the necessary community consultation and the development of community networks to make sure that the service will be effective. I can assure the honourable member that I will give him the additional details and also of the fact that the special needs of Aboriginal people, especially in remote areas, are recognised in Home and Community Care and by this Government.

BICYCLES

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport questions concerning the use of bikes on footpaths in current legislation.

Leave granted.

The Hon. T.G. CAMERON: I've got a nice easy one for you today, Minister.

The Hon. Diana Laidlaw: It's not legal; that's the answer.

The Hon. T.G. CAMERON: I know it's not legal; that's what I'm going to ask about. My office was approached by the mother of a teenage boy who was recently stopped and warned by the police for riding his bike on a footpath. The youth in question happened to be delivering his local Messenger newspapers as part of an after school hours job. He had absolutely no idea that he was not allowed to do so as part of his job. I used to be a paperboy myself and deliver newspapers and I am not quite sure how you could deliver the Messenger without riding on the footpath. The only way around that would be to stop on the road, get off your bike, wheel the bike over to the fence, and drop the newspaper in an appropriate place.

The Hon. Diana Laidlaw: Is that how you did it?

The Hon. T.G. CAMERON: No, I used to ride on the footpath.

The Hon. Diana Laidlaw: Illegally?

The Hon. T.G. CAMERON: Yes. I understand that I was breaking section 61(1) and (2)(c) of the Road Traffic Act, but that was 40 years ago and I do not think you are going to chase me and sue me now. There must be hundreds of young people who every day of the week deliver newspapers and leaflets to thousands of household letterboxes not knowing that they are breaking the law. I understand that the use of bicycles on footpaths is covered under section 61(1) and (2)(c) of the Road Traffic Act 1961. My questions are:

1. Is the Minister aware of the current situation in relation to riding bicycles on footpaths and, if so, does she consider it to be satisfactory (and she has half answered that question already)?

2. Will she consider amending the Road Traffic Act so that people who have a legitimate reason, such as these young people, for riding bikes on footpaths are legally able to do so?

The Hon. DIANA LAIDLAW: It is not legal at the present time, as the honourable member has highlighted and as I have interjected. However, it is proposed that the arrangement should be legalised as part of draft national road

rules that are to be considered by Ministers of Transport at the forthcoming Australian Transport Conference which was to be held in October but because of some prospect of a Federal election it has been suggested that it be held in December in Melbourne. So the matter will come up again then. I possibly should not confess—but I will—that I have also ridden on the footpath with nieces and nephews because it was my perception that it was too dangerous to ride on the road at that time.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: And I didn't even have the legitimate reason that the honourable member has suggested—delivering newspapers. However, I was concerned for the safety of my nieces and nephews, and we all loved riding, and it seemed to me at that time it was best to be on the footpath. The honourable member may recall the troubled time that this Parliament had, particularly the Labor Party, when I moved, and, fortunately with the support of the Australian Democrats, was able to get arrangements legalised in this State for roller blades and skateboarders to use footpaths when it was not safe on the road. I am not sure whether the honourable member is forecasting that there would be a change of heart by the Labor Party when addressing cycling on footpaths, having found that it could not support roller blading or skateboards, for whatever reasons.

I would ask the honourable member to think through these issues for the Labor Party and the Parliament as a whole because I think there is good reason to advance bike riding on footpaths when it is deemed to be unsafe on the roads or in the circumstances the honourable member has suggested. The honourable member would be aware that this Government has as a concerted campaign undertaken the installation, on a 50:50 per cent funded basis with local government, of bike paths on roads and recreational bike paths through parklands and on side streets.

We are not suggesting in every circumstance that every cyclist is simply on the footpath because there are many other safe places to cycle and there will be many more facilities provided for safe cycling in the future. However, to complement that infrastructure and funding initiative by the Government and local councils cycling on footpaths has been proposed and draft rules have been drawn up on a national basis. They have not yet been endorsed by Transport Ministers so I cannot necessarily say that it will be part of the package, but it is something that I believe must be addressed by Transport Ministers, and probably next year the Parliament.

BROWNHILL DEVELOPMENT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the Brownhill development.

Leave granted.

The Hon. M.J. ELLIOTT: Quite some time ago, I think it might have been some 18 months ago now, there was an application for a development on Brownhill that was rejected by the Mitcham Council as contrary to the development plan. I understand that recently that development has had some changes made to the proposal and is now seeking major development status from the Minister. I and many members of the community wish to know, first, what time frame the Minister is working on in terms of a decision on the matter and, secondly, what factors the Minister will take into account in determining whether or not this project, which I understand might employ about 20 people, will enjoy major development status and, as such, enable it to be built in a place otherwise contrary to the development plan?

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: That gives the location.

The Hon. DIANA LAIDLAW: Mr President, I am sorry about the aside but I had to confirm that the honourable member, in talking about the Brownhill development, was talking about Andrew Garrett's 350 hectare proposal for vineyards, some hotels and residential areas in the hills face zone: and we are talking about the same development. A proposal has been put to me in the form of an inquiry as to whether I would be prepared to consider that this development could be given major development status.

The factors that I would take into account in determining whether or not it would be a major development are outlined in the Development Act. They are economic, social or environmental factors, and I must form an opinion that on any one of those grounds the project should be considered as warranting major development status. This week I have received advice from Planning SA on this matter and I am having further discussions tomorrow. I hope that in a short time I will be able to form the opinion, as I am required to under the Act, whether or not it warrants such status.

The Hon. M.J. ELLIOTT: I desire to ask a supplementary question. As the Act is silent on quantitative matters, can the Minister give any indication as to the size of investment, the number of jobs or anything else that would influence her one way or the other?

The Hon. DIANA LAIDLAW: It is interesting to look at the provisions in the Act because it is left totally without any qualification to the opinion of the Minister. The one opinion I have formed about major development applications that I have received is that Parliament erred in calling such projects major developments, because it is often seen that they should be assessed in terms of jobs, dollars or size, because that is the way we look in the English language at the term 'major'. In fact, it may be a small development but a controversial one, for example, as with landfill, which is hardly a big job or money earner. Nevertheless, most landfill applications have been deemed to be major developments.

We are now undertaking an assessment of the Development Act. I know the honourable member has a keen interest in all these matters and, in the near future, he may wish to be part of the assessment of the Act, and the major development provisions should be addressed in respect of the terminology used. It would be unwise of me at this stage to highlight or even speculate about the matters I will be taking into account. I can say to the honourable member only that the fact that it is hills face zone is a matter that at all times I would take most seriously.

The Hon. T. CROTHERS: Mr President, I desire to ask a supplementary question. Will the Minister in her process of decision making give account to the projected glut of grapes brought about, it is alleged by Brian Croser, of some 70 000 tonnes Australia-wide, due, he asserts, to the Federal Government's tax on wine? Will the Minister take that into consideration in making a determination on the economic viability or commerciality of the plant?

The PRESIDENT: That is a very tenuous link.

The Hon. DIANA LAIDLAW: I am not required to assess the economic viability of any of the projects that are put to me in terms of major development status and the consideration of such status. I am just in the broadest terms required to assess economic, social or environmental factors;

I am not required to look at whether there is a glut of grapes on the market. They are commercial decisions that would be made with regard to the project component. I understand the honourable member's concerns but they would not generally be matters that the Minister considers when making a planning decision.

ETSA, PRIVATISATION

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Leader of the Government in this Council a question about customer service.

Leave granted.

The Hon. L.H. DAVIS: There has been considerable public discussion in recent months in South Australia and indeed nationally about the level of service to customers from utility companies. There has been particular comment about Telstra and delays in customers receiving connections or tradesman not turning up at the agreed time. Increasingly, there are expectations that there should be minimum standards of service. For example, Australia Post regularly releases data about the efficiency of its postal delivery services. Will the Government insist on any minimum standards of service for customers of ETSA in the event of ETSA's being privatised?

The Hon. R.I. LUCAS: I thank the honourable member for his question. Certainly, the issue of customer service standards has been raised in a number of community consultations that the Government and its advisers have been conducting in the country and also in the city over recent weeks. I must say that, in consultation with a number of groups, including SACOSS, the Farmers Federation and a variety of other community groups recently here in Adelaide, this was one of the issues, amongst a number of others, that was raised.

There certainly has been complaint along the lines that the honourable member has indicated, and the Government's response will be included in the total package of Bills which will be debated later by this Chamber and also, more importantly, which will be overseen by the independent Industry Regulator.

If approved by Parliament, the structure will include a provision for an independent Industry Regulator to approve, monitor and review industry codes of service. There will also be a customer service charter, and I indicate that, whilst the customer service charter will obviously cover many things, the Government intends that in a number of areas quite specific commitments be given in relation to improved service standards for ETSA customers. I will give three or four examples of those.

In relation to supply connections, for any new supply connection, for every day late that the company fails to meet an agreed time of supply $50 will automatically be taken off the customer's next account, to a maximum total reduction of $250 off future accounts. The matter of appointments, an issue that the honourable member raised, relates not just to ETSA but also to Telstra. Many working parents have had to organise to have someone at home whilst the service person comes to provide a service for a utility, only to have the person sit there for hours and in some cases for a day to find that no-one turns up, and the frustration is self evident.

In relation to appointments, it is the Government's intention that, if a power supplier is more than 15 minutes late for a service appointment at a customer's home or premises, a phone call of apology will need to be made and $20 will automatically be taken off the customer's next ETSA power supply account.

In relation to street lighting, which is another issue of concern that has been raised by consumers, when people complain about street lights being out or damaged for some days (in some cases it is some weeks before the street light is repaired), the Government intends that the first person to report a broken street light will be given a fix-by date and, if that date is not kept to in terms of the light being repaired, that person will have $10 taken off their next power supply account.

In relation to communications, the Government will oblige power companies to maintain a 24 hour seven day a week telephone service for account and service queries and reports.

The Hon. L.H. Davis: These are higher standards than we've got now.

The Hon. R.I. LUCAS: These are certainly higher standards, the Government having listened to and consulted with community groups and consumers. This is a genuine attempt by the Government to try to lift service standards in a privatised electricity industry in South Australia.

When the Parliament debates the associated legislation later, it will be seen that there are a number of areas where for the first time in South Australia the Government will seek to provide a greater degree of protection than currently exists for customers and consumers of electricity in South Australia.

I conclude by saying that this issue will be reviewed and monitored by the Independent Industry Regulator. The Government has indicated that the Regulator will be advised by a community consultative committee, which will include representatives of groups such as SACOSS, the Consumers Association, the Farmers Federation, the Employers Chamber, and a range of other groups. The committee will be modelled along the lines of the consultative group that advises the Office of the Regulator-General in Victoria.

The Independent Regulator, together with that community consultative committee, will obviously be in a position to monitor the progress of the relevant industry codes and the customers' charter. It will also be in a position to provide advice to the Independent Regulator, and it will be a decision for the Independent Regulator in the future whether further change or amendment of those industry codes which will govern the behaviour of the industry is required.

I think this proposal will be warmly received by community groups, consumers and customers if the Government is in a position to be able to implement these significant reforms in terms of the improvement of customer services in South Australia.

YEAR 2000 COMPLIANCE

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Treasurer, representing the Minister for Administrative and Information Services, a question about the Year 2000 date problem and the South Australian Captive Insurance Corporation (SAICORP).

Leave granted.

The Hon. CARMEL ZOLLO: I thank the Treasurer for his reply to my question on notice of 22 July 1998. As members would be aware, SAICORP is the Government corporation that insures Government agencies. According to the Treasurer, SAICORP renewed the Government's catastrophe reinsurance program in September last year. At that time, the reinsurers imposed a year 2000 policy exclu-

sion. I understand that the Government is attempting to have this exclusion lifted.

I am sure that members are familiar with the year 2000 date problem. There have been many scenarios put forward on the effect that this may cause, ranging from total chaos and shutdowns to much smaller consequential outcomes. In South Australia, experts have estimated that the total cost to address this bug will easily reach $300 million. It does not discriminate between the Government and large, medium or small businesses. Reports indicate that as many as 60 per cent of machines in hospitals may be affected, as well as almost all PCs in schools with pre-1997 motherboards.

Increasing numbers of Australian financial investment companies and insurance companies are at a point where they will not deal with businesses that are not Y2K compliant or have Y2K strategies in place. My questions to the Treasurer are:

1. What is the unfunded liability which the taxpayers of South Australia will potentially bear if SAICORP cannot have this year 2000 exclusion lifted by the reinsurers?

2. If the Government has been aware of this problem since at least September last year, why are Government agencies being allowed until 30 June 1999 to sign off on year 2000 compliance responsibilities, given that some effects of the date problem already exist?

The Hon. R.I. LUCAS: I will refer the honourable member's questions to the Minister and bring back a reply, and I will certainly take some advice from SAICORP as well. As I indicated by way of response to the honourable member's last question, based on information provided by the appropriate Minister, there is an overall coordinated Government program under the responsibility of Minister Matthew. Government departments have been required for some time to use their best endeavours to establish the extent of the problems within their particular areas. It is not an easy task for big agencies such as the Department of Human Services which has many hospitals, agencies and many pieces of equipment within it. Whilst some might suggest that it is easy, in some cases the equipment is relatively old and the manufacturers may no longer be in business. A whole range of dilemmas are being confronted, not only by Government departments but also by private sector business, in terms of trying to tackle these problems.

I am advised that the Government and its departments have made a genuine endeavour to try to combat the year 2000 problem and that that will continue until the last possible moment. We need to be a little cautious, because, as I understand it, a number of the potential problems with pieces of equipment in hospitals, for example, might not be life threatening but might provide some inconvenience in terms of their usage. Clearly, others may have potential problems which may well be much more significant than that. Again, it is for the departments and agencies to try to establish the relative degree or urgency of each problem, which is not uniform across all agencies.

In relation to the estimates of unfunded liability, I will seek advice from experts within the agency, but I am relatively confident in assuming that no-one in Government or the private sector is in a position to put a figure on such a question. As the previous answer and a lot of the public discussion has indicated, departments, agencies and businesses are still trying to establish, first, the extent of the problem; and, secondly and more importantly, the cost of fixing the problem. Some agencies and departments have done estimates, and there are some aggregate figures which Minister Matthew has used already. Ultimately, however, I do not think even Minister Matthew will claim that there is one undisputed final figure which will fit the bill to answer the honourable member's question.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: There are certainly some estimates, but I do not think anyone would be prepared to claim that there is an undisputed figure. If there is, we would love to hear from that person, because that could well solve many of the problems of departments, agencies and other people. I will refer the honourable member's questions to the appropriate Ministers and agencies and see what further information can be provided.

EMPLOYMENT

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Government Enterprises, a question on employment and contracting out.

Leave granted.

The Hon. R.R. ROBERTS: My attention was drawn to a contribution in the *Advertiser*, Thursday 6 August, which refers to the fact that a French engineering firm will move its Australian headquarters from Melbourne to Adelaide after winning a $20 million contract. The Government Enterprises Minister is quoted as saying that it would create 90 full-time jobs and a further 100 jobs would be created indirectly through associated outsourcing deals.

Further in the contribution, he is quoted as saying that it will create 200 jobs—which is slightly different from his first contribution. I am advised that the water metres that currently are used in South Australia are manufactured by Dobbie Dico, a company under the Davies Shephard group of companies which manufactures these metres in Melbourne. I understand that the company moved from South Australia to Melbourne some time ago because, it asserts, it did not receive any support from the Olsen Government. It has been servicing SA Water for 60 years and has designed and developed its product over this period of time. I understand it was a tenderer for the metres and I also understand that its price was considerably lower than the accepted tenders. I am also advised that in excess of 200 jobs will be lost in Melbourne because of the loss of this contract.

The Hon. K.T. Griffin interjecting:

The Hon. R.R. ROBERTS: For the benefit of the interjector, I note that they are Australians who are being employed in an Australian company which had its genesis in South Australia. My questions are:

1. Have any Government incentives been given to Schlumberger to relocate its headquarters in Adelaide?

2. Does Schlumberger have any corporate company or other contractual arrangement with the cartel that runs SA Water or its French partners?

3. Given the discrepancy in the figures quoted in the contribution in the *Advertiser*, how many genuinely new jobs will be created in South Australia beyond those that are currently employed in this industry by the Phoenix Society? According to the *Advertiser*, under the new contract the Phoenix Society will assemble and test the new metres. Obviously, they will be manufactured elsewhere but be assembled in South Australia. I point out to the Minister that those people are now employed. So, given the figures that jump around in the *Advertiser,* how many actual jobs will be created in South Australia?

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

COUNTRY FIRE SERVICE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement by the Hon. Iain Evans in another place this day on the clearing the CFS debt.

Leave granted.

HOUSING TRUST PROPERTY

The Hon. T. CROTHERS: I seek leave to make a precied statement prior to directing some questions to the Treasurer and the Leader of the Government in this place on the policy of the South Australian Housing Trust, particularly as it relates to disasters and related matters.

Leave granted.

The Hon. T. CROTHERS: From the outset, let me declare that I have a personal interest in some of the questions which will follow. The other day, when attending to my mail, I came across a pamphlet from the South Australian Housing Trust headed, 'Arranging maintenance on your trust home'. This pamphlet details the maintenance matters as they will apply to Housing Trust owned properties. The pamphlet then goes on to state that there will be three orders of priority in respect of urgency of maintenance repairs and sets out in some very specific detail what constitutes priority 1, priority 2 and priority 3 in respect of such maintenance.

Priority 1 and its contents got my total undivided focus. The lead paragraph of priority 1 states:

> Priority 1 maintenance consists of matters which affect your health, safety and security. This work should start within four hours of the contractor being asked to do the job or at a time negotiated with you.

The paragraph then delineates priority 1 situations as follows: disasters, electrical fires, ordinary fires, gas escapes, burst pipes, vehicle damages and security. But, it was the definition under the subheading which held my attention. It states:

> Large areas of roofing blown off or collapsed, storm damage, major flooding and fallen trees or the possibility of fallen trees/large tree limbs which pose a risk to tenants.

Such a situation so perfectly described in respect to trees in this Housing Trust pamphlet also exists in respect of many privately owned dwellings across the State. Yet, when one is given a report by the inspector of fire hazards, intended for one's local council to act on, no-one seems to care enough to act on it. Councils seem to have forgotten how much this type of neglect cost them in the Ash Wednesday bushfires of recent times.

Each year in South Australia, and right across Australia, especially in times of tempest, ordinary Australians are killed by falling trees. In fact, during the recent tempest, I might add, that was the case with two or three individuals. The present position in this State seems to leave a lot to be desired. My questions to the Minister are:

1. Does he agree with the fact that the Housing Trust has labelled as a disaster 'fallen trees or the possibility of fallen trees/large tree limbs which pose a risk to tenants'?

2. If he does, what does his Government intend to do to speed up the process of removing dangerously overhanging trees or some of the limbs thereof?

3. Does the Minister perceive that there is any difference between the safety of a Housing Trust tenant and any other home dweller in this State?

4. Does the Minister believe that paralysis of action in this area is brought about by local and State Governments standing in awe of environmentalists who may support the retention of all trees, irrespective of whether or not they present a hazard to human life itself?

The Hon. R.I. LUCAS: I thank the honourable member for his well considered question and I certainly refer it to the appropriate Minister and bring back a reply.

BUS U-TURNS

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport a question about buses completing U-turns on King William Road.

Leave granted.

The Hon. SANDRA KANCK: The dismantling of Adelaide's previously integrated public bus system created a number of logistical problems, in particular the need for buses to lay over and turn in the vicinity of the city rather than continue on a through route. As a solution to those difficulties, the Government introduced legislation to enable buses to perform U-turns from the left-hand lane at selected traffic lights around Adelaide—and this was legislation I supported.

The system operates by inserting an additional direction into the traffic light sequence. When all the standard traffic lights are red, a small B flashes up, signalling that the buses can begin to make a U-turn. The corner of King William Road and Victoria Drive is the location of one U-turn lane, and I regularly find myself waiting for a red light at these traffic lights. Since the installation of the U-turn lane, I have repeatedly seen motorists set off as the bus begins to wheel around as part of its U-turn and I usually sit there and grit my teeth waiting for an accident to happen. Although I have not actually seen one, I have heard of accidents between buses and cars at that intersection. A researcher from my office spoke to a bus driver who turns his bus at this set of stop lights, who confirmed that cars taking off as the bus begins the U-turn is a common occurrence. The circumstantial evidence indicates that accidents are likely as a result of car drivers mistaking the movement of the bus as an indicator that they have a green light.

My feeling is that the signage alerting motorists to the presence of the bus lane is inadequate. At the King William Street and Victoria Drive lights there is a sign indicating that no U-turns can be done, with the exception of buses, and two small lights appended to the traffic lights flash up to the B signal to let the buses through. It has been suggested to me that a larger flashing light saying, 'Bus U-turn only' would reduce the incidence of motorists attempting to cross the intersection at the same time as a bus is completing a U-turn. My questions to the Minister are:

1. Is the department monitoring the incidence of accidents involving buses and private cars at traffic lights allowing buses to make U-turns?

2. If so, will the Minister provide statistical information to the Parliament?

3. Does the Minister consider that signage could be improved?

The Hon. DIANA LAIDLAW: I know that the Passenger Transport Board, TransAdelaide and the Adelaide City Council but not to my knowledge Transport SA have been monitoring the intersection. I am not sure that there is evidence that there have been accidents, so I cannot confirm

whether they are monitoring accidents, but I will seek information. I have not seen any misuse or difficult use of that intersection, and I use it at least twice a day. However, I must admit that while I have seen no difficulty by any motorists using that intersection I always hold my breath hoping that nobody will, because it is novel in road management in South Australia. It is the only U-turn facility of this nature in South Australia. As I recall the Bill introduced last year, any further U-turn operation for buses would have to come before this place in the form of a regulation, so progress would be monitored accordingly. I recall, too, that the Passenger Transport Board, TransAdelaide and the Adelaide City Council were undertaking a monitoring role, and I will get a progress report for the honourable member.

ASSAULTS

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Police, Correctional Services and Emergency Services, a question about assaults.

Leave granted.

The Hon. G. WEATHERILL: Over the past 12 months there has been a lot of talk and fear in the Henley and Grange area amongst elderly people who have been assaulted. Just recently three old ladies had been around to the local church on Sunday morning and when they went into the house two of these little thugs pushed them out of the way, pinched their handbags and ran off with them. This seems to be happening quite a lot in the area. Will the Minister contact the local police and find out just how many of these incidents have occurred in the area? There seem to be an awful lot at present. Could there be more of a police presence in the Henley and Grange area?

The Hon. K.T. GRIFFIN: I am sure we can identify some information about the level of assaults. From time to time there are difficulties in particular areas. The way in which the Police Commissioner is presently operating is that police resources are targeted to dealing with problems; that is a problem solving approach and it is intelligence based. I know that if there is concern in a particular area and that is evidenced from the police's own information, they may well think it appropriate to form a special group to deal with a problem in that area, because it may be that it is just one offender or it may be a group of offenders working over the area. So, the whole object is to try to target those sorts of problems, give citizens peace of mind and also bring offenders to justice. I will refer the issue to my colleague in another place and bring back a reply.

MOTOROLA

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question about an answer he supplied to the Estimates Committee.

Leave granted.

The Hon. P. HOLLOWAY: Back in September 1994 the now Premier, John Olsen, told the House of Assembly that no side deals other than the estimated $16 million incentive package attracted Motorola to South Australia. When the Treasurer signed off on information supplied signed by the Minister for Administrative and Information Services in July this year in relation to a question asked in Estimates, was he aware that the now Premier had offered Motorola a deal to become the designated supplier of radio equipment for the whole of Government network, conditional on Motorola's establishing its software centre in Adelaide? Was he aware that it conflicted directly with the now Premier's statement to the House in September 1994?

The Hon. R.I. LUCAS: I was not directly involved in the discussions or negotiations with Motorola, so I have no knowledge of the events of 1994 or soon afterwards. The answer to which the honourable member refers was referred by me to the Minister for Administrative Services, and I conveyed a response as indicated in that answer as provided to me by that Minister, word for word. I understand that this issue was pursued with Minister Matthew yesterday, and that is the appropriate place, and I understand that questions have also been directed to the Premier. So, I cannot offer any further useful information.

Members interjecting:

The Hon. R.I. LUCAS: That is because we are answering so many questions. I indicate that I certainly do not accept the honourable member's interpretation of events and assertions in relation to how bits of paper or answers are being interpreted by the Deputy Leader of the Opposition. I have learnt that from my experience in dealing with the members of the Labor Party over some years. That will be an issue which—

Members interjecting:

The Hon. R.I. LUCAS: No; I provided the answer. I have no direct knowledge of the events of 1994 and I am therefore not in a position to provide any independent validation or assessment of the events of 1994.

ABORIGINAL ASSISTANCE

The Hon. DIANA LAIDLAW (Minister for the Arts): I seek leave to table the ministerial statement relating to assistance to Aboriginal people made earlier today in another place by the Minister for Aboriginal Affairs.

Leave granted.

TOBACCO PRODUCTS REGULATION (DISSOLUTION OF SPORTS PROMOTION, CULTURAL AND HEALTH ADVANCEMENT TRUST) AMENDMENT BILL

The Hon. R.I. LUCAS (Treasurer) obtained leave and introduced a Bill for an Act to amend the Tobacco Products Regulation Act 1997. Read a first time.

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

That this Bill be now read a second time.

When Living Health was first established in 1988 its original objectives were to replace tobacco sponsorship programs and to promote good health and healthy practices and the prevention and early detection of illness related to tobacco consumption. In 1997 the Economic and Finance Committee reviewed Living Health and expressed the view that it had been unsuccessful in achieving its original objectives and recommended that it be disbanded. The committee noted that only one-fifth of all moneys disbursed by the trust between 1988 and 1996 were directed towards anti-smoking programs, and its administration costs were reported to be $895 000 in 1995-96.

The committee's recommendations were unanimous. The membership comprised: H. Becker, K. Foley, S. Bass, F. Blevins, M. Buckby, J. Quirke and M. Brindal. The

Government has decided that Living Health as an independent authority should be disbanded and that the budget appropriation of $13.4 million be allocated to the Department of Human Services, the Department of Transport and Urban Planning, the Department of the Arts and the Office of Recreation and Sport within the Department of Industry and Trade. The Government guarantees that the funding of $13.4 million will be allocated in a similar way in future budgets and that there will be a continuing focus on health in all grants paid from the allocation.

The Government expects that this Bill will enable additional funding to be provided for sport, art and health programs through considerable savings in administrative costs and through the elimination of duplication between various Government and Living Health programs in the sports and arts areas. I commend the Bill to members. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Interpretation

This clause defines 'the Minister' as the Minister for Human Services, and 'the Trust' as the South Australian Sports Promotion, Cultural and Health Advancement Trust.

Clause 3: Amendment of long title

This clause amends the long title of the principal Act to reflect the dissolution of the Trust.

Clause 4: Amendment of s. 3—Objects of Act

This clause removes references from section 3 of the principal Act to the Trust and its functions.

Clause 5: Amendment of s. 4—Interpretation

This clause removes the definitions of 'fund' and 'Trust' from the principal Act.

Clause 6: Repeal of Part 4

This clause repeals Part 4 of the principal Act which deals with the Trust.

Clause 7: Transitional provisions

Clause 7(1) provides for the transfer to the Consolidated Account of all moneys held in account in the Sports Promotion, Cultural and Health Advancement Fund at the Treasury immediately before the dissolution of the Trust.

Clause 7(2) provides that all property, rights and liabilities vested in or attaching to the Trust immediately before the dissolution of the Trust, vest in or attach to the Minister.

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

CRIMINAL LAW (LEGAL REPRESENTATION) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to reform the law relating to the power to stay the trial of a serious offence on the ground that the defendant has insufficient financial resources to present an adequate defence at the trial. 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 report and the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

This Bill reforms the law relating to the power to stay the trial of a serious offence on the ground that the defendant has insufficient financial resources to present an adequate defence at trial. It seeks to remedy some of the difficulties arising from the High Court decision in *Dietrich v The Queen*.

In *Dietrich*, the High Court considered the legal issues which arise in serious criminal cases where the defendant does not have legal representation and cannot afford a lawyer. Members of the High Court rejected the submission that any indigent accused has a right to the provision of counsel at public expense. However, on examining the right of an accused person to a fair trial, the Court established the principle that, other than in exceptional circumstances, an indigent person is likely to be denied a fair trial if, through no fault of that person, he or she is unrepresented in a serious criminal trial. In a joint judgement, Mason CJ and McHugh J concluded ((1992) 177 CLR 292 at page 399):

> it is desirable that. . . we identify what the majority considers to be the approach which should be adopted by a trial judge who is faced with an application for an adjournment or a stay by an indigent accused charged with a serious offence who, through no fault on his or her part, is unable to obtain legal representation. In that situation, in the absence of exceptional circumstances, the trial in such a case should be adjourned, postponed or stayed until legal representation is available. If in those circumstances, an application that the trial be delayed is refused, and by reason of the lack of representation of the accused the resulting trial is not a fair one, any conviction of the accused must be quashed by an appellate court for the reason that there has been a miscarriage of justice in that the accused has been convicted without a fair trial.

The Court did not set out the meaning of the term 'indigent'.

The decision in *Dietrich* has had an effect on the Legal Services Commission and, in turn, the Government. Courts are being asked to stay proceedings on the basis of the indigence of the defendant. For a case to proceed where the stay has been granted, it is necessary for the Legal Services Commission to provide legal assistance (even if the case does not meet its criteria) or for the Government to contribute to the defendant's costs.

While no statistical data has been specifically maintained recording all the *Dietrich* applications in this State, inquiries reveal that at least 59 *Dietrich* applications have been made in South Australia between December 1992 and November 1997. This averages out to about 12 *Dietrich* applications per year. It is understood that 15 *Dietrich* applications have been granted in 8 cases. This averages out to 3 successful applications per year. In addition, 25 applications in 20 cases were resolved and aid granted before the applications were finally determined by a Court.

The Government has a responsibility to ensure that prosecutions are litigated in a proper manner and brought to a just conclusion. Matters should be brought to trial so that accused persons can answer charges against them. Charges should not be avoided because of a failure to prosecute as a result of a lack of legal representation.

The Government also has a duty to ensure that money for legal aid is administered in a proper and efficient manner.

In 1996, a Bill was introduced into Parliament with the aim of remedying the difficulties arising from the High Court decision in *Dietrich*. That Bill gave a court the discretion to adjourn a trial to enable a defendant on a criminal charge to apply to the Legal Services Commission for legal assistance where it appeared to the court that the defendant might not receive a fair trial because of insufficient means to retain legal representation. However, it limited the application of *Dietrich* by providing that any decisions regarding grants of legal assistance were to be made by the Legal Services Commission.

The Bill was introduced for the purpose of consultation with interested parties, including the judiciary, Legal Services Commission, Law Society, Bar Association and Director of Public Prosecutions. It subsequently lapsed due to the prorogation of Parliament.

