LEGISLATIVE COUNCIL

Thursday 10 December 1998

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

ROAD TRAFFIC (MISCELLANEOUS No. 2) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning) obtained leave and introduced a Bill for an Act to amend the Road Traffic Act 1961. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

It relates to regulating the mass and loading provisions for heavy vehicles, conditions for safe travel of oversized and over mass vehicles, and heavy and light vehicle roadworthiness standards. I seek leave to have the second reading speech and explanation of clauses inserted in *Hansard* without my reading them.

Leave granted.

The purpose of the Bill is to amend the Road Traffic Act 1961 in order to incorporate:

- nationally consistent legislation to regulate mass and loading provisions for heavy vehicles;
- nationally consistent conditions for the safe travel of oversize and overmass vehicles; and
- nationally consistent heavy and light vehicle roadworthiness Standards.

Governments across Australia have agreed to develop and implement national road transport reforms which promote safety and efficiency, both within and across State borders, and which reduce the environmental impact and the costs of administration of road transport, for the benefit of road users and others in the community. The reforms proposed in this Bill are an important contribution to the development of a system of nationally uniform and consistent road transport regulation.

The passage of this Bill will contribute to meeting the obligations undertaken by the South Australian Government as a signatory to the Intergovernmental Agreement to Implement the National Competition Policy and Related Reforms, signed on 11 April 1995 by the Council of Australian Governments (COAG). The Intergovernmental Agreement makes substantial Commonwealth payments (in excess of $1 billion over 10 years) dependent upon the State meeting its obligations under the Conditions of Payment, which include an obligation to implement the agreed national road transport reforms. The amendments in this Bill form part of those reforms.

Two of the three principal reform areas this Bill is designed to introduce, namely Mass and Loading reform and Oversize and Overmass provisions, both applicable to heavy vehicles, were approved by Transport Ministers in 1995. Progress in implementing these reforms will be considered by the National Competition Council in its assessment of South Australia's eligibility for competition payments, which begins in March 1999.

Many of the provisions contained in this Bill, and provisions planned for the Regulations that will subsequently be made under this Bill, are already operational in South Australia. These important reforms have been delivered over the last few years in South Australia by the adoption of much of the national law by administrative means and piecemeal amendments. Transport SA has now conducted a 'due diligence' process comparing details of the national law and the current South Australian law, to identify any significant differences. This process has determined that the practical implications to road users of introducing legislation concerning the national reforms contained in this Bill are minimal; the amendments will mainly facilitate transparency in the law, rather than making significant changes in the legal requirements placed on the road transport industry.

The current legal framework for the control of oversize and overmass vehicles, for the control of mass and loading and for the control of vehicle standards is not ideal. The application of the law by administrative means and gazette notice has the disadvantage that it is difficult for industry to determine its legal obligations, without wading through Regulations, gazette notices, administrative guidelines and other such instructions.

This Bill will introduce a rationalised and more accountable framework.

By way of example, *The Loading Restraint Guide* is a booklet used Australia wide that describes how loads on heavy vehicles must be securely fastened so as not to create a danger to road users. Currently, the booklet is required to be used as a loading guide for oversize or overmass vehicles travelling in South Australia on routes where this is permitted by *Gazette* notice or individual permit. Other road transport industry members tend to use the booklet as a best practice guide, even though it is not required by law. The changes proposed in this Bill will require the use of *The Load Restraint Guide* by all vehicles through Regulation.

The Bill also introduces a definition of 'operator' of a vehicle in accordance with current national registration practices, and extends liability for a breach of the relevant areas of the Road Traffic Act to include the operator as well as the owner or driver of a vehicle. This provision will allow sanctions to be applied more effectively, by including operators in the chain of responsibility where illegal acts occur.

The existing definition of 'road' has always been problematic. It has been left to the Courts on many occasions to determine what is or is not a road. The extent to which 'public access' areas should, or should not, be included in the definition of a road has also been the subject of much debate in the national arena. The Bill reflects the nationally agreed and comprehensive definition of 'road', and introduces the concept of a 'road related area' to deal with the issue of public access areas. 'Road related areas' will now include footpaths, nature strips, other areas used by the public for driving or parking vehicles and areas that divide roads. Supporting Regulations will allow the Minister to declare, by gazettal, that particular areas are, or are not, road related areas.

The Bill restructures Part 4 of the Road Traffic Act, currently entitled 'Equipment, Size and Mass of Vehicles and Safety Requirements'. This section will be re-titled 'Vehicle Standards, Mass and Loading Requirements and Safety Provisions'. The Bill provides the mechanisms to allow the on-road operation and movement of vehicles to be administered and enforced. Technical details, relating to such matters as the design and construction requirements of vehicles, standards applying to vehicle mass and loading, and rules regarding the operation of oversize and overmass vehicles are now to be provided for by Regulations and Rules.

The Bill provides for the Governor to make Rules to set standards ('Vehicle Standards Rules') detailing the in-service standards for both heavy and light vehicles. Standards will cover general safety requirements, vehicle marking, configuration and dimensions, lighting, braking, and fuel and exhaust systems for motor vehicles, trailers and combinations.

The Standards are designed to achieve best practice uniformity and consistency throughout Australia. The Standards are designed to improve road safety and take into account the need to provide practical and enforceable rules easily understood across Australia. A further major function of the Standards is to continue the application of the Australian Design Rules (ADR's) to vehicles in-service, as opposed to new vehicles prior to registration.

The Bill allows the Governor to make Regulations to cover a range of standards applying to vehicle mass and loading. These include mass limits associated with vehicle design capabilities, maximum axle mass limits, gross vehicle or combination mass limits, and the size, projection, placing and securing of loads.

The proposed Regulations will consolidate the current Mass Limits Regulations and relevant gazette notices.

The Bill will also allow the Governor to make Regulations regarding the operation of oversize and overmass vehicles, that is those vehicles which carry large indivisible loads, large special purpose vehicles such as plant or mobile cranes, and agricultural machines, implements and trailers.

The proposed Regulations set out the standards for the operation of oversize and overmass vehicles under gazette notice or permit, including mass and dimension limits, operating requirements, the fitting of warning devices, and requirements for pilot and escort vehicles.

Consultation has occurred with affected parties. The National Road Transport Commission has consulted widely with industry and other affected parties, including the National Environment Protection

Council, prior to obtaining the approval of the Ministerial Council on Road Transport for the content of the Regulations and Rules this Bill is designed to support.

It is anticipated more consultation will occur as the Regulations and Rules specifying technical details are finalised and presented to Cabinet and the Legislative Review Committee.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 5—Interpretation

This amends current definitions of words and phrases used in the principal Act and inserts a number of additional definitions.

All the definitional changes are designed to bring about consistency with definitions and developments in national Road Transport Reform legislation.

Included in the amendments is a new definition of bus. It is now defined as a motor vehicle built mainly to carry people that seats over 12 adults (including the driver). Currently, a bus is a motor vehicle designed to carry more than 8 persons (including the driver).

The term motor cycle will no longer be used, but such a vehicle will now be referred to as a motor bike.

A new definition of articulated motor vehicle is substituted and, related to this, there are new definitions of prime mover and semi-trailer.

A combination is defined to mean a group of vehicles consisting of a motor vehicle connected to one or more vehicles.

New subordinate legislation, corresponding to national Road Transport Reform regulations, will be promulgated as mass and loading requirements under new section 113 and vehicle standards under new section 111 (see clause 14).

A number of new definitions relating to axles and various axle groups are added for the purposes of the proposed mass and loading requirements.

It is proposed to insert a new definition of operator. This will reflect changes in other States and Territories and changes proposed to the South Australian Motor Vehicles Act 1959. In relation to a motor vehicle, an operator will mean a person registered or recorded as the operator of the vehicle under the Motor Vehicles Act 1959 or a similar law of the Commonwealth or another State or a Territory of the Commonwealth.

The current definition of road will be replaced by a new definition of road and a related definition of road-related area. Road will mean an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving of vehicles. Road-related area will mean any of the following:

- an area that divides a road;
- a footpath or nature strip adjacent to a road;
- an area that is not a road and that is open to the public and designated for use by cyclists or animals;
- an area that is not a road and that is open to or used by the public for driving or parking vehicles;
- any other area that is open to or used by the public and that has been declared by regulation to be a road-related area.

Clause 4: Insertion of s. 6A

This is consequential on the insertion of the definitions of road and road-related area (see clause 3).

6A. Roads and road-related areas

This new section provides that a reference in the principal Act to a road includes a reference to a road-related area unless it is otherwise expressly stated.

Clause 5: Amendment of s. 38—Questions as to identity of drivers, etc.

Clause 6: Amendment of s. 42—Power to stop vehicle and ask questions

These amendments are consequential on the adoption of the concept of operator in vehicle registration laws and in section 5 (*see clause 3*).

Clause 7: Amendment of s. 53—Speed limits for certain vehicles

Section 53(1) provides that it is an offence for a person to drive certain kinds of vehicles at a speed in excess of 100 kilometres per hour. The new subsections to be inserted in section 53 reproduce the substance of current section 144 which is to be repealed (see clause 14).