A number of submissions were received on the Bill. Concern was expressed at a number of aspects but particularly the provision that made the Legal Services Commission the final arbiter of indigence. This was of concern to the legal profession because of the power it would vest in the Commission.

Since that time, a number of approaches have been considered to deal with the issue. In addition, the issue has been on the agenda of the Standing Committee of Attorneys-General and recently, the Law Council of Australia has suggested draft legislation to deal with the matters.

In the interests of resolving this matter, the Government has considered the issues raised by the *Dietrich* decision and the submissions received on the earlier Bills. As a result, a legislative framework has been developed in an attempt to deal with the matter.

The approach is aimed at minimising the impact of the *Dietrich* decision and to strike an appropriate balance so that the court's

power to stay proceedings in accordance with *Dietrich* is preserved but the impact of the decision is minimised.

This Bill, together with the Legal Services Commission (Legal Representation) Amendment Bill 1998, sets out the proposed legislative framework. The scheme adopted in the Bills seeks to:

- preserve the courts power to stay proceedings in accordance with *Dietrich*;
- clarify ambiguities;
- reduce the number of *Dietrich* applications;
- minimise abuse;
- identify and resolve *Dietrich* cases at the pre trial stage;
- address other procedural problems associated with *Dietrich* applications; and
- give the Government flexibility in connection with the funding of trials that have been or are likely to be stayed.

Clause 4 of the Bill retains the right of a defendant charged with a serious offence to apply to a court for an order staying the trial on the ground that it would be unfair to proceed because the defendant has insufficient financial resources to present an adequate defence at trial.

Clause 5 of the Bill provides that, before applying for a stay of proceedings, the applicant must have complied with the preconditions, namely the defendant must have applied for legal assistance through the Legal Services Commission or, where appropriate, applied for access to assets subject to a restraining order under the Criminal Assets Confiscation Act 1996. Before a court commits a defendant to trial, it must give the defendant a written statement explaining these preconditions.

Except in the circumstances set out in clause 5(3), an application for an order staying a trial cannot be made after the case has been listed for trial. Therefore, the Bill provides that a court must not list a case for trial unless an application has been made for an order staying a trial or the court has made inquiries and complied with prescribed procedures set out in the regulations. These provisions are aimed at ensuring that issues relating to legal assistance and applications for stays under the Act are dealt with at an early stage of the criminal proceedings.

The Bill also sets out the steps the court must take before making an order to stay a criminal trial. These include estimating the amount required for an adequate defence and conducting an investigation into the financial resources of the defendant. In assessing a defendant's financial resources, a court is to treat the financial resources of the defendant's spouse as available to the defendant to the same extent as if they belonged to the defendant, unless there are compelling reasons why they should not be. In addition, the financial resources of the defendant's associates are to be treated as available to the defendant to the extent considered appropriate by the court.

An associate is defined to mean a person (other than the Commission) from whom the defendant could reasonably expect financial assistance for defending the charge, including a person who is or has within the last five years been in a relationship with the defendant in which the defendant provides financial support to, or receives financial support from the person.

Clause 8 of the Bill provides that, if a court is of the opinion that a transaction has been entered into unreasonably or for the purpose of diminishing the financial resources of the defendant or placing the resources beyond reach, the court may set aside the transaction. This should act as a disincentive to defendants dissipating assets (for example, transferring property) in anticipation of a trial.

The Bill also provides for a court to make orders against the defendant or an associate for payment of a contribution to the cost of the defence. This could occur where the defendant, or an associate, has some financial resources but they are insufficient to fund an adequate defence. The court may also make ancillary orders such as freezing specified assets or for seizure and sale of specified assets if it is satisfied that there is proper reason to do so.

Clause 10 of the Bill deals with the power of a court to order a stay of the trial of a charge of a serious offence. It provides that a superior court must order a stay if it is satisfied that:

- it would be unfair to proceed with the trial because the defendant's financial resources are insufficient for the presentation of an adequate defence and
- the defendant's financial position is not attributable to unreasonable conduct on the defendant's part or action taken intentionally by the defendant to diminish his or her financial resources or place them beyond reach.

A superior court is defined to mean a Judge nominated by the Chief Justice or the Chief Judge to hear and determine proceedings under the Act. Clause 24 specifically provides that a judge who hears an application for a stay should not preside at the subsequent trial of the defendant.

Currently, the Director of Public Prosecutions is the respondent in *Dietrich* applications. However, this raises the issue of whether it is appropriate for the Director of Public Prosecutions to be the respondent when the issues raised in relation to the application and the evidence adduced at the hearing could assist the prosecution case.

Under the terms of the Bill, the Legal Services Commission will be a party to the proceedings. This is considered appropriate, as the Commission will have given consideration to both an accused's means and the trial generally and will be in possession of relevant information and documentation. Moreover, having made the decision which ultimately leads to the application for a stay, the Commission will have knowledge of the issues.

It is not envisaged that this role will conflict with the Commission's role under the Legal Services Commission Act, as the relationship with the accused will have been terminated by the refusal or termination of aid. It is expected that the Director of Public Prosecutions will be a source of information for both the courts and the Commission.

Since the assets and income of financially associated persons are to be taken into account for the purposes of determining financial resources and, given that the courts will have the power to make contribution orders against an associate, the court is also given the power to join an associate as a party if the court is of the opinion that the proceedings may affect the interests of that person.

The Bill also requires that the Attorney-General be notified of the result of any proceedings under the Act. This will ensure that the Government is aware of cases that are granted a stay at an early stage.

Part 3 of the Bill deals with evidentiary and procedural issues and includes provisions regulating the disclosure of evidence about proceedings under the Act and abrogating the rules of self incrimination and legal professional privilege.

The Bill prevents a defendant and other witnesses from refusing to provide information or produce documents on the ground that the information would incriminate the person or is protected by legal professional privilege. As a result, it is anticipated that applications to stay trials under the Act will result in sensitive information about a defendant and his or her case being adduced. This raises concerns that information about a defendant who is presumed innocent and is yet to be tried will be in the public domain and that this could prejudice a defendant's case. Therefore, in order to prevent the general release of the information adduced at the hearing, the Bill provides for the hearing of applications to be held in private.

In addition, clause 17 of the Bill prohibits the disclosure of information obtained in the course of, or for the purposes of, proceedings under the Act. A number of exemptions are set out in subclause (2).

Clause 20 of the Bill provides that the fairness of a trial cannot be challenged on an appeal against conviction on the ground that the defendant had insufficient financial resources to present an adequate defence at trial. However, clause 23 specifically provides that an appeal will lie to the Full Court against a decision of a superior court under the Act. In addition, clause 22 provides that the Bill does not affect any obligations a court has, at common law, to provide information and assistance to an unrepresented defendant.

Clause 25 of the Bill deals with the application of the Act. The Act will apply where a defendant first appears before a court on a charge arising out of the circumstances of the alleged offence after the commencement of the Act.

The Schedule to the Bill repeals sections 297(3) and 360 of the Criminal Law Consolidation Act 1935. Section 297(3) of the Criminal Law Consolidation Act empowers a court to order that a defence witness be paid expenses as if the witness was one for the prosecution. This provision derived from section 5 of the Justices Procedure Amendment Act which was intended to allow a poor person to have the proper expenses incurred by witnesses called in his or her defence paid by the Crown.

Section 360 of the Criminal Law Consolidation Act authorises a judge to assign legal representation to an appellant for the purposes of an appeal, new trial or proceedings preliminary thereto, where the appellant has insufficient means.

Given the terms of the Legal Services Commission Act and the statutory scheme proposed by the Bill, these provisions are no longer considered necessary.

As there is considerable interest in this matter, the Government is introducing this Bill and the Legal Services Commission (Legal Representation) Amendment Bill with the view to encouraging

further consultation. These Bills are important measures to balance the interests of persons charged with a criminal offence and their right to seek a fair trial with the community's expectations that prosecutions will be litigated in a proper manner and brought to a just conclusion with the proper administration of legal aid funds. The Government would welcome comments on the Bill and, in order to allow a reasonable period for such comments to be received, does not propose to debate the Bills in the current Parliamentary Sittings.

I commend this Bill to honourable members.

Explanation of Clauses

PART 1—PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions or words and phrases necessary for the interpretation of the Bill. In particular, a serious offence is defined so as to exclude a summary offence and a trial means proceedings to determine whether a person charged with a serious offence is guilty of the offence, but does not include a preliminary examination of the charge, appeal proceedings or proceedings under this Bill.

PART 2—POWER TO STAY CRIMINAL TRIAL

DIVISION 1—APPLICATION FOR STAY OF PROCEEDINGS

Clause 4: Application for order to stay trial of charge of serious offence

A defendant charged with a serious offence may apply in writing to a superior court (see definition in cl. 3) for an order staying the trial of the charge on the ground that it would be unfair to proceed with the trial because the defendant has insufficient financial resources to present an adequate defence at the trial.

Clause 5: Pre-conditions of application

An application for an order staying a trial may only be made if the defendant is a natural person who has complied with certain pre-conditions. When a defendant is committed for trial on a charge of a serious offence, the court committing the defendant for trial must give the defendant a written statement (in accordance with the regulations) explaining the pre-conditions.

An application for an order staying a trial cannot be made after the case has been listed for trial unless the court is satisfied that the circumstances out of which the application arises occurred after the case was listed for trial or there are other special reasons for allowing the application to be made out of time.

DIVISION 2—INVESTIGATION OF FINANCIAL RESOURCES

Clause 6: Investigation of financial resources

Before a superior court makes an order staying a trial on an application under this Bill, the court must—

- estimate the amount required for presentation of an adequate defence (based on current scales of costs, except in exceptional circumstances); and
- conduct an investigation into the defendant's financial resources; and
- if the court finds that the defendant has insufficient financial resources to present an adequate defence at the trial—determine the extent the defendant and the defendant's associates should contribute to the cost of the defence.

Clause 7: Assessment of financial resources

In assessing a person's financial resources under this proposed Division, a court must have regard to—

- the person's income and assets both within and outside of the State; and
- the person's liabilities.

In assessing a defendant's financial resources under this proposed Division, a court—

- usually, is to treat financial resources of the defendant's spouse as available to the defendant to the same extent as if they belonged to the defendant personally (unless there are compelling reasons why they should not be treated in that way); and
- is to treat financial resources of the defendant's associates (other than the spouse) as available to the defendant to the extent considered appropriate by the court.

Clause 8: Court's power to set aside transactions

If, in proceedings under this proposed Division, the court is of the opinion that a particular transaction has been entered into—

- unreasonably; or
- for the purpose of diminishing the defendant's financial resources; or
- for the purpose of placing financial resources that would otherwise be available to the defendant beyond the defendant's reach,

the court may set aside the transaction and make orders restoring (as far as practicable) the parties to the transaction to their former positions.

The burden of proof is on the parties to a transaction entered into after the date of the alleged offence to show why the transaction should not be set aside in the event that the Commission asks the court to set the transaction aside under this proposed section.

Clause 9: Power to make orders for payment towards costs of defence

In proceedings under this proposed Division, the court may make orders against the defendant or an associate of the defendant (or both) for payment of contributions towards the cost of the defence.

DIVISION 3—POWER TO GRANT STAY

Clause 10: Power to stay trial of charge of serious offence

A superior court must order a stay of the trial of a charge of a serious offence if satisfied, on application by the defendant, that—

- it would be unfair to proceed with the trial because the defendant's financial resources are insufficient for the presentation of an adequate defence at the trial; and
- the defendant's financial position is not attributable to unreasonable conduct on the defendant's part or intentional action by the defendant.

Such an order, or a decision not to make an order, may be reviewed by the court on application by the Commission or the defendant.

DIVISION 4—INCIDENTAL PROVISIONS

Clause 11: Parties to proceedings

The defendant to the charge of the serious offence, the Commission and any person joined as a party to the proceedings under proposed subsection (2) are the parties to proceedings founded on an application under this proposed Act for an order, or review of an order, staying a trial.

The court may join an associate of the defendant or some other person as a party to the proceedings if of the opinion that the proceedings may affect the interests of the associate or other person.

Clause 12: Attorney-General to be notified of results of proceedings under this Act

The Commission must notify the Attorney-General of the result of proceedings under this proposed Act for an order staying a trial, or for review of an order staying a trial.

PART 3—EVIDENCE AND PROCEDURE

Clause 13: Obligation to file documents in court

Regulations may impose obligations on a party to proceedings under this proposed Act or any other person in relation to documents.

Clause 14: Evidence

In proceedings under this proposed Act, the court may—

- receive evidence by way of affidavit or statutory declaration from a party to the proceedings or any other person;
- call evidence on its own initiative.

If the court receives evidence by way of affidavit or statutory declaration, it may still require the witness to appear personally for oral examination or cross-examination.

Clause 15: Burden of proof

The burden of proof in relation to evidence necessary to establish a fact in proceedings under this proposed Act is on the balance of probabilities.

Clause 16: Proceedings to be in private

Proceedings under this proposed Act are to be held in private.

Clause 17: Disclosure of evidence

Other than in certain circumstances (see proposed subsection (2)), a person who discloses information obtained in the course, or for the purposes, of proceedings under this proposed Act is guilty of an offence and liable to a maximum penalty of $2 500 or imprisonment for 6 months.

Clause 18: Evidence given in proceedings under this Act not to be available for other purposes

Evidence given, or obtained, for the purposes of proceedings under this proposed Act cannot be used against a person in other legal proceedings except proceedings in which the person who gave the evidence is prosecuted for an offence involving the giving of false evidence and the evidence is alleged to be false.

Clause 19: Abrogation of certain privileges

If, in proceedings under this proposed Act, the court certifies that specified information or a specified document is essential to the proper determination of the proceedings, a person—

- is not entitled to refuse to provide the information on the ground that the information would tend to incriminate the

person of an offence or is protected by legal professional privilege; and

- is not entitled to refuse to file or produce the document as required on the ground that the document would tend to incriminate the person of an offence or is protected by legal professional privilege.

PART 4—EXCLUSION OF COMMON LAW RULES

Clause 20: Exclusion of common law rules

This proposed Act operates to the exclusion of any common law rules under which a trial could be stayed, postponed or adjourned on the ground that it would be unfair to proceed with the trial because the defendant has insufficient financial resources to present an adequate defence at the trial.

Clause 21: Invalidity of certain challenges to fairness of trial

The fairness of a trial cannot be challenged, on an appeal against a conviction, on the ground that the defendant had insufficient financial resources to present an adequate defence at trial.

The fairness of proceedings for the preliminary examination of a criminal charge cannot be challenged, on an appeal against a conviction, on the ground that the defendant was unrepresented, nor can the fairness of a trial be challenged, in any such proceedings, on the ground that the defendant was unrepresented at a preliminary examination of the charge.

Clause 22: Saving provision

Nothing in this proposed Act derogates from any obligation that a court has at common law to provide information and assistance to an unrepresented defendant.

PART 5—MISCELLANEOUS

Clause 23: Appeal

Subject to the rules of the Supreme Court, an appeal lies to the Full Court against a decision of a superior court under this proposed Act.

Clause 24: Judge who hears application for stay of proceedings not to preside at trial

A Judge who hears an application for a stay of proceedings under this proposed Act is not to preside at the subsequent trial of the defendant.

Clause 25: Application of Act

This proposed Act applies to a trial or preliminary examination if the defendant first appears before a court on a charge arising out of the circumstances of the alleged offence after the commencement of this proposed Act (regardless of whether the defendant is alleged to have committed the offence before or after the commencement of this proposed Act).

Clause 26: Saving provision

Nothing in this proposed Act is to be taken to imply that a defendant has a legally enforceable right to be provided with legal representation in proceedings for the trial of a charge of a serious offence or any other form of legal assistance.

Clause 27: Regulations

The Governor may make regulations for the purposes of this proposed Act.

SCHEDULE—AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

These amendments are consequential on the passage of the Bill.

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

LEGAL SERVICES COMMISSION (LEGAL REPRESENTATION) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Legal Services Commission Act 1977. 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 report and the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

This Bill proposes a number of amendments to the Legal Services Commission Act. The Bill together with the Criminal Law (Legal Representation) Bill sets out the proposed legislative framework for dealing with issues arising from the *Dietrich* decision.

The Bill inserts two new Divisions into Part 4 of the Act to deal with the investigation of applications for legal assistance and legal assistance in criminal cases. The Bill also makes a number of miscellaneous amendments and includes a schedule of statute law revision amendments.

Clause 3 inserts a number of new definitions into the Act. The definitions of 'associate' and 'serious offence' are consistent with the definitions in the Criminal Law (Legal Representation) Bill. In addition, Clause 4 provides for the Commission, when assessing the financial resources of a person in a case where the applicant is charged with a serious offence, to apply, as far as practicable, the same principles as apply under the Criminal Law (Legal Representation) Act 1998.

Clause 5 provides for the introduction of random audits. The Bill authorises the Commission to conduct random audits of clients in order to monitor the provisions of legal assistance. The introduction of random audits is consistent with a recommendation of the Statutory Authorities Review Committee in its review of the Legal Services Commission.

The Bill also proposes an amendment to section 11(d)(ii) of the Act. That provision currently requires the Commission to have regard to the desirability of enabling all assisted persons to obtain the services of legal practitioners of their choice, in exercising its powers and functions.

The Bill amends section 11(d)(ii) to require the Legal Services Commission, in exercising its powers and functions to have regard to:

> 'the desirability of enabling assisted persons to obtain the services of legal practitioners of their own choice so far as that object is practicable and consistent with the most effective allocation of the limited resources available for legal assistance'.

The amendment still recognises the concept of solicitor of choice but allows the Commission to balance this against the effective allocation of legal aid resources.

Clause 9 of the Bill makes a number of amendments to section 17 of the principal Act. The first amendment substitutes the requirement that applications for aid be verified by a statutory declaration with a requirement that they be verified by a signed declaration. This amendment does not arise from *Dietrich.* However, the amendment is consistent with the Commission's current practice and simplifies the procedure for making an application for legal aid, since it will be unnecessary for applications to be sworn before an authorised person as is the case with statutory declarations.

Section 17 of the Act also deals with appeals and reviews of legal aid decisions. Currently, the section requires appeals to be lodged within 14 days. However, the scheme proposed under the *Criminal Law (Legal Representation) Bill* requires the courts to direct a defendant to appeal against unfavourable determinations by the Commission where he or she has not already done so. The scheme also prohibits *Dietrich* applications until all appeal rights have been exhausted. Therefore, section 17 is amended to enable appeals lodged outside the 14 day time limit to be considered by the Commission.

New Division 2 of Part 4 of the Act gives increased powers to the Legal Services Commission to investigate applications for legal aid in certain circumstances. There has been much debate about whether the Commission should have investigative powers in connection with the determination of applications for legal assistance.

The Commission manages limited public funds for the benefit of those who are unable to afford legal representation and, consistent with that responsibility, the Government considers it appropriate that the Commission have powers to ensure that only those entitled to legal aid receive it. Since a majority of legal aid recipients are in receipt of social security benefits and have already been subjected to financial assessment tests, it is acknowledged that it will be unnecessary for the Commission to conduct extensive investigations in all cases.

New sections 22B and 22C deal with the Commission's power to require information and conduct examinations. The powers set out in these sections can only be exercised in the circumstances set out in new section 22A, namely:

- to investigate an application for legal assistance where the Commission is of the opinion that an application for a stay of proceedings may result if legal assistance is refused; and
- to investigate a matter arising in relation to proceedings under the Criminal Law (Legal Representation) Act 1988; and
- to investigate compliance with conditions on which legal assistance is provided in accordance with a random audit program.

A person is not entitled to refuse to answer a question or to produce documents on the ground of self incrimination or legal

professional privilege. Non-compliance with provisions constitutes an offence.

New Division 3 of Part 4 of the Act deals with legal assistance in criminal cases. The Bill provides that, if the Commission is to provide legal representation, it may assign a legal practitioner from its staff or engage a legal practitioner to represent the defendant. New section 22H(1) provides that the relationship between the legal practitioner assigned or engaged to represent an assisted person is the same as if the person had personally engaged the practitioner to represent the assisted person.

The Bill authorises the Commission, when negotiating an engagement, to disclose information in the Commission and the Director of Public Prosecution's possession about the defendant and the case, but the Commission must also take reasonable steps to present unnecessary dissemination of the information.

New section 22F(4) of the Bill specifically provides for the Commission to call for tenders for the provision of legal representation in criminal cases. This issue has been the issue of some community debate, particularly in the context of the Government's decision to tender in the *Garibaldi* case. The Government believes that the use of tenders should be specifically provided for in the Act as the use of a tender, in an appropriate case, is a means of satisfying the public interest and a means of providing value for money in relation to legal assistance.

New section 22G provides for the Commission to enter into an arrangement with the Attorney-General about the provision of legal assistance for a defendant who makes an application for a stay under the Criminal Law (Legal Representation) Act 1998. It also provides for the Attorney-General to direct the Commission in relation to the provision of legal assistance in such cases. The provision recognises that legal assistance provided as a result of an application for a stay of proceedings falls within a special category and may be subject to different funding and other arrangements.

Under new section 22H(2), a legal practitioner engaged to act as counsel is required to exercise independent judgement to confine the proceedings to issues that have, in the practitioner's opinion, some real prospect of success and to avoid unnecessary delay or complication or prolongation of proceedings. It is understood that the Law Council has given consideration to similar obligations in developing its *Model Rules of Professional Conduct*. The provision will provide some check on defendants who obtain Government funded legal representation so that they do not waste resources by pursuing matters that are not really in issue.

The Bill also allows for the Commission, in certain circumstances, to apply to a trial judge for a review of any charge made by a legal practitioner for representation of an assisted person. The circumstances include where the Commission suspects a practitioner has failed to act with proper justification or with reasonable expedition. The trial judge may disallow or reduce a charge made or, where payment has been made, order the practitioner to make a refund. This provision is based on a United Kingdom Practice Direction in relation to criminal costs. It is not expected that the Commission would apply for a review in every case; however, this power could be used where the Commission has concerns about the costs in a particular matter.

The Bill also proposes that section 21 of the Act be repealed and that section 32 be substituted, and a new section 32A introduced. The proposed section 32 would make it an offence for an applicant for, or recipient of, legal assistance to make a deceptive or misleading statement or representation with the intention of deceiving or misleading the Commission. The proposed section 32A would enable the Commission to recover the cost of legal assistance if a person is convicted of an offence of dishonesty in connection with an application for, or receipt of, legal assistance. It is essential that applicants for legal aid be deterred from providing any false or misleading information, and that the Commission be in a position to recover money inappropriately spent. The maximum penalties for a breach of new section 32 and existing section 31A are set in the Bill at $2500 or six months imprisonment.

Given the considerable interest in this matter, the Government is introducing this Bill and the Criminal Law (Legal Representation) Bill with the view to encouraging further consultation. The Government would welcome comments on the Bill and in order to allow a reasonable period for such comments to be received, does not propose to debate the Bills in the current Parliamentary Sittings.

I commend this Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 5—Interpretation

This clause inserts a number of definitions of words and phrases necessary for the purposes of the Bill.

Clause 4: Insertion of s. 5A

5A. Assessment of financial resources in criminal cases

New section 5A provides that, in assessing a person's financial resources (see cl. 3) in a case where the applicant for legal assistance is charged with a serious offence (see cl. 3), the Commission must (as far as practicable) apply the same principles as are applicable under the Criminal Law (Legal Representation) Act 1998.

Clause 5: Amendment of s. 10—Functions of Commission

This clause inserts a further function of the Commission to carry out random audits to monitor the provision of legal assistance under the Act and ensure that the legal services provided by way of legal assistance are appropriate, efficient and cost-effective.

Clause 6: Amendment of s. 11—Principles on which Commission operates

This clause provides that in the exercise of its powers and functions, the Commission must have regard to the desirability of enabling assisted persons to obtain the services of legal practitioners of their own choice so far as that object is practicable and consistent with the most effective allocation of the limited resources available for legal assistance (in addition to the principles on which the Commission operates already set out section 11 of the principal Act).

Clause 7: Insertion of heading

A divisional heading ('General Provisions') is proposed to be inserted immediately after the heading to Part 4 of the principal Act. (The current contents of Part 4 of the principal Act, as amended by the Bill, now become the contents of Division 1 of Part 4.)

Clause 8: Amendment of s. 16—Provision of legal assistance

This amendment will enable the Commission to engage legal practitioners to provide legal assistance, in addition to being able to assign legal practitioners for that purpose.

Clause 9: Amendment of s. 17—Application for legal assistance

The amendments proposed to section 17 of the principal Act will allow applications for legal assistance to be verified by the applicant's signed declaration and set out the time within which an applicant for legal assistance, or an assisted person, may appeal to the Commission against a decision under section 17(3) or (5).

Clause 10: Repeal of s. 21

This section is repealed as a consequence of the insertion of proposed new Division 2 of Part 4.

Clause 11: Insertion of Divisions 2 and 3

DIVISION 2—INVESTIGATION OF APPLICATION

22A. Purposes for which investigative powers may be exercised

The Commission's powers under new Division 2 may be exercised—

- to investigate an application for legal assistance, or a matter arising out of an application for legal assistance, in a case where the application relates to proceedings involving a charge of a serious offence and an application for a stay of the proceedings would be likely if the legal assistance sought by the applicant were refused; or
- to investigate a matter arising in relation to proceedings to which the Commission is a party under the Criminal Law (Legal Representation) Act 1998; or
- to investigate compliance with the conditions on which legal assistance is being, or has been, provided by the Commission in accordance with a random audit program.

22B. Power to require information, etc.

The Commission may by written notice require a person—

- to return written answers to specified questions to the Commission at a nominated address; or
- to produce specified documents or all documents of a specified class in the person's possession or power to the Commission.

A person who, without reasonable excuse, fails to comply with a requirement under this section within the time allowed in the notice is guilty of an offence and liable to a maximum penalty of $2 500 or imprisonment for 6 months.

22C. Powers of examination

The Commission may by written notice require a person to attend at a specified time and place for examination on a specified subject before a person nominated by the Commission to conduct the examination (the investigating officer). A person to whom such a requirement is addressed must—

- attend before the investigating officer as required by the notice; and
- if so required by the investigating officer—make an oath or affirmation to answer all questions truthfully; and
- answer truthfully all questions put to the person by the investigating officer or by someone else with the officer's consent.

A person who, without reasonable excuse, fails to comply with a requirement under this section is guilty of an offence and liable to a maximum penalty of $2 500 or imprisonment for 6 months.

22D. Exclusion of certain privileges

A person is not entitled to refuse to answer a question or to produce documents on the ground of—

- a privilege against self-incrimination; or
- legal professional privilege.

However, if the information or document is protected by any such privilege, it remains privileged in the hands of the Commission and may only be disclosed as authorised under Part 4, or in proceedings under the Criminal Law (Legal Representation) Act 1998 or for non-compliance with Part 4 or an oath or affirmation made under Part 4.

22E. Legal representation

A person in relation to whom powers of investigation are, or are to be, exercised under new Division 2, is not entitled to legal assistance for the purposes of the investigation.

DIVISION 3—LEGAL ASSISTANCE IN CRIMINAL CASES

22F. How legal representation is provided in criminal cases

If the Commission provides legal assistance by way of legal representation for a defendant in a criminal case, the Commission may—

- assign a legal practitioner who is a member of the Commission's own staff to represent the defendant; or
- engage a legal practitioner, on terms and conditions mutually agreed between the Commission and the legal practitioner, to represent the defendant.

A person to whom confidential information is disclosed under this new section must not disclose the information except for a purpose authorised by the Commission (maximum penalty: $2 500 or imprisonment for 6 months).

The Commission may call for tenders for the provision of legal assistance by way of legal representation but such a call does not oblige the Commission to accept any tender.

22G. Special provision for legal assistance in cases involving an application under Criminal Law (Legal Representation) Act 1998

The Commission—

- may enter into an arrangement with the Attorney-General about the provision of legal assistance for a defendant who makes an application for a stay of proceedings under the Criminal Law (Legal Representation) Act 1998; and
- is subject to direction by the Attorney-General in relation to the provision of legal assistance in such cases.

22H. Relationship between legal practitioner and assisted person

The relationship between the legal practitioner assigned or engaged to represent the assisted person is the same as if the assisted person had personally engaged the legal practitioner to represent the assisted person.

A legal practitioner engaged to act as counsel for an assisted person in a criminal case must exercise an independent judgment—

- to confine the proceedings to issues that have, in the legal practitioner's opinion, some real prospect of success; and
- to avoid unnecessary delay or unnecessary complication or prolongation of the proceedings.

22I. Attorney-General and DPP to be informed of certain decisions

If an application for legal assistance is refused in a case where the applicant is charged with a serious offence, the Commission must notify the Attorney-General and the DPP of its decision.

Clause 12: Insertion of s. 29A

29A. Review of accounts for legal services

If a legal practitioner appears before a court or tribunal for an assisted person and the Commission suspects that costs have arisen unnecessarily due to some failure on the part of the legal practitioner, the Commission may apply to the court or tribunal for review of any charges made by the legal practitioner for representation of the assisted person.

On such an application, the court or tribunal may—

- disallow or reduce any charge made by the legal practitioner; and
- if, in view of the disallowance or reduction an overpayment has been made to the legal practitioner, order the legal practitioner to make a refund.

Clause 13: Amendment of s. 31A—Secrecy

This amendment proposes to upgrade the penalty for an offence against this provision from $1 000 or imprisonment for 6 months to $2 500 or imprisonment for 6 months, in keeping with other penalties imposed for offences against the Act.

Clause 14: Substitution of s. 32

Current section 32 is to be repealed as it is obsolete and new sections substituted.

32. Misleading conduct

An applicant for, or recipient of, legal assistance must not, with the intention of deceiving or misleading the Commission, make a deceptive or misleading statement or representation to the Commission in connection with the application (maximum penalty: $2 500 or imprisonment for 6 months).

32A. Recovery of cost of legal assistance

If a person is convicted of an offence involving dishonesty in connection with an application for, or the receipt of, legal assistance, the Commission may recover, as a debt, costs that would not have been incurred but for the dishonesty.

Clause 15: Further amendments of principal Act

The principal Act is further amended as set out in the Schedule.

SCHEDULE—FURTHER AMENDMENTS OF PRINCIPAL ACT

The Schedule contains amendments of a statute law revision nature.

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

POLICE BILL

Consideration in Committee of the House of Assembly's message intimating that it had agreed to amendments Nos 1, 26, 27 and 36 made by the Legislative Council without any amendment and that it had disagreed to amendments Nos 2 to 25 and 28 to 35.

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

That the Legislative Council do not insist on its amendments Nos 2 to 25 and 28 to 35.

I indicate that we are dealing with this on a blanket basis in order to establish a deadlock conference.

The Hon. P. HOLLOWAY: We oppose that.

Motion negatived.

CITY OF ADELAIDE BILL

Second reading.

The Hon. R.I. LUCAS (Treasurer): I move:

That this Bill be now read a second time.

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

Leave granted.

The State Government is unambiguously committed to the rejuvenation of the City of Adelaide.

In the last decade, the attention of policy in relation to the City of Adelaide has turned towards its role and function in the context of South Australia's needs as a community and as an economy that is ever increasingly affected by international influences, technological changes, global competition and better communications. At the same time, the City must resolve a number of persistent problems, such as static commercial property values, the rapid decline in retailing activity and high vacancy rates in commercial buildings.

Studies of governance arrangements for the City in reports ranging from the Adelaide 21 Report to the City of Adelaide Governance Review Report have consistently found that the wider metropolitan, State and national interests in the city centre do not fit comfortably within the current local government structure. The

Adelaide 21 report noted the inherent structural problems of the Council, including:

- organisational isolation from other local governments and tiers of government;
- inbuilt tensions between the investment and commercial importance of the State's capital and the proper representational requirements of residents; and
- too many members for focused decision making.

While some of these problems can be, and have been, alleviated by improved relationships, structural changes are necessary to ensure the future governance of the capital city is guided by the requirements of the 21st century rather than hamstrung by the procedures and preoccupations of the past.

The Bill makes these changes.

The City of Adelaide is of vital importance to South Australia, for at least three reasons:

Firstly—its cultural, knowledge, religious and commercial status and identity;

Secondly—its unparalleled concentration of private and public assets;

Thirdly—its geographic centrality within the metropolitan area.

For these reasons the City of Adelaide assumes a particular priority in the State's long term development.

In recent decades, business, government and the Council have not worked well together. This is changing, and the City of Adelaide Governance Review process has been instrumental in fostering that change. There is increasing evidence that there is not only a sense of determination, but a renewed commitment by all parties to ensure that the City Centre is positioned to make the best use of its assets and seize opportunities as they arise.

This requires the establishment of mechanisms which provide the best possible business climate for the City Centre, build investor confidence, formalise good working relationships between the State Government and the Adelaide City Council and establish priorities for joint action by both levels of government.

This Bill provides those mechanisms.

The City of Adelaide Governance Review Report recommends special legislation to demonstrate commitment to the City by the Council and the Government and to lay a strong foundation for action. The Bill is to be read in conjunction with the Local Government Act. The specific provisions of this Bill will over-ride any inconsistent provisions of the Local Government Act, but otherwise Local Government Act provisions will continue to apply to the Adelaide City Council.

Although some of the provisions in this Bill have benefited from work done in the course of preparing consultation drafts of new legislation to replace the Local Government Act, the measures in this Bill are particularly adapted for the City of Adelaide and take account of its unique role and characteristics as the capital city. It is not intended that the provisions of this Bill will establish precedents for local government generally in South Australia, or in any way predetermine the outcome of consultations on new Local Government legislation.

The Bill introduces arrangements for the governance of the City of Adelaide, to give effect to the Government's approach to the Final Report of the City of Adelaide Governance Review Advisory Group.

Tribute must be paid to the work of the Governance Review Advisory Group, comprising Annette Eiffe, Chairman of the Local Government Boundary Reform Board, Malcolm Germein, Chairman of the Local Government Grants Commission and Neill Wallman, a Commissioner of the Environment, Resources and Development Court. The Group consulted extensively with a board range of people on what might be the best governance arrangements for the City of Adelaide. Their Report was based on extensive research on urban regeneration and the relationship of cities' governance arrangements to their health and prosperity.

The Report noted that the City of Adelaide would benefit from:

- a shared vision and strategy for the City of Adelaide;
- respectful and cooperative relationships between the State Government and the Adelaide City Council;
- a strong, democratically elected Council with the capacity to fulfil its capital city and municipal roles.

Submissions on the GRAG report were invited and the common ground in these submissions was a focus on clarifying the roles of Government and other sectors in ensuring sustainable development of the City. There was a remarkable level of consensus on the majority of the GRAG report recommendations, with different views revolving around a small group of policy issues:

- North Adelaide—whether or not it should be retained within the Adelaide City Council boundaries;
- the representative structure of the Council—the number of members and whether its constituency should be area wide or based on geographic wards;
- the form of the institutional link between the State Government and the Council for the purposes of coordinating strategic development for the City and whether that should be provided through a Commission for the City of Adelaide or another form of joint collaborative arrangements;
- electoral issues—such as compulsory voting and the property franchise.

On 8 May, 1998 the Premier released *The Government of South Australia's Proposed Approach to the City of Adelaide Governance Review* and *The South Australian Government's Capital City Development Program* for public consultation.

On 2 June, 1998 the Consultation Draft City of Adelaide Bill was sent to the Lord Mayor, all Aldermen and Councillors and the Chief Executive Officer of the Adelaide City Council, all Parliamentary parties and Independent members, the Local Government Association and interested peak bodies for comment.

The Government has, in good faith, made every effort to ensure extensive consultation on its proposed approach to this Bill. It has been able to take account of the views expressed by the Council, Lord Mayor and Chief Executive Officer of the Council, other Council members, the Independents, the Democrats, the Local Government Association, and individuals and organisations which made submissions to the Government. Only the Labor Party rejected the offer of a meeting to discuss the draft Bill.

The Capital City Development Program sets out a cohesive plan for the City. The Program is to be jointly endorsed by the State Government and the Adelaide City Council. The Program draws together, for the first time, three inter-related elements:

The Capital City Policy is a broad statement of the preferred directions for the City, and is intended to guide both State Government and the Adelaide City Council and assist decision makers in the private sector.

The Capital City Strategy states more specifically the actions to be taken by the State Government and the Adelaide City Council to implement the Policy.

The Capital City Implementation Program explains who is undertaking which particular programs and projects and also sets out how the Government and the Council will work together.

The Capital City Development Program rests on supporting growth industries, providing twenty first century information technology and upgrading the city's physical and natural appeal.

The fundamental issue in the rejuvenation of the City is not land and buildings. It is about generating new demand, particularly through growing new markets for existing city businesses. The so-called knowledge industries are most likely to generate employment. The City hosts the greatest concentration of business services and facilities for higher education, the arts and culture, health, tourism, and medical services in South Australia.

Because of this concentration of services and facilities, the State Government envisages that the City Centre, that is, the commercial heart of the City and its immediate environs, will play a leading role in the Government's attempts to foster an enterprising community, which is capable of assembling the technical, intellectual and managerial skills required of an advanced economy and society. There is no intention to redistribute activity or prevent future growth occurring elsewhere in the Metropolitan area or the State, or to relocate any functions back to the city centre. The challenge is to capitalise on the City's existing strengths to rejuvenate the City Centre in a way which enables the City to add value to the further development of the State's economy.

The Government's ambition is to make the City Centre more attractive, accessible and enjoyable so that it remains the heart of the South Australian economy and community.

This Bill provides an institutional link between the Government and the Council, which preserves the independence of the public and private sector bodies involved in the development of the City but assists them to make better, informed decisions and to coordinate their efforts to achieve optimum results.

Rather than the Commission recommended by GRAG, this will take the form of a Capital City Committee, made up of the Premier, or his/her nominee, two government Ministers, the Lord Mayor, or another member of the Council if the Lord Mayor chooses not to be a member , and two other elected members of the Adelaide City

Council, acting collaboratively in pursuing the rejuvenation of the City.

The GRAG model of a Capital City Commission comprised of officials from the State Government and the Council has several weaknesses. The problem of the City is not the absence of a vehicle for development. Rather it is the lack of a formal mechanism for elected members of the State Government and the Council to co-operate on an agreed strategy and to create the best climate for business investment. The GRAG model of a Commission of officials does not solve that problem.

The establishment of a Capital City Committee as provided for in this Bill will facilitate the essential political accommodation which is required between the State Government and the Council to address the needs of the City and will provide for a shared understanding of its strengths and agreement on initiatives to harness its potential. The Committee will formalise the good working relationships which have been established in the last year between the Government and the Council.

The role of the Capital City Committee as provided for in the Bill will be to-

- identify key strategic requirements for the development and growth of the City of Adelaide as the primary focus for the cultural, educational, tourism, retail and commercial activities of South Australia. These would be in line with the policies for the Capital City as outlined in the Capital City Development Program;
- maximise opportunities for the effective coordination of public and private resources available to meet those requirements, and establish priorities for joint action by the State Government and the Adelaide City Council capable of being considered by the State Government and the Adelaide City Council as part of their budget processes;
- monitor the implementation of programs describing initiatives to be undertaken jointly and independently for the development of the City of Adelaide;
- make provision for the publication, as appropriate, of agreed key directions, strategies and commitments; and
- collect, analyse and disseminate information about the economic, social, environmental and physical development of the City of Adelaide in order to assess outcomes and identify factors which will influence future development.

The Committee is to convene a forum of members of the broader City of Adelaide community and seek the advice of, and share information with this group. The forum will be a means of disseminating information on the factors and issues influencing the development of the city, and will provide an opportunity for major stakeholders in the City, such as the universities and peak bodies representing property, retail, employer and community interests, to consider the policies and strategies for the development of the city, as well as proposals of individuals and agencies.

The Committee will take as its starting point the Capital City Development Program endorsed by the State Government and the Adelaide City Council. It will be required to meet at least four times a year, to monitor the implementation of the Capital City Development Program and to revise it on an annual basis. Whilst the Capital City Committee is responsible for preparing and monitoring the Capital City Development Program, it will remain the case that the Cabinet and the Council retain ultimate responsibility for endorsing the Program and allocating the necessary funds for its implementation. The actual delivery of the program will the responsibility of relevant officers of the various state government agencies and the Council in the usual way.

The Committee's programs, when approved by the State Government and the Council, will comprise expressions of policy formed after consultation within government and with the Capital City Forum. They do not detract from the powers of the State Government or the Adelaide City Council.

Given the nature of this Committee, it is considered appropriate that its operations not be subject to scrutiny by the Statutory Authorities Review Committee or other similar Parliamentary Committees.

Similarly, it is not considered appropriate that the documents dealt with by the Committee should be subject to the Freedom of Information Act 1991 or Part 5A of the Local Government Act 1934. However, there will be no constraint on members of the Committee reporting back to the Council and Cabinet on the deliberations of the Committee. This Bill provides that the Government and the Council are entitled to access to documents dealt with by the Committee, unless such access would be in breach of a duty of confidence. It also provides that the Committee may place conditions on access to its documents.

The administrative and staffing costs of the Committee will be shared equally between the State Government and the Adelaide City Council. A Capital City Project Team will support the Capital City Committee, with the specific task of preparing the revised Capital City Development Program for the Committee to consider. The Project Team will replace the existing Adelaide 21 group which was always intended as a temporary measure pending resolution of governance issues.

A requirement of the Bill is for annual reports by the Committee to be presented by the Lord Mayor and the Premier to the Council and the Parliament respectively on the operation of the new collaborative arrangements.

The Premier will also be required, in consultation with the Adelaide City Council, to present a report to Parliament by the 30 June 2002 on any changes to the collaborative arrangements established under this Bill which may be appropriate. In preparing his report the Premier must ensure that the Council has the opportunity to contribute to the report and to comment on the final draft.

I would like to recognise the contribution of the Lord Mayor, the CEO, and the Council members and others who made submissions and participated in discussions on the new collaborative structures for the constructive and energetic way in which they have embraced the concept of the Capital City Committee and its potential.

The GRAG report recommended that the present boundaries of the City of Adelaide be retained. GRAG concluded after considering three options (expansion, contraction, status quo) that there was no convincing evidence that changing the boundaries at this stage would improve the governance of the City.

The Government considers that the revitalisation of the City is the major priority and accepts the GRAG Reports' view that changing the Council's external boundaries now would distract from this task.

The Lord Mayor, the Council, and its management and staff have worked hard to improve the Council's reputation and performance in an atmosphere of uncertainty and with an unwieldy representative structure. The Council is now at a critical stage in developing, in collaboration with the Sate Government and on its own behalf, plans and programs for the future viability of the City, all of which have been based on the assumption that North Adelaide is to remain part of the City of Adelaide. Delaying resolution of governance issues for a further period will have debilitating effects on the ability of the Council to manage the complex issues facing the City.

There is also strong public support for retaining the current boundaries, based on a deeply-felt sense of history and identity. In May this year, a petition signed by 2 372 residents of South Australia was presented by the Member for Adelaide, urging the Government to ensure that the existing boundaries of the Adelaide City Council remain, and that local ward representation by elected councillors be retained.

Under this Bill, the Council will consist of the Lord Mayor and 8 councillors. The position of alderman is abolished.

The Bill provides that, commencing with the next term of the Council, no person would be eligible to hold the office of Lord Mayor for more than 2 consecutive terms.

The ward option proposed by the Government in the House of Assembly is, in the firm opinion of the Government, the best which could be devised given a number of constraints including—

- the Government's intention to reduce the number of councillors to 8
- a preference for keeping the whole of North Adelaide together
- the requirement that representation ratios (electors represented by each member) be equal within a maximum tolerance of 10%, and
- to the extent that it is possible to do so given the variables which determine the outcome of any election (such as the number and type of candidates and the level of turnout of different groups of voters under a voluntary voting system), the need to maximise the chance of an overall outcome which balances 'business' and 'residential' interests and reflects the fact that the total numbers of residential and non-residential entitlements for the whole area are similar. This involves accommodating the fact that business interests as represented by 'non-residential' electors are concentrated in certain geographic areas.

A review of the composition and representative structure and the need for ongoing review is provided for. This will be initiated by the Minister in consultation with the Council within seven years of the

new arrangements unless relevant issues have been addressed by an earlier review.

A number of special arrangements for the City of Adelaide are introduced in this Bill to reinforce its unique role within the local government context. Another reason for including these arrangements is so that potential candidates at the special election to be held later this year are aware of the new arrangements and administrative provisions under which they will operate.

The role of the Lord Mayor and elected members is defined.

The Lord Mayor is the principal elected member of the Council representing the Capital City of South Australia and would provide leadership and guidance to the City community, maintain intergovernmental relations at all levels and carry out appropriate civil and ceremonial duties. As the principal member of the Council, the Lord Mayor is to provide leadership and guidance to the Council and carry out other relevant duties.

Members of the Adelaide City Council are expected to take a more strategic role, provide community leadership and guidance to the City community, keep Council's goals, policies, corporate strategies and resource allocation under review and serve the overall public interest of the City.

'City community' in this context is defined as those who live, work, study, or conduct business in, visit, and use or enjoy the services, facilities and public places of, the capital city. In other words, once elected, Councillors are clearly called upon to represent a wider community than is reflected by their 'elector' base.

The Bill provides that the Council must, within six months of the special general election, prepare a code of conduct to be observed by the members of the Council.

The overall framework for allowances and benefits will be more flexible. Members of the Council will continue to be eligible for an annual allowance, which may vary from those for other councils. Members may also receive fees and reimbursements for the performance of official functions and duties, and this will allow for the payment of sitting fees.

The role of the Chief Executive Officer is also defined. The Bill makes it explicit that the CEO is responsible for employee matters on behalf of the Council.

The objectives of the Council in the performance of its roles and functions are specified to reflect the need for Adelaide City Council to be sensitive to the needs of people in the broadly defined City community.

The council's responsibility to engage in coordinated strategic planning for the City and the metropolitan area is established under the Bill.

The Bill also provides that the Council must prepare and publish a rating policy each year which links the Council's corporate plan, budget and rate structure. The policy will include reasons for the valuation method and use of any differential rates or service rates, issues concerning equity and rating impact, application of any minimum rate and council policy on discretionary rebates.

From 1 July 2001, the Bill prevents the Council from using s193(4)(a) of the Local Government Act, which is a power to grant rate rebates for the purpose of securing the proper development of the area, to maintain its current residential rebate scheme. The Council could still use other rating tools (eg a differential rate for residential use) for the granting of some rebates. It does not prevent the Council from granting a rate rebate to any specific development (residential or not) or from granting rebates to classes of non-residential development or to classes of residential development intended for the benefit of disadvantaged persons, students or other special groups. The Government's aim is to ensure that the Council's rating policy is one which still allows Council the flexibility to assist low income earners and long term residents who may not otherwise be able to live, or continue to live, in the City, without providing a concession which is of most benefit to owner/occupiers of the most valuable residential real estate and unfairly increases the rate burden on other ratepayers.

The interests of residents and non-residents are not mutually exclusive and can be brought together—City residents want a City which is prosperous and provides them with a stimulating environment and high quality services, and the character and quality of life in the City is a competitive advantage for business.

However there is a distinction between local interests and very narrow, parochial interests which can distract from the broad strategic perspective required to serve the broader City community.

The package of measures in this Bill, ranging from the reform of the Council's representative structure to provide balanced residential and non-residential representation to the way in which members roles are defined, should assist in bringing together these broader and local interests there residential and commercial interests and allow the Council to demonstrate that it is acting on behalf of the whole City.

For the same reason the Bill provides that the Council must include in its annual financial statements expenditure information related to its commitment to the Capital City Development Program, and its own economic development program for the City and make the relationship between its corporate plan and its rating, revenue and expenditure policies more transparent in its annual report.

The Bill provides that special elections be held for the Lord Mayor and other members of the Council on the new ward boundaries on 7 December 1998 or if an earlier date is fixed by proclamation, on that date. The term of those elected at the special elections will expire at the May 2000 elections.

Joint owners/occupiers and corporate bodies will be able to exercise their vote via a member of the group or an officer of the company who makes an appropriate declaration of authority to vote on behalf of the group or company at the time of voting.

This will replace the need for enrolled joint owners/occupiers and corporate bodies to nominate a natural person for voting purposes before the closure of the roll. Failure to do so currently disenfranchises groups and companies entitled to exercise in excess of 3 000 votes.

The Bill also restricts a person from voting in more than once capacity in any election. This will overcome the perception of unfairness which arises from individuals exercising multiple votes, notwithstanding that each additional vote is exercised on behalf of a different partnership, group or entity entitled to vote.

The Government believes that this combination of measures should be acceptable to all except those who are either opposed to the retention of the property franchise in principle or, alternatively, want to see it expanded.

The Bill provides that elections for the City Council include the following features:

- voluntary voting;
- voting by postal ballot;
- the State Electoral Commissioner to be the Returning Officer, and costs to be defrayed by the Council;
- a requirement for the roll to be publicly exhibited for at least three weeks prior to finalisation of its revision to provide residents, owners and occupiers with the opportunity to check and correct their entitlements;
- provisions which specify that the person who will exercise the vote on behalf of an enrolled corporate body or joint owner/occupier can nominate as a candidate;
- all candidates for election to be Australian citizens;
- continued use of quota-preferential proportional representation method of voting and counting.

Regulations will provide that all candidates must provide, at the time of nomination, personal information not exceeding the prescribed length, and a recent photo, for distribution to electors with the voting papers.

The Bill also provides for the making of regulations. Regulations governing any reviews of Council composition and ward structure can only be made with the agreement of the Council and the Government is committed to collaboration with the Council on the drafting of any regulations made pursuant to the Act.

The combination of measures provided for in this Bill, including the Capital City Development Program, the Capital City Committee and the revised Council structure and administrative arrangements, are intended to ensure that public resources are able to be targeted to greatest effect in the rejuvenation of the City and the maintenance and improvement of its quality of life.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Objects

The objects of the measure are set out in this clause and principally are to recognise, promote and enhance the special role that the City of Adelaide plays as the capital city of South Australia, to provide collaborative arrangements based on intergovernmental liaison between the State and the Adelaide City Council for the strategic development of the City of Adelaide, and to revise and enhance local governance arrangements for the City of Adelaide.

Clause 4: Interpretation

This clause contains the definitions that are required for the purposes of the Bill.

Clause 5: Interaction with Local Government Act
This measure is to be read with the *Local Government Act 1934* as if the two Acts constituted a single Act. This measure will prevail in the event of any inconsistency between this Act and the Local Government Act 1934.

Clause 6: Establishment of the Capital City Committee
The Capital City Committee is established.

Clause 7: Membership of the Capital City Committee
The Committee will consist of the Premier or another Minister of the Crown nominated by the Premier, two other Ministers of the Crown nominated by the Premier, the Lord Mayor or another member of the Council, and two other members of the Council nominated by the Council.

Clause 8: Chairperson of the Capital City Committee
The Premier, or another member of the Committee nominated by the Premier from time to time, will be the chair of the Committee.

Clause 9: Deputies
This clause provides for the appointment of deputies.

Clause 10: Function of the Capital City Committee
The Committee is established as an intergovernmental body to enhance and promote the development of the City of Adelaide as the capital city of the State. The Committee may, for this purpose, exercise various powers and functions.

Clause 11: Programs
A *Capital City Development Program* will be prepared by the Committee. The Committee may prepare or adopt other programs. A program will be subject to endorsement or adoption by the State Government and the Council and is to be taken to be an expression of policy (and not a substantive or binding document affecting rights or liabilities).

Clause 12: Proceedings
The Committee will be required to meet at least four times in each year.

Clause 13: Subcommittees
The Committee will be able to establish subcommittees to assist it in the performance of its functions.

Clause 14: Staff, etc.
This clause provides for administrative and staffing arrangements for the Committee. Staffing and administrative costs will be shared equally between the State and the Council.

Clause 15: Delegation
The Committee will be able to delegate a function or power under the Act to a specified person or body, or to a person occupying a specified position. A delegation may be subject to conditions or limitations, will be revocable at will, and will not prevent the Committee from acting itself in a matter.

Clause 16: Reporting
The Committee will be required to provide an annual report on the operation of the collaborative arrangements established under or pursuant to the Act in a particular financial year.

Clause 17: Review
The Premier will prepare a report by 30 June 2002 on the operation of the collaborative arrangements established under or pursuant to this Act since its commencement, and on changes that should be considered or implemented to improve or enhance those arrangements. The Adelaide City Council will be involved in the preparation of the report. Copies of the report will be tabled in Parliament.

Clause 18: Protection of information
Various documents prepared for the purposes of, or in connection with, the Committee (or a subcommittee or delegate of the Committee) will be taken to be exempt documents for the Freedom of Information Act 1991 and Part 5A of the Local Government Act 1934.

Clause 19: Committee not to subject to Parliamentary Committees Act
This clause expressly provides that the functions and operations of the Committee may not be subject to inquiry under the Parliamentary Committees Act 1991.

Clause 20: Constitution of Council
The Adelaide City Council will, from the relevant day (defined to mean the day on which the general election to be held pursuant to this Bill concludes), be constituted of the Lord Mayor and eight other members. A person will not be able to hold the office of Lord Mayor for more than two consecutive terms (although service as Lord Mayor immediately before the relevant day will be disregarded for the purposes of this provision). The constitution of the Council will be able to be changed by proclamation following a review under clause 21.

Clause 21: Review
The Minister will be able to conduct a review into the constitution of the Council, and the representative structure of the Council in consultation with the Council. At least one review must be conducted within seven years from the relevant day, and subsequent reviews must be conducted at least once in every six years following a previous review. A review will be conducted in accordance with the regulations. A report on the making of a relevant proclamation must be tabled in Parliament. This scheme will replace the internal review mechanisms under the Local Government Act 1934 in respect of the Council. However, any review under this provision will be required to address the question as to whether subsequent reviews should be conducted under the Local Government Act 1934.

Clause 22: Lord Mayor
This clause sets out provisions describing the role of the Lord Mayor as the principal local government elected member representing the capital city of South Australia, and as the principal member of the Council.

Clause 23: Members
This clause sets out provisions describing the role of members of the Council as members of the governing body of the Council and as elected representatives on Council.

Clause 24: Code of conduct
The Council will be required to prepare a code of conduct for members within six months after the relevant day. A code will then need to be reviewed within 12 months after each subsequent general election. A code will need to be consistent with any requirement prescribed by the regulations.

Clause 25: Allowances
This clause makes special provision with respect to the allowances to be paid to members of the Council.

Clause 216: Fees and reimbursement of expenses
A member of the Council will be able to receive fees for the performance and discharge of official functions, and reimbursement of certain expenses.

Clause 27: Provision of facilities and support
The Council will be able to provide facilities and other forms of support for members to assist members in performing or discharging official functions and duties.

Clause 28: Role of the chief executive officer
This clause makes express provision in relation to the role of the chief executive officer of the Council.

Clause 29: Appointment of staff
This clause makes express provision about the responsibility of the chief executive officer for appointing, managing, suspending and dismissing the other staff of the Council. Any staff appointment must be consistent with strategic policies and budgets adopted or approved by the Council.

Clause 30: Objectives
This clause includes specific objectives for the Council.

Clause 31: Strategic plans
The Council will be expected to take reasonable steps to undertake, or to participate in, strategic planning for its area, and the State more generally (so far as is relevant to the City of Adelaide).

Clause 32: Closure of streets, roads, etc. running to boundary of City
A resolution under section 359 of the Local Government Act 1934 will be subject to disallowance by either House of Parliament.

Clause 33: Rating policy
The Council will be required to publish a rating policy for each financial year commencing with the 1999/2000 year. The policy will be required to address the relationship between the Council's corporate plan, budget and rate structure, and other specified matters.

Clause 34: Rate rebates
A limitation is to be placed on the ability of the Council to grant a rebate of rates under section 193(4)(a) of the Local Government Act 1934.

Clause 35: Financial reporting
The Council will be required to provide various pieces of financial information.

Clause 36: Register of Interests
The Register of Interests for the Adelaide City Council is to be a public document.

Clause 37: Regulations
The Governor will be able to make regulations for the purposes of the Act.

Clause 38: Transitional provision
This clause makes express provision for the cessation of the existing wards.

Schedule: Special provisions for elections and polls

This schedule sets out various special provisions for elections or polls conducted for the City of Adelaide. (The provisions of the Local Government Act 1934 will apply with respect to any matter not covered by this schedule, and this schedule will prevail to the extent of any inconsistency between the two Acts.) Clause 3 provides for a general election to be held on or before 7 December 1998. The term of office of a member elected at this election will be until May 2000 (see clause 4). Clause 5 sets out the qualifications for enrolment for elections for the Council, including a scheme that will not rely on nominated agents for bodies corporate or groups. A special scheme for the revision of the voters roll is included in clause 6. Clause 7 sets out the entitlements to vote. Various qualifications will apply. A candidate for election as a member of the Council will be required to be an Australian citizen (in addition to other relevant requirements). Postal voting will be used for all elections and polls (see Part 5). The method of counting votes will be the method set out in section 121(4) of the Local Government Act 1934. The returning officer will, after consultation with the Council, be able to use a computer program to undertake various steps associated with the recording, scrutiny or counting of votes.

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

INDEPENDENT INDUSTRY REGULATOR BILL

Second reading.

The Hon. R.I. LUCAS (Treasurer): 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 South Australian Independent Industry Regulator Bill 1998 establishes an Independent Regulator which will regulate the South Australian electricity supply industry. The Independent Regulator is established as a body corporate and is to be constituted of a person appointed by the Governor.

The Independent Regulator is one of the cornerstones of the proposed reform and privatisation of the South Australian electricity supply industry and is required for South Australia to participate in the National Electricity Market.

The Electricity Act 1996 established a pricing regulator and a technical regulator, neither of whom was independent of Government. The pricing regulator's functions are limited to network prices, while the technical regulator has a wide jurisdiction which includes the issuing of licences and the enforcement of technical and safety requirements.

For the purpose of the National Electricity Market, it will be necessary for each participating jurisdiction to have an Independent (economic) Regulator (described in the National Electricity Code as a jurisdictional regulator). The Independent Regulator will have responsibility for distribution network pricing and, in the initial stage of the National Electricity Market, transmission network pricing. In addition, the Independent Regulator will also have responsibility for State based issues, including retail pricing for non-contestable customers (that is, customers who do not have the right to choose their retailer under the Government's contestability timetable), licensing of industry participants and monitoring of service standards.

The legislation establishing the Independent Regulator sets out its functions and the powers that it may exercise in performing those functions. The functions of the Independent Regulator will comprise a combination of the functions currently assigned to the technical regulator and the pricing regulator by the existing Electricity Act, together with a number of additional functions that are not currently addressed in the Act.

The key functions of the Independent Regulator are as follows.

The Independent Regulator will regulate retail pricing to non-contestable customers until 1 January 2003, distribution network pricing and (prior to the Australian Competition and Consumer Commission assuming responsibility) transmission network pricing. The purpose of the restructuring and sale process is to create a fully competitive market for electricity – with resulting downward pressure on prices. It is, however, accepted that certain electricity services will have 'monopoly' elements. One of the important functions of the Independent Regulator is therefore to regulate prices charged in relation to those 'monopoly' components – namely, transmission and distribution.

The Independent Regulator's powers in respect of pricing will be subject to an electricity pricing order to be issued by the Government to provide certainty for buyers and consumers in the transition to a privatised industry. The electricity pricing order will regulate the price of network services and the prices paid for electricity by non-contestable customers. It will also implement certain price-related policies.

Fairness for the country is a feature of the Government's pricing arrangements. The Electricity Act will require the Independent Regulator, in making price-related determinations that apply to the electricity industry, to have regard to the principle that there should be no difference in prices for network services between "on-grid" small customers in metropolitan areas and "on-grid" small customers in non-metropolitan areas.

The Independent Regulator will monitor and enforce compliance with minimum standards of service. This function will involve liaising with the Electricity Industry Ombudsman. The Ombudsman scheme is itself an important feature of the restructured electricity industry. It will be established and operated by industry, but in a form approved by the Independent Regulator. The first Ombudsman will be appointed on the recommendation of the Minister. The Ombudsman's functions could include investigating and facilitating the resolution of complaints and dealing with disconnection and security of deposit claims.

The Independent Regulator will be responsible for issuing licences to participants in the South Australian electricity supply industry and monitoring and enforcing the conditions imposed on those licensees by their licences. The licence conditions will include requirements to comply with service standards set out in codes developed by the Industry Regulator. The Regulator is required to keep such codes under review so as to ensure their continued relevance and effectiveness.

The Independent Regulator will also be responsible for monitoring and enforcing the 'ringfencing' arrangements between the 'stapled' distribution and retail businesses. Ringfencing is an important requirement of the restructured electricity industry. ETSA's distribution and retail businesses will be offered for sale together (ie. 'stapled'). However, these businesses will be conducted by separate companies, albeit under a common holding company. To ensure competition, the distribution and retail businesses are being 'ringfenced'—that is, they will have separate accounting and information systems and will be precluded from cross-subsidising each other.

In exercising its powers and carrying out its functions, the Independent Regulator will be obliged to have regard to the need to:

- promote competitive and fair market conduct;
- prevent the misuse of monopoly or market power;
- facilitate entry into relevant markets;
- promote economic efficiency;
- ensure consumers benefit from competition and efficiency;
- protect the interests of consumers with respect to reliability, quality and safety of services and supply; and
- facilitate the maintenance of the financial viability of the industry.

It is important for the Independent Regulator to be, and to be seen to be, independent from the Government. Industry participants will want an independent regulator to ensure that their economic well-being is not subject to day to day political issues which may affect Government decision making. Consumers will want an independent regulator to protect their interests through monitoring and (if appropriate) regulating the behaviour of industry participants once the Government ceases to have control of the industry.