Clause 8: Amendment of s. 61—Driving on footpaths or bikeways

This amendment is consequential on the substitution of motor bike for the previously used motor cycle (see clause 3).

Clause 9: Amendment of s. 79B—Provisions applying where certain offences are detected by photographic detection devices

Subsection (1) of section 79B contains definitions of words and phrases used in this section. The following definition is inserted:

owner, in relation to a vehicle, has the meaning assigned to the term by section 5, and includes the operator of the vehicle.

As a consequence of the new definition of owner, the definition of registered owner is struck out from subsection (1) and amendments are made to subsections (2), (3) and (4).

Clause 10: Insertion of ss. 92A and 92B

New sections are to be inserted under the heading *Miscellaneous Duties of Road Users*.

92A. Using lights while driving at night or during periods of low visibility

New section 92A provides that, except as otherwise prescribed, a person must not drive a vehicle, or cause a vehicle to stand, on a road between sunset and sunrise or during a period of low visibility unless the lamps fitted to the vehicle are operating effectively and are clearly visible.

92B. Duty to dip headlamps

New section 92B provides that the driver of a vehicle fitted with a dipping device must cause the main beam of light projected by the headlamps of the vehicle to be dipped between sunset and sunrise or during a period of low visibility, when the vehicle is within 200 metres of another vehicle approaching from the opposite direction.

These new sections replace current sections 119 and 122 (*see clause 14*).

Clause 11: Amendment of s. 94A—Portion of body protruding from vehicle

This amendment is consequential to the change from the term motor cycle to the term motor bike.

Clause 12: Insertion of s. 107A

107A. Vehicle fitted with metal tyres

New section 107 provides that if a vehicle fitted with metal tyres is driven on, or drawn along, a road, the surfaces of the tyres that come into contact with the surface of the road must be smooth and at least 33 millimetres in width. A person who drives a vehicle on a road, or draws a vehicle along a road, in contravention of subsection (1) is guilty of an offence.

This new section replaces section 150, a provision in Part 4 as it is currently arranged (see clause 18).

Clause 13: Substitution of heading

The proposed new heading to Part 4 is 'VEHICLE STANDARDS, MASS AND LOADING REQUIREMENTS AND SAFETY PROVISIONS'.

Clause 14: Substitution of sections 111 to 147 and headings

New sections 111 and 112 will appear under the new heading 'Vehicle Standards'.

111. Rules prescribing vehicle standards

New section 111 provides that the Governor may make rules to set vehicle standards about the design, construction, efficiency and performance of, and the equipment to be carried on, motor vehicles, trailers and combinations.

The rules proposed to be made under this provision will correspond to the proposed national *Road Transport Reform (Vehicle Standards) Regulations*.

112. Offence relating to vehicle standards, safety maintenance and emission control systems

New section 112 provides that a vehicle (defined in this section to include a combination (see clause 3) must not be driven or towed on a road if—

- it does not comply with the vehicle standards; or
- it has not been maintained in a condition that enables it to be driven or towed safely; or
- it does not have an emission control system fitted to it of each kind that was fitted to it when it was built; or
- an emission control system fitted to it has not been maintained in a condition that ensures that the system continues operating essentially in accordance with the system's original design.

The driver, owner and operator of the vehicle are each guilty of an offence if a vehicle is driven or towed in contravention of new subsection (1) and a person guilty of such an offence in a particular respect is guilty of a further offence if the vehicle simultaneously fails to comply with the standards or new subsection (1) in another respect.

This new section does not apply to vehicles excluded by the vehicle standards from the application of those standards.

For the purposes of this new section, a vehicle is not maintained in a condition that enables it to be driven or towed safely if driving or towing the vehicle would endanger the person driving or towing the vehicle, anyone else in or on the vehicle or a vehicle attached to it or other road users.

New sections 113 and 114 will appear under the new heading 'Mass and Loading Requirements'.

113. Regulations prescribing mass and loading requirements

New section 113 provides that the Governor may make regulations to prescribe mass and loading requirements about the mass and loading of motor vehicles, trailers and combinations, including dimensions and securing of loads and the coupling of vehicles.

The regulations proposed to be made under this provision will correspond to the national *Road Transport Reform (Mass and Loading) Regulations*.

114. Offences relating to mass and loading requirements

New section 114 provides that a vehicle (defined in this section to include a combination) must not be driven or towed on a road if the vehicle or a load on the vehicle does not comply with the mass and loading requirements. The driver and the owner and operator of the vehicle are each guilty of an offence if a vehicle is driven or towed in contravention of subsection (1). The penalty for such an offence in part matches the penalty for the current mass limit offence in section 146 of the principal Act:

- in the case of an offence where a mass limit prescribed in the mass and loading requirements has been exceeded—
  1. not less than $1.75 and not more than $10 for every 50 kilograms of the first tonne of mass in excess of the mass limit; and
  2. not less than $10 and not more than $20 for every 50 kilograms of the excess mass after the first tonne;
- in any other case—$1 000.

A person guilty of such an offence in a particular respect is guilty of a further offence if the vehicle simultaneously fails to comply with the standards or new subsection (1) in another respect.

New section 115 will appear under the new heading 'Oversize or Overmass Vehicle Exemptions'.

115. Standard form conditions for oversize or overmass vehicle exemptions

New section 115 provides that the Governor may make regulations to prescribe standard form conditions to apply to the driving on a road of a vehicle (defined in this section to include a combination) the subject of an oversize or overmass vehicle exemption.

The regulations proposed to be made under this provision will correspond to the national *Road Transport Reform (Oversize and Overmass Vehicles) Regulations*.

For the purposes of new section 115, an oversize or overmass vehicle exemption is an exemption granted under this Part by the Minister in respect of a vehicle from a dimension limit in the vehicle standards or a mass or dimension limit in the mass and loading requirements.

If the Minister grants an oversize or overmass vehicle exemption in respect of a class of vehicles by notice published in the *Gazette*, the exemption is—

- except as otherwise provided in the notice, to be subject to the standard form conditions prescribed by the regulations for vehicles travelling under notices and the class of vehicles to which the notice applies; and
- to be subject to any other conditions the Minister thinks fit and specifies in the notice.

If the Minister grants an oversize or overmass vehicle exemption in respect of a specified vehicle by instrument in writing, the exemption is—

- except as otherwise provided in the instrument, to be subject to the standard form conditions that are declared by the regulations to apply to a vehicle subject to such an exemption; and
- to be subject to any other conditions the Minister thinks fit and specifies in the instrument.

An exemption granted by notice published in the *Gazette* may designate an area or road to which the exemption applies to be in a particular category for the purposes of the operation of a standard form condition prescribed by the regulations.

New section 116 will appear under the new heading 'Towing of vehicles'.

116. Towing of vehicles

New section 116 provides that a vehicle must not be towed by another vehicle on a road if a requirement of the regulations relating to the towing of vehicles is not complied with. If a vehicle is towed in contravention of new subsection (1), the driver and the owner and the operator of the towing vehicle are each guilty of an offence.

This new section replaces current section 157 (see clause 22).

Clause 15: Insertion of heading

The heading 'Enforcement Powers' is inserted before section 148 of the principal Act.

Clause 16: Amendment of s. 148—Determination of mass

The amendments relating to the substitution of 'axle group' for 'group of axles' are consequential on the insertion of the definition of axle group in section 5 of the principal Act (see clause 3). In addition, new subsection (3) is inserted to provide that in section 148 vehicle includes a combination.

Clause 17: Amendment of s. 149—Measurement of distance between axles

The proposed amendment to this clause strikes out subsection (1) (which will now be dealt with in the proposed new mass and loading requirements) and amends subsection (2) as a consequence of the insertion in section 5 of the principal Act of the definition of combination.

Clause 18: Repeal of s. 150

The substance of section 150 is now provided for in new section 107A (*see clause 12*) making this section obsolete.

Clause 19: Amendment of s. 153—Determining mass

Clause 20: Amendment of s. 154—Measurement of loads, etc.

The amendments to these clauses are consequential on the adoption of the concept of operator in the vehicle registration laws.

Clause 21: Amendment of s. 156—Unloading of excess mass

The amendments to this clause are consequential on the new definitions inserted in the principal Act.

Clause 22: Repeal of s. 157 and headings

The substance of section 157 is now provided for in new section 116 (*see clause 14*) making this section (and the various headings) obsolete.

Clause 23: Amendment of s. 160—Defect notices

This amendment is consequential on the adoption of the concept of operator in the vehicle registration laws. In addition the penalty provision is amended to be consistent with current drafting styles.

Clause 24: Amendment of s. 161—Suspension of registration of unsafe vehicles

On removal of the suspension of a vehicle the registration period of which has not expired, the Registrar of Motor Vehicles must issue to the person registered as operator of the vehicle (rather than to the owner as is currently required) a registration label for the vehicle. The amendment to subsection (4) is consequential on this amendment.

Clause 25: Insertion of heading

After section 161 of the principal Act, the heading 'Further Safety Provisions' is to be inserted.

Clause 26: Amendment of s. 162—Securing of loads on light vehicles

The amendment provides that section 162 does not apply to a vehicle to which the mass and loading requirements apply.

Clause 27: Repeal of s. 162B

This section is now obsolete as a consequence of earlier amendments.

Clause 28: Amendment of s. 163C—Application of Part

Subsection (2) of this section is struck out as the substance of that subsection has been provided for by the amendments proposed to section 163D.

Clause 29: Amendment of s. 163D—Inspection of vehicles and issue of certificates of inspection

These amendments provide that a vehicle to which Part 4A applies must not be driven on a road while carrying passengers (other than the driver) unless the vehicle is the subject of a current certificate of inspection.

If a vehicle is driven on a road in contravention of new subsection (1), or when a condition of a certificate of inspection in respect of the vehicle has not been complied with, the driver, the owner and the operator of the vehicle are each guilty of an offence.

Clause 30: Amendment of s. 163E—Inspection of vehicles

This amendment is consequential on the adoption of the concept of operator in the vehicle registration laws.

Clause 31: Amendment of s. 163F—Cancellation of certificates of inspection

One of the amendments is consequential on the adoption of the concept of operator and the other is of a minor drafting nature.

Clause 32: Amendment of s. 163GA—Maintenance records

The amendments to section 163GA are consequential on the adoption of the concept of operator.

Clause 33: Insertion of ss. 173A and 173B

173A. Defence relating to registered owner or operator

New section 173A provides that in proceedings for an offence against the principal Act in which a person is charged as a registered owner of a vehicle, it is a defence if the person proves—

- that before the relevant time the ownership of the vehicle had been transferred to some other specified person; or
- that the person was wrongly registered or recorded as an owner of the vehicle.

In proceedings for an offence against the principal Act in which a person is charged as the operator of a vehicle, it is a defence if the person proves that at the relevant time the person was not principally responsible for the operation or use of the vehicle.

173B. Service of notices, etc., on owners of vehicles

New section 173B provides that if a notice or other document is required or authorised by the principal Act to be served on or given to the owner of a vehicle, it is sufficient, in a case where there is more than one owner of the vehicle, if it is served on or given to only one or some of the owners.

Clause 34: Amendment of s. 175—Evidence

Clause 35: Amendment of s. 176—Regulations and rules

The amendments to these clauses are consequential.

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

STATUTES AMENDMENT (NATIVE TITLE No. 2) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Aboriginal Lands Trust Act 1966, the Electricity Trust Act 1996, the Environment, Resources and Development Court Act 1993, the Mining Act 1971, the Native Title (South Australia) Act 1994, the Opal Mining Act 1995 and the Petroleum Act 1940. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

The *Native Title Amendment Act 1998* (Cth) came into operation on 30 September 1998. It substantially amends the *Native Title Act 1993*. The Government has reviewed the legislative options now available under the *Native Title Act 1993* for South Australia and believes that it is appropriate to make the following legislative responses to those amendments.

Validation

Section 22F of the *Native Title Act* allows the State to validate acts done over pastoral and other lands in the period between 1 January 1994 and 23 December 1996 (the date of the *Wik* decision) on the assumption that native title was extinguished.

The State is required to publish a list of all mining tenures granted in the relevant period in the event that native title holders whose rights were affected wish to seek compensation in relation to the effect of any invalid tenure on their native title rights.

Section 24EBA allows States to validate invalid future acts by Indigenous Land Use Agreement if State laws allow. This is an appropriate provision to include in State legislation in case it is required in the future.

It is now therefore appropriate to amend Part 6 of the *Native Title (South Australia) Act* to validate those acts covered by section 22F and also to provide for the State to be able to validate invalid future acts pursuant to section 24EBA.

Confirmation

Sections 23E and 23I of the *Native Title Act* provide for the State to confirm the extinguishment (total or partial respectively) of native title by previous exclusive possession acts and previous non-exclusive possession acts attributable to the State, including those listed in the list of extinguishing tenures for South Australia set out in Schedule 1, Part 5 of the *Native Title Act*.

It is appropriate for the State to confirm the extinguishing effect of those tenures covered by these provisions.

Registration test

The proclamation of the *Native Title Amendment Act* on 30 September 1998 has created a situation where South Australia's registration test for native title claims under the *Native Title (South Australia) Act 1994* is less stringent than the registration test under the *Native Title Act*. To date, there have not been any native title claims lodged in the State jurisdiction. Nevertheless it is necessary and desirable to have the same test as in the Commonwealth jurisdiction to ensure that the State scheme is consistent with the *Native Title Act* and to avoid forum shopping on the part of claimants.

Definition of "native title" and explanatory note to section 4 of the NT(SA) Act

The Commonwealth has slightly amended the definition of "native title" in section 223 of the *Native Title Act*. It is thus appropriate for the State to amend its definition in section 4 of the *Native Title (South Australia) Act* to make it consistent with the Commonwealth Act.

In addition, section 4(5) of the *Native Title (South Australia) Act* currently states that native title in land was extinguished by an act occurring before 31 October 1975 that was inconsistent with the continued existence, enjoyment or exercise of native title in the land. The explanatory note to this section gives examples of such tenures. In light of the confirmation of extinguishment provisions to be inserted in a later part of the *Native Title (South Australia) Act*, it is now appropriate for the explanatory note to be removed.

Accelerated decisions of arbitral body

The Bill provides for a new Division 6 of Part 3 of the *Native Title (South Australia) Act*. Division 6 would allow the Minister to make a declaration where he or she is of the view that it is in the public interest that a matter involving a native title question being heard by the Court is resolved within a particular time frame. Upon the making of such a declaration the Attorney-General may request that the Court take action to expedite proceedings to ensure they are determined within this declared time frame. The Court is required to accede to any such request in so far as it can do so consistently with the interests of justice. The Supreme Court may review a decision of the ERD Court under the new section and give further or other directions on application by the Attorney-General. The concept underlying Division 6 is consistent with sections 36 to 37 (inclusive) of the NTA but is designed to protect the independence and judicial function of the Court.

Existing right to negotiate schemes for mining and opal mining

South Australia is the only State to have existing alternative right to negotiate schemes in operation in respect of minerals and opal mining. These are found in Part 9B of the *Mining Act 1971* and Part 7 of the *Opal Mining Act 1995*.

The transitional provisions to the *Native Title Act* provide that existing determinations of the Commonwealth Minister approving alternative State schemes already made under section 43 remain in place as if they had been made under section 43 as amended.

It is desirable, however, to have State schemes for mining, opal mining and petroleum that are consistent with each other and, to the extent that it is necessary and appropriate, with the right to negotiate in the *Native Title Act.*

In light of this, the schemes for mining and opal mining are to be amended in such a way that they are consistent with the amendments to the Commonwealth right to negotiate process and so as to ensure they comply with the requirements set out in section 43(2) as amended. These amendments include changes to the notification and time limit requirements to make them consistent with the *Native Title Act*.

The amendments will alter the test to determine which acts will attract the expedited procedure process, restrict the negotiations to a native title holder or claimants' registered native title rights and alter the powers and responsibilities of the Environment Resources and Development Court to reflect the changes made by the *Native Title Amendment Act.*

The schemes are also to be amended to reflect the fact that indigenous land use agreements, which replace the operation of the right to negotiate for the area they cover, may now be negotiated.

In light of the changes made to the Commonwealth right to negotiate scheme it is also appropriate to re-examine the application of conjunctive and umbrella agreements under the State schemes.

Under the State schemes conjunctive authorisations can only be reached with native title claimant groups in extremely limited circumstances. These restrictions were placed on the State scheme at a time when no conjunctive agreements were available under the Commonwealth Act. Section 26D of the *Native Title Act* (together with the 'project act' provisions in section 29) now allows for conjunctive agreements to be reached with native title claimant groups without the restrictions currently in place on such agreements in the State legislation. It is therefore appropriate to remove the restrictions on such authorisations in the State schemes to make the schemes consistent with the Commonwealth right to negotiate.

There are indications from both the mining industry and Aboriginal groups that the ability to negotiate conjunctive agreements would be useful.

Umbrella authorisations are currently restricted to opal mining activities under the State regime. Whilst such authorisations are not expressly provided for in the Commonwealth right to negotiate, the freeing up of the Commonwealth's regime, along with the new indigenous land use agreement provisions which allow for alternative procedure agreements to be reached for an area, make the expansion of the application of umbrella agreements to mining generally now appropriate.

A number of other amendments to the *Mining Act* and *Opal Mining Act* are set out in this legislation. These relate to notification of owners by the registrar, the information to be provided in a notice initiating negotiations, the registration of agreements and the ability for industry to have the time limits on its non native title conditions varied where they have legitimately been held up by native title negotiations. These amendments have been included in response to practical issues that have arisen from the use of the State scheme up to this point.