This Bill addresses the independence of the Independent Regulator by providing that:

- the Independent Regulator is not to be subject to Ministerial direction in the performance of its functions;
- the Independent Regulator is to be appointed for a fixed term of five years and the terms and conditions of that appointment must not be varied during that time so as to become less favourable to the Independent Regulator; and
- apart from certain very limited circumstances, the Independent Regulator can only be removed from office by an order of the Supreme Court made on the application of the Minister.

The Independent Regulator will be funded out of consolidated revenue. However, provision is made for the annual licence fees paid by electricity industry participants to be set having regard to the costs of the Independent Regulator.

In addition, to ensure that the Independent Regulator is, and is seen to be, an effective regulator, the Independent Regulator has been given the power to make orders requiring compliance with its pricing determinations and to suspend or cancel the licence of an electricity industry participant where that participant is in breach of its licence conditions. The Independent Regulator also has the power, in certain circumstances, to appoint an operator to the business of a licensee.

Provision is made for decisions of the Independent Regulator to be reviewed by the Regulator at the request of an affected person and then to be appealed to the Administrative and Disciplinary Division of the District Court.

Finally, there is also scope for the Independent Regulator to regulate industries other than the electricity supply industry, particularly the converging utility industries, if Parliament wishes it to do so in the future.

I commend the Independent Industry Regulator Bill 1998 to honourable members.

Explanation of Clauses

PART 1 PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause contains definitions for the purposes of the measure. The measure relies on other Acts declaring particular industries to be regulated industries for the purposes of the measure. The proposed amendments to the *Electricity Act 1996* include a declaration of the electricity supply industry as a regulated industry.

PART 2 SOUTH AUSTRALIAN INDEPENDENT INDUSTRY REGULATOR

Clause 4: Industry Regulator

This clause establishes the Industry Regulator as a body corporate and provides that the body has all the powers of a natural person.

Clause 5: Functions

This clause sets out the functions of the Industry Regulator as follows:

- to regulate prices and perform licensing functions under relevant industry regulation Acts;
- to monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts;
- to make, monitor the operation of, and review from time to time, codes and rules relating to the conduct or operations of a regulated industry or licensed entities;
- to provide and require consumer consultation processes in regulated industries and to assist consumers and others with information and other services;
- to advise the Minister on any matter referred by the Minister;
- to administer the measure;
- to perform any other function assigned by or under this measure or any other Act.

The clause also sets out general factors that the Industry Regulator must have regard to, namely, the need—

- to promote competitive and fair market conduct;
- to prevent misuse of monopoly or market power;
- to facilitate entry into relevant markets;
- to promote economic efficiency;
- to ensure consumers benefit from competition and efficiency;
- to protect the interests of consumers with respect to reliability, quality and safety of services and supply in regulated industries;
- to facilitate maintenance of the financial viability of regulated industries.

Clause 6: Industry Regulator may publish statements, reports and guidelines

This clause contemplates statements, reports and guidelines being published by the Industry Regulator relating to the functions of the Industry Regulator.

Clause 7: Independence

This clause provides that the Industry Regulator is not subject to Ministerial direction.

Clause 8: Industry Regulator's appointment, removal, etc.

The Governor is to appoint a person (with knowledge of or experience in one or more of the fields of industry, commerce, economics, law or public administration) to constitute the Industry Regulator. Provision is made for the office to become vacant in certain circumstances including if the Industry Regulator is convicted of an indictable offence or sentenced to imprisonment or becomes bankrupt.

The clause provides a mechanism for removal of the Industry Regulator from office by order of the Supreme Court made on the application of the Minister. The order may be made on the basis of misconduct, incapacity to perform satisfactorily the Industry Regulator's functions or material contravention of or failure to comply with the requirements of this or any other Act. Provision is also made for suspension of the Industry Regulator from office by the Supreme Court pending determination of an application for removal.

Clause 9: Minister to act in office of Industry Regulator pending first appointment

Until an Industry Regulator is first appointed under the measure, this clause contemplates the Minister acting in the office.

Clause 10: Associate Industry Regulators

This clause empowers the Minister to appoint and remove Associate Industry Regulators. The requirements as to qualifications are the same as for the Industry Regulator.

Clause 11: Staff

This clause provides that the staff may comprise—

- persons employed in the Public Service of the State and assigned to assist the Industry Regulator;
- persons appointed by the Industry Regulator on terms and conditions determined by the Industry Regulator.

Clause 12: Consultants

This clause contemplates the Industry Regulator engaging consultants.

Clause 13: Advisory committees

This clause contemplates the Industry Regulator establishing advisory committees.

Clause 14: Delegation

This clause provides for delegation of functions and powers of the Industry Regulator.

Clause 15: Acting Industry Regulator

Under this clause the Governor may appoint an Acting Industry Regulator to act in the office for up to 6 months while the Industry Regulator is unable to perform official functions or the office is vacant or to act in the office in relation to a matter for which the Industry Regulator is disqualified.

Clause 16: Conflict of interest

This clause contains provisions relating to the declaration of interests that may lead to conflict by the Industry Regulator, an Acting Industry Regulator or a delegate and the resolution of potential conflicts of interest.

Clause 17: Application of money received by Industry Regulator

Licence fees and any other fees collected by the Industry Regulator are to be paid into the Consolidated Account unless the Treasurer directs otherwise.

Clause 18: Budget

This clause requires the Industry Regulator to prepare and submit a budget to the Minister containing information required by the Minister.

Clause 19: Accounts and audit

This clause requires the Industry Regulator to keep proper accounting records and provides for auditing by the Auditor-General.

PART 3 PRICE REGULATION

Clause 20: Price regulation

This clause sets out the basis on which the Industry Regulator may make a pricing determination in a regulated industry and contemplates determinations—

- fixing a price or the rate of increase or decrease in a price;
- fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price;
- fixing an average price for specified goods or services or an average rate of increase or decrease in an average price;
- specifying pricing policies or principles;
- specifying an amount determined by reference to a general price index, the cost of production, a rate of return on assets employed or any other specified factor;
- specifying an amount determined by reference to quantity, location, period or other specified factor relevant to the supply of goods or services;
- fixing a maximum revenue, or maximum rate of increase or minimum rate of decrease in maximum revenue, in relation to specified goods or services.

The clause specifically recognises that a price range may be fixed in any case.

Special factors are set out that must be considered in relation to a pricing determination as follows:

- the costs of making, producing or supplying the goods or services;
- the costs of complying with laws or regulatory requirements;
- the return on assets in the regulated industry;
- any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries;
- the financial implications of the determination;
- any factors specified by a relevant industry regulation Act or by regulation under this measure;
- any other factors that the Industry Regulator considers relevant.

Clause 21: Making and effect of determinations

This clause sets out procedural requirements relating to determinations and ensures their publication. It also requires licensed entities in a regulated industry to comply with applicable provisions of a determination.

Clause 22: Enforcement of determinations

This clause empowers the Industry Regulator to issue provisional or final orders to require compliance with a determination or to accept undertakings about compliance.

If a person profits from contravention of such an order or undertaking, the clause provides for the Industry Regulator to recover from the person an amount equal to the profit.

PART 4 INDUSTRY CODES AND RULES

Clause 23: Codes and rules

Part of the new scheme in the electricity supply industry is for conditions of licence for electricity entities to require compliance with codes or rules made under this Part.

This clause provides for procedural matters and for publication of codes and rules made by the Industry Regulator.

In addition, the Industry Regulator is required to review the codes and rules in order to keep them up to date.

PART 5 COLLECTION AND USE OF INFORMATION

Clause 24: Industry Regulator's power to require information

This clause contains a broad power for the Industry Regulator to require a person to provide information in the person's possession to the Regulator where that is reasonably required for the performance of functions. Privilege against self incrimination may be claimed. Provisions for review and appeal in relation to a requirement for information under this clause are included in the next Part.

Clause 25: Obligation to preserve confidentiality

A person performing a function under the measure is required to keep commercially sensitive information confidential, subject to certain specified exceptions.

However, a mechanism is put in place to enable the Industry Regulator to disclose confidential information if of the opinion that the public benefit in making the disclosure outweighs any detriment that might be suffered by a person in consequence of the disclosure. If a person has claimed confidentiality, notice must be given before such disclosure by the Industry Regulator. Provision is made in the next Part for review and appeal in relation to a decision of the Industry Regulator under this clause.

PART 6 REVIEWS AND APPEALS

Clause 26: Review by Industry Regulator

This clause provides for—

- review of a pricing determination of the Industry Regulator on application of the Minister or a licensed entity to which the determination applies;
- review of a requirement made by the Industry Regulator to provide information on application by the person of whom the requirement is made;
- review of a decision of the Industry Regulator to disclose information claimed to be confidential on the application of the person given notice of the proposed disclosure.

The application for review must be made within 10 working days and the Industry Regulator is required to make a decision on the review within 6 weeks.

In the case of an application for review of a pricing determination, notice of the application (inviting submissions and joinder in the review) must be given to all persons who could also have applied for review of the determination.

Procedural provisions are included in relation to a stay of a determination or decision and, in the case of a determination, publication of the stay.

After considering the application, the Regulator may confirm, vary or substitute the determination or decision. Variation or substitution of a determination is to be achieved by further determination so as to require notification to affected parties, publication in the *Gazette*, etc.

Clause 27: Appeal

An appeal may be made against the Industry Regulator's decision on a review by the applicant for review or any other party to the review who made submissions on the review.

The appeal is to the Administrative and Disciplinary Division of the District Court sitting with experts as set out in the Schedule.

An appeal must be made within 10 working days.

Procedural provisions are included in relation to a stay of a determination and publication of the stay.

The Court may only consider the information on which the Industry Regulator based the determination or decision that was the subject of the review and any information put before the Industry Regulator on the review.

Clause 28: Exclusion of other challenges to determinations

This clause excludes any other challenge to the validity of a pricing determination of the Industry Regulator.

PART 7 INQUIRIES AND REPORTS

Clause 29: Inquiry by Industry Regulator

This clause provides for inquiries by the Industry Regulator after consultation with the Minister if the Industry Regulator considers an inquiry necessary or desirable for the purpose of carrying out functions.

Clause 30: Minister may refer matter for inquiry

This clause enables the Minister to require the Industry Regulator to conduct an inquiry with specific terms of reference.

Clause 31: Notice of inquiry

This is a procedural provision about public and other notice of an inquiry.

Clause 32: Conduct of inquiry

This is a procedural provision about the conduct of an inquiry. Public hearings are possible but not mandatory. The Industry Regulator is empowered to require attendance of a person at an inquiry.

Clause 33: Reports

A final report on an inquiry is to be given to the Minister. Provision is made for special reports during the course of an inquiry. Reports are to be laid before Parliament and made available to members of the public.

Provisions are included for the exclusion from publication of confidential material.

PART 8 MISCELLANEOUS

Clause 34: Annual report

This clause makes provision for annual reports to be laid before Parliament.

Clause 35: False or misleading information

This clause makes it an offence to make a statement that is false or misleading in a material particular in information given under the measure.

Clause 36: Statutory declarations

The Industry Regulator is empowered to require information to be verified by statutory declaration.

Clause 37: General defence

This clause contains the general defence that the offence was not committed intentionally and did not result from any failure to take reasonable care to avoid the commission of the offence.

Clause 38: Offences by bodies corporate

This clause contains the usual provision making directors of a body corporate guilty of an offence of which the body corporate is guilty.

Clause 39: Continuing offence

This clause contains a continuing offence penalty of one-fifth of the applicable maximum penalty per day.

Clause 40: Immunity from personal liability

This clause contains the usual provision for immunity from personal liability for acts or omissions in good faith. Liability is transferred to the Crown.

Clause 41: Evidence

This clause provides evidentiary aids in relation to appointments and official action taken under the measure.

Clause 42: Service

This clause provides for service personally or by post or by leaving the relevant document with a person over the age of 16 years at the person's place of residence or business. It also contemplates service on a company in accordance with the *Corporations Law*.

Clause 43: Regulations

This clause provides general regulation making power.

SCHEDULE Appointment and Selection of Experts for Court

The Schedule provides for establishment by the Minister of a panel of persons with knowledge of, or experience in, a regulated industry or in the fields of commerce or economics. On appeals under the measure the Court is required to sit with two experts selected from the panel.

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

STATUTES AMENDMENT (FINE ENFORCEMENT) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1237.)

The Hon. IAN GILFILLAN: When we adjourned for lunch I had just dealt with the matter of offenders who could not pay their fine. I addressed what happens to them, that it goes back to the court, and I referred to expiation notices. So that it does not break too distinctly with what I shall refer to now, the factor which I was emphasising with great appreciation was the abolition of imprisonment as a penalty for default. I again take this opportunity to reinforce my approval for that measure. However, I must warn that we are now moving into an area bristling with hazards concerning how these alternative measures aimed at getting the fines and/or expiation fees paid and the forms of punishment for those who do not pay.

I am apprehensive that this will be a very tortuous experimental period while various activities are tested. I hope that the undue impact on the offenders and their families is not too onerous through ignorance or disinterest as to the effect that some of these measures will have. I was sorry to see, though, that there is a move to diminish the use of community service orders. Although they have been subject to some criticism there also have been benefits and substantial expressions of appreciation as to how they have worked, the involvement of people in certain projects, what satisfaction people have had from being involved in it and the benefit to the community from the fulfilment of a community service contract for different projects.

I remember visiting a riding school for disabled young people which was being maintained and expanded by a community service order. As this was an interchange quite closely with the young people who were benefiting from it there was a social advantage for the people who were doing the community service order as well as a great advantage to that service. It does seem to me that to restrict the community service order only to those who 'cannot satisfy a warrant for the seizure and sale of land or goods or a garnishee order and who have been assessed upon investigation of means as being unable to pay' is rather narrow and may in fact deprive some people of the opportunity for optimum benefit for themselves and the community when working out this penalty through community service orders.

I commented before the lunch break about the difficulty in determining what is the attitude to a defaulting fine or expiation debtor, whether it is a criminal matter and whether there is a distinction between expiation and a fine. I hope to have some explanation from the Attorney-General about this either in his summing up or during the Committee stage of the Bill.

The next matter that caught my attention was the remission of any part of a pecuniary sum which consists in whole or in part of a levy imposed under the Criminal Injuries Compensation Act. The second reading explanation states:

> The Government's commitment to the levy, and its imposition, can be seen clearly in the reordering of the priorities in which payments are to be applied. The reforms contained in the Bill make it clear that where a pecuniary sum is paid by an offender, the payments are to be applied first to the satisfaction of the criminal injuries compensation levy, then to any order of compensation or restitution to the victim, then to the payment of costs, then to the complainant and lastly to General Revenue.

I would ask the Attorney—I hope he picks up; if he does not I will have to raise it in the Committee stage—what is the payment to the complainant and who is the complainant in these circumstances? I look forward to hearing an explanation of that, bearing in mind that the first satisfaction is already determined to the Criminal Injuries Compensation Levy and then the second to any order of compensation or restitution to the victim. It leaves me somewhat confused and certainly unclear as to who would be the complainant in this context.

I appreciate the significance of the next matter which is that the police will no longer have responsibility for executing default warrants. It seems to me a very appropriate relief to police officers not to have to go through this process. There are far more important areas of policing for which their skill and training would be more appropriately directed. It will be handled by staff of the Penalty Management Unit, and that does point out the complication, sophistication and challenge that this unit will have. Although police officers may not be involved in this, it will certainly require staff of considerable sensitivity and training.

In the conclusion of the report the Minister went to some pains to put the background for this in a philosophical context, and I think it does bear reiterating. I quote:

> There are no quick fixes in this, however. The legislation is a radical reform but, even so, it is mainly facilitative. Much depends on the commitment of those who will be charged with making the structure work and much will also depend upon changes in the culture of our community.

I emphasise 'changes in the culture of our community'. It is interesting that this part of the Attorney's speech was not read to the Council but was included without him reading it. This is a watershed of some significance and some enlightenment for which I applaud the Government, steering away from the tub thumping and the law and order push which is so mindlessly brought to the surface by both the media and those who really do not have any indepth knowledge of what the challenges are of dealing with offences and punishment for offences. I hope this can be made to work. It continues:

> Many who call stridently to get tough on crime fail to see that getting tough on the majority of crime that occurs in our society is about the enforcement of fines and expiation notices which make up the bulk of law enforcement effort in this society, and in Australia generally, and have done so for very many years. For too long it has been the case that traffic offences and fishing offences and minor thefts are seen by many as just little things punished only by a fine or an expiation notice after all—just a nuisance really and not to be taken seriously.

I quote that part because it is an interesting contrast to the earlier claim that we are moving away from that call to get tough on crime, with a statement which then says that traffic and fishing offences and minor thefts are very serious and that they are taken very seriously. I am not arguing that we should take these matters seriously, but we have caught in a net a whole lot of people who are not at heart criminals and who are not at heart anti-social or anti-community. Quite often in the process, because we drive them through procedures, these people become antagonistic to police and their experiences in prison often embitter them to the community at large. Indeed, in some cases we steer them into the way of a much more profound and regrettable life of crime, when they become more of a burden on society.

As to the two final commitments given by the Attorney in his conclusion to this report, he welcomes the report back and makes the point, to which I referred earlier, that this measure

has not had public consultation. That is a frank admission, and for the life of me I cannot see why not. Even at this stage it would have been appropriate to have proceeded less hastily and had some public fora involving a wide range of people who would be interested in discussing and implementing this type of reform. The Attorney goes on to say what I regard as rather confusing things, as follows:

> I will therefore welcome public comment on the scheme and the legislative proposal and encourage those individuals and organisations concerned with it to make comments and representations, preferably in writing, to my office. I should say, however, that this does not mean that my office will conduct an investigation or reinvestigation, as the case may be, of individual or particular cases, however contentious they may seem to those concerned.

I do not see how that is relevant, because the cases upon which I assume he would want to report will not have come into effect because this legislation will not be in effect itself. I do not know what that particular exhortation is aimed at achieving. The Attorney-General then says that any comment should be made quickly because the Government wishes to have the Bill passed by the Parliament by the end of this session. Again, I ask what is the hurry. Let us get some report and discussion done and get it right.

The Attorney may make another attempt to clarify this when he winds up the debate (I hope he does), because it involves many complicated issues and I do not believe it serves any purpose to bolt this matter through the Parliament. Somewhat close to the end of his contribution the Attorney says:

> I understand that there is a certain nervousness when Government makes what I admit to be radical changes to a legal process which has the capacity to profoundly affect people's finances and their legal liabilities.

It is indeed a profound and radical change which will have, at least in its intention, the strong support of the Democrats. His second commitment we also strongly endorse, that is, that the Government will undertake a thorough review of the system as implemented 12 months after it has been in operation. I am sure that intention will be fulfilled by the Attorney. I have absolute confidence that that is his intention and I hope the resources will be there for a thorough assessment to be made and that it will not just involve lip service to this commitment. We look forward to being able to assess the result of that review after the 12 months.

As I said earlier, I have not had the resources nor have I been able myself to look through the actual clauses of the Bill, nor even the explanation thereof. I take on faith what the Attorney has said; sometimes perhaps I have acted a little recklessly to take it on faith. However, believing as we do that the report accurately reflects the intention of the legislation, the Democrats enthusiastically support the second reading stage. Obviously, we reserve the right in Committee to look more closely at the clauses and, where possible, to question and, if need be, move amendments to ensure that the legislation lives up to its promise, as best as can be assessed at this stage. The Democrats support the second reading.

The Hon. T. CROTHERS secured the adjournment of the debate.

POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 August. Page 1220.)

The Hon. IAN GILFILLAN: The Democrats support the second reading of the Bill, which is a contemporary measure, the more substantial Police Bill that we have dealt with being scheduled for conference. This Bill deals more specifically, as is said in its bracketed title, with complaints and disciplinary procedures. I do not intend to speak at length about the substance of the Bill, which has been explained quite clearly in the report. To a large extent it is non-contentious.

In the case of the amendment to section 32, the Bill is a matter of clarification and facilitates a clearer legislative direction to the Police Complaints Authority. However, the amendment to section 39 is a relatively substantial matter, to which I will return for the main substance of my contribution. The amendment to section 48 restricts access to the Police Complaints Authority's files to preserve privacy where it is reasonable to be done and, in fact, it appears to be clearly and reasonably done in these circumstances.

The other amendment, to section 46, allows appeals to go to the Administrative and Disciplinary Division of the District Court instead of the Supreme Court. I do not have any problem with that. We have a totally competent and adequate level of jurisdiction in the District Court to deal with matters of appeal. In fact, one of the more recent appeals at the Supreme Court has triggered off to an extent part of the debate about where the Commissioner of Police has selected a penalty for an offence which the offending officer regards as too harsh. In such a case, that person can take the matter to the Supreme Court. In the case of a female police officer who had misrepresented her age in a sporting contest, her penalty of termination was overturned by the Supreme Court and she was reinstated in the force.

Concern has been expressed by the Police Association and serving police officers that there must be an adequate and, should I say, sensitive appeal process to provide an opportunity for the reversal of what could arguably be too harsh a penalty imposed for an offence. So far, so good, but it is tricky to get the right balance.

The Democrats believe that the Commissioner should have the power to discipline and control the force. There are circumstances where some alleged offences, misdemeanours and cases of misconduct would be difficult, if not impossible, to prove beyond reasonable doubt within the normal bounds of the criminal requirement. Therefore, there has been a move to accept that most alleged offences can be established on the balance of probabilities. This Bill introduces that concept into the context of an appeal even in respect of the termination of employment.

I have had extensive discussions with the Police Association and some discussions with the Police Commissioner, both having been good enough to share ideas with me on this matter. The Opposition has on file an amendment which deals with the requirement that, prior to the hearing of a matter, the Commissioner should signal the likelihood or otherwise of termination of employment—in other words 'the sack'—being a possible or likely penalty if the alleged offender was found guilty.

So that the Council understands the variation which I am considering, I refer to the amendment which is proposed by the Hon. Paul Holloway and which seeks to insert after section 39(2) the following paragraph:

> (2a) The Commissioner or person representing the Commissioner in proceedings before the tribunal must, at the commencement of the proceedings, indicate to the tribunal the punishment that the Commissioner considers would be appropriate if the tribunal finds the member guilty of the breach of discipline.

The end result of that amendment would be to change the criterion of guilt or innocence from the balance of probabilities to beyond a reasonable doubt where the Commissioner considers that an offence may possibly be punishable by termination of employment.

I am not persuaded that that is the best way in which to proceed. I have asked Parliamentary Counsel to draft an amendment which would still require the Commissioner or the person representing the Commissioner in proceedings before the tribunal to give an indication of the category of punishment. It is my aim through that amendment to have the category of punishment included in the Act so that there will be a guide for the tribunal as to the possible degree of severity of penalty that the sentencing officer (in this case the Commissioner, because the tribunal only finds guilt or innocence) might impose.

The argument in support of this amendment is that the tribunal is susceptible to variation (consciously or subconsciously) in the diligence with which it pursues the balance of probabilities if it believes the offence to be 'a hanging offence' compared with a trifling offence where the penalty may be relatively minor. So, the justification for it through this rather convoluted process and in an attempt to retain the authority of the Commissioner to determine the sentence, which I believe is appropriate, is that that should be able to be caught up by my amendment. The only obligation on the Commissioner will be to signal to the tribunal prior to the hearing in what category the alleged offence should fit.

That amendment should soon be on file for members to examine in detail. Nothing will please everyone totally. I hope that it provides a workable procedure which will allay the fears of the Police Association and serving police officers that their hearing will get a less than full and thorough assessment and that officers stand the risk of their career being terminated without a proper hearing at appeal.

My final remarks in relation to this Bill go back again to the significance of this whole major legislative reform of SA Police. We do not accept the frequently commented on observation that there are similarities or dissimilarities with the Public Service Act as an argument for or against certain amendments. According to the Government, the police should be embraced in the catch-all legislation that deals with the Public Service across the board.

SA Police is a distinctly different entity that provides a unique service to the community, and it is run close to military lines. I have had cause to ring the department in the past few days, and I have regularly and consistently been referred to as 'Sir'. I must say that is a wild exception from all other sections of the Public Service.

The Hon. Diana Laidlaw: Did you like it or not?

The Hon. IAN GILFILLAN: Well, no, it stunned me a bit. I would much prefer to be rather amiably referred to as 'Ian', which is the normal response I get when I track through any of the other departments that I have rung lately. I think they call me 'Ian' because they find it difficult to pronounce 'Gilfillan', which is not as commonly known as it used to be. However, that is an aside.

The Hon. Diana Laidlaw interjecting:

The Hon. IAN GILFILLAN: I like that sort of chummy thing, especially because I am a politician for the people. It has a good ring to it.

The Hon. Diana Laidlaw: But you are still not getting the service you want?

The Hon. IAN GILFILLAN: Yes, I am. I have no complaints about—

The Hon. G. Weatherill interjecting:

The Hon. IAN GILFILLAN: I reckon you would sing it pretty well, too, George. Mr Acting President, I am being diverted by some entertaining but irrelevant interjections. I conclude by re-emphasising the point that SA Police is a separate dedicated entity which should not lean on general public sector legislation and procedures in respect of its conduct. It is important that the Commissioner has a strong hand to play in running the force.

I believe that this measure and the way in which the other Bill has been amended will allow that ability of the Commissioner to be retained very significantly in SA Police and that it will also allow serving police officers to feel protected by an adequate and just system of appeal. I hope that, on balance, both these Bills will allow SA Police to go from strength to strength and to serve the people of South Australia admirably. I support the second reading.

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

ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL) BILL

Adjourned debate on second reading(resumed on motion).

(Continued from page 1231.)

The Hon. CAROLINE SCHAEFER: I wish to speak not because I consider myself an economist of note or an expert on electricity supply, but as an elector and a consumer. This is in my view the most important piece of legislation to come before this House in my term as a member and probably the most important since the Roxby Downs Bill. In the years to come, people will look back at this Bill as a historic piece of legislation. Our decisions will shape the future of South Australia. So, it is important for us to state our position.

I know I have looked at old *Hansards* to see who said what on the Roxby Downs Bill and I believe the passing or otherwise of this Bill is similarly important. It will determine the economic future of this State for the foreseeable future and, whether we like it or not, the state of our economy will determine the quality of life for most of our citizens. I recognise that many in the electorate are confused, concerned and hesitant. They hark back to the days when Sir Thomas Playford set up much of the electricity system that we have today—a system which, by and large, has served us well; a system which has returned a profit to the State.

So, why sell? Setting aside the very convincing arguments of exposure and risk after we join the national market, there is, for me, one main and compelling reason, that is, that we have no choice. If I use simple farm economics I will put it this way: if the farm is trading badly you start by cutting back on spending and selling the caravan. Then you sell off any surplus machinery but, if after you have done that, you are still only servicing the overdraft and not making any impression on the core debt, there is no choice but to sell off a block of land. In order to keep the farm, you have to reduce the core debt and sell, even if that block of land was returning a profit.

As I see it, that is where our State is now. We have been a fiscally responsible Government. We have sold the caravan—which was the State Bank. We have quit all the surplus plant, that is, other assets, and we have balanced the budget. We have even reduced the core debt by some $2 billion but we are still paying $2 million per day in interest. What could we do with the $700 million plus that we

could free up without any debt? Certainly, we would all have a wish list. My No.1 would be more money on our road system.

Certainly, the $700 million we pay in interest far exceeds the profit our electricity companies generate. Of course, the sale will not totally clear our debt. However, we will clear $150 million plus more a year than we do now and that is inclusive of the profit currently generated by ETSA and Optima. To take the farm analogy further, we all know that, if one does not take care of the core debt during the good times, it will remain like an albatross around our neck with the arrival of the next drought. With our largest traders, Japan and Korea, and with most of Asia in an economic drought, it is more vital than ever that we place ourselves into a sound financial position.

One of the things that continues to worry people outside the metropolitan area is whether they will be guaranteed supply and infrastructure under private ownership, and I believe that the Government has done all it can to set these requirements in concrete. Country customers will be protected by a range of legislative measures, including the establishment of an Independent Regulator, a system of licences, codes and service standards, and the establishment of the industry Ombudsman. Some of the functions of the Industry Regulator will be to regulate the prices charged to non-contestable customers and to regulate transmission network charges until 1 January 2003; to licence electricity suppliers and monitor and enforce compliance with licence conditions; to promote improvements in standards and conditions of service and supply; to liaise with the electricity ombudsman; to protect the interests of consumers with particular leaning to reliability, quality and safety of supply; and to develop codes of practice in conjunction with the consumer advisory committee. This Industry Regulator will be independent of Government and appointed for a fixed term of five years.

Licence codes and service standards will be more strictly regulated and probably of a higher standard than ever before. Performance codes in licences will contain minimum standards of service which must be at least equivalent to the actual level of service that ETSA has delivered over the last year. In addition, they must take into account relevant national benchmarks at the time. Other matters covered in the codes will include response times, disconnection policy, and a policy for dealing with hardship in meeting bills. There will be a legal obligation for distributors and retailers to comply with the codes, and a breach of these licence conditions would render a licensee liable to a maximum financial penalty of $250 000 or cancellation of licence. In addition to these precautions, there will also be the industry ombudsman, similar to those based in New South Wales and Victoria.

In addition to these precautions, there will also be the Industry Ombudsman, similar to those based in New South Wales and Victoria. Above all, consumers will be guaranteed the cross subsidy of $123 million per annum and no greater differential in pricing than 1.7 per cent anywhere in the State—but only as I understand it if the utilities are sold can that money be freed up. In other words, rural consumers have a better chance of consistent supply and costing after a sale than if we were to retain ETSA and Optima. But let us be honest: no-one can guarantee into the indefinite future. Future supply or infrastructure cannot be guaranteed by Government—any Government. How can any Government look people in the face and say, 'We'll supply when the State is broke'? Can a Government honestly say it will maintain at present levels and service the debt indefinitely? I think not.

Perhaps my experiences with electricity supply are somewhat different from those of most people in this place. I did not enjoy the luxury of a Government supplied 240 volt power until well after I was married. In fact, power did not come to the farms in our district until about 20 years ago.

The Hon. Ian Gilfillan: Did you have kerosene lamps?

The Hon. CAROLINE SCHAEFER: Yes, we did, actually. I reckon the kero fridges are the worst. Even then, we paid between $5 000 and $10 000—and that was 20 years ago—for the privilege of having stobie poles in our paddocks. I will always claim that the connection of 240 volt power is the greatest single incident to improve our standard of living in my lifetime. However, supply in outlying areas has never been consistent or reliable, and most of us have had the additional expense of buying portable generators as an insurance against outages, which often last for 24 hours or more. So, I do not think people should get too romantic about the wonders of our current supply. Nor can I see that a private supplier will necessarily be any less efficient than a Government supplier. We must sell ETSA and Optima or face horrendous increases in State Government charges.