Section 43 right to negotiate scheme and petroleum

At the present time, there is no State based 'right to negotiate' scheme in the *Petroleum Act*. In the absence of a State scheme, the right to negotiate in the Commonwealth *Native Title Act* applies. In order to facilitate the ability of the petroleum industry to get access to land in this State without encountering the delays that have been experienced under the Commonwealth scheme, and in the interests of ensuring the consistency of treatment of native title issues in South Australia, it is now appropriate to introduce a State based right to negotiate regime in the *Petroleum Act 1940* for which an authorisation under section 43 of the *Native Title Act* will be sought.

The amendments to the *Petroleum Act* put in place a scheme consistent with that in Part 9B of the *Mining Act* and Part 7 of the *Opal Mining Act* after the passing of this Bill. There are also several consequential amendments to the *Petroleum Act* being made which are necessary to ensure the Act is consistent with the *Native Title Act* and the rest of the State scheme.

Compulsory Acquisition and Pastoral Act issues

Amendments to the *Land Acquisition Act 1969* are being prepared to bring it into line with the revised land acquisition provisions of the *Native Title Amendment Act*. Amendments are also being prepared to the *Pastoral Land Management and Conservation Act 1989* to clarify issues that have been raised by pastoralists consequent upon the passing of the *Native Title Amendment Act*. It is proposed that these will be introduced as amendments to this Bill at the relevant time. Whilst they are not contained in the Bill as it currently stands, it is envisaged that these amendments will be released for consultation in sufficient time to ensure that all parties have an appropriate opportunity to consider and comment on them.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

These clauses are formal.

PART 2

AMENDMENT OF ABORIGINAL LANDS TRUST ACT 1966

Clause 4: Amendment of s. 16AAA—Native title

Section 16AAA currently recognises that land may be dealt with by the Aboriginal Lands Trust in a way that extinguishes or affects native title if that is authorised by an agreement between the Minister and the holders of native title. Such agreements were contemplated by section 21 of the *Native Title Act 1993* of the Commonwealth (NTA). The Commonwealth Act has been amended to provide for registration under that Act of a range of such agreements (called indigenous land use agreements). The amendment recognises the new system applicable under the NTA.

PART 3

AMENDMENT OF ELECTRICITY ACT 1996

Clause 5: Amendment of s. 47—Power to carry out work on public land

This clause recognises that under the amendments to the NTA certain acts relating to public electricity infrastructure may validly affect native title (including through registered indigenous land use agreements).

PART 4

AMENDMENT OF ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT ACT 1993

Clause 6: Amendment of s. 10—Commissioners

The requirement to consult the Commonwealth Minister before appointment of Native Title Commissioners has been removed from the NTA and this clause consequently removes that requirement from the State legislation.

PART 5

AMENDMENT OF MINING ACT 1971

Clause 7: Amendment of s. 6—Interpretation

The amendment inserts definitions required for the purposes of the amendments to Part 9B of the Act.

Clause 8: Amendment of s. 35A—Representations in relation to grant of lease

The new subsection requires the Minister, as soon as practicable after receiving an application for a mining lease, to invite submissions from the owner of the land and the council of the area in which the land is situated. The current provisions require this to be done within 14 days.

Clause 9: Amendment of s. 53—Application for licence

The amendment makes a similar change in relation to miscellaneous purposes licences.

Clause 10: Amendment of s. 63F—Qualification of rights conferred by exploration authority

This amendment recognises that an indigenous land use agreement registered under the NTA may provide an alternative means of authorising mining operations under an exploration authority.

Clause 11: Amendment of s. 63H—Limits on grant of production tenement

This amendment recognises that an indigenous land use agreement registered under the NTA may provide an alternative means of authorising mining operations under a production tenement.

Clause 12: Amendment of s. 63I—Applications for production tenements

This amendment contains a minor drafting improvement.

Clause 13: Amendment of s. 63K—Types of agreement authorising mining operations on native title land

The NTA has been altered to allow for approvals similar to conjunctive authorisations under the State scheme (*ie* authorisations that may cover exploration and production under future authorities or tenements) without the limitations currently imposed by the State scheme. These amendments remove the current limitations in respect of conjunctive authorisations. The requirement for an umbrella authorisation (*ie* an authorisation that extends to a class of mining operators) to relate to prospecting or mining for precious stones over an area of 200 square kilometres or less is also removed.

Clause 14: Substitution of s. 63L—Negotiation of agreements

Section 63L is adjusted to reflect the amendments to the NTA in a number of respects:

- the description of the native title parties with whom an agreement must be negotiated has been altered (in particular, an Aboriginal group who applies for registration of a claim within 3 months of the notice and whose claim is registered within 4 months of the notice has a right to negotiate)—see s. 30 NTA;
- the notice of intention to negotiate is required to include a map and notations of pastoral leases etc. and to include a statement warning Aboriginal groups who wish to negotiate of the need to apply for registration of a claim.

The section is also amended to expressly recognise that there may be a series of agreements with appropriate native title parties who have made or established distinct claims or entitlements to native title in relation to the land to which the proposed native title mining agreement is to relate.

Clause 15: Repeal of s. 63M

The material covered in this section is transferred to the substituted section 63L.

Clause 16: Amendment of s. 63N—What happens when there are no registered native title parties with whom to negotiate

This section is adjusted to remove limits on conjunctive authorisations and to recognise the new time limit of 4 months for relevant native title parties to become registered claimants (ss s. 28(1)*(a)* NTA).

Clause 17: Amendment of s. 63O—Expedited procedure where impact of operations is minimal

This amendment mirrors Commonwealth amendments to the expedited procedure (see s. 237 NTA) and the new time limit for objections to the expedited procedure (see s. 32(3) NTA).

Clause 18: Amendment of s. 63P—Negotiating procedure

This amendment mirrors the Commonwealth amendment that limits the right to negotiate to matters related to the effect of the mining operations on registered native title rights—*ie* those rights described in a register under the Commonwealth or State legislation (see s. 31(2) NTA).

Clause 19: Amendment of s. 63Q—Agreement

This amendment requires the proponent, when lodging an agreement for registration, to provide any information required by the registrar to show that the agreement was properly negotiated.

Clause 20: Amendment of s. 63S—Application for determination

The NTA has been altered to fix 6 months as the required period of negotiations before application for a court determination (see s. 35(1)*(a)* NTA) and the amendments mirror this time limit.

The amendments also mirror the amendments to the NTA allowing certain matters to be determined subsequently by arbitration (see s. 38(1A) and (1B) NTA).

Clause 21: Substitution of ss. 63T and 63U

Proposed section 63T reflects adjustments to the criteria to be applied by the Court in making a determination as set out in s. 39(1) and (2) NTA. Subsection (3) mirrors s. 39(4) NTA by enabling the court to limit the matters under consideration by excluding those subject to agreement between the parties.

Limitations relating to conjunctive authorisations have been removed in the replacement section 63U.

Clause 22: Amendment of s. 63W—Ministerial power to overrule determinations

The amendment removes limitations relating to conjunctive authorisations.

Clause 23: Insertion of s. 63ZBA—Extension of time limits

The new section enables the Minister to extend time limits where delays result from negotiations with native title parties.

Clause 24: Substitution of s. 63ZC—Exclusion of certain tenements from application of this Part

The new section reflects the alterations to validation of acts under the NTA.

Clause 25: Repeal of s. 63ZD

The sunset clause is removed.

PART 6

AMENDMENT OF NATIVE TITLE (SOUTH AUSTRALIA) ACT 1994

Clause 26: Amendment of s. 4—Native title

The amendments in this clause reflect the amendments to the concept of native title in s. 223 of the NTA.

Clause 27: Amendment of s. 16—Notice of hearing and determination of native title questions

The amendment reflects the longer time limit contained in s. 66(10) of the NTA.

Clause 28: Insertion of Division 6 of Part 3—ACCELERATED DECISIONS

A new provision is inserted enabling the Minister to make a declaration by notice in the *Gazette* to the effect that the Minister considers that proceedings involving a native title question should in the public interest be determined within a particular time limit. The Attorney-General may then request the Court to take action to ensure that the proceedings are determined within that time limit. The Court is required to comply with the request in so far as it can do so consistently with the interests of justice. The Court may require written submissions and work towards limiting the proceedings to matters genuinely in dispute. The Attorney-General can take the matter to the Supreme Court for further directions if appropriate.

This provision achieves a similar end to sections 36 to 36D of the NTA.

Clause 29: Amendment of s. 17—Register

The amendment to paragraph *(c)* reflects s. 186(1)*(g)* NTA. The register is required to contain a description of the rights claimed to be conferred by the native title.

The removal of subsection (4)*(b)* means that the names and addresses of the claimants need not be included in the register and reflects the removal of s. 188(2) of the NTA.

Clause 30: Substitution of s. 18

This section is amended in order to mirror the new registration test and the processes for registration of a native title claim contained in the NTA.

Proposed section 18 largely mirrors the requirements of ss. 61 and 62 of the NTA (and to a certain extent s. 190C(4) and (5)) about the content of an application for registration of a native title claim.

Proposed section 18A largely mirrors ss. 61A, 190B, 190C and 190D of the NTA as to the test to be applied to claims by the Registrar.