That solution is not palatable to anyone, but the unemployed and the low wage earner would probably suffer most. We hear much from the ALP about our heartlessness and—the most dreadful of curses—our economic rationalism but how they perceive that disadvantaged people can be better off with $150 million less in Government coffers is beyond my comprehension. In fact, as I see it, the only real reason for the ALP's not supporting us is that it is cynically prepared to block sale on the premise that a hike in government prices would put it into power. Then it would sell, but by then at a reduced price. Privately many of those members will admit that ETSA and Optima should be sold; only one has had the courage to say it in public. I find it quite amazing that, while the New South Wales Government continues to argue for the sale of its electricity, Mike Rann refuses to listen—or is it, as I have said, that in spite of his rhetoric about consensus he is more interested in his own power than the generation of power for the State?

Much will be said in this debate about the move to national supply and open competition. When one looks at some of the tariff reductions in other States, for instance, a fall of 17.2 per cent in real terms in the past five years in Victoria and New South Wales, one can see just what competition has done for pricing, but for me the reality is that with just 1.5 million people South Australia simply cannot compete in that big market unless it becomes a much larger entity. In his speech today Mr Holloway argued that perhaps we have no need to move to a national grid, which defies both logic and legality. However, if someone could wave a magic wand and remove our legal obligation to join the grid, he would be condemning businesses in this State to paying much more per unit for power than their interstate competitors. What a quick way to shift our hard fought for manufacturing base away from us!

I do not propose to dwell on the implications of a national grid or the ACCC which we were locked into by previous Labor Federal governments and over which no State Government will have control. I am sure others will argue those statistics in here—and we have heard them many times in the Lower House and the press. Suffice to say that even if this State were not in any debt we could no longer afford to own our electricity generation and supply. We will hear many words over the next few days but the morals of this case are clear. We must not leave a debt created by our generation to

be serviced not only by our children for their working lives but also by their children. I can only hope and pray that those who can will have the courage and the moral fibre to support this Bill.

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

LOCAL GOVERNMENT (MISCELLANEOUS) AMENDMENT BILL

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

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): 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.

Consultation is well underway on proposals to completely replace the current Local Government Act. This Bill makes some amendments to the Local Government Act which are necessary for practical purposes, pending the revision of the entire Act.

Firstly, it puts in place some interim arrangements for dealing with any changes to Council boundaries which might be necessary to process in the period from 30 September 1998 until the commencement of a new Local Government Act.

Under section 22G of the current Act, Division 10 of Part 2 establishing the Local Government Boundary Reform Board and the procedures for structural reform proposals expire on 30 September 1998. This will bring to an end a period of intense structural reform in Local Government and it is not the intention to extend the life of the Board as presently constituted. The success of the voluntary structural reform process overseen by the Board is notable. The number of Councils in South Australia has decreased from 118 to 69 since the passage of the Local Government (Boundary Reform) Amendment Act in December 1995. The Government is particularly proud of the achievements of the Board and acknowledges the dedicated work of its members, deputies and staff.

The provisions for changing Council areas, which will ultimately replace the Board process, are currently the subject of consultation with Local Government and the wider community.

In the interim this Bill provides for the operation of a Boundary Adjustment Facilitation Panel, by redesignating the Board as a Panel which can be constituted if necessary, with half the members of the previous Board, streamlined administration and restricted powers. The functions of the Panel are limited to completing any remaining work associated with Board-formulated proposals and processing any voluntary proposals lodged by Councils.

Secondly, before these new arrangements are put in place, the Local Government Boundary Reform Board will be required to prepare a report on the extent to which the statutory objectives of the structural reform program—a significant reduction in the number of councils in the State, a significant reduction in the total costs of providing the services of local government authorities, and significant benefits for ratepayers—have been met, and further opportunities which may in its opinion exist for structural reform. The report is to be tabled in Parliament within 12 sitting days of its receipt by the Minister. It will provide a formal means to recognise the work done by the Board and Councils and record experience accumulated in dealing with structural reform proposals and their implementation, as well as ensuring public accountability for the period of the Board's operation. Importantly, it will effectively ensure accountability to this House.

Thirdly, at the request of the Local Government Superannuation Scheme it is intended to amend the current section 75 requirement that the investment of funds generated under the superannuation scheme must be carried out on behalf of the Local Government Superannuation Board by investment managers appointed by the Board, to allow the Board to hold some direct investments. The requirement to appoint investment managers even for long-term investments means that, in some cases, significant management fees are paid for little more than reports of quarterly returns.

The Bill amends section 75 to provide that the requirement does not apply to investments or classes of investment prescribed in the Scheme rules. The Board itself may amend the scheme rules by regulation and such regulations are subject to review and disallowance by Parliament.

The fourth matter provided for in the Bill relates to European wasps. These introduced pests have become a significant public nuisance with impacts on the tourism and food industries and our South Australian lifestyle. Reports of European wasp impacts on the horticultural industry are being investigated and its environmental impact is yet to be researched. Despite the history of cooperation between State and Local Government on wasp control, it has proven impossible to eliminate this dangerous pest with current measures. An order making power for Councils is sought now in order to have a full range of control mechanisms in place before next summer.

The order making power will allow Councils to order the owner or occupier of property to take action to destroy any European wasp nest located on that property. If the owner or occupier does not comply, Councils may have the nest destroyed and recover the cost of doing so from the owner or occupier. Capacity has been included to limit the level of cost recovery by regulation.

The object is to ensure that Councils have clear power to inspect for wasp nests and to compel their destruction should an owner or occupier refuse to cooperate with whatever arrangements are in place for removal of these nests. It is proposed to delay commencement of this section until an overall strategy for European wasp control, involving negotiations with Local Government, has been finalised.

It must be emphasised that the Government intends to handle this problem in an equal partnership with the Local Government sector and that neither level of Government has a desire to inflict unnecessary costs on individuals. However, in the event that this problem gets beyond the capacity of the Government sector, that same sector has a responsibility to ensure that the community constitute an appropriate part of the remedy.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause sets out a scheme under which the provisions of the Bill will come into operation.

Clause 3: Amendment of s. 5—Interpretation

This clause strikes out the definition of the Local Government Boundary Reform Board and provides for a new definition relating to the Boundary Adjustment Facilitation Panel.

Clauses 4, 5, 6

These clauses are consequential on the reconstitution of the Local Government Boundary Reform Board as the Boundary Adjustment Facilitation Panel.

Clause 7: Amendment of s. 16—The Panel

The Local Government Boundary Reform Board is to become the Boundary Adjustment Facilitation Panel.

Clause 8: Substitution of 16A

The Panel will be constituted of two members appointed by the Minister and two members selected by the Minister from a panel of persons nominated by the Local Government Association of South Australia.

Clause 9: Amendment of s. 16B—Conditions of membership

A member of the Panel will be appointed on terms and conditions determined by the Minister.

Clause 10: Substitution of s. 16C

A member of the Panel will be entitled to fees and expenses determined by the Minister.

Clauses 11, 12, 13, 14

These clauses are consequential on the reconstitution of the Board as the Boundary Adjustment Facilitation Panel.

Clause 15: Amendment of s. 16H—Staffing arrangements

The Minister will determine the staffing arrangements for the Panel.

Clause 16: Amendment of heading

This clause is consequential on the reconstitution of the Board as the Boundary Adjustment Facilitation Panel.

Clause 17: Substitution of s. 17

The functions of the Panel will be to consider proposals for proclamations submitted by councils under Part 2 of the Act, and to complete any work associated with any proposal formulated under section 21 of the Act (subject to the operation of subsection (17) of that section).

Clause 18: Repeal of s. 17A

The objectives set out in section 17A of the Act are no longer relevant in the context of this measure.

Clauses 19, 20, 21, 22, 23, 24, 25, 26

These clauses are consequential on the reconstitution of the Local Government Boundary Reform Board as the Boundary Adjustment Facilitation Panel.

Clause 27: Repeal of s. 22A

Section 22A of the Act is no longer required.

Clauses 28, 29, 30, 31

These clauses are consequential on the reconstitution of the Local Government Boundary Reform Board as the Boundary Adjustment Facilitation Panel.

Clause 32: Substitution of s. 22G

The Local Government Boundary Reform Board is to be required to prepare a report on the extent to which the objectives that were included in section 17A of the Act have been achieved under the Act, and on further or future opportunities that in the opinion of the Board exist for structural reform in the local government in the State.

Clause 33: Amendment of s. 29—Error or deficiency in an address, recommendation, notice or proclamation

This clause is consequential.

Clause 34: Amendment of s. 75—Investment of funds

The requirement to appoint investment managers to invest funds of the Local Government Superannuation Board is not to apply to investments, or classes of investments, prescribed by the rules of the superannuation scheme under this amendment.

Clause 35: Insertion of s. 666

This clause will provide for a new section that will give councils the power to require owners or occupiers of land to take action to destroy European wasp nests. There will be a right of appeal against the imposition of a requirement. If a person fails to comply with a requirement, the council will itself be able to take action and recover its reasonable costs and expenses (subject to any limits prescribed by the regulations).

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

POLICE BILL

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

The Legislative Council agreed to a conference, to be held in the Legislative Council Plaza Room at 11.30 a.m. on Tuesday 11 August, at which it would be represented by the Hons I. Gilfillan, K.T. Griffin, P. Holloway, A. Redford and R. Roberts.

ELECTRICITY (MISCELLANEOUS) AMENDMENT BILL (No. 2)

Second reading.

The Hon. R.I. LUCAS (Treasurer): 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.

Honourable members will already be aware, from my Second Reading Speech in relation to the Electricity Corporations (Restructuring and Disposal) Bill 1998, of the Government's proposals to restructure and privatise South Australia's electricity supply industry, and the compelling reasons for those proposals.

As I stated, the objective of the reforms that will be implemented by the Government is to achieve:

- an efficient, competitive electricity supply industry in South Australia, within the context of the national electricity market and competition policy;
- sustainable and competitive electricity prices and a choice of supply for consumers;
- an appropriate regulatory environment to encourage competitive outcomes and protection for consumers;
- long term security of supply;
- repayment of budget supported debt;
- reduced risks to taxpayers; and
- acceptable access to supply and equity for regional South Australia.

The Electricity (Miscellaneous) Amendment Bill is part of a package of legislation that is being introduced into this House. This package of legislation also includes the Independent Industry Regulator Bill, the Sustainable Energy Bill and the Electricity Corporations (Restructuring and Disposal) Bill. The last of these Bills has already been introduced but I have foreshadowed some amendments to it for the purpose of further facilitating the restructuring and sale of the State's electricity businesses.

The Electricity (Miscellaneous) Amendment Bill amends the Electricity Act 1996 in a number of respects and I will outline in general terms the important changes that will be effected by this Bill.

Licensing

One of the Bills in the package to which I have referred, the Independent Industry Regulator Bill, will establish the South Australian Independent Industry Regulator. This office is being established by way of separate legislation so as to enable the Independent Industry Regulator to be given responsibility not just for the electricity supply industry but also for such other industries as Parliament may consider appropriate in the future.

One of the principal functions of the Independent Industry Regulator will be to license participants in the electricity supply industry and to monitor and enforce compliance with the electricity supply industry licensing regime.

The Bill sets out a number of conditions which must be included in licences issued to participants in the electricity supply industry. Some of these conditions are intended to protect the interests of consumers by establishing service standards that must be met by licensees. These service standards will be included in codes and it will be a condition of each licence that the licensee comply with these codes. An important function of the Independent Industry Regulator is to make, monitor the operation of, and review from time to time, codes relating to the conduct or operations of the electricity supply industry. Moreover, the Independent Industry Regulator is authorised to make codes relating to the conduct or operations of the electricity supply industry and licensed entities operating in it and must keep the contents and operation of such codes under review with a view to ensuring their continued relevance and effectiveness.

In particular the Independent Industry Regulator must make a code which imposes minimum standards of service for customers that are at least equivalent to the actual levels of service for such customers prevailing during the past year and take into account relevant national benchmarks developed from time to time. Each distribution and retail licence will be required to include a condition requiring the licensee to comply with such code provisions and to monitor and report on levels of compliance with these minimum standards. Each distribution and retail licence must also include a condition that requires the licensee to comply with code provisions limiting the grounds on which the supply of electricity to customers may be disconnected or discontinued and prescribing the process to be followed before the supply of electricity is disconnected or discontinued. Moreover, a distribution licence must include a condition that requires the licensee to supply electricity to customers of a retailer whose licence has been suspended or cancelled or who has ceased to retail electricity. This condition (which is to operate until 1 January 2005) requires the licensee to supply electricity to such customers for a maximum period of three months.

Other conditions that must be included in a licence include a condition requiring the licensee to have its operations under the licence audited and to report the results of the audit to the Independent Industry Regulator and a condition requiring the licensee to provide such information to the Independent Industry Regulator as the Regulator may from time to time require.

In addition, each licence must contain a condition requiring the licensee to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by electricity entities.

It is an offence for a licensee to contravene a condition of its licence and such a contravention will render the licensee liable to a maximum penalty of $250 000 and to the possible suspension or cancellation of its licence.

Each licensee will pay an annual licence fee. The annual licence fee payable by a licensee will be fixed by the Minister at such an amount as the Minister considers appropriate as a reasonable contribution towards "administrative costs" having regard to the nature and scale of the operations that are authorised by the licence. Such costs include the costs of the Independent Industry Regulator

in administering the Electricity Act and in administering the Independent Industry Regulator Act (to the extent those costs relate to the electricity supply industry). They also include the costs of the Technical Regulator and the Electricity Supply Industry Planning Council. These fees will be paid into the Consolidated Account.

The Bill also amends the Electricity Act to provide for certain parties who are dissatisfied with a decision of the Independent Industry Regulator in relation to licensing, or who are dissatisfied with a decision of the Technical Regulator, to have that decision reviewed initially by the relevant Regulator and subsequently by the District Court.

Price Regulation

The Independent Industry Regulator will be responsible for regulating prices in the electricity supply industry.

Under the Bill the Independent Industry Regulator is empowered to regulate the prices at which electricity is sold to non-contestable customers as well as the price for network (ie. transmission and distribution) services. Of course, as from 1 January 2003 there will be no non-contestable customers and the regulation of transmission charges will become the responsibility of the Australian Competition and Consumer Commission. However, the Independent Industry Regulator will continue to be responsible for regulating distribution charges.

In performing its price-regulation functions the Independent Industry Regulator is required to have regard to a number of matters set out in the Independent Industry Regulator Bill, including the need to promote economic efficiency, the need to ensure consumers benefit from competition and efficiency and the need to protect the interests of consumers with respect to reliability, quality, and safety of services and supply. In addition, the Electricity (Miscellaneous) Amendment Bill requires the Independent Industry Regulator, in regulating prices, to have regard to the principle that, regardless of their location, "on-grid" small customers should pay for network services at the same rate. For these purposes, a small customer is a customer with electricity consumption levels in respect of a single site of less than 160 MWh per year – that is, a customer who is in the last tranche of consumers to become contestable. This is one of a number of measures that the Government has introduced to ensure that, as far as possible, residents of country areas will not be disadvantaged. Indeed, this measure, combined with the decision to keep a single distribution company, means that the current cross-subsidy from the city to the country (which amounts to over $120 million per annum) can be maintained.

For the short term, however, the Government intends to issue an electricity policy order which will regulate in detail network prices and the electricity prices payable by non-contestable customers. This order will be issued prior to the privatisation of the first of the State's electricity businesses. Under this order, initial electricity pricing will be regulated so that prices cannot rise by more than the CPI and the Independent Industry Regulator will set maximum prices based on a "regulated cap" mechanism that provides incentives for the transmission and distribution network operators to reduce the real cost of electricity delivered over time. To ensure consumer protection, this electricity pricing order cannot be varied or revoked and will be binding on the Independent Industry Regulator.

The sanctions for breaching either the electricity pricing order or a pricing determination of the Independent Industry Regulator are severe. They include a maximum financial penalty of $250 000, possible suspension or cancellation of the offending licensee's licence and confiscation of any profits that result from the contravention.

Electricity Industry Ombudsman

As I have said, the Government is strongly committed to consumer protection. As a result, each transmission, distribution and retail licence will be required to include a condition that requires the licensee to participate in an electricity supply industry ombudsman scheme. While this scheme will be established and operated by industry, its terms and conditions must be approved by the Independent Industry Regulator. The Government expects that the ombudsman will provide a strong and independent voice for customers and that it will oversee the resolution of electricity consumer complaints in relation to, for example, the provision of electricity services, the administration of credit payment services and the disconnection of electricity supply.

The Bill requires the Independent Industry Regulator to liaise with the electricity supply industry ombudsman in performing its licensing functions.

Consumer Advisory Committee

The Independent Industry Regulator is required to establish an advisory committee comprising consumer representatives to provide advice to the Regulator in relation to the performance of the Regulator's licensing functions, as well as on any other matter relating to the electricity supply industry.

Cross-ownership restrictions

As Members will be aware, the Government's proposed restructuring of the electricity supply industry will create three new power generation companies, a stapled distribution and retail business, a separate transmission business and a new gas trading company (the South Australian Gas Trader). In order to prevent any re-aggregation of the industry following its privatisation, the Bill introduces a number of restrictions on cross-ownership. These restrictions will expire on 31 December 2002, after which any re-aggregation in the electricity supply industry will be subject to general Commonwealth competition laws (including primarily the Trade Practices Act). Generally speaking, the cross-ownership restrictions included in this Bill will prevent a purchaser of one of the State's electricity businesses (or an associate of such a purchaser) from buying another of the State's electricity businesses, except that a purchaser of the transmission business or of the distribution/retailing business will be able to acquire the Gas Trader (and vice versa).

If these cross-ownership restrictions are breached, the Independent Industry Regulator will be empowered to make one or more of a number of kinds of orders. These orders include an order requiring the disposal of shares, an order suspending voting rights attaching to shares, an order requiring the termination of a partnership, joint venture or other agreement, arrangement or understanding, and an order requiring an electricity entity or an associate to cease carrying on particular operations or a particular business. A failure to comply with such an order will be an offence attracting a monetary penalty of up to $250 000 and (where the offender is a licensed electricity entity) may result in the suspension or cancellation of that entity's licence. Moreover, a condition of each licence issued under the Electricity Act will be that the constitution of the licensee contains provisions for the divestiture of shares for the purposes of rectifying a breach of these restrictions, and that the licensee notifies the Independent Industry Regulator about any matters that are relevant to the enforcement of these restrictions.

Electricity Supply Industry Planning Council

The transition to the National Electricity Market will mean that planning of interconnection augmentation will be transferred to National Electricity Market Management Company Ltd (NEMMCO). However, the National Electricity Code leaves responsibility for intrastate transmission and distribution system planning and augmentation with the State. As a result, the Bill establishes a body corporate called the Electricity Supply Industry Planning Council. This Council will have functions which include developing overall electricity load forecasts, reviewing and reporting on the performance of the South Australian power system, advising the Government on matters relating to the future capacity and reliability of the South Australian power system, preparing and reviewing proposals for augmenting the South Australian power system, and reviewing, conducting and controlling tendering processes for augmentations of the South Australian transmission network.

The Council will be governed by a board of directors comprising five members appointed by the Governor after consultation with generation, transmission and distribution licence holders.

The members of the board must be persons who have appropriate qualifications or expertise in relation to power system design, development and operation, transmission and distribution network planning, electricity markets and financial management. These members will each be appointed for a term of up to three years but will be eligible for re-appointment. The establishment of this Council will ensure that coordinated planning is maintained within the new electricity supply industry.

Access for Telecommunications

The Bill will enable easements for electricity purposes to be used for telecommunications purposes so that the economic potential of the State's electricity infrastructure can be maximised. In addition, it will be a condition of each transmission and distribution licence that the licensee will comply with code provisions made by the Independent Industry Regulator which establish a scheme for third parties to have access to the licensee's network for telecommunications purposes (subject to requirements as to technical feasibility and preservation of visual amenity). These code provisions must also provide for the arbitration of disputes between the licensee and third

parties seeking such access, with the arbitration to be undertaken by a person appointed by the Independent Industry Regulator.

Undergrounding

The Bill provides for the continuation of programs to underground powerlines. It will be a condition of every transmission and distribution licence that the licensee must carry out work to locate powerlines underground in accordance with an undergrounding program. For this purpose the Minister will be empowered to prepare periodic programs for works to be carried out for the undergrounding of powerlines forming part of a transmission or distribution network. In preparing an undergrounding program the Minister must consult with, and seek proposals and submissions from, councils, electricity entities and such other persons as the Minister considers appropriate.

Technical Regulator

The existing functions of the Technical Regulator will be transferred to the Independent Industry Regulator in so far as they relate to licensing. However, the Technical Regulator will continue to be responsible for monitoring and regulating safety and technical standards both in the electricity supply industry and with respect to electrical installations. The Technical Regulator will also retain responsibility for vegetation clearance schemes.

Environment

The Government has indicated that it will establish a Sustainable Energy Authority and has introduced a Bill for that purpose. However, as further evidence of the Government's commitment to the environment, the Electricity (Miscellaneous) Amendment Bill requires each distribution licence to contain a condition that requires the licensee, before it makes any significant expansion of its distribution network, to investigate whether it would be cost effective to avoid or postpone such expansion by implementing measures for reducing demand for electricity from the network. A distribution licence holder will also be required to prepare and publish reports relating to such demand management investigations and measures.

In addition, each retail licence will be required to contain a condition that requires the licensee to investigate strategies for achieving a reduction of greenhouse gas emissions and to prepare and publish annual reports on the implementation of such strategies.

System Control

Under the Bill the entity responsible for system control will be required to hold a system control licence. The system controller will be given a broad power to issue such directions to electricity entities as the system controller considers necessary for reasons of public safety or the security of the power system. It will be a condition of each licence that the licensee complies with directions of the system controller.

This Bill, together with the Independent Industry Regulator Bill, the Sustainable Energy Bill and the Electricity Corporations (Restructuring and Disposal) Bill, implement the Government's proposed reforms to the South Australian electricity supply industry, together with the Government's promises to South Australians in relation to the industry.

I commend the legislation to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure is to be brought into operation by proclamation.

Clause 3: Amendment of long title

References to consequential amendments already made in the principal Act are removed. The amending provisions are exhausted and are being replaced with a new Schedule.

Clause 4: Amendment of s. 4—Interpretation

References will appear in amendments to section 17 of the principal Act (Consideration of applications for licences) and in proposed new section 21 (Licence conditions) to the 'cross-ownership rules'. These are defined as the rules set out in clause 2 of the proposed new Schedule 1.

The definition of 'customer' is amended to narrow the meaning to a person who has a supply of electricity available for consumption by that person but at the same time to widen the meaning to include persons of a class declared by regulation to be customers. This will allow the scope of 'retailing' to be fixed with more certainty.

'Telecommunications' is defined for the purposes of provisions contained in proposed new sections 23 and 48A dealing with the use of electricity infrastructure for telecommunications purposes.

Clause 5: Amendment of s. 5—Crown bound

Section 5 is amended to remove a reference to electricity corporations which is unnecessary and will become superfluous in view of the other legislation before the Parliament.

Clause 6: Substitution of s. 6—Other statutory requirements not affected

The substituted provision makes it clear that the principal Act is in addition to and does not derogate from the provisions of the *National Electricity (South Australia) Act 1996* as well as other Acts.

Clause 7: Insertion of Part 2 Divisions 1 and 2

New Divisions are inserted dealing with the Industry Regulator and the Electricity Supply Industry Planning Council.

DIVISION 1—INDUSTRY REGULATOR

Proposed new section 6A—Functions and powers of Industry Regulator

This new provision spells out that the proposed South Australian Independent Industry Regulator (to be established under an *Independent Industry Regulator Act*) will have licensing, price regulation and other functions and powers conferred by the *Electricity Act* or regulations under the *Electricity Act.*

The Industry Regulator is required by the provision to liaise with the proposed electricity supply industry ombudsman to be appointed under a scheme required by licence conditions.

The provision authorises regulations to be made to add to or vary the Industry Regulator's functions and powers as required for the purposes of the *National Electricity (South Australia) Law* and the National Electricity Code.

In performing functions, the Industry Regulator is to have regard to the provisions of the National Electricity Code and the need to avoid duplication of, or inconsistency with, regulatory requirements under that Code.

DIVISION 2—ELECTRICITY SUPPLY INDUSTRY PLANNING COUNCIL

Proposed new section 6B—Interpretation

Definitions of certain terms are provided for the purposes of the Division.

Proposed new section 6C—Establishment of Electricity Supply Industry Planning Council

The clause establishes the Planning Council as a body corporate.

Proposed new section 6D—Application of Public Corporations Act 1993

The *Public Corporations Act 1993* is to apply to the Planning Council subject to any exceptions prescribed by regulation.

Proposed new section 6E—Functions of Electricity Supply Industry Planning Council

The functions of the Planning Council will be:

- to develop overall electricity load forecasts in con-sultation with participants in the electricity supply industry and report the forecasts to the Minister and the Industry Regulator
- to review and report to the Minister and the Industry Regulator on the performance of the South Australian power system
- to advise the Minister and the Industry Regulator on the performance of the South Australian power system
- to prepare or review proposals for extending or augmenting the South Australian power system and to make reports and recommendations to the Minister and the Industry Regulator in relation to such proposals
- to review, conduct or control tendering processes for extensions or augmentations of transmission networks in South Australia in such manner as is prescribed by regulation
- to advise the Minister and the Industry Regulator, either on its own initiative or at the request of the Minister or the Industry Regulator, on other electricity supply industry and market policy matters
- to submit to the Minister and the Industry Regulator, and publish, an annual review of the matters referred to above
- to perform any other function prescribed by regulation or assigned by or under any other Act.

Proposed new section 6F—Common seal and execution of documents

This provision regulates the use of the Planning Council's common seal and the execution of documents by the Council.

Proposed new section 6G—Establishment of board

The Planning Council is to have a five person board with appropriate qualifications and expertise in—

- power system design, development and operation
- transmission and distribution network planning
- electricity markets
- financial measurement.

Proposed new section 6H—Conditions of membership

Directors are to have terms of appointment of not more than three years. The provision deals with removal from office and vacancies in directors' offices.

Proposed new section 6I—Vacancies or defects in appointment of directors

An act of the board will not be invalid because of a vacancy or a defect in the appointment of a director.

Proposed new section 6J—Remuneration

A director is to be entitled to remuneration fixed by the Governor and paid from the Council's funds.

Proposed new section 6K—Board proceedings

This provision deals with the procedures to be followed by the board of the Planning Council.

Proposed new section 6L—Staff of Planning Council

The Minister may appoint a chief executive of the Council. The Council may appoint further staff.

Proposed new section 6M—Consultants

Provision is made for consultants to be engaged by the Planning Council.

Clause 8: Substitution of heading to Part 2 Division 1

The heading to the Division dealing with the Technical Regulator is altered to renumber the Division as Division 3.

Clause 9: Amendment of s. 7—Technical Regulator

The Technical Regulator will in future be appointed by the Minister rather than the Governor.

Clause 10: Substitution of s. 8—Functions of Technical Regulator

The Technical Regulator's functions are narrowed in view of the role of the proposed Industry Regulator in relation to licensing and service standards and the role of the proposed Planning Council.

Clause 11: Amendment of s. 10—Technical Regulator's power to require information

Clause 12: Amendment of s. 11—Obligation to preserve confidentiality

These sections are amended in consequence of narrowing of the Technical Regulator's role. The maximum penalty for failing to provide information as required by the Technical Regulator is increased to $20 000 as part of a general raising of penalty levels under the principal Act.

Clause 13: Repeal of ss. 12 and 13

The provisions for executive and advisory committees for the Technical Regulator are replaced by a proposed new general provision for advisory committees for the Minister, the Industry Regulator or the Technical Regulator (see proposed new section 14A).

Clause 14: Amendment of s. 14—Annual report

The clause removes the requirement for the Technical Regulator to report on undergrounding work. This is no longer required in view of the narrowing of the range of functions to be performed by the Technical Regulator.

Clause 15: Substitution of Part 2 Division 2 (ss. 14A to 14D)

Division 2 of Part 2 of the principal Act (comprising sections 14A to 14D) dealing with the Pricing Regulator is replaced with a Division 4 providing for advisory committees.

DIVISION 4—ADVISORY COMMITTEES

Proposed new section 14A—Consumer advisory committee

The Industry Regulator is required to establish an advisory committee comprising representatives of consumers—

- to provide advice to the Industry Regulator in relation to the performance of the Industry Regulator's licensing functions under Part 3 of the measure; and
- to provide advice to the Industry Regulator, either on its own initiative or at the request of the Industry Regulator, on any other matter relating to the electricity supply industry.

Proposed new section 14B—Other advisory committees

The Minister, the Industry Regulator or the Technical Regulator may establish other advisory committees to provide advice on specified aspects of the administration of the Act.

Clause 16: Insertion of Part 3 Division A1

DIVISION A1—DECLARATION AS REGULATED INDUSTRY

Proposed new section 14C—Declaration as regulated industry

The proposed new section declares the electricity supply industry to be a regulated industry for the purposes of the *Independent Industry Regulator Act*. The provisions contained in that measure relating to price regulation, codes and rules and other matters are all linked to 'regulated industries' which are required to be declared as such by the Acts dealing with those industries or by regulation.

Clause 17: Amendment of s. 15—Requirement for licence

System control is added as an operation in the electricity supply industry for which a licence will be required. The maximum penalty for not having a licence as required is increased to $250 000. A provision is added making it clear that NEMMCO (the National Electricity Market Management Company under the *National Electricity Law*) is not required to be licensed because of its operations for national market purposes.

Clause 18: Amendment of s. 16—Application for licence

Amendments are made consequential to the replacement of the Technical Regulator by the Industry Regulator for licensing functions.

Clause 19: Amendment of s. 17—Consideration of application

The criteria (now to be considered by the Industry Regulator) for the issue of a licence are adjusted—

- to make it a requirement (subject to alternatives to be prescribed by regulation) that a licence applicant be a body corporate incorporated in South Australia
- to require that the issue of a licence will not result in a breach of the cross-ownership rules set out in Schedule 1
- to prevent the same person holding both a distribution network licence and a retailing licence
- to require that a system controller be capable of adequately exercising system control functions in order to qualify for a system control licence.

The criteria to be applied by the Industry Regulator are in addition to the factors required to be taken into account by the Industry Regulator under Part 2 of the *Independent Industry Regulator Act*.

Clause 20: Insertion of s. 17A—Licences may be held jointly

Proposed new section 17A makes it clear that licences may be held jointly and, if so, the joint licensees will be jointly and severally liable to meet statutory requirements.

Clause 21: Substitution of s. 19—Term of licence

The proposed new section allows licences to be issued for an indefinite period or for a fixed term.

Clause 22: Amendment of s. 20—Licence fees and returns

The licence fee provisions are amended to enable licence fees to cover the costs of all aspects of regulation of the electricity supply industry, including the costs of the Planning Council proposed under Part 2.