Proposed section 18B is similar to s. 190D(2) of the NTA. The test relating to association with the land by a parent of a member of the claimant group is applied directly at the registration stage in the State provisions rather than at the review stage as in the Commonwealth provisions.

Clause 31: Amendment of s. 20—Application for native title declaration

This amendment is consequential to the substitution of s. 18.

Clause 32: Amendment of s. 23—Hearing and determination of application for native title declaration

These amendments reflect s. 225(b) to (e) of the NTA. They require native title rights, and the relationship between the native title and other interests in the land, to be specifically defined.

Clause 33: Amendment of s. 28—Service on native title holder where title registered

Clause 34: Amendment of s. 29—Service on native title claimants

These amendments reflect the approach in s. 29(2) of the NTA—when serving registered holders or claimants of native title there is no longer to be a compulsion to serve the representative Aboriginal body.

Clause 35: Amendment of s. 30—Service where existence of native title, or identity of native title holders uncertain

These amendments require a person serving a notice under the section on all who hold or may hold native title to estimate the date when all the requirements for service will be completed. The concept is derived from section 29(4) of the NTA.

Clause 36: Substitution of heading to Part 6

The scope of Part 6 is extended and the heading is consequently amended. The Part is divided into Divisions to assist in organisation of the provisions.

Clause 37: Insertion of heading to Part 6 Division 2

Division 2 as amended will deal with validation.

Clause 38: Insertion of ss. 32A to 32C and Division heading

Proposed section 32A provides for validation of intermediate period acts attributable to the State and is contemplated by s. 22F of the NTA.

Proposed section 32B equates to section 24EBA of the NTA and recognises that an indigenous land use agreement to which the State is a party may provide for the retrospective validation or conditional validation of a future act or a class of future acts attributable to the State. The agreement must be registered and any person who is or may become liable to pay compensation in relation to the act or class of acts must be a party to the agreement.

Division 3 is to contain the current provisions relating to the effect of validation of past acts. Previous exclusive possession and certain previous non-exclusive possession acts are excluded since they are dealt with separately in Division 5.

Clause 39: Insertion of ss. 36A to 36J and Division headings

Division 4 (ss. 36A to 36E) provides for the effect of validation of intermediate period acts as contemplated in section 22B of the NTA.

Division 5 (ss.36F to 36J) contains provisions contemplated by ss. 23E and 23I of the NTA in relation to previous exclusive and non-exclusive possession acts.

Clause 40: Substitution of s. 38—Preservation of beneficial reservations and conditions

The application of this provision is extended to intermediate period acts and previous exclusive or non-exclusive possession acts attributable to the State.

Clause 41: Amendment of s. 39—Confirmation

Section 39 is amended to accommodate similar amendments to those made to s. 212 of the NTA.

Clause 42: Transitional provision—Previous registration or application for registration of claim to native title

These provisions require reconsideration of any claims lodged before commencement of the Part in accordance with the new registration test.

PART 7
AMENDMENT OF OPAL MINING ACT 1995

Clauses 43 to 58:

The scheme in the *Opal Mining Act 1995* is the same as that in the *Mining Act 1971*. These clauses mirror the amendments made to the *Mining Act 1971* scheme.

PART 8
AMENDMENT OF PETROLEUM ACT 1940

Clause 59: Amendment of s. 3—Interpretation

This clause amends the interpretation section to introduce definitions similar to those used in the native title schemes relating to mining and opal mining.

Clause 60: Amendment of s. 4—Rights of Crown to petroleum

The amendment confirms ownership of petroleum in the Crown as contemplated by s. 212 of the NTA.

Clause 61: Amendment of s. 51—Notice of entry to be given to occupiers

Section 51 is amended to provide that notice of entry to occupiers will not be necessary if the occupiers are native title parties bound by an agreement or determination and the land is entered in accordance with the terms of the agreement or determination. Such an agreement or determination is required to deal with questions of entry to land.

Clause 62: Amendment of s. 75—Compensation for mining operations

The right to compensation in relation to land injuriously affected by reason of operations conducted pursuant to a licence under the Act is expressly extended to native title holders.

Clause 63: Amendment of s. 76—Determination of compensation

The amendment contemplates that a native title petroleum agreement or indigenous land use agreement may deal with the question of the amount of compensation.

Clause 64: Insertion of Part 2AA

This clause introduces into the *Petroleum Act* a scheme relating to native title land equivalent to that contained in the *Mining Act* and in the *Opal Mining Act* as amended by this measure.

Clause 65: Amendment of s. 80G—Factors relevant to the grant of a licence

Section 80G sets out the factors that the Minister must consider in relation to an application for a pipeline licence. One of the factors is "any public or private interest that might be affected by the grant of the licence". The amendment makes it clear that this includes native title interests.

Clause 66: Amendment of s. 80J—Acquisition of land

The amendment makes sure that a reference to the acquisition of land includes a reference to the acquisition of native title in land.

Clause 67: Amendment of s. 80K—Power of Governor over unalienated Crown lands

To the extent that action under this section may affect native title, the amendment ensures that can only happen consistently with the Commonwealth Act.

Clause 68: Amendment of s. 80L—Minister may require operator to convey petroleum

The amendment provides that the ERD Court is to be the court of review of a Minister's decision under the section.

Clause 69: Insertion of s. 87AA—Compliance orders

The new section mirrors a provision added to the *Mining Act* in connection with the native title scheme.

Clause 70: Substitution of penalty provisions

Divisional penalties are converted and updated throughout the Act.

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

LISTENING DEVICES (MISCELLANEOUS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Listening Devices Act 1972. Read a first time.

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

That this Bill be now read a second time.

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

Leave granted.

This Bill makes a number of amendments to the *Listening Devices Act 1972*.

Since the *Listening Devices Act 1972* was passed there have been significant advances in technology. The development of visual surveillance devices and tracking devices facilitates effective investigation of criminal conduct. Also, there have been a number of court cases which have raised issues about the operation of certain provisions of the *Listening Devices Act 1972*. As a result, the Police are experiencing some practical problems in using all forms of electronic surveillance to their full potential in criminal investigations.

This Bill updates the provisions of the Act taking into account technological advances. It makes a number of other amendments aimed at overcoming some current practical problems in the *Listening Devices Act 1972* and at increasing the protection of information obtained by virtue of this legislation. It also increases the level of accountability to accord with other similar legislation.

Electronic surveillance, encompassing listening devices, visual surveillance devices and tracking devices, provides significant benefits in the investigation and prosecution of criminal activity. Electronic surveillance as a whole was significantly praised by the Royal Commission into the New South Wales Police Service. The Royal Commission considered its use of electronic surveillance the single most important factor in achieving a breakthrough in its investigations. In the Report from the Royal Commission (the Wood Report), released in May 1997, the Royal Commission stated that the advantages of using electronic surveillance included—

- obtaining evidence that provides a compelling, incontrovertible and contemporaneous record of criminal activity;
- the opportunity to effect an arrest while a crime is in the planning stage, thereby lessening the risks to lives and property;
- overall efficiencies in the investigation of corruption offences and other forms of criminality that are covert, sophisticated, and difficult to detect by conventional methods;
- a higher plea rate by reason of unequivocal surveillance evidence.

Currently, the *Listening Devices Act 1972* allows for an application by a member of the police force or by a member of the National Crime Authority ('an investigating officer') to a Supreme Court judge for a warrant to authorise the use of a listening device. However, the definition of a listening device does not extend to video recording and tracking devices. While the use of visual surveillance devices and tracking devices is not currently illegal, the Act does not contain a provision to allow for entry onto private premises to set up a video recorder or tracking device.

In view of the limitations of the current legislation, it has been the practice in South Australia to only install video cameras where there is permission to be on particular premises, or where the activities can be filmed from a position external to the premises. However, criminal activity, by its nature, is often conducted in private resulting in there being an area where criminal activity occurs but where devices that have many investigative and evidentiary advantages cannot be used. The Government considers that investigating officers should be in a position to use up-to-date surveillance technology to detect and prevent serious crime. Therefore, this Bill will allow investigating officers to obtain judicial authorisation to install video surveillance devices and tracking devices (collectively referred to in the Bill as 'surveillance devices').

However, in extending the range of surveillance devices, the Government acknowledges that the legislation must seek to balance competing public interests. The Government believes that the Bill strikes a balance between an individual's right to be protected from unnecessarily intrusive police investigation on one hand with the need for effective law enforcement techniques on the other.

The existing Act envisages obtaining information and material by use of a listening device in 3 ways—

- illegally, in contravention of section 4;
- in accordance with a warrant; and
- in certain circumstances, where the person records a conversation to which he or she is a party.

The disclosure of the information or material obtained by such use of a listening device is currently restricted by existing sections 5, 6A and 7(2) respectively. The Bill will delete these existing sections and insert new disclosure provisions.