Clause 23: Substitution of ss. 21 to 24

Proposed new section 21—Licence conditions

Every licence is to be made subject to the conditions determined by the Industry Regulator—

- requiring compliance with applicable codes or rules made under the *Independent Industry Regulator Act* as in force from time to time
- requiring compliance with specified technical or safety requirements or standards
- relating to the electricity entity's financial or other capacity to continue operations under the licence
- requiring the electricity entity to maintain specified accounting records and to prepare accounts according to specified principles
- specifying methods or principles to be applied by the electricity entity in determining prices or charges
- requiring the electricity entity to notify the Industry Regulator about changes to officers, and if applicable, major shareholders of the entity
- requiring the electricity entity to comply with the cross-ownership rules
- requiring the constitution of the electricity entity to contain provisions for the divestiture of shares for the purposes of rectifying a breach of the cross-ownership rules
- requiring the electricity entity to notify the Industry Regulator about any matters relevant to the enforcement of the cross-ownership rules
- requiring the electricity entity to have all or part of the operations authorised by the licence audited and to report the results of the audit to the Industry Regulator
- requiring the electricity entity to provide, in the manner and form determined by the Industry Regulator, such other information as the Industry Regulator may from time to time require
- requiring the electricity entity to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the

performance of community service obligations by electricity entities.

The Industry Regulator must, on the issue of a licence, make the licence subject to further conditions that the Industry Regulator is required by regulation to impose on the issue of such a licence.

The Industry Regulator may, on the issue of a licence, impose further conditions considered appropriate by the Industry Regulator.

Proposed new section 22—Licences authorising generation of electricity

Further special conditions are to be imposed on a generation licence—

- requiring compliance with directions of the system controller
- requiring the business of the generation of electricity authorised by the licence to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions.

Proposed new section 23—Licences authorising operation of transmission or distribution network

Further special conditions are to be imposed on a transmission or distribution network licence—

- requiring compliance with directions of the system controller
- requiring the electricity entity to comply with specified provisions for or relating to the granting to other electricity entities of access (on non-discriminatory terms) to the entity's transmission or distribution network for the transmission or distribution of electricity by the other entities
- requiring the electricity entity to comply with specified provisions for or relating to the granting to all electricity entities and customers of a class specified in the condition access (on non-discriminatory terms) to the entity's transmission or distribution network to obtain electricity from the network
- requiring the electricity entity to inform persons seeking or in receipt of network services of the terms on which the services are provided (including the charges for the services) and of any changes in those terms
- requiring the electricity entity to confer rights on other electricity entities, as far as technically feasible and on fair commercial terms, to use the entity's transmission or distribution network for the support or use of electricity infrastructure of the other entities
- requiring the electricity entity to carry out work to locate powerlines underground in accordance with a program established under Part 5A
- requiring the electricity entity to participate in an electricity supply industry ombudsman scheme the terms and conditions of which are approved by the Industry Regulator
- requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act*) establishing a scheme for other bodies to have access to the entity's transmission or distribution network for telecommunications purposes (subject to requirements as to technical feasibility and preservation of visual amenity), and for the arbitration of disputes between the entity and such other bodies in relation to such access by a person other than the Industry Regulator appointed by the Industry Regulator.

In addition, in the case of a transmission network licence, a further condition is to be imposed requiring the business of the operation of the transmission network authorised by the licence to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions.

In addition, in the case of a distribution network licence, further conditions are to be imposed—

- requiring the business of the operation of the distribution network authorised by the licence to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions
- requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act*) imposing minimum standards of service for customers that are at least equivalent to the actual levels of service for such customers prevailing during the year prior to the commencement of this section and take into account relevant national benchmarks developed from time to time, and requiring the entity to monitor and report on levels of compliance with those minimum standards
- requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act*) limiting the grounds on which the supply of electricity to customers may be disconnected and prescribing the process to be followed before the supply of electricity is disconnected
- requiring the electricity entity to establish customer consultation processes of a specified kind
- requiring the electricity entity—
  - to investigate, before it makes any significant expansion of the distribution network or the capacity of the distribution network, whether it would be cost effective to avoid or postpone such expansion by implementing measures for the reduction of demand for electricity from the network
  - to prepare and publish reports relating to such demand management investigations and measures
- requiring the electricity entity to sell and supply electricity (on terms and conditions approved by the Industry Regulator) to customers of another electricity entity whose licence to carry on retailing of electricity is suspended or cancelled or whose right to acquire electricity from the market for wholesale trading in electricity is suspended or terminated or who has ceased to retail electricity in the State (a retailer of last resort requirement).

A retailer of last resort requirement operates only until 1 January 2005.

The obligation to sell and supply electricity to a customer imposed by a retailer of last resort requirement continues only until the end of three months from the event giving rise to the obligation or until the customer advises the electricity entity that the sale and supply is no longer required, whichever first occurs.

A licence that is subject to a retailer of last resort requirement is to be taken to authorise the sale and supply of electricity in accordance with the requirement.

Proposed new section 24—Licences authorising retailing

A retailing licence will, if the Minister so determines, confer an exclusive right to sell and supply electricity to non-contestable customers in a specified area.

The Industry Regulator is to make a retailing licence subject to further special conditions—

- requiring the business of the retailing of electricity authorised by the licence to be kept separate from any other business of the electricity entity or any other person in the manner and to the extent specified in the conditions
- requiring or relating to standard contractual terms and conditions to apply to the sale and supply of electricity to non-contestable customers or customers of a prescribed class
- requiring the electricity entity to establish customer consultation processes of a specified kind
- requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act*) imposing minimum standards of service for customers that are at least equivalent to the actual levels of service for such customers prevailing during the year prior to the commencement of this section and take into account relevant national benchmarks developed from time to time, and requiring the entity to monitor and report on levels of compliance with those minimum standards
- requiring the electricity entity to comply with code provisions as in force from time to time (which the Industry Regulator must make under the *Independent Industry Regulator Act*) limiting the grounds on which the supply of electricity to customers may be discontinued or disconnected and prescribing the process to be followed before the supply of electricity is discontinued or disconnected
- requiring a specified process to be followed to resolve disputes between the electricity entity and customers as to the sale and supply of electricity
- requiring the electricity entity to participate in an electricity supply industry ombudsman scheme the terms and conditions of which are approved by the Industry Regulator
- requiring the electricity entity—
  - to investigate strategies for achieving a reduction of greenhouse gas emissions to such targets as may be set by the Environment Protection Authority from time to time

or such levels as may be binding on the entity from time to time, including strategies for promoting the efficient use of electricity and the sale, as far as is commercially and technically feasible, of electricity produced through cogeneration or from sustainable sources

- to prepare and publish annual reports on the implementation of such strategies.

Before issuing a licence conferring an exclusive right to sell and supply electricity to non-contestable customers within a specified area, agreeing to the transfer of such a licence or determining or varying conditions of such a licence, the Industry Regulator is to consult with and have regard to the advice of the Commissioner for Consumer Affairs and the consumer advisory committee established under Part 2.

Proposed new section 24A—Licences authorising system control

A system control licence is to be made subject to special conditions requiring the separation of system control business from any other business in the manner and to the extent specified in the conditions.

Proposed new section 24B—Licence conditions and National Electricity Code

The Industry Regulator is not to impose a condition (including a condition that would otherwise be required under a preceding provision) if satisfied that the condition would duplicate or be inconsistent with regulatory requirements under the National Electricity Code.

Clause 24: Amendment of s. 25—Offence to contravene licence conditions

The maximum penalty for contravening a licence condition is increased to $250 000.

Clause 25: Repeal of s. 26

The matter of notice of licensing decisions is now to be dealt with in a more general way (see proposed new section 28B) and section 26 is accordingly repealed.

Clause 26: Amendment of s. 27—Variation of licence

The amendment makes it clear that a licence variation may not involve removal of a condition that the Industry Regulator is required to impose.

Clause 27: Substitution of s. 28

Proposed new section 28—Transfer of licence

The new provision makes it clear that the same procedures and rules are to apply to applications for the Industry Regulator's agreement to the transfer of a licence as apply to applications for the issue of a licence.

Proposed new section 28A—Consultation with consumer bodies

The Industry Regulator may consult with the Commissioner for Consumer Affairs and the consumer advisory committee established under Part 2 in relation to the issue, transfer or variation of a licence.

Proposed new section 28B—Notice of licence decisions

General provision is made for notification by the Industry Regulator of licensing decisions.

Clause 28: Amendment of s. 29—Surrender of licence

Clause 29: Amendment of s. 30—Register of licences

These clauses convert references to the Technical Regulator to references to the Industry Regulator.

Clause 30: Repeal of s. 31

Section 31 providing for regulations relating to a system controller and the appointment or establishment of a system controller is repealed. The system controller is now to be licensed under Part 3 Division 1.

Clause 31: Amendment of s. 32—Functions of system controller

The power to extend the system controller's functions by regulation is removed.

Clause 32: Amendment of s. 33—Power of direction

The amendment spells out more precisely the powers of the system controller. A new provision is added to deal with situations where directions of the system controller are not observed. A provision is made for the recovery of costs and expenses incurred in taking action that should have been taken in compliance with a direction of the system controller.

Clause 33: Insertion of ss. 35A and 35B

Proposed new section 35A—Immunity of system controller

The proposed new section makes the system controller and the system controller's assistants immune from liability for acts or omissions in good faith in the exercise or discharge, or purported exercise or discharge, of functions or powers under the Act.

Proposed new 35B—Variation of functions and powers of system controller in view of Code

Power is conferred for regulations to be made to narrow or vary the functions or powers of the system controller by regulation as necessary in view of the *National Electricity (South Australia) Law* and the National Electricity Code.

Clause 34: Substitution of Part 3 Division 2A

DIVISION 2A—PRICE REGULATION

Proposed new section 35C—Price regulation by determination of Industry Regulator

The proposed new section makes provision for pricing determinations by the Industry Regulator. This provision should be read in conjunction with Part 3 of the *Independent Industry Regulator Act*. That Act sets out factors to be taken into account by the Industry Regulator in fixing prices. In addition to those factors, the Industry Regulator is to have regard to the principle that prices charged for network services in relation to the transmission network in South Australia and the distribution networks that are connected to it should be at the same rates for small customers regardless of their location. A 'small customer' is defined as a customer with electricity consumption levels (in respect of a single site) of less than 160 MW.h per year.

Proposed new section 35D—Initial electricity pricing order by Minister

The proposed new section empowers the Treasurer to make an initial electricity pricing order. A date is to be fixed by proclamation before which any such order must be made. It will then take effect on the day fixed in the order and will not be capable of being varied or revoked except by amendment of the Act. Provision is made for public notice to be given of the order and for copies of the order to be sent to electricity entities affected and to be made available for public inspection and purchase. The Industry Regulator will be responsible for making calculations and determinations under the order from time to time and is to enforce the order in the same way as a pricing determination made by the Industry Regulator. While the order is in force the Industry Regulator's powers with respect to pricing determinations will be restricted to the extent specified in the order.

Clause 35: Amendment of heading to Part 3 Division 3

Clause 36: Amendment of s. 36—Standard terms and conditions for sale or supply

These clauses make a correction of the wording of the heading and section 36 to make it clear that the provisions apply to the sale as well as the supply of electricity.

Clause 37: Insertion of Part 3 Division 3A

DIVISION 3A—PROTECTION OF PROPERTY IN INFRASTRUCTURE

Proposed new section 36A—Electricity infrastructure does not merge with land

The proposed new provision makes it clear that powerline poles and other infrastructure of electricity entities do not pass into the ownership of the owner of the land on which they are installed because they are affixed or annexed to the land.

Proposed new section 36B—Prevention of dismantling of electricity infrastructure in execution of judgment

The dismantling of electricity infrastructure in execution of a judgment is prevented.

Clause 38: Amendment of s. 37—Suspension or cancellation of licences

Consequential amendments are made reflecting the change from the Technical Regulator to the Industry Regulator. Several minor changes are made clarifying the grounds for suspension or cancellation of licences.

Clause 39: Amendment of heading to Part 3 Division 5

Clause 40: Amendment of s. 38—Power to take over operations

These amendments are also consequential on the change from the Technical Regulator to the Industry Regulator.

Clause 41: Amendment of s. 39—Appointment of operator

Section 39 deals with a person appointed to take over the operations of an electricity entity in circumstances where that is necessary to ensure an adequate supply of electricity to customers. A new provision is inserted making it clear that the operator taking over operations of an electricity entity must comply with any applicable provisions of the *National Electricity (South Australia) Law* and the National Electricity Code. The maximum penalty for non-compliance with any directions of such an operator is increased from $50 000 to $250 000.

Clause 42: Repeal of Part 3 Division 6

Division 6 of Part 3, which provides for mediation of disputes by the Technical Regulator, is repealed.

Clause 43: Amendment of s. 41—Appointment of electricity officers

A power is contained in section 41 to impose conditions on the appointment by an electricity entity of electricity officers who have certain special statutory powers of entry. The imposition of such conditions is to be a matter for the Minister now rather than the Technical Regulator.

Clause 44: Amendment of s. 43—Electricity officer's identity card

Identity cards for electricity officers are to be approved by the Minister rather than as at present by the Technical Regulator. The section currently requires an electricity officer to return his or her identity card within 21 days after ceasing to be an electricity officer. This period is reduced to two days.

Clause 45: Amendment of s. 45—Entry on land to conduct surveys, etc.

The function of the Technical Regulator of authorising entry by an electricity entity onto land for the purpose of surveying or assessing the suitability of the land for installation of electricity infrastructure is made a function of the Minister.

Clause 46: Amendment of s. 47—Power to carry out work on public land

A general power to delegate is conferred on the Minister by a proposed new provision in Part 9. As a result special provisions for delegation by the Minister are removed from section 47.

Clause 47: Amendment of s. 48—Power to enter for purposes related to infrastructure

Section 47 of the principal Act sets out statutory powers for entry by electricity entities onto public land. Powers of entry onto private land, however, are acquired by electricity entities by way of easements granted by agreement or obtained by compulsory acquisition or are created by statutory easements. Section 48(1) of the principal Act doubles up on these powers by creating a general power of entry for the purposes of carrying out work relating to electricity infrastructure. Subsection (1) of section 48 of the principal Act is removed and the scope of the remaining provisions of section 48 (dealing with the giving of notice prior to entry, entry in an emergency and entry under a warrant) is narrowed so that the provisions relate only to entry under an easement.

Clause 48: Insertion of s. 48A—Easements and access to infrastructure for data transmission and telecommunications

Electricity entities have powers and rights to install, operate and carry out work relating to electricity infrastructure on land that does not belong to them under section 47 of the principal Act and pursuant to statutory or other easements. The proposed new provision extends those powers and rights so that they will also be exercisable for the purposes of—

- installing telecommunications cables or equipment by attaching it to or incorporating it in the electricity infrastructure on the land
- operating and carrying out work relating to telecommunications cables or equipment so installed
- operating the electricity infrastructure on the land for telecommunications.

Under the proposed new provision those powers and rights of an electricity entity as extended to telecommunications will also be exercisable by another body with the consent of the electricity entity.

Clause 49: Amendment of s. 53—Electricity entity may cut off electricity supply to avert danger

A reference to the title of the Country Fire Service Board is corrected.

Clause 50: Amendment of s. 58—regulations in respect of vegetation near powerlines

Regulations in respect of vegetation clearance are required to be made with the concurrence of the Minister for the Environment and Natural Resources. That Ministerial title has now changed and provision is made instead for such regulations to be made after consultation with the Minister responsible for the administration of the *Environment Protection Act 1993*.

Clause 51: Insertion of Part 5A

PART 5A

UNDERGROUNDING OF POWERLINES

Proposed new section 58A—Program for undergrounding of powerlines

The Minister is empowered to prepare periodic programs for works to be carried out for the undergrounding of powerlines forming part of a transmission or distribution network.

Except as otherwise determined by the Minister, councils will be required to pay a fixed proportion of the costs of undergrounding work in their areas.

Consultations must be undertaken by the Minister in relation to undergrounding programs with councils, electricity entities, bodies (other than councils) responsible for the care, control or management of roads and other persons as the Minister considers appropriate.

A copy of an undergrounding program must be given to each electricity entity required to undertake work in accordance with the program at least six months before the commencement of the period to which the program relates.

Provision is made for the variation of a program at the request or with the consent of the electricity entity concerned.

Clause 52: Amendment of s. 59—Electrical installations to comply with technical requirements

Clause 53: Amendment of s. 60—Responsibility of owner or operator of infrastructure or installation

Clause 54: Amendment of s. 62—Power to require rectification, etc., in relation to infrastructure or installations

The maximum penalties for offences under these sections are increased consistently with other penalty increases provided for by the Bill.

Clause 55:Amendment of s. 64—Appointment of authorised officers

At present authorised officers are appointed by the Technical Regulator. Instead, under the section as amended, authorised officers will be appointed by the Minister and will be assigned to assist the Industry Regulator or the Technical Regulator, or both, as the Minister considers appropriate. An authorised officer exercising powers in relation to Part 3 or proposed new Schedule 1 (which provisions are to be administered by the Industry Regulator) will be subject to direction and control by the Industry Regulator. An authorised officer exercising powers in relation to other provisions of the Act (which are to be administered by the Technical Regulator) will be subject to direction and control by the Technical Regulator.

Clause 56: Amendment of s. 65—Conditions of appointment

Clause 57: Amendment of s. 66—Authorised officer's identity card

Clause 58: Amendment of s. 69—General investigative powers of authorised officers

Amendments are made consequential on the role of the Minister in relation to authorised officers and the division of authorised officers between the Industry Regulator and the Technical Regulator.

Clause 59: Amendment of s. 70—Disconnection of electricity supply

Clause 60: Amendment of s. 71—Power to require disconnection of cathodic protection system

Clause 61: Amendment of s. 72—Power to make infrastructure or installation safe

Clause 62: Amendment of s. 73—Power to require information

The maximum penalties for offences under these sections are increased consistently with other penalty increases provided for by the Bill.

Clause 63: Substitution of Part 8

PART 8

REVIEWS AND APPEALS

Part 8 is replaced with new provisions for reviews and appeals which differ from the previous provisions in the following respects:

- The new provisions reflect the division of administrative responsibilities between the Industry Regulator and the Technical Regulator.
- Provision is made for reviews and appeals relating to the transfer of licences (in addition to the current provisions relating to the issue, variation, suspension or cancellation of licences).
- Provision is made for reviews and appeals relating to orders given under proposed new Schedule 1 as part of the enforcement of the cross-ownership rules set out in that schedule.
- Reviews are required to be completed within four weeks.
- On appeals, the Administrative and Disciplinary Division of the District Court is now to sit with experts selected in accordance with proposed new Schedule 1A, except where an appeal relates only to a question of law.
- Further appeal from the District Court will lie only on questions of law.
- The Minister is empowered to intervene in reviews and appeals.

Clause 64: Substitution of s. 80—Power of exemption
The proposed new section gives the Industry Regulator as well as the Technical Regulator a power of exemption.

Clause 65: Amendment of s. 81—Obligation to comply with conditions of exemption
The maximum penalty under the section is increased to $50 000.

Clause 66: Insertion of s. 81A—Delegation by Minister
Provision is made for delegation by the Minister.

Clause 67: Amendment of s. 90—False or misleading information
The maximum penalty is amended to introduce an alternative of imprisonment for two years.

Clause 68: Amendment of s. 91—Statutory declarations
This amendment is consequential on the new role for the Industry Regulator.

Clause 69: Amendment of s. 94—Continuing offence
The daily penalty under the provision is increased to one-fifth rather than one-tenth of the ordinary penalty for the offence concerned.

Clause 70: Amendment of s. 95—Immunity from personal liability

Clause 71: Amendment of s. 96—Evidence
These amendments are consequential on the new role for the Industry Regulator.

Clause 72: Amendment of s. 97—Service
A reference to a provision of the *Corporations Law* is updated.

Clause 73: Amendment of s. 98—Regulations
New provisions are inserted authorising regulations to be made for transitional provisions relating to the contestability timetable and for matters consequential on the *National Electricity (South Australia) Law* and the National Electricity Code.

Clause 74: Substitution of Sched. 1
Schedule 1 of the principal Act currently contains consequential amendments that are exhausted. The Schedule is replaced with new schedules dealing with cross-ownership rules and the appointment and selection of experts for the District Court when hearing appeals under the principal Act.

SCHEDULE 1

Cross-ownership Rules

In the explanation below, a 'specially issued licence' is to be taken to refer to a licence issued at the direction of the Minister under Part 3B of the proposed *Electricity Corporations (Restructuring and Disposal) Act*.

The rules contain restrictions on the connections that may exist between—

- the holder of a specially issued generation licence *and*—
  - any other specially issued generation licence, any transmission network licence, a specially issued distribution network licence or a specially issued retailing licence, or the holder of any such licence *or*
  - a transmission network in another State or Territory or the operator of such a network *or*
  - a gas trading company (a company carrying on the business of selling gas for the generation of electricity in South Australia declared by proclamation for the purposes of this Schedule) *or*
  - a gas pipeline licence (a pipeline licence under the *Petroleum Act 1940* in respect of the Moomba-Adelaide pipeline) or the holder of such licence
- the holder of a specially issued transmission network licence *and*—
  - any generation licence, distribution network licence or retailing licence *or*
  - the holder of any such licence
- the holder of a specially issued distribution network licence or specially issued retailing licence *and*—
  - a specially issued generation licence or any transmission network licence *or*
  - the holder of any such licence.

The restrictions relate to cross-ownership or control of licences, company shares or interests in, or rights in respect of, assets, whether directly or through associates.

The restrictions will cease to operate after 31 December 2002.

The restrictions—

- do not apply to a State-owned company
- do not prevent connections that are contemplated by conditions of a licence under the principal Act or that are a necessary or incidental part of operations in the electricity supply industry
- are subject to exceptions prescribed by regulation.

The Schedule, at clause 3, confers powers on the Industry Regulator to issue orders to rectify breaches of the cross-ownership rules. These orders may include orders for the disposal of shares, the suspension of voting rights attaching to shares, the termination of agreements, arrangements or understandings, the cessation of specified operations or the disposal or surrender of specified interests or rights. Non-compliance with such an order is made an offence punishable by a maximum penalty of $250 000. Further action may be taken against an offender's licence under the principal Act.

SCHEDULE 1A

Appointment and Selection of Experts for Court

The Schedule deals with panels of experts who may sit as assessors with the Administrative and Disciplinary Division of the District Court when hearing appeals under the principal Act.

Clause 75: Amendment of Sched. 2—Transitional Provisions
Clause 2 of Schedule 2 of the principal Act contains a temporary immunity from liability for damages where an electricity corporation cuts off an electricity supply or there is a failure or variation in the supply of electricity. This immunity is made to apply to electricity entities generally. The immunity will cease on the commencement of a similar immunity provision contained in section 28 of the *National Electricity (South Australia) Law*.

Schedule
Part 8 of the *Renmark Irrigation Trust Act 1936* contains obsolete provisions relating to electricity. This Part is repealed.

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

ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1261.)

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

A quorum having been formed.

The Hon. M.J. ELLIOTT: In speaking to the second reading I will paint a broad brush picture to put the Democrat view into context. My colleague the Hon. Sandra Kanck, as the relevant spokesperson, will do a far more detailed analysis of the actual proposal and the legislation in relation to ETSA and Optima. Nine months ago, the Liberal Party said that it would not sell ETSA and Optima. They also insinuated right up until the election that South Australia had seen the worst of the economic pain. They now tell us that we must sell ETSA and Optima and that our economic situation is desperate. In a period of nine months, they have gone from a situation where ETSA and Optima were not for sale, where despite the fact that we had been through a great deal of pain they, through their very good economic management as they saw it, had things well under control. That is what they told the people of South Australia. In fact, not a single member from the Liberal benches told us anything different. Not a single member on the Liberal benches stood up and said that we must sell ETSA and Optima. Not one of those Liberal Party members, including the Treasurer, including the economic guru the Hon. Legh Davis, stood up in this place and told us that the situation was desperate, that as a consequence of the national—

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: You were getting rolled all the time were you? Why did you not have the courage to speak up, Mr Davis? You congratulate the courage of others and yet you showed no courage at all during the previous four years on this particular matter that now you tell us is of such grave urgency. Were they telling us lies then or are they telling us lies now? That is a several billion dollar question. The Liberals had been in Government for over four years and

yet within months of the last State election things had suddenly changed—or so they would have us believe.

How can the Liberals expect us to believe the claims they make now after such a dramatic reversal? It is no wonder that the public is losing confidence in politicians. It is no wonder there are jokes like, 'How do you know when a politician is lying? Just watch to see if the lips are moving.' The Liberals went to the last election promising not to sell ETSA or Optima. Labor went to the last election promising not to sell ETSA or Optima. The Democrats' campaign slogan was 'Don't sell SA short'. It was reasonable for voters and for any of the Parties to believe that ETSA and Optima would not be sold. Well over 90 per cent of voters voted for candidates who were standing on a platform that would have given people every indication that ETSA and Optima were not to be sold, yet within two months of the election the Government has done this amazing about-face.

The political questions regarding the Liberal reversal of position are, first, was it cynical politics that led to a promise regarding the sale before the election that was never meant to be kept? Secondly, was it cynical politics that led to the decision in December 1997 to sell ETSA and Optima after giving a promise to the contrary? Thirdly, was it incompetence that allowed a Government which had been in office for four years and which should have had some idea about what the books looked like to suddenly work out that the ETSA and Optima sale was so crucial to the well-being of the State that if it did not happen everything would fall apart—or so it would have us believe now?

It seems to me the only other choices by way of explanation are combinations of the above, because nothing changed between September and December except that the Government had been re-elected, although, importantly, very narrowly, and the leadership team was in a bit of trouble. The case that the Government brought forward in February this year to justify the changed position was spurious. It was solely based on the Auditor-General's Report—information which was misused by the Government for political purposes. The Liberals gave three reasons for the sale.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Could I suggest to the Hon. Legh Davis that if he was so keen to speak he could have spoken before me. I would prefer it if he did not speak while I am speaking. He can speak after and he could have spoken before, but not during. The Liberals gave three reasons for the sale. The first was to secure competition payments that South Australia was to get from the Federal Government; the second was that there were too many risks in the national electricity market; and the third, although this was not the stated reason for the flip at the beginning, was to pay off State debt.

The Government has failed to back up these claims. The threat to competition payments was found to be baseless. The Premier claimed in Parliament in February 1998 that:

> To keep power in State hands in the face of the national electricity market and Federal competition policy South Australia stood to lose more than $1 billion in competition payments.

This is not true. The Australian Competition and Consumer Commission and the National Competition Council have confirmed that privatisation of ETSA and its generation arm Optima are not required to gain competition payments: they are not required. So the first reason—the reason of competition payments—simply did not hold water. It was not true: it was a lie.

The second reason given was the market's claim of market threats. Of course, the only bit of new information in relation to market threats was coming from the Auditor-General's Reports. The Government's claims of market threats being too much for the Government to manage have been discounted by many, including the heads of ETSA and Optima, who now appear to be a bit short of a job. ETSA's poles and wires—the transmission and distribution business—face no market risk. That is where most of the asset is.

The Hon. R.I. Lucas: You just don't understand.

The Hon. M.J. ELLIOTT: Yes, they're going to build alternative poles and alternative wires. Yes, I understand perfectly well. ETSA's poles and wires do not face that risk. ETSA's retail market risks are real but certainly have been exaggerated. As Optima Energy has a near monopoly in South Australia its risk is also minimal. The State Auditor-General, Ken MacPherson—and the Government was using him as an excuse—stated in his 1997 annual report:

> There are many opportunities available to both the South Australian Government, the ETSA Corporation and Optima to manage the risks associated with the entry of South Australia into the NEM.

The Government used those two reasons. As I said, the first excuse held no water at all. As to the second one, yes, there was a risk, but it was manageable and it was grossly exaggerated. They were the reasons given for the flip. Of course, the Government should always have been aware that there were some risks associated with the NEM. It was not new: it had been around at that stage for five or six years and we knew we were going into it. How come it worked it out in December but did not work it out before September? No, it was lying before and it was lying after, or it was just simply playing politics.

The Government, having used spurious reasons—reasons that were not new in any sense—then went back to State debt. It could not use that as an excuse for the change of mind because nothing had changed in regard to debt between September and December 1997. State debt is an important issue and it is not one that is being treated lightly by the Democrats. The sale of ETSA is being presented as the magic bullet that will solve our debt problem.

Members interjecting:

The Hon. M.J. ELLIOTT: If only the sale of ETSA were the magic bullet. The challenge for the Government is not to prove that debt will be reduced. You could sell ETSA for $10 and reduce the State debt, because of course it will. The important thing is: what is the bottom line impact? The challenge for the Government is to prove that the net effect on the bottom line will be positive, for example, that ETSA and Optima are worth more to us sold than they are retained. That is what the Government has had to prove—and it simply has not done it.

I listened with interest to the Hon. Carolyn Schaefer talking about her farm and, yes, there are times when you might need to sell off a paddock. But you do not ask somebody else to flog the paddock off for you. This Parliament is being asked to simply say, 'We trust you. Whatever price you get for that paddock will suit us fine.' That is essentially what we are being asked to do. Whether or not the State has a bottom line gain, as distinct from a reduction in debt, depends very much upon the price. Price is something that the Government will not speculate on and will not enter into any discussion on, and of course is not part of the legislation in any way.

There is then a further challenge from the Government—to show not just the effect on the bottom line of the budget itself, as distinct from debt, but also the net effect on the community as a whole. For example, even if there were budgetary gains, what are the long-term—and I stress that—energy costs? It is all very well to point to Victoria. We know the prices there are artificially low, and that is conceded by everybody. When brown coal ceases to be a major generator that will affect South Australia but it will hurt Victoria a lot more. That will happen within the space of the next 10 years. Victoria will be in dead trouble, and what are the long-term implications?

If only this State were asking more fundamental questions about the long-term supply of cheap energy it would be getting into more detailed discussions about how we are going to get more gas into South Australia, because that will be the last of the fossil fuels to be used because it is by far the most efficient in an energy and greenhouse sense. That is the way the world is going, even though some people are in a state of denial.

We should be having very serious discussions about long-term, secure supplies of cheap gas into South Australia because that is what will underpin the long-term security of this State. But the electricity market in Victoria is underpinned by cheap, dirty brown coal. We are somewhat reliant on dirty brown mud ourselves, but nowhere near as much as Victoria. The game is going to go through a lot more changes yet, and it is incredibly simplistic to look at what is happening in the market right now, particularly looking at the prices in the Eastern States and what has happened to them. To assume that any benefits there so far will be there in the longer term is incorrect.

What are the long-term rather than short-term implications for energy costs? Any company that goes to Victoria hunting cheap energy should have their head read. Rather than servicing State debt through the budget, the community will be servicing private investment. The Government gets its best debt reduction by seeking the highest price it can gain for ETSA and Optima. Of course, from the investors' viewpoint, they will not pay a high price because they feel sorry for us! They need a return and obviously South Australians will pay. There is the old joke, 'I am from the Government and I am here to help you.' One can also say that about business as well. Ultimately, a business is there to make a buck. That is not to be disparaging: it is simply a fact of life.