The amendments are required for several reasons. Existing section 5 makes it an offence to communicate or publish information or material obtained by the use of a listening device in contravention of the Act, and there are no exceptions to this rule. The Act does not provide for the information or material to be communicated to a

court in prosecutions for illegally using a listening device or communicating the illegally obtained information in contravention of the Act. This has raised some concern and can make these offences potentially difficult to prove. New section 5 will restrict disclosure to relevant investigations and relevant proceedings relating to the illegal use of a listening device or illegal communication of the illegally obtained material or information. It will also allow communication of the information to a party to the recorded conversation, or with the consent of each party to the recorded conversation.

Existing sections 6A and 7(2) are problematic in that they make it an offence for the persons involved in recording the conversation to disclose information or material obtained through the legal use of a listening device except in limited circumstances. However, if the information is legally communicated to another person, it is not an offence for this person to communicate or publish the information to another party.

Clause 9 of the Bill inserts new sections to make it an offence to communicate or publish information derived from the use of a listening device except in accordance with the Act. New section 6AB will also make it an offence to communicate or publish information or material derived by use of a surveillance device installed through the exercise of powers under a warrant, except as provided.

Under new sections 6AB and 7(3), communication will be permitted to a party to the recorded conversation (or activity in the case of new section 6AB), with the consent of each party to the recorded conversation (or activity) or in a relevant investigation or relevant proceedings. The new sections also allow for disclosure of material in a number of other circumstances, including where the information has been received as evidence in relevant proceedings.

In the Bill, 'relevant investigation' has been defined as the investigation of offences and the investigation of alleged misbehaviour or improper conduct. The definition of 'relevant proceedings' includes a proceeding by way of prosecution of an offence, a bail application proceeding, a warrant application proceeding, disciplinary proceedings, and other proceedings relating to alleged misbehaviour or improper conduct.

Clause 8 amends section 6 of the Act to allow a judge of the Supreme Court to authorise the installation, maintenance and retrieval of surveillance devices on specified premises, vehicles or items where consent for the installation has not been given. This will improve the ability of investigating officers to conduct effective investigations into serious criminal activity.

Except in urgent circumstances, an application must be made by personal appearance before a judge following lodgement of a written application. This Bill requires the Supreme Court judge to consider specified matters, such as the gravity of the criminal conduct being investigated, the significance to the investigation of the information sought, the effectiveness of the proposed method of investigation and the availability of alternative means of obtaining the information. In this way, the Bill seeks to balance the public interest in effective law enforcement with the right to be free from undue police intrusion.

Clause 8 (which amends current section 6 of the Act) also makes it clear that the judge may authorise the use of more than one listening device or the installation of more than one surveillance device in the one warrant, and that the judge may vary an existing warrant. Currently, a separate warrant must be issued for each device, and a new warrant must be issued if the terms of a warrant are to be altered. No greater protection is offered by requiring the judge to fill out a separate warrant for each device to be used or installed, as the case may be, nor is there greater protection in requiring a judge to fill out a new warrant when he or she is satisfied that an existing warrant should be varied.

Until the High Court case of *Coco—v- The Queen* (*Coco*), it was assumed that a legislative provision which empowered a judge to authorise the use of a listening device also authorised the installation, maintenance and retrieval of that device. However, the Court in *Coco* held that the power to authorise the use of a listening device did not confer power on the judge to authorise entry onto premises for the purpose of installing and maintaining a listening device in circumstances where the entry would otherwise have constituted trespass. New section 6(1) will make it clear that a Supreme Court judge has the power to authorise entry onto premises for the purpose of installing, maintaining and retrieving a listening device and surveillance device. New section 6(7b) will operate in conjunction with new section 6(1) to make it clear that the power to enter premises to install, use, maintain and retrieve a listening device will also authorise a number of ancillary powers. While some may consider that new section 6(1) already authorises the exercise of ancillary powers, it is considered beneficial for the purposes of clarity to specify the ancillary powers that may be exercised.

New section 6(7b) will make it clear that, subject to any conditions or limits specified in the warrant, the warrant authorises the warrant holder to—

- enter any premises or interfere with any vehicle or thing for the purpose of recording the conversation of a person specified in the warrant who is suspected on reasonable grounds of having committed, or being likely to commit, a serious offence;
- gain entry by subterfuge;
- extract electricity;
- take non-forcible passage through adjoining or nearby premises;
- use reasonable force;
- seek and use assistance from others as necessary.

A comprehensive procedure for obtaining a warrant in urgent circumstances has been inserted by clause 9 of the Bill. Under existing section 6(4) of the Act, a warrant may be obtained by telephone in urgent circumstances. New section 6A will provide that an application for a warrant under section 6 may be obtained in urgent circumstances by facsimile machine or by any telecommunication device. (The definition of 'telephone' includes any telecommunication device.) The new section also provides that where a facsimile facility is readily available the urgent application must be made using those means. Facsimiles provide an instant written record of the application and the warrant, if issued. This reduces the opportunity to misunderstand the grounds justifying the application or the terms of the warrant. However, for the purposes of flexibility, an urgent application can still be made by any telecommunication device where a facsimile is not readily available.

This Bill makes significant improvements to the recording and reporting requirements under the Act and will insert an obligation on the Police Complaints Authority to audit compliance by the Commissioner of Police with those recording requirements.

Existing section 6B requires the Commissioner of Police to provide specified information to the Minister 3 months after a warrant ceases to be in force. The Commissioner is also required to provide specified information to the Minister annually. The Minister is required to compile a report from the Commissioner's report and information received from the National Crime Authority, and to table it in Parliament.

While the existing Act imposes a reporting requirement on the Police, it does not specify that the information forming the basis of the report must be recorded in a particular place. New section 6AC will specify that the Commissioner must keep the information, which will form the basis of the report under section 6B(1)(c), in a register. The information to be recorded on the register includes the date of issue of the warrant, the period for which the warrant is to be in force, the name of the judge issuing the warrant, and like information.

New section 6B(1b) will require the Police to provide specified information about the use of a listening device or a surveillance device that is not subject to a warrant, in prescribed circumstances. The additional reporting requirements are based on similar reporting requirements in the *Telecommunications (Interception) Act* (Cth). Under that Act, the report to the Minister must contain information relating to the interception of communication made under sections 7(4) and 7(5) of that Act, which provides for the interception of communications without obtaining a warrant in certain circumstances.

There is no suggestion that police are inappropriately using listening devices in accordance with section 7, nor is there any suggestion that police are inappropriately using surveillance devices. However, the additional reporting will increase police accountability in using a listening device or installing a surveillance device without a warrant, and so guard against improper use. An example of a prescribed circumstance may be where police use a declared listening device in accordance with section 7.

New section 6C will regulate the control of information or material obtained by use of listening or surveillance devices by investigating officers. Currently, police have adopted a comprehensive procedure to deal with information and material derived from the use of listening devices. However, this is largely a procedural rather than a legal requirement. New section 6C will allow the regulations to prescribe a procedure for dealing with the material and information derived from the use of a listening device under a warrant, or the use of a surveillance device installed through the exercise of powers under a warrant. It is proposed that a number of recording requirements relating to the movement and destruction of information and material obtained under the Act will be inserted in

the Regulations. New section 6C, when coupled with regulations, will allow for stricter controls over the information than the current legislation requires.

The increased recording and reporting requirements in the Bill are also prompted by the decision to require the Police Complaints Authority to audit the records kept by the Commissioner of Police.

Under the *Telecommunications (Interception) Act* (Cth), police are obliged to keep registers of warrants, which are audited biannually by the Police Complaints Authority in South Australia to ascertain the accuracy of the records and ensure that they conform with the reporting requirements. The Government believes that it would be appropriate for police records relating to warrants obtained under the Act to be independently audited by the Police Complaints Authority. New section 6D will require the Police Complaints Authority to inspect the records kept in accordance with the Act once every 6 months and report the results of the inspection to the Minister. New section 6E will set out the powers of the Police Complaints Authority for the purposes of the inspection.

Clause 12 will insert a new section 7(2) to extend the exemption from section 4 of the Act, which makes it an offence to use a listening device. Subsection (2) will prevent prosecution of any other member of a specified law enforcement agency who listens to a conversation by means of a listening device being used by an officer of that law enforcement agency in accordance with section 7 of the Act. On occasions, police officers involved in undercover operations will have a device hidden on them which transmits conversations for monitoring by nearby police. Courts have previously held that those officers monitoring the conversation are not direct parties to the conversation, and are therefore not covered by the exemption under section 7. However, this practice is used to help ensure the safety of the officer. The procedure should therefore be permissible under the legislation.

Clause 14 will repeal the existing section 10 of the Act, and insert new sections 9 and 10.

The repeal of section 10 will remove the right of a defendant charged with an offence against the *Listening Devices Act 1972* to elect to have the offence treated as an indictable offence. This right, which is currently provided for in existing section 10, is inconsistent with the *Summary Procedure Act* which classifies offences into summary offences, minor indictable offences and major indictable offences. Summary offences are defined to include offences for which a maximum penalty of, or including, two years imprisonment is prescribed. The offences created by the *Listening Devices Act* fall within that definition.

Existing section 8 makes it an offence for a person to possess, without the consent of the Minister, a type of listening device declared in the Gazette by the Minister. In addition, existing section 11 empowers a court before whom a person is convicted for an offence against the Act to order the forfeiture of any listening device or record of any information or material in connection with which the offence was committed. However, the South Australian legislation currently does not provide for the police to search and seize the record of information or declared listening device. This can impact on the effectiveness of existing sections 8 and 11. New section 9 of the Act will authorise a member of the police force to search for, and seize, a declared listening device which is in a person's possession without the consent of the Minister, or information or material obtained through the illegal use of a listening device.

New section 10 will allow the Commissioner of Police or a member of the National Crime Authority to issue a written certificate setting out relevant facts with respect to things done in connection with the execution of a warrant, such as the fact that the device was installed lawfully. In the absence of evidence to the contrary, the matters specified in the certificate will be taken to be proven by the tender of the certificate in court. Such certificates will be used in connection with the prosecution for an offence in which evidence to be used in court has been obtained by use of a listening device, or a surveillance device where a warrant was issued to allow the installation of that device. A similar provision has been enacted in the *Telecommunications (Interception) Act* (Cth).

The Bill will also make a number of other minor amendments to the *Listening Devices Act 1972* including the insertion of definitions, review of penalties, rewording of sections to include references to surveillance devices, general rewording for the purposes of drafting clarity, and statute law revision amendments.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of long title

The current Act regulates the use of listening devices. However, the effect of these amendments is to also provide for surveillance devices and hence the long title is to be amended to reflect the new purpose of the Act.

Clause 4: Amendment of s. 1—Short title

As a consequence of the proposed amendments, it is appropriate to amend the short title of the Act to be the *Listening and Surveillance Devices Act 1972*.

Clause 5: Amendment of s. 3—Interpretation

This clause sets out a number of definitions of words and phrases necessary for the interpretation of the proposed expanded Act. In particular, the clause contains definitions of listening device, surveillance device (which means a visual surveillance device or a tracking device), tracking device and visual surveillance device, as well as definitions of relevant investigation, relevant proceeding and serious offence.

Clause 6: Amendment of s. 4—Regulation of use of listening devices

The proposed maximum penalty for contravention of section 4 is 2 years imprisonment (as it is currently) or a fine of $10 000 (up from $8 000).

Clause 7: Substitution of s. 5

5. Prohibition on communication or publication

New subsection (1) provides that a person must not knowingly communicate or publish information or material derived from the use (whether by that person or another person) of a listening device in contravention of section 4 (maximum penalty: $10 000 or imprisonment for 2 years).

However, new subsection (2) provides that new subsection (1) does not prevent the communication or publication of such information or material—

- to a person who was a party to the conversation to which the information or material relates; or
- with the consent of each party to the conversation to which the information or material relates; or
- for the purposes of a relevant investigation (*see s. 3*) or a relevant proceeding (*see s. 3*) relating to that contravention of section 4 or a contravention of this proposed section involving the communication or publication of that information or material.

Clause 8: Amendment of s. 6—Warrants—General provisions

The amendments proposed to this section are largely consequential on the proposal to expand the current Act to include surveillance devices.

Amendments to the section provide that a judge of the Supreme Court may, if satisfied that there are, in the circumstances of the case, reasonable grounds for doing so, issue a warrant authorising one or more of the following:

- the use of one or more listening devices;
- entry to or interference with any premises, vehicle or thing for the purposes of installing, using, maintaining or retrieving one or more listening or surveillance devices.

Such a warrant must specify—

- the person authorised to exercise the powers conferred by the warrant; and
- the type of device to which the warrant relates; and
- the period for which the warrant will be in force (which may not be longer than 90 days),

and may contain conditions and limitations and be renewed or varied.

An application for a warrant must be made by personal appearance before a judge following the lodging of a written application except in urgent circumstances when it may be made in accordance with new section 6A (*see clause 9*).

Subject to any conditions or limitations specified in the warrant, a warrant authorising—

- the use of a listening device to listen to or record words spoken by, to or in the presence of a specified person who, according to the terms of the warrant, is suspected on reasonable grounds of having committed, or being likely to commit, a serious offence (*see s. 3*) will be taken to authorise entry to or interference with any premises, vehicle or thing as reasonably required to install, use, maintain or retrieve the device for that purpose;
- entry to or interference with any premises, vehicle or thing will be taken to authorise the use of reasonable force or subterfuge for

that purpose and the use of electricity for that purpose or for the use of the listening or surveillance device to which the warrant relates;

· entry to specified premises will be taken to authorise non-forcible passage through adjoining or nearby premises (but not through the interior of any building or structure) as reasonably required for the purpose of gaining entry to those specified premises.

The powers conferred by a warrant may be exercised by the person named in the warrant at any time and with such assistance as is necessary.

Clause 9: Substitution of s. 6A

6A. Warrant procedures in urgent circumstances

New section 6A provides that an application for a warrant under section 6 (as amended) may be made in urgent situations by facsimile (if such facilities are readily available) or by telephone. The procedure for an application by facsimile or by telephone is set out.

New section 6AB replaces current section 6A.

6AB. Use of information or material derived from use of listening or surveillance devices under warrants

New section 6AB prohibits a person from knowingly communicating or publishing information or material derived from the use of a listening device under a warrant, or a surveillance device installed through the exercise of powers under a warrant, except—

· to a person who was a party to the conversation or activity to which the information or material relates; or
· with the consent of each party to the conversation or activity to which the information or material relates; or
· for the purposes of a relevant investigation; or
· for the purposes of a relevant proceeding; or
· otherwise in the course of duty or as required by law; or
· where the information or material has been taken or received in public as evidence in a relevant proceeding.

The maximum penalty for contravention of this proposed section is a fine of $10 000 or imprisonment for 2 years.

6AC. Register of warrants

There is currently no register of warrants required to be kept under the Act. New section 6AC provides that the Commissioner of Police must keep a register of warrants issued under this Act to members of the police force (other than warrants issued to members of the police force during any period of secondment to positions outside the police force) and sets out the matters that must be contained in the register.

Clause 10: Amendment of s. 6B—Reports and records relating to warrants, etc.

Section 6B deals with the reports and information relating to warrants issued under this Act that the Commissioner of Police and the National Crime Authority are required to give to the Minister as well as the report (compiled from the information provided to the Minister) that the Minister must lay before Parliament. The reports given to the Minister by the Commissioner of Police must distinguish between warrants authorising the use of listening devices and other warrants. The information for the Commissioner's report will be obtained from the information contained in the register of warrants (*see new s. 6AC*).

New subsection (1b) provides that, subject to the regulations and any determinations of the Minister, the Commissioner of Police must also include in each annual report to the Minister information about occasions on which, in prescribed circumstances, members of the police force used listening or surveillance devices otherwise than under a warrant. The Commissioner must provide a general description of the uses made during that period of information obtained by such use of a listening or surveillance device and the communication of that information to persons other than members of the police force.

Clause 11: Substitution of s. 6C

Substituted section 6C is not radically different from current section 6C but allows for the regulations to provide more specifically for dealing with records obtained by use of listening or other surveillance devices.

6C. Control by police, etc., of information or material derived from use of listening or surveillance devices

New section 6C provides that the Commissioner of Police and the National Crime Authority must—

· in accordance with the regulations, keep any information or material derived from the use of a listening device under a warrant, or the use of a surveillance device installed through the exercise of powers under a warrant, and control and manage access to that information or material; and
· destroy any such information or material if satisfied that it is not likely to be required in connection with a relevant investigation or a relevant proceeding.

6D. Inspection of records by Police Complaints Authority

In the current Act, there is no provision for the Police Complaints Authority to monitor police records relating to warrants and the use of information obtained under the Act in order to ensure compliance with the Act.

This new section provides that the Police Complaints Authority must, at least once each 6 months, inspect the records of the police force for the purpose of ascertaining the extent of compliance with sections 6AC, 6B and 6C and must report to the Minister on the results of the inspection (including any contraventions of those sections).

6E. Powers of Police Complaints Authority

The Police Complaints Authority is given certain powers of entry, inspection and interrogation so as to be able to conduct properly an inspection in accordance with new section 6D.

A person who is required under new section 6E to attend before a person, to furnish information or to answer a question who, without reasonable excuse, refuses or fails to comply with that requirement is guilty of an offence (maximum penalty: $10 000 or imprisonment for 2 years).

It is also an offence for a person, without reasonable excuse, to hinder a person exercising powers under new section 6E or to give to a person exercising such powers information knowing that it is false or misleading in a material particular (maximum penalty: $10 000 or imprisonment 2 years).

Clause 12: Amendment of s. 7—Lawful use of listening device by party to private conversation

Proposed subsection (2) extends the exemption from section 4 (Regulation of use of listening devices) given (in section 12(1)) to a member of the police force, a member of the National Crime Authority or a member of the staff of the Authority who is a member of the Australian Federal Police or of the police force of a State or Territory of the Commonwealth, in relation to the use of a listening device for the purposes of the investigation of a matter by the police or the Authority to any other such member who overhears, records, monitors or listens to the private conversation by means of that device for the purposes of that investigation.