The Government is asking the Parliament to sign a blank cheque. The Liberals in Opposition were loath to agree to allow by proclamation what might be done by regulation or by regulation what might be done by legislation. In Opposition, they would not sign blank cheques on relatively minor points within legislation. We agreed with them and voted with them regularly, but this really is the grand daddy of all blank cheques: this allows the Government to sell assets which are worth billions of dollars, with a final price that itself may vary by billions of dollars. The Government says, 'Trust us.' They are saying we should trust the same people who made all those promises and then did a flip on such flimsy excuses so soon afterwards.

The budgetary process and Estimates Committees allowed detailed scrutiny of most Government expenditures and budgetary behaviour, but here, with the most significant financial action by a Government since the State Bank collapse (and it will probably be the case for the next decade or so), it is simply done on trust and there is no parliamentary approval other than saying, 'Go do it,' not knowing what the impacts will be. The Government promised the opposite of what it now proposes. It concocted spurious reasons and then says, 'Trust us; give us a blank cheque.'

Out of the blue the Government announced in early February that it had done a backflip on ETSA and Optima. It was not just a backflip but it was a broken promise. I met with the Premier on the day they made the announcement. I made it plain that the Democrats' starting position was opposition to the sale of ETSA and Optima.

The Hon. L.H. Davis: It became your finishing position as well.

The Hon. M.J. ELLIOTT: It did become the finishing position.

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: That will be addressed, quite happily. When members overhear conversations and quote them, they should make sure they overhear the whole conversation and then they can put it in context. I also said that, given time, we were prepared to look at the issue. The Hon. Sandra Kanck, as the relevant Democrat spokesperson, then began the exhaustive task of examining the proposal. I was involved in several of the briefings, and the Party room regularly examined information on the issue as it came to hand. I was stunned during this process by the shallowness of the information that was made available by the Government.

Members interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: Mr President, I seek your support in just stopping the amount of noise that is going on at this stage. I was stunned during the process by the shallowness of the information that was made available by the Government. The challenge in this debate is on the Government: it has the resources and, as the Government, it should be producing the detail (and I emphasise 'detail') to justify the sale. Using the excuse that to do calculations based on a particular selling price would give a message on what the Government would accept, the Government has avoided calculations altogether or, if it has done calculations, it has failed to show them to us.

An invitation was made to the Government on several occasions to run through a series of scenarios and the Government simply did not take it up. It is not a difficult task for a Government, with its resources, to set up a range of scenarios based on a range of selling prices and a range of interest regimes.

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: The Hon. Sandra Kanck will go through all that, if you do not mind. It is not a difficult task for the Government to set up a range of scenarios based on a range of selling prices and a range of interest regimes and to input other relevant data to show the budgetary impact. Each scenario, including its assumptions, would then be capable of analysis.

Members interjecting:

The Hon. T. CROTHERS: Mr President, I rise on a point of order. There is a cacophonous level of interjectory noises which are much too loud. I put it to you that this debate, as important as it is, ought to be determined on merit and substance and not on who can yell the loudest.

The PRESIDENT: Your point of order is correct. Interjections are out of order, and I hope all members will take note of the point of order and not interject themselves. I am well aware that there will be interjections from both sides, but I ask members to keep their interjections to a

minimum because every member has an opportunity to speak and rebut other comments that are being made.

The Hon. M.J. ELLIOTT: The Sheridan report ran to about six pages and, while it had a couple of numbers at the end, it had nothing which told us anything about the assumptions and workings to allow a genuine analysis of how the conclusions were reached.

The Hon. R.I. Lucas: You never read it.

The Hon. M.J. ELLIOTT: I did read it.

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: I am sick of suggestions by way of interjections or speeches of lies being put across. I leaned across to the Hon. Sandra Kanck and asked whether she was addressing the Sheridan report and she said she might have to do it now. The point I make is this: the Sheridan report ran to about six pages. I read it and it did not go into any depth. It was not the sort of document upon which one would make a decision. It was a *Reader's Digest* version of an analysis, at best. That is not a reflection on Mr Sheridan: I do not know what he was asked to produce. I know only that the report ran to six pages, and the report covered a range of things. In terms of the analysis of scenarios, it would be lucky to run over half a page to a page. It simply did not happen in detail: there was no detail of the underlying assumptions or how the conclusions were reached, starting with those assumptions. Yet that is the sort of thing which is necessary for any genuine scenario that can be capable of analysis. However, it simply was not up to analysis.

I am astonished that this has not been done. I would have hoped that the Government had a great deal more detail than the Sheridan report. Indeed, that is precisely what it should have had back in December when it decided to sell. In fact, the lack of detailed analysis, in my view, is just one more piece of evidence to show that the decision made by the Government had everything to do with politics and nothing to do with economics, unless, of course, the Government makes it decision on the basis of rhetoric.

We persistently sought data and, while the Government supplied information and gave us print-outs of every debt that we have and the interest rate—and that was one bit of detailed information that we did receive—for the most part the information supplied simply did not carry the sort of detailed analysis that is necessary for a reasonable person to make a decision.

Understandably, there are people in South Australia who are desperate for a magic bullet to solve the State debt problem, but there are no magic bullets and there are no free lunches. The sale of ETSA and Optima will not be a magic bullet for State debt or, more importantly, the bottom line. It may have a positive impact upon debt, but the Democrats are not convinced of that. Debt reduction, particularly relative to GDP, in the long run will best be achieved by growing the economy. Unfortunately, this internally divided and inept Government has missed a number of opportunities—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: —with about the only exception being the growth in call centres, which is one thing that the Government appears to have got right. Our State debt is not new. It is now at its second lowest level in the past 30 years (as a ratio of gross State product).

We must examine what has been done in the past four years by the Liberals to cut our debt. We should also look at why the State debt is as high as it is after four years of Liberal hard talking. We have asset sales well in excess of $2.1 billion. The State debt stands at $7.4 billion. The past three Auditor-General's Reports give some clues as to why we have not made the progress that some South Australians would have expected in the light of some of the pain that has been inflicted.

The new Government created a large deficit due to the way in which it handled separation packages for public servants. I refer members to the 1994-95 Auditor-General's Report. Two weeks ago in this place, the Treasurer referred to a report that claimed $500 million of savings due to downsizing. I asked whether he would make available details of how that $500 million figure was arrived at. Unfortunately, to this time that has not been delivered.

It was an interesting notion that a great deal of the downsizing happened by paying people two years wages to leave straightaway. In many cases, their jobs were not superfluous: they needed to be done. People were then employed on contract to do the work or it was outsourced. We were told that this was creating efficiency and saving money. Many people who were paid out on those two year contracts are now back working for the Government again. I know personally of people who are back on the pay-roll after being paid two years wages not to work for the Government.

On the issue of budget cuts, the $300 million saving published in the past few years has been found by the Auditor-General to be illusory. He found that the real level of spending has gone up, notwithstanding the cuts. When the Government set about its assault on the public sector, there were warnings that there would be a *quid pro quo*. If people forgo job security and many other aspects that the public sector seems to have, then you will get pressure on wages and the like.

The Government has also shown a propensity for spending money efficiently in an attempt to get projects started. Galaxy is a case in point, although I believe we still do not have the bottom line on precisely how much money went into that. The Government, in its absolute pigheadedness to insist on the current site for the wine centre, will have to spend $9.8 million to refit a perfectly functional Herbarium and administration building. It is going to spend that money to replace buildings that are perfectly functional and are doing the job now. There is gross inefficiency in that. The Government pleaded with the Federal Government to supply more money, but at the end of the day it said, 'Don't worry, we've got that money, anyway. We'll make sure it still goes ahead.'

In respect of a great number of projects, the Government has not been efficient and has been profligate with its spending. In July 1998, the Economic Briefing Report by the South Australian Centre for Economic Studies identified that current spending had risen substantially in real terms over the past few years. Page 74 of the report says that the increase may be caused by privatisation and outsourcing, shifting some costs from the capital budget into recurrent spending. The reduction in the level of debt has not been as great as spending restraint.

The Government counts debt and unfunded superannuation separately and, although the Government is now funding more superannuation than previously, last year's Auditor-General's Report shows that this past year's budget provided less in this area than was provided in 1993-94.

At 30 June 1993, six months before the Liberals gained office, State debt was 25.7 per cent of gross State product. As at June 1995, the Liberals had sold more than $600 million

in State assets and claimed that they had reduced debt to 22 per cent of gross State product. The Liberals now say that they have now reduced State debt to below 20 per cent, with the hope of getting it down to 19 per cent by 30 June next year.

The Liberals sold $2.12 billion worth of assets with a debt reduction of, I believe, about $1.8 billion and claimed at the same time that they were good managers of public money. Mr Olsen said in Parliament on 17 February this year:

> We can get debt down, and we have done so. After heading towards $9 billion, it's down to $7.4 billion. We are good managers and we are proud of that.

In the *SACOSS News* of June, July and August 1998, a letter from former ETSA General Manager, Bruce Dinham, states:

> Although they may not be aware of it, ETSA consumers are already bearing a large part of the State debt burden through excess charges being imposed on ETSA by the Government. ETSA is one of the largest taxpayers in the State. It pays all normal State taxes and charges such as pay-roll tax, land tax, stamp duties, vehicle registration fees, council rates, mining royalties, etc.

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: Let me finish. It continues:

> In addition, Government is extracting large amounts of money from it through a variety of extra charges such as a statutory levy, inflated interest rates on loans, notional income tax and so-called 'dividends'.

None of those things would continue if ETSA was privatised. The letter goes on:

> Since 1985—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will have his chance.

The Hon. M.J. ELLIOTT: I know that Mr Davis is upset because his Party has repeatedly misled this Parliament and the people of South Australia, but that does not justify his behaviour.

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: He has no shame. The letter continues:

> Since 1985, when it became subject to ministerial (that is political) control and direction and ceased to be an independently managed undertaking, ETSA has been used increasingly by Governments as a financial milch cow to subsidise the State Treasury. In the last four financial years, the additional amounts taken by the Governments through these extra charges, over and above normal State taxes, exceed $1.3 billion. Of this, about $700 million was taken in the last financial year, 1996-97, including an amount of $450 million extracted by a remarkable piece of creative accounting euphemistically called 'capital restructuring'. This involved ETSA borrowing $450 million from the Government to pay the Government a special $450 million 'dividend'.

That is the apparent transfer of the State debt, but in fact the debt resides within ETSA. The May State budget did little to clarify the budgetary bottom line. It was not predicated on the sale of ETSA, yet the budget was used as a political tool to suggest that the sale of ETSA was not only necessary but also inevitable. As Terry Plane says in the *City Messenger* of 3 June:

> What appears to be happening is that the budget is being cast as a servant of the Government's determination to sell ETSA and Optima, and the figures in the budget are being portrayed in such a way as to support the sell-off argument. So, instead of rational strategy, we have a situation where undue emphasis is placed on this one issue and, irrationally, the sale of ETSA and Optima is being promoted as the panacea to everything we are told is wrong with South Australia's financial state.

Of course, this Government has no problems spending a great deal of public money to promote the sale of the budget through a one-sided argument. The Liberals' handling of this issue really has undermined the credibility of the Government.

The Government places a great deal of faith, if privatisation occurs, in regulation that will protect the people of South Australia. Well, I simply do not believe that. The fact is that Governments at the end of the day, faced by large companies, multinationals or even large Australian companies, tend to back off. I recall a law at Federal level which limited the number of service stations to be owned by oil companies. They flouted the law all the time. They just gave the Government the thumbs up and eventually the Government changed the law. On any number of occasions we have seen company threats of closure being enough for Governments to back off from doing what should be done in the public interest. Both Liberal and Labor Governments have failed in that regard. Both have failed to tackle monopolies. We have seen it in the growth of the print monopolies in Australia and that is now starting to go into the electronic monopolies. While you get talk from time to time from Governments about the need to control monopolies, when push comes to shove they back right off.

At the end of the day, there has been a great deal of deceit of South Australians. I certainly understood what the Hon. Nick Xenophon was saying when he raised the Ingerson affair. It was not the matter of Mr Ingerson himself but, I think, a matter of so many things happening which destroy the trust and faith of voters. Frankly, the handling of this issue by the Government—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT:—just reinforces the jaundiced view that people have. The Democrats have always been prepared to examine privatisation proposals on a case by case basis.

The Hon. L.H. Davis: Tell us which ones you supported.

The Hon. M.J. ELLIOTT: Okay. During the previous term of Government, WorkCover claims management was outsourced and the Democrats supported that change within the legislation—and that was not a minor change. We went through a great deal of soul searching and we had to be convinced that, on balance, it would produce a positive. I must say there have been some negatives to that—and I will say that to this day. People like to paint issues as being black and white and they are never that simple. The outsourcing of WorkCover was not simply black and black and is not today. This issue is not black and white, either. There are certainly merits on both sides of the argument, but the question is: where does the balance lie? The Democrats, on the basis of information put on the public record so far, believes that the balance lies, very strongly, in favour of the status quo.

The challenge for the Government was to prepare a comprehensive and cohesive case. If I go back to February when we sat in the Premier's office and we had our first discussion on the matter, we said that we were prepared to look at it and we said that we would need a great deal of information. That information was pursued. In fact, we were seeking to make our final position by the end of May, before Parliament resumed. We were working towards that and the Government was aware of that. As the end of May drew near, we said that we were not getting the information that satisfied us and the Government asked us, at the end of May, whether

or not we would delay our decision. And, indeed, we did: we delayed the decision for another hour.

So, for the reporter who overheard the conversation and heard the Hon. Sandra Kanck say to someone, 'Well, we had decided not to sell in May', that is true; but it is also true that after May we continued to look at any other information that was provided—

The Hon. R.I. Lucas: Sandra said that—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT: I am making the point that we sought to make up our minds by a certain time and the Hon. Mr Lucas is quite aware—

The Hon. L.H. Davis interjecting:

The Hon. M.J. ELLIOTT: Let me finish. The Hon. Mr Lucas was quite aware we were aiming to do it before Parliament resumed. On the basis of—

The Hon. L.H. Davis: Parliament didn't resume until the last week in May.

The Hon. M.J. ELLIOTT: Right. On the basis of the information that we had at that time, we had determined that we would not support a sale. But, when the Government said, 'We want more time. We will give you more information,' then we did not say, 'No, sorry, we will give you another month but we have made up our minds.' We were prepared to see if they were going to give us the information we were pursuing. But, they did not, so—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. M.J. ELLIOTT:—when the time came for us, again, to make it plain to the public, because the public was wanting to know what our thinking was, we made our position clear. The information that the Government was announcing some three or four days later was not of direct relevance to the important issues about which we were making up our minds. It was not of direct relevance to the matters that were fundamentally important to our decision, and that is why it made no difference.

The Government has failed to produce the detail to sustain the case for sale. It is still asking, as I said earlier, for us to sign a blank cheque, to say, 'Trust us. Look at our record. We are totally trustworthy.' On its record I am not willing to trust the Government. We will be convinced only on the detail and the facts, and, if the Government has not been prepared to do that, it must accept, whether it likes it or not, the decision we have made in relation to sale.

The Hon. L.H. DAVIS: What could one say—

The Hon. Sandra Kanck: Then sit down.

The PRESIDENT: Order!

The Hon. L.H. DAVIS:—about that extraordinary contribution from the Australian Democrats. Today, we have had unveiled the new Australian Democrat policy. It is to grow the economy. This is the solution to debt. It is to grow the economy. Now, one can imagine how taken aback the Hon. Robert Lucas and myself were to hear the Hon. Michael Elliott say that because, on every occasion the Government has tried to grow the economy, the Australian Democrats have been the first to put their hand up against it and to raise their voices against it.

Just think of North Haven and West Beach; just think about a decade ago of Roxby Downs and their vocal and vehement opposition to that proposal; just think of their opposition to development of an international tourism resort at Flinders Ranges. Think of those regrowth eucalypts which they objected to being cut down at Mount Lofty just prior to the opening of that wonderful new development at the end of 1996 on the basis that it was violating the environment—regrowth trees, very young, and with no merit whatsoever. Even the Democrats made page one of the *Advertiser* objecting to that. That is how you grow the economy under the Australian Democrats. The Australian Democrats have yet to come into this House and support anything for growth in this State. I will deal with the Hon. Sandra Kanck later, because she deserves to be dealt with.

The Hon. Sandra Kanck: I'm really frightened, Legh.

The Hon. L.H. DAVIS: Well, you should be. Listening to the Hons Michael Elliott and Sandra Kanck you would have thought that privatisation was a pox. The fact is that privatisation in this country has been led largely by Federal and State Labor governments. That is the reality. Let me deal with the reality, because it is about time we dealt with facts rather than the theories which are continually paraded by the Opposition. I remind members, including the Hon. Paul Holloway who made a lamentable contribution this morning, of how we come to be in a situation where we are trying to make Australia a more competitive country, where we have introduced economic reform and guidelines for productivity and efficiency, where the Federal Government rewards States with competition payments for restructuring their economy to make Australia more competitive in this world in which we live. Let us go back to the beginning, because I think the Hon. Sandra Kanck and certainly the Hon. Paul Holloway need some reminding of the facts.

Back in January 1991, the Industry Commission, which was the Federal Government's chief advisory body, reported that Australian households were losing an average of $330 each year because of the inefficiencies of the electricity and gas industries. I will take members back a little further than that, to 1988, when for the first time the Industries Commission reviewed the State of the electricity industry in Australia. It was not until that time—1988—that we became aware of just how inefficient, uncompetitive and unproductive our electricity industry was in this country. In my previous career I had a very close link with the Electricity Trust and the South Australian Gas Company all through the 1970s until I became a member of Parliament. I was more familiar than most with the operations of those two bodies and I thought they were very productive and efficient. But in 1988 the Industry Commission found otherwise.

It is worth remembering that the Industry Commission was under the aegis of the Federal Labor Government, led at that stage by Prime Minister Bob Hawke and his Treasurer, Paul Keating. So, in January 1991 the Industry Commission released a draft report in which it recommended the privatisation of all electricity and gas utilities. Just stack that up against what the Hon. Paul Holloway said this morning and you will see there was a just a little bit of difference between the facts as paraded by the Hon. Paul Holloway and the reality of the facts that I have delivered just now.

The commission found that inefficiencies cost the national economy $2.65 billion a year—that is what it said. It is worth remembering also that, in 1990, before the problems with the State Bank were out in the open (although by that time the Liberal Opposition had more than certainty that there were real difficulties with the State Bank), the Labor Government at the time under Premier Bannon was using ETSA as a milch cow. In fact, it was revealed in February 1990 that the Government had rejected a recommendation by ETSA for a

3.5 per cent reduction in electricity tariffs from 1 March 1990. Then Leader of the Opposition, Mr Dale Baker, said:

> The Treasurer, Mr Bannon, was not prepared to allow this, because he wanted to get his hands on ETSA's surplus. Instead of that surplus being returned to consumers in the form of lower tariffs, the Treasurer used it so the Government could cover up some of its financial mismanagement.

That is not the sort of thing you are likely to hear from the Opposition or the Australian Democrats, but it underlines a fundamental point: that, whether it be a public utility or another commercial operation, there is a fundamental dilemma with a Government business with the commercial operation in Government hands. The Government is torn between being an owner-operator maximising profits—and it has to do so by keeping prices up and costs down—and also the social obligations that go with being in Government. It is a fundamental conflict. But something as basic and important as that has not been discussed by people in this debate tonight.

Let me go further and make the point even more succinctly. By November 1994 Prime Minister Paul Keating was commenting on the options for private sector involvement in the supply of gas, water, electricity, transport and communications. In that month of November 1994, Prime Minister Keating asked the Economic Planning Advisory Commission (EPAC) to investigate options for private sector input into the funding, management and control of what is now public infrastructure. The Federal Government made it quite clear that it would seek greater efficiency and competition in all areas of public facilities. Mr Keating was quoted as saying:

> 'It is critical for Australia's economic performance and social well-being that we have adequate public infrastructure in the form of facilities for transport, communications and the provision and transmission of electricity, gas and water and that these facilities are used in the most efficient manner.'
>
> He said Governments would continue to have a big role in the provision of public facilities but that it was important and appropriate to examine opportunities for the private sector being more involved. Mr Keating asked EPAC to form a task force which would investigate and report on private sector involvement in public sector infrastructure by March 1995.

There we have it. That was Prime Minister Paul Keating talking about the need for private sector involvement in public sector owned utilities. Yet, nearly four years later, we have the extraordinary spectacle of the Leader of the Opposition in South Australia, Mike Rann, making public his indignation and outrage that the Hon. Terry Cameron, a member of this Chamber, is actually talking about this very thing, as did Paul Keating four years ago, and being threatened with expulsion. It is outrageous. I wonder where Mike Rann was in November 1994. Why did he not write to Paul Keating and say, 'If you go on like this I'm going to raise this matter with the National Convention of the ALP and threaten you with expulsion'?

The Hon. T.G. Roberts: There's a difference between selling it on and selling it off.

The Hon. L.H. DAVIS: Well, you are right off. So, let us just put privatisation in perspective and see what has been privatised, and when, around Australia. Let us start with the Federal Labor Government. In 1991 the Federal Labor Government privatised 30 per cent of the Commonwealth Bank for $1.3 billion. Then in 1993 it privatised a further 20 per cent of the Commonwealth Bank for $1.6 billion and then finally it set in train the privatisation of the remaining 50 per cent of the Commonwealth Bank in 1996 for $5 billion. It is worth noting that the Federal Labor Government did not have a mandate for the privatisation of the Commonwealth Bank. With regard to the Commonwealth Bank, it is worth noting that, through its company ALP Holdings Pty Ltd, the Labor Party in South Australia had 10 000 shares in that first float in 1991. I do not believe that they own them now, but whatever happened they made a significant profit. I challenge Mike Rann to say that he objected to that holding. Did he object to the fact that the Labor Party in South Australia had a significant holding of Commonwealth Bank shares when it was first privatised? Yet they have the hypocrisy seven years later to object to the privatisation of the Electricity Trust of South Australia.

In 1992 the Federal Labor Government privatised Qantas for a figure of $1.45 billion. It is worth noting that the Federal Labor Government did not have a mandate for the privatisation of Qantas. In addition to Telstra and the Commonwealth Bank, there is the proposal to sell other Commonwealth assets such as Australian Defence Industries for $300 million. There is also the proposal to sell ANL shipping line. That was attempted first under a Federal Labor Government and it failed, but it is still something which is seen as on the drawing boards.

Federal Airport Corporation leases for Melbourne, Brisbane and Perth airports were privatised last year for $3.34 billion, and Federal Airports Corporation leases on 14 smaller airports were privatised in 1998 for $730 million. Australian National's rail businesses were privatised in 1997 for $95 million. In addition, there is a proposal to privatise the Snowy Mountains Hydro-Electric Authority for $5.5 billion. In addition to those privatisations which took place largely under a Federal Labor Government without at any stage there being a mandate, there have of course been other major privatisations by State Governments, many of them Labor Governments.

First, the most significant privatisation we have seen to date was the Victorian power generators and distribution network, privatised between 1992 and 1996 for $22.5 billion. Also, the Victorian power grid was privatised last year for $2.7 billion, and Southern Hydro in Victoria was privatised for $391 million. The State Bank of Victoria was privatised in 1991 by the Victorian Labor Government for $1.6 billion. The port of Portland was privatised by the Kennett Government in 1996 for $30 million, being bought I understand by South-East businessman Mr Alan Scott who was part owner of that port.

In addition to those privatisations in Victoria there has been a number of privatisations in Western Australia, including BankWest in 1995 for $900 million and SGIO in Western Australia in 1994 for $165 million. In New South Wales the TAB was privatised under a Labor Government this year for almost $1 billion (I think without a mandate); and GIO in New South Wales was privatised in 1992 for $1.2 billion, along with Graincorp in that same year of 1992 for $110 million. Axiom Funds Management was privatised in 1997 in New South Wales for $240 million, and in 1994 the State Bank of New South Wales was sold to Colonial for $576 million.

In South Australia, South Australian Water was not privatised so much as outsourced in 1996 for $1.5 billion, and BankSA was sold in 1995 for $730 million; but, of course, that sale was originally flagged by the Bannon-Arnold Governments (again without any mandate). SGIC in South Australia was sold to private sector operators in 1995 (again by Labor) for $170 million and, again, without any mandate. TGIO, the State-owned insurance group in Tasmania was

sold in 1993 for $54 million. I did overlook in Western Australia that the Dampier to Bunbury gas pipeline was sold in 1997 for a massive $2.4 billion.

It is also worth remembering that in 1993, in the dying days of the Bannon-Arnold Labor Governments, the Labor Party completed the sale of what had been an 82 per cent interest in the South Australian Gas Company, and hundreds of millions of dollars were raised by that *de facto* privatisation. Those shares in the South Australian Gas Company owned by the State Government were sold off to the private sector company Boral Energy. Indeed, it is worth noting that Sagasco has changed its name to Boral Energy. In the five years that have elapsed since the State Government quit that energy stock, where it had an overwhelming control through 82 per cent, there has not been one pip, squeak or whimper from the Australian Democrats or the Labor Party about the operation of that energy stock. The fact is that gas has to be generated and distributed in the same fashion as electricity.

The fact is that the gas industry will be deregulated in this country, just as we are seeing a national electricity market in operation in Australia. It may well be that the heads of the Opposition are lowered as these indisputable facts roll out. Having dealt with the fact that privatisation is not a pox in Australia—and that is instanced by the number of people opposite who hold shares in privatised companies listed on the stock exchange and who are, nevertheless, voting against privatisation in this case—let me deal with the question of the mandate.

Much has been made of the alleged lack of morality of the Olsen Government in not revealing that it would sell off the Electricity Trust before it went to the election. Are the Hon. Ian Gilfillan, the Hon. Sandra Kanck, the Hon. Paul Holloway, the Hon. Ron Roberts and the Hon. Terry Roberts actually saying that, if we went to the polls and said that we would privatise ETSA and Optima and we had been re-elected, they would be voting today on the same side on this particular matter? Is that what they are saying? Is that what the Hon. Ian Gilfillan is saying? Is that what the Hon. Sandra Kanck is saying? Are they saying that?

The Hon. Ian Gilfillan: I haven't said a thing.

The Hon. L.H. DAVIS: No, that's right; and you would be very wise not to. Their argument that the Government does not have a mandate and therefore they will oppose it is an absolute myth—

The Hon. R.R. Roberts: But you have a got a mandate: not to sell it.

The Hon. L.H. DAVIS: The Hon. Ron Roberts has fallen right into the hole.

The Hon. R.R. Roberts interjecting:

The Hon. L.H. DAVIS: The honourable member says you do not have a mandate to sell it—

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order, the Hon. Ron Roberts. We have heard your interjection three times.

The Hon. L.H. DAVIS: On this basis, the Democrats and the Labor Party are saying this: if you do not have a mandate, we will not allow you to sell it; that is the proposition.

The Hon. R.R. Roberts interjecting:

The Hon. L.H. DAVIS: The Hon. Ron Roberts is now saying that he did not say that. Well, *Hansard* will record differently. They are saying that if you do not have a mandate, if you went to the people and said you did not sell it, at no point can you turn around and say that you will sell it. Does it mean that you have to wait four years and get a mandate then? Let me apprise members opposite of the facts, the unpalatable truth. On 17 September 1979 the Tonkin Opposition went to the people and won an unexpected victory.

If you look at the policies put forward to the people, to the voters of South Australia, on 17 September 1979, standing clear and strong was one of the arguments that if we were elected we would legislate to ensure that Roxby Downs was given the go-ahead. That is what we said. You can check our policies and speeches on this matter in *Hansard*: they are on the record. We had a mandate: we had an overwhelming victory in 1979. So, what happened? The Democrats came into this Chamber and voted against Roxby Downs. The Democrat at the time, the Hon. Lance Milne—fine man in many ways—did not take any notice of the mandate.

The Hon. Ian Gilfillan interjecting:

The Hon. L.H. DAVIS: I talked to him; I was on a select committee looking at the matter.

The Hon. Ian Gilfillan: You must be one of the few who failed.

The Hon. T.G. Roberts: He agreed with everybody else.

The Hon. L.H. DAVIS: The Hon. Ian Gilfillan should not talk ill of the dead. I thought the Hon. Lance Milne was a very fine man. The Hon. Lance Milne took no notice of the mandate argument because I put it to him over many a cup of coffee and a block of chocolate. The Labor Party took no notice of the mandate that the Liberal Party had in 1979. That was not an issue for them, except for one man who had courage and was later proved to be right—and that was the Hon. Norm Foster, and he had to resign from the Party. The great irony is that months later the policy was changed to fit in with what Norm Foster had argued. The Hon. Trevor Crothers actually moved the motion in the Labor Party to bring Norm Foster back and to re-admit him to the Party.

So much for the Labor Party and the mandate. Let us not have any cant and hypocrisy about mandates and what they mean. Let us not have any cant and hypocrisy about voluntary voting. We have had a mandate for that for two elections in a row. We have put it before the House on several occasions. That does not stop the Hon. Ian Gilfillan, the Hon. Mike Elliott or the Hon. Sandra Kanck saying, 'We don't care if you've got a mandate for that. We're going to vote against it.' So let us have nothing about this nonsense of mandates—nothing at all.

Professor Cliff Walsh, the Executive Director of the Centre for Economic Studies of the Adelaide and Flinders University, in an article in the *Advertiser* of 7 July, made a very neat point about mandates as follows:

> Labor's mandate argument is ultimately empty, even destructive. Why should a Government be stopped from doing something that's in the State's interest if it didn't previously say it would or even if it said it wouldn't. Remember Labor's belated decision to sell the State Bank.

Snap! What we have is an extraordinary situation where Labor in New South Wales is proposing that—

The Hon. R.R. Roberts: That's not true.

The Hon. L.H. DAVIS: You're saying it's not true that in New South Wales they're trying to sell it?

The Hon. R.R. Roberts: Not the Labor Party.

The Hon. L.H. DAVIS: I see. So we have the extraordinary spectacle of the Hon. Ron Roberts saying the Labor Party is not trying to sell power utilities in New South Wales, it's only the Premier and his Treasurer—the two most powerful people in the Labor Party.

The Hon. R.R. Roberts: Absolutely.

The Hon. L.H. DAVIS: That's pretty remarkable stuff. Let me quote briefly what the Hon. Michael Egan MLC, Treasurer and Minister for Energy, said at a meeting of Pacific Power and electricity unions last year:

> When large scale electricity generation was first established in the late nineteenth century, capital markets were primitive. Government had to do the job themselves or give monopolies to private companies to generate power. This is no longer the case. As demonstrated the world over, a competitive private sector can now produce and distribute electricity effectively.