New subsection (3) sets out the circumstances in which a person may knowingly communicate or publish information or material derived from the use of a listening device under section 7 as follows:

· when the communication or publication is to a person who was a party to the conversation to which the information or material relates; or
· with the consent of each party to the conversation to which the information or material relates; or
· in the course of duty or in the public interest, including for the purpose of a relevant investigation or a relevant proceeding; or
· being a party to the conversation to which the information or material relates, as reasonably required for the protection of the person's lawful interests; or
· where the information or material has been taken or received in public as evidence in a relevant proceeding.

A person who contravenes new subsection (3) may be liable to a maximum penalty of a fine of $10 000 or imprisonment for 2 years.

Clause 13: Amendment of s. 8—Possession, etc., of declared listening device

The current penalty provision for a contravention of subsection (2) (*ie* Division 5 fine of $8 000 or division 5 imprisonment of 2 years, or both) is updated to a maximum penalty of a fine of $10 000 or imprisonment for 2 years.

Clause 14: Substitution of s. 10

Current section 10 is repealed as a result of classification of offences and time for bringing prosecutions now being dealt with in the *Summary Procedure Act 1921*.

9. Power to seize listening devices, etc.

New section 9 provides that if a member of the police force, a member of the National Crime Authority or a member of the staff of the Authority who is a member of the Australian Federal Police or of the police force of a State or Territory of the Commonwealth suspects on reasonable grounds that—

· a person has possession, custody or control of a declared listening device without the consent of the Minister; or

· any other offence against this Act has been, is being or is about to be committed with respect to a listening device or information derived from the use of a listening device,

the member may seize the device or a record of the information.

Certain powers are given to such a member for the purposes of being able to carry out the power given to the member under this proposed section and there is provision for the return of such seized items in due course.

10. Evidence

In any proceedings for an offence, an apparently genuine document purporting to be signed by the Commissioner of Police or a member of the National Crime Authority certifying that specified action was taken in connection with executing a specified warrant issued under this Act (as amended) will, in the absence of evidence to the contrary, be accepted as proof of the matters so certified.

Clause 15: Insertion of s. 12

There is currently no provision for the making of regulations for the purposes of the Act but such a provision has become necessary as a consequence of the proposed amendments.

12. Regulations

The Governor may make such regulations as are contemplated by the Act including the imposition of penalties for breach of, or non-compliance with, a regulation.

Clause 16: Further amendments of principal Act

The Act is further amended in the manner set out in the schedule.

Schedule: Statute Law Revision Amendments

The schedule contains amendments to various sections of the Act of a statute law revision nature.

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

NURSES BILL

Second reading.

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.

I am pleased to introduce this Bill, the primary aim of which is to provide the mechanism through which the public may be assured of high standard, effective and ethical nursing practice. The Bill reforms and updates the systems of registration and enrolment for nurses, thereby positioning the profession to meet the challenges which will be ushered in by the new millennium.

Honourable members may recall that the last time the Act was substantially revised was in 1984. Since that time, heightened community expectations of health professionals, the increasing introduction of highly sophisticated technology and therapeutic agents, changing practices and higher educational standards, have created a new environment in which health care is delivered.

The nursing profession, to its credit, has responded positively to the changing environment. The role of nurses has expanded to keep pace with advances in health care and technology and nurses are increasingly assuming more responsibility for complex patient care. The profession has recognised the need to ensure that the legislation which sets down the parameters within which it practises should also keep pace with modern developments and expectations.

The Bill before honourable members today is the culmination of an extensive process of review and consultation, including most recently, a review carried out in accordance with the Competition Principles Agreement. It is designed to reflect national and international developments in nurse regulation which aim to—

· use standardised and understandable language for nursing regulations, clearly describing the functions for consumers, employers, education providers and nurses;
· standardise entry-to-practice requirements and limit them to competence assessment, promoting physical and professional mobility;
· operate on the basis of demonstrated initial and continuing competence, allowing and expecting different professions and professional groupings to share overlapping scope of practice;
· provide pathways that allow all regulated persons to provide services to the full extent of their knowledge, training, experience and skill;
· redesign professional registration Boards and their functions to reflect the interdisciplinary and public accountability demands of the changing health care delivery system.

Turning to the main provisions of the Bill, the Board is maintained at eleven members, five of whom must be nurses. However, it is no longer prescriptive as to nominating bodies or areas of nursing practice to be included in membership. Importantly, the Minister is empowered to nominate three consumer members to the Board. Increased public participation in the regulatory process is in keeping with international trends. It increases transparency and accountability which in turn should lead to enhanced public confidence in the system.

Significantly, the first of the functions of the Board is listed as regulating the practice of nursing in the public interest. The Board, in exercising its functions under the legislation, must do so with a view to ensuring that the community is adequately provided with nursing care of the highest standard. It must also seek to achieve and maintain the highest professional standards both of competence and conduct in nursing. Professional standards developed by the Board will be provided to all registered and enrolled nurses, will be available at the Board's offices for perusal and will be published in the *Gazette*.

The Board pursues its objectives through a system of registration and enrolment of nurses. Under the existing Act, a number of separate registers and rolls are maintained for different fields of nursing, for example, registers for general nurses, psychiatric nurses, mental deficiency nurses and midwives, and rolls for general (supervised) nurses and mothercraft nurses. The Bill proposes to streamline that system by establishing a single register and a single roll. Those persons registered or enrolled under the existing system will be taken to be registered or enrolled on the commencement of the new system and any specialist qualifications noted under the existing system will be noted under the new system.

Under the new system, the Board will authorise specialties for inclusion on the register or roll. The first authorised specialties will be midwifery and mental health nursing, practitioners of which will have their specialised area of qualification and experience noted on the register. Such authorisation will carry with it an assurance that individuals authorised as specialist practitioners meet the legal requirements for practice. They will have unequivocal authority for a scope of practice and regulatory endorsement of their role. The proposed stringent controls on use of title and 'holding out' will protect against unqualified use of advanced practice titles for the benefit of the public and also the practitioner. Substantial penalties apply for breach of those provisions.

The Board is empowered to approve or recognise courses of education and training, a function which is linked to its registration and enrolment role. By this mechanism, the Board can ensure that training for nurses reflects the competency standards of the nursing profession. The provision is broad enough to enable the Board to approve a training course which would, for example, support the direct entry of midwives into the profession. A right of appeal is included against a decision of the Board to refuse to recognise or approve a course.

In relation to enrolled nurses, the Bill continues the requirement for supervision by a registered nurse. However, flexibility is introduced to enable the Board to approve arrangements and specify conditions under which an enrolled nurse may practise within their area of competence but without supervision by a registered nurse. Such arrangements might relate, for example, to domiciliary care, day surgeries, doctors' rooms and hostels, after due consideration has been given to competence and circumstances.

An important consideration for any registration Act is the scope of practice which it covers. The Bill is clear in its intent that it covers nurses and nursing practice and standards. It is not intended, nor is it appropriate, that it embrace other care workers. While productive working relationships exist between registered and enrolled nurses and other categories of care workers, such care workers are not practising nursing and do not come within the ambit of the legislation.

In summary, the Bill establishes a firm foundation for the continuation of nursing excellence. It introduces increased flexibility to enable the Nurses Board to respond to changing health care practices and the community's right to high standard, effective and ethical nursing care. It enshrines increased public and professional participation in the regulatory process which will promote the

partnership that is most critical to maintaining standards of nursing care.

I commend the Bill to the House.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Interpretation

This clause sets out various definitions for the purposes of the measure. A 'nurse' is defined as a person who is registered or enrolled under the Act. There will be a register of nurses and a roll of nurses. Other key terms include definitions of 'supervision' and 'unprofessional conduct'.

PART 2
NURSES BOARD OF SOUTH AUSTRALIA
DIVISION 1—ESTABLISHMENT OF BOARD

Clause 4: Establishment of Board

The *Nurses Board of South Australia* is established. The Board will be a body corporate with perpetual succession and a common seal.

DIVISION 2—THE BOARD'S MEMBERSHIP

Clause 5: Composition of Board

The Board will (subject to the operation of Part 5) be constituted of 11 members appointed by the Governor, of whom *(a)* one will be a person with nursing qualifications appointed as the presiding member; *(b)* five must be nurses registered or enrolled under the Act; *(c)* one must be a medical practitioner; *(d)* one must be a legal practitioner; and *(e)* three must be persons who are neither nurses, medical practitioners nor legal practitioners.

Clause 6: Terms and conditions of membership

A member of the Board will be appointed on conditions determined by the Governor for a term not exceeding three years.

Clause 7: Vacancies or defects in appointment of members

An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Clause 8: Remuneration

A member of the Board is entitled to remuneration, allowances and expenses determined by the Governor.

Clause 9: Disclosure of interest

A member of the Board must disclose an interest in any matter under consideration by the Board, and must not take part in any deliberations or decision of the Board on the matter.

DIVISION 3—THE BOARD'S PROCEDURES