Again, quoting Michael Egan, he says:

> However, with the opening of a national electricity market there is a strong argument for increasing the level of competition in New South Wales. There is no sustainable argument the Government, the taxpayers, the environment, consumers and the economy would be worse off if we had more than one owner of the major electricity utilities in New South Wales.

Indeed, as the Hon. Paul Holloway found out to his horror, this was exactly what Hilmer advocated. Paul Holloway's extraordinarily lamentable contribution this morning will be exposed shortly in that matter. He continues:

> In the long-term our electricity business has been facing increasing commercial and competitive pressures. In the short term to medium term the sale of the business will provide additional budget flexibility for the Government as well as potentially funding a number of major capital projects.

Then again in the same speech he says:

> It is naive to think that the great economic and social changes over the last few decades will soon cease. Change will continue at increased pace. Governments need to reap the benefits of these changes while softening the impacts of change and protecting the essential values of the community. . .
>
> These changes will completely repaint the face of the electricity industry over the next decade. There will be better products and better services for communities, but there will also be—

and I underline this point—

> different commercial benefits and risks for industry owners. No longer is electricity—

just listen to this Paul—

> a monopoly business with guaranteed returns to Government. It's an increasingly commercial and competitive business with increasing risks to its profits.

Do you want to argue against the Treasurer of New South Wales? He continues:

> The choice for Government is whether it regulates and oversees this industry to secure good social and economic outcomes or whether it owns the industry thereby risking billions of dollars of taxpayers' money in commercial business enterprises rather than investing those funds in social and economic services and facilities that are the core areas of Government responsibility.

Do you still want to argue against the Treasurer of New South Wales, Hon. Terry Roberts? I will be interested to know how you go. You will be running on empty, I think. In his concluding comments, the Hon. Michael Egan said:

> The Government does not need to own the electricity industry to ensure that it achieves desirable economic and social outcomes. The market for electricity business is currently very strong with high prices being realised and is an opportunity that should not be missed.

He further states:

> Selling the businesses means that the Government does not have to bear the increasing risks of continued ownership. There is a significant annual benefit to the budget, and thus the people of New South Wales, of hundreds of millions of dollars on an indefinite basis, which can be applied towards better Government services. The social and economic benefits of selling our electricity utilities, I believe, are very clear.

Mr Egan concluded:

> In other words, it is time for the New South Wales Labor movement to assess the demands on a modern Labor Government and how they can best be justified.

That is pretty heavy stuff, pretty punishing stuff, and, if one were listening to that for the first time, one would be pretty shocked, if one was a member of the Labor Party in South Australia, to think that that was the Treasurer of New South Wales talking. Because that was the truth; that was the reality. If one goes back to some of the earlier discussions about what should happen in South Australia, it is interesting to see what the then Premier, John Bannon, said at the time he sold off the South Australian Gas Company shares. What did he say? He said:

> This money can be better employed in addressing budget issues.

The Hon. T.G. Roberts interjecting:

The Hon. L.H. DAVIS: That is what he was doing. He was selling control. He was selling 82 per cent. That, even to a 'leftie' like the honourable member, means control. He said it when we sold off the State Bank. When the move was made he said the same thing: 'It will be better for the budget outcome if we sell off the State Bank.' But now that Labor is in opposition it is different. It has nothing to do with economics: it has everything to do with politics.

Mr Kevin Foley in another place in a parliamentary Estimates Committee on Thursday 18 June 1998 admitted that, in the Estimates Committee in 1997, he had said, and I quote:

> . . . the ability for ETSA and Optima Energy to pay the sorts of dividends they have in recent years would come under stress in terms of the need for ETSA and Optima Energy to meet their competition head-on. . .

That was Kevin Foley in a moment of weakness admitting the truth but not having the strength, to match it with his vote when the legislation subsequently came before the House.

The Hon. Mike Rann, who, of course, we would all recognise as a giant in financial and economic circles, said that Roxby Downs was a joke. He wrote a book about it, campaigned against it and advocated that people should stop buying BP petrol because it owned 50 per cent of Roxby at the time. He said that Premier Tonkin would be exposed as a fraud because no real economic benefits were associated with Roxby Downs.

That was strike one for Mike Rann on the economic and financial front, and strike two, of course, was that for two years he laughed at the serious and persistent Liberal claims about problems with the State Bank. Mike Rann's economic and financial status is confirmed for all Rann watchers and followers, and we know that when things get difficult for Mike he generally goes bushwalking. Well, I think that he would probably be doing a bit of bushwalking right now, because here he is for the third big issue of the past two decades, having been proved wrong in the first two, again backing the loser—being against privatisation. On Saturday 27 June in the *Advertiser* Mike Rann was asked:

> Without selling ETSA/Optima, how would you reduce State debt?

Mike Rann's answer goes on a bit, but he does not give an answer. Just read it, folks: page 19 of the *Advertiser*. All *Hansard* followers—

The Hon. J.S.L. Dawkins: You had better tell us.

The Hon. L.H. DAVIS: What does he say? All he talks about is the mandate thing. But to be fair to him he said:

> Labor announced a detailed debt reduction strategy at the last election based on the Premier's own budget figures. . .

He goes on:

Labor believes we can pay off the State debt. . . over time as laid out in our election strategy.

Let us lay out Mike Rann, and let us put a headstone there.

The Hon. T.G. Roberts: No wonder you did not want to read it out.

The Hon. L.H. DAVIS: It is so powerful; it just blew me away. In another place in debating this Bill the Hon. Mike Rann, the Leader of the Opposition, this economic and financial heavyweight who has bricks in his pocket to stop him blowing away on a windy day, said:

But make no mistake, if the Premier is allowed to do that—

in other words, privatise ETSA—

he will have left the State in a worse financial position and not a better one.

That had the Hon. Paul Holloway looking up quickly, as well he might. What is this man on about it?

The Hon. R.I. Lucas: Who said this?

The Hon. L.H. DAVIS: Mike Rann. Let us read it quickly:

John Olsen wants to privatise ETSA and Optima because he wants to use the proceeds to buy his way back into office at the next election. But make no mistake, if the Premier is allowed to do that—

that is, privatise ETSA and Optima—

he will have left the State in a worse financial position and not a better one.

What an incredible proposition! You raise in excess of $5 billion from the sale of ETSA and Optima and you leave the State in a worse financial position. I reckon that if you gave Mike Rann a whiteboard and said, 'Now, Mike—

Members interjecting:

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

The Hon. L.H. DAVIS: If you gave Mike Rann a whiteboard and even brought Ros Kelly in to give him a bit of help, he would be struggling to explain that. Then, of course, we have another lovely piece of logic from the vastly underrated Mike Rann, in economic and financial terms I mean, at page 881 in the debate on Tuesday 26 May 1998. He referred to Premier John Olsen quite rightly raising the fact that the Labor Party did a U-turn on uranium mining at Roxby Downs on the eve of the 1982 election.

You remember, members opposite, in talking about mandate, we said, 'Yes, we came into government in 1979 with a mandate for Roxby Downs but Labor took no notice of that and voted against Roxby Downs,' and it was only Norm Foster's resigning from the Labor Party and crossing the floor as an Independent that got Roxby Downs into position. Today it is one of the great mines and the biggest capital works project anywhere in Australia at the moment ($1.6 billion) and it employs 4 000 people.

Members interjecting:

The Hon. L.H. DAVIS: The Hon. Terry Roberts said, 'That is how democracy works. I was against it and I am still against it. Sandra Kanck is against it—she does not believe that it is there: she is still against it.' In the debate on ETSA, the Hon. Mike Rann said:

. . . the ALP publicly debated and announced its change of policy on uranium mining at Roxby Downs before the election and not after it. John Bannon, in his policy speech in November 1982, told South Australians that Roxby Downs 'can and will go ahead' under Labor—and that is the crucial difference. We debated our policy change out in the public and openly, and we went to the election on that policy change. It is the difference between two things: honesty and dishonesty.

What an incredible thing! What a nonsense! What a non sequitur! The Roxby Downs Bill had passed: it was legislation and it was going to go ahead. So, what was Labor going to do? Was it going to reintroduce legislation when it got in and say, 'No, we are not going to have Roxby Downs any more.'? It had been through the Parliament in June, and Western Mining was off and running. The election was not until November 1982. And Rann has the extraordinary hide to stand up in Parliament and try to run that as an argument of Labor's honesty versus our dishonesty.

Let us look at some of the contributions—it is just delicious stuff. Let us look at the Hon. Paul Holloway's lamentable contribution. Paul Holloway is a very pleasant fellow—he is very benign, very polite. He is not very effective with his interjections but, nevertheless, very well meaning.

The Hon. Carmel Zollo: He is not an actor.

The Hon. L.H. DAVIS: Well, that's true. He does need to take lessons.

The Hon. Carmel Zollo: Unlike you.

The Hon. L.H. DAVIS: I'm not an actor: I am just being natural. Apparently, the Hon. Paul Holloway is the financial spokesman for the Labor Party, and he parades an economics degree—although the Hon. Robert Lucas and I, in private discussion which I am prepared to share with members today, have publicly questioned whether, in fact, he did go to the same economics school as we did. We think not—but we have not asked.

The Hon. Paul Holloway goes on at length about Hilmer and how the Labor Party supported Hilmer—as well he might, because it was, after all, the Federal Labor Government that introduced Hilmer. And the Hilmer report, which drives competition payments and the restructuring of Australian public utilities in the private sector, demands that these efficiencies and productivities be put in place—as we battle in this global economy. So, having accepted that, he goes on to say:

. . . we are now seeing an ideological study rather than an economic one. There are a number of problems with a national electricity market, and I will refer to some of them. First, some of the studies that have been undertaken about what happens within electricity markets have shown that a break up of the vertically integrated electricity utilities can lead to additional costs.

This is extraordinary stuff. In other words, any benefits that derive from the National Competition Policy in the electricity industry have to overcome these additional costs. To take the Hon. Paul Holloway's proposition to its ultimate conclusion, the Labor Party is stridently against monopolies—although, of course, if they are public monopolies they have been all right. The Hon. Paul Holloway is now suddenly arguing a pro monopoly position. Having accepted Hilmer, and the virtues of Hilmer, he then goes on to argue against Hilmer.

What has happened in Australia (and let me say this slowly, so that the members of the Labor Party and the Democrats will understand) is that the very monopolies that Hilmer is breaking down led, to the credit of Prime Minister Hawke and then Prime Minister Keating, to a recognition of the need for massive structural reform, and this is supported by the Howard-Costello team in Federal Government at the moment. It is these very monopolies in the public sector in particular that have created the economic inefficiencies which made Australia pay so dearly in world terms.

Everyone can remember how inefficient Telecom was—how one would have a fight with the operator when one was looking for the name of someone in some country town, and

the operator would be quite rude on the phone and get away with it.

We can all remember those days when there was no Optus and Telecom did not say 'Yes.' It loved saying, 'No.' We all remember those days before there was competition in telecommunications. We can all remember those days and we can still remember how inefficient rail has been. In my view, one of the great untold scandals in this country is the scandal of Australian National. I just cannot begin to believe how lucky some of those people are who ran AN for so many years. It is one of the great scandals: how inefficient rail has been in this country, a country that screams out for rail and is perfect for rail, and that is only now being addressed.

One looks at electricity and sees how inefficient electricity has been. Look at the number of people who worked at ETSA. There were 6 500 people working at ETSA a decade ago. Now they are more productive and efficient and it has only 2 800 people. These huge monopolies in the public sector were anti-competitive, anti-productive, anti-service and were inimical to productivity, efficiency, new technology, competition and profitability. That was the Hon. Paul Holloway at work: it was just extraordinary stuff.

He then came on with a wonderful analogy. If you read it quickly, it does not look too bad but, if you read it slowly, it looks awful. He stated:

> The main thrust of the debate is that we need to sell ETSA to pay off our debts—

this is Paul Holloway, the finance spokesman—

> Most members in this Chamber would have a mortgage on their house. If they want to remove that debt they could always sell the house and pay off the debt. The only problem is that they would not have anywhere to live. You could adopt the attitude that if you sell your house, reduce the mortgage and rent a place for less, you would be better off, but would you? There are certain benefits that come with ownership.

Gee, that sounds all right, but just think about it. We are not talking about a house because, if you own and live in a house, you are not receiving anything for it. There is an imputed rent to the economist. But we really should be comparing businesses and factories in the street. If all the factories in the street are free of debt and not paying in interest, say, 16¢ for every dollar they earn in revenue, they can then spend every dollar they receive in revenue on research, development, expansion and capital—all the other things that go with money. You might begin to think that, even if you are slow at this game, they might have the edge over the person who is paying 16¢ in the dollar in interest.

That is the analogy we have got. That is where the world has moved on from two years ago, when the Labor Party last looked at this issue at the convention and decided it was against ETSA's privatisation. In their hearts members opposite—and I include the Democrats—must know that the world does move on sometimes. If they ran a private business (and the Hon. Terry Cameron has at least had the advantage of running a private business and understands these things), they would know that if they had to make a major decision and had not looked at it for two years, they would certainly go back and look at it again, because the world has moved on in this time.

New South Wales is now out in the rink and looking to privatise. Win, lose or draw, all bets are off: whoever wins the election at the end of March 1999 in New South Wales will privatise. Labor has a deal with the unions. Everyone is talking about that; it is an open secret and no-one opposite would deny that. The Liberal Party is also committed to privatisation. New South Wales will go ahead, and Victoria has already proved the benefits of privatisation, notwithstanding the fallacious 'C minus' paper delivered by the Australian Democrats to justify their lamentable decision to oppose this legislation.

The benefits of privatisation in Victoria are manifest. The benefits of the national electricity market are obvious. Businesses in New South Wales and Victoria have reported cuts of 25 per cent to 30 per cent in their power costs. Those are the benefits that will flow from the national electricity market: benefits to consumers, risks to the providers. Whatever one might say about newly elected Queensland Premier Beattie, that State will be swept up with this national electricity market, and it will face some tough decisions whatever its current rhetoric may be.

So, you have a situation where South Australia, according to the Labor Party and the Democrats, should soldier on with power in public hands competing against powerful private sector interests with deep pockets, and with a tenacity and a determination to increase their share of the market. When you are dealing with 30 retailers of electricity in South Australia in time, when the Hon. Carmel Zollo can go to the supermarket and order a block of power, just as she can go to a bowser and get some petrol—because that is how it will be—and when you are aware that the studies in Victoria have shown that up to 50 per cent of consumers have changed the source of their power supply through competition, then you recognise what is happening in this market. Dramatic things are afoot.

Just to continue with the Hon. Paul Holloway, he argues that there is merit—and I will not misquote him—when he says:

> The New South Wales electricity market is considerably different from ours. There are three main reasons for that. First, New South Wales has surplus generating capacity whereas South Australia has deficit capacity, importing as we do 30 per cent of our electricity. Secondly, New South Wales is the largest market in the country; South Australia is the smallest mainland. Thirdly, New South Wales has large reserves of low cost high quality black coal. In this State we do not have rich resources.

He takes all those three arguments and wraps them up and says, 'I can understand why New South Wales wants to privatise and why we should not,' and they are reasons why we should not. Goodness me, if we talk about this sensibly, we would realise immediately that, if you have the biggest State in the nation with surplus capacity and a strong and buoyant economy that will surge over the next two or three years as we move through the Olympic Games and beyond, with low cost high quality black coal, even those who have not visited an economics course or done a WEA summer course in high finance would recognise that New South Wales, once it gets into the national electricity market with a vengeance—and it starts in mid-November—will be highly competitive, and will be in there competing with Victoria for Mitsubishi, Adelaide Brighton Cement and those other 27 major manufacturers in South Australia which account for about 17 per cent of our total electricity market.

Paul Holloway puts up the very arguments in favour of privatisation and counts them as his own, and he is the finance spokesman for the Labor Party. That is appalling. Then Paul Holloway says—and I do not want to be misquoting him, as it is so good to quote him directly:

> Selling something is never really a solution when you are dealing with fundamentally profound State assets.

He has not listened to his leaders. Read the Hon. John Bannon's justification why he sold off the State Bank and the SA Gas Company: it was to reduce debt.

The Hon. J.F. Stefani interjecting:

The Hon. L.H. DAVIS: And Torrens Island Power Station, leasing that off to a pension fund in Outer Mongolia—exactly. So, I come to the last of the very many things we could discuss about the Hon. Paul Holloway, because he represents the face of Labor. I quote as follows:

> It seems that ETSA and Optima will be further broken up into parts, and there is nothing Parliament can do to stop it. The benefits from an integrated publicly owned infrastructure monopoly will substantially be dissipated by the Olsen Government regardless of this Bill. There is little doubt in my mind that if this Bill is rejected the National Competition Council will, in due course, threaten competition payments to South Australia using the argument that there cannot be genuine competition if the shareholders of the three generation companies remain the same—that is, the taxpayer.

That should frighten every taxpayer in South Australia. There from the Labor Party's own financial spokesman is the truth. He speaks it, but he does not recognise it. He says—and it is here in black and white:

> There is little doubt. . . that if this Bill is rejected—

and he his trying very hard to reject it—

> the National Competition Council will, in due course, threaten competition payments to South Australia.

It will take away or withhold money. The Treasurer is listening to this debate with intense interest. We are not talking about $1 million or $2 million but hundreds of millions of dollars being withheld using the argument 'there cannot be genuine competition if the shareholders of the three generation companies remain the same—that is, the taxpayer.'

The Hon. Paul Holloway has hit the nail on the head. This is what the Treasurer and the Premier have said: that Hilmer demands that this happen. The Federal Labor Government imposed this on the States: the competition payments will be made only if the prerequisites of restructuring and productivity improvements are fulfilled. Is Paul Holloway right? Yes, he is—and he intends to vote against his own logic. This is extraordinary. The Hon. Paul Holloway began his speech by praising and embracing Hilmer, recognising that the Labor Party brought in that report, and he ends up backing away from it.

An honourable member: Who was Premier then?

The Hon. L.H. DAVIS: The Hon. John Bannon. Mike Rann was right there. You did not hear Mike Rann talking about Hilmer, which is not surprising because he is not very good at economics and finance.

Having picked up some of the extraordinary and inconsequential arguments from the Labor Party, I now want to address some matters raised by the Democrats. The Hon. Sandra Kanck, the Australian Democrat responsible for the privatisation issue, has put in a lamentable performance. She announced in late June that the Democrats would oppose privatisation. This was just a few days before the State Government released vital new information about the proposed restructuring of ETSA and Optima and their privatisation. She had been advised that the Government could not release this information until approval had been given for the new structure by national regulatory bodies.

The Hon. Sandra Kanck deliberately went public to lock in the Australian Democrats. She said that the Democrats had made their decision weeks earlier in May. The Hon. Sandra Kanck had the gall to give many interviews during June complaining about how difficult it was to get information from the Government to assist the Democrats with their decision when, in fact, she had already made her decision.

On 20 July, the Hon. Sandra Kanck made a number of statements during a radio interview claiming that the information provided by the Electricity Supply Association of Australia (ESAA) showed that privatisation of power in Victoria had led to reliability of power supplies worsening in recent years.

The honourable member also said that supply interruptions were three times more likely in Victoria than in South Australia. The Managing Director of ESAA, the well respected Keith Orchison, went ballistic. In trenchant public criticism of the Hon. Sandra Kanck, he rebutted her main points. He demolished the logic of her arguments and exposed their falseness with respect to the reliability of suppliers—Victoria *vis-a-vis* South Australia.

I hope that the Hon. Ian Gilfillan is listening because he is a sensible person and I am sure that he takes this debate seriously. It is my fervent hope that he will at least give this legislation due weight notwithstanding the fact that the Hon. Sandra Kanck claims to have spoken for all the Democrats.

This Chamber ultimately will decide this legislation. We have the Treasurer in this Chamber and I would hope, at the very least, the Labor Party would like to put on record all the information about this important matter. I hope that, even if the Labor Party and Democrats are committed to voting against the third reading, they support the second reading to ensure that they have no excuse and they can ask questions of the Treasurer (who is in charge of this vital piece of legislation for the whole of Government) directly during the Committee stages. I hope that challenge will be taken up by both the Democrats and the Labor Party. I do not know what they will do. I would be extraordinarily disappointed if they elected to vote against the second reading.

An honourable member interjecting:

The Hon. L.H. DAVIS: I look on you for leadership. Keith Orchison said:

> She could easily have checked with ESAA before she put out a statement—she has done so in the past—but chose not to do so.

In particular, Orchison noted that the Hon. Sandra Kanck in a media statement made a claim about the bad effects of privatisation of electricity supply internationally which is also not borne out by the examination of the record. In fact, members can refer to comments that have been made by the Hon. Sandra Kanck in a letter to the editor as recently as 14 July 1998 in which she said:

> Privatisation has generally resulted in higher prices and poorer service.

An honourable member: A thousand hours of research in that.

The Hon. L.H. DAVIS: I am not sure whether there was a thousand hours of research in that. All I can say is she has a lot more research to do. Orchison further said:

> In her media statement [Hon. Sandra Kanck] makes a claim about the bad effects of privatisation of electricity supply internationally, which is also not borne out by examination of the record.

I would have thought Orchison's response sent 240 volts coursing through the Hon. Sandra Kanck's veins because he stated:

> In Britain, for example, the chairman of the electricity consumers' committees for the 14 British electricity regions is on the recent record as praising a 'significant improvement' in standards of service since privatisation, citing a halving in customer complaints

since 1991, a 30 per cent reduction in power bills for residential customers—

that is in real terms—

and a reduction in failures by private distribution companies against their licence standards from 12 321 to 100 000 customers in 1992-93 to 2 251 in 1996-97. Mrs Kanck knew about this statement of support for privatisation by the leader of the British consumers' committee before putting out her media statement because I wrote to her in late June to provide the information.

That is not a politician talking, that is the well respected Keith Orchison of ESAA. As members would have seen during Question Time in recent weeks in the Council, the Hon. Sandra Kanck's questions have been pretty typical of the lack of research, factual evidence, consistency and candour which have been a feature of her approach to this important matter. Some weeks ago the Hon. Sandra Kanck was asked by the Government to provide answers to 15 basic questions about privatisation. She has so far refused to answer them. She claims she spent 1 000 hours researching the issue.

An honourable member: Yes, she would.

The Hon. L.H. DAVIS: She claimed that she would, but so far she has refused to answer them. In fact, the day after the 15 questions were sent to her she claimed on 5AN that the questions were simplistic and she could not be bothered to answer them—and she has not answered them. Her statements in Parliament and her interviews on the media have been laced with inaccuracies and misleading statements. As I said earlier, I would venture to suggest that, if this position paper documenting the Democrats' position prepared by the Hon. Sandra Kanck had been submitted as a university economics essay, it would have attracted a C minus at best.

The reality is that the Democrats have not done their homework: the 1 000 hours have been badly spent. I just want to refer to some of the inaccuracies that the Hon. Sandra Kanck has made, because they do bear addressing. She claims that ETSA's transmission and distribution businesses face no market risk, that there will be no trading losses in this area. Absolutely wrong. As I mentioned, there are 27 manufacturers who represent 17 per cent of the revenue of ETSA who could go elsewhere which would leave stranded assets and which would mean asset values would be reduced.

Importantly, for members opposite, ETSA has lost the opportunity of operating the transmission line which serves Roxby Downs and Olympic Dam. WMC, which is a massive user of power, rejected ETSA because it was not competitive. That, again, represents lost revenue for the State.

The Kanck report, as it is called, stated that the transmission and distribution side of ETSA will remain profitable sources of steady income in either public or private ownership. Again, that ignores the significant regulatory risk associated with that. We have seen in Victoria that a regulator is at liberty to reset a lower rate of return which, of course, would expose the transmission and distribution assets to risk.

The Hon. T.G. Roberts: How do you correct that?

The Hon. L.H. DAVIS: You correct that by privatising it and by taking the Government out of the risk. One of the things that the Kanck report did get right was that she argued Optima will effectively exercise monopoly control because, by strategic bidding, it can set the pool price between 60 per cent and 96 per cent of the price. Whilst that may be correct that is an admission Optima is a monopoly supplier as things stand. As the Treasurer has said, energy prices and consumer prices are a zero sum gain. If you are going to have higher energy prices to maintain dividends to the State—which is what the Labor Party advocates; the endless bonanza that will flow from ETSA and Optima even though this is a publicly owned asset competing for the first time in a non-monopoly situation against private owners—the only way State owned Optima dividends can remain high is through keeping—

The Hon. T.G. Cameron interjecting:

The Hon. L.H. DAVIS: —high consumer prices. The Hon. Terry Cameron interjects with a very pungent and telling criticism about the opponents of privatisation. He says, 'Of course, we heard this about the State Bank.' The Hon. John Bannon used to say, 'This is the projected profit for the State bank.' The profit was there all right: it was a fiddle, an absolute fiddle.

Members interjecting:

The Hon. L.H. DAVIS: SGIC and Beneficial Finance.

The Hon. T.G. Cameron interjecting:

The Hon. L.H. DAVIS: That is right, exactly right. It reflects, again, the fundamental conflict that the Government as the owner wants to maximise profits and that may be contrary to the interests of the consumer.

Then, of course, we had the heavy reliance on Professor Quiggin. This was something which was a feature of the Democrats. They relied very heavily on someone who is known to be a vehement opponent of privatisation. I want to read from an article in the *Financial Review* of 16 July 1998. Professor John Quiggin, Senior Research Fellow in Economics at James Cook University, was reported as saying:

Whether we focus on reforming tax and welfare or on direct public sector stimulus, it will cost money, and that money must come from taxpayers on middle and upper incomes. For the past decade it has been assumed that ordinary Australians are too greedy and short-sighted to accept a higher tax burden in order to achieve social goals. Unless that assumption is rejected, there is little chance of a reduction in unemployment.

So, there is Professor John Quiggin, who is the hero of the Labor Party and Australian Democrat opponents to privatisation, advocating high taxation for middle and upper class people. That is Quiggin's view. This is the same Professor John Quiggin who wrote in the Australian *Financial Review* praising the Democrats' decision to oppose privatisation—without declaring that they were relying on his very analysis. Talk about failing to declare a conflict of interest!

Members interjecting:

The Hon. L.H. DAVIS: I will come to that in a moment. At one stage the Hon. Sandra Kanck was on the public record as saying that the early repayment of our State debt, which would have been achieved through privatisation, would cost us an extra $1 billion to $2 billion in penalty payments. She changed her mind, as she is wont to do, and reduced it to $900 million, but she stuck with that figure. I understand that the Treasurer produced a total breakdown of State debt by maturity date, and it revealed that about $5 billion is due for repayment over the next four years and that there were no penalties associated with that repayment. So, there is another example of Sandra Kanck being wrong by a mere lazy $1 billion to $2 billion.

Should we not have a privileges committee into this? It is very tempting. The *Advertiser* of 4 July, which is Independence Day—I guess Sandra is breaking out of everything here and being quite independent—quotes her as saying what we heard from Mike Elliott—and now we know where he got it from—that reduction in State debt can occur quite rapidly by growing the economy. She says that the Government has wasted huge sums on separation packages for public servants, worth about $900 million, rather than reducing the size of the

public sector through natural attrition. That is a doozey of an argument. We heard that from the Hon. Mike Elliott.

The Hon. P. Holloway: There's an element of truth in it.

The Hon. L.H. DAVIS: The Hon. Paul Holloway says that there is an element of truth in it.

The Hon. P. Holloway: There is.

The Hon. L.H. DAVIS: The majority of public servants who were retrenched were retrenched under a Labor Government, as the honourable member would understand, and packages were offered to them. Why did the Labor Party do it?

The Hon. P. Holloway: To reduce the ongoing costs.

The Hon. L.H. DAVIS: The Hon. Paul Holloway has that right. He should go on the record with a right answer. He has opened his score for the day. It is 6.15, very late in the day, but he has opened his account. Why have we lowered the number of public servants by natural attrition, packages or whatever? It is to reduce the ongoing cost; that is the answer. You have those ongoing, recurring costs, and you have a one-off payment. It might be a nine month, a one year and, in a few cases, a two year package, but if we take Mike Rann with a white stick to the white board and show him how it works, he will find that if you net it out the ongoing costs of those public servants will far outweigh the one-off packages that are given. That is a nonsense of an argument and it just shows how shallow the Democrats are.

The Hon. Sandra Kanck then argues that currently if ETSA is tardy about repairing a fault the responsibility comes from the heat of public pressure and from the Minister reminding ETSA's board and management of its obligations to the South Australian public. Again, in her thousand hours of research the Hon. Sandra Kanck has not seen or understood how transparent the electricity industry is around the world. America has an unemployment rate of 4 per cent to 4.5 per cent. Its electricity authorities and power utilities are and have been privately owned. The process is transparent. Consumer groups are out there, keeping electricity companies honest.

Only today we heard what the Treasurer said:in an exciting initiative, arguably leading the nation, that customer service parameters will be put in place so that, for every day a supply connection is late, there will be a $50 reduction on a bill. If a tradesperson is more than 15 minutes late, a phone call of apology will be required and $20 will be taken off the account. Those are standards we do not have in place now in the public sector, but they will be in place under privatisation. So much for the research of the Democrats.

The Hon. Sandra Kanck also cited Auckland's recent power failure as an example of what can go wrong with privatisation, but the truth is that Auckland's Mercury Energy was much more like ETSA than a privately owned organisation, because Auckland's Mercury Energy is not owned by private investors and it is not a comparable situation.

Finally, the Hon. Sandra Kanck in the Kanck report says that there is no case for privatisation on the grounds of potential loss of competition payments. Even in his lamentable performance the Hon. Paul Holloway admitted that the competition payments were at risk if this legislation were rejected, and that is a point I am sure the Treasurer will build on. The fact is that that is untrue. Finally, we had the extraordinary performance of the Hon. Sandra Kanck quoting something as a World Bank report on privatisation when it turned out that it was not: it was something specifically disclaimed as being authorised or supported by the World Bank.

In conclusion, the big issues that are yet to be addressed already by the Labor Party, the Australian Democrats and the No Pokies member are, first, the economic benefits of privatisation versus the economic costs of not privatising, and the importance of ensuring that proper regulatory measures are in place and that there is proper consumer protection. The way the world has changed in electricity in Australia mirrors the way the world has changed in so many other industries, such as the car industry. We cannot go backwards: we can only go forwards.

If this State does not address this issue seriously and take the window of opportunity that exists with the high level of interest that is clearly being shown in ETSA's and Optima's assets at the present time, we face the very real prospect of becoming the Tasmania of the Australian mainland. I do not think it is being too dramatic to state it in those terms. This window of opportunity exists in particular because, with the melt-down in Asian economies, Australia's political and economic stability become even more attractive to national and international investors. I urge members of the Labor Party and the Australian Democrats to seize this opportunity and support this measure.

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

WHEAT MARKETING (GRAIN DEDUCTIONS) AMENDMENT BILL

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

STATUTES AMENDMENT (YOUNG OFFENDERS) BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 6.25 p.m. the Council adjourned until Tuesday 11 August at 2.15 p.m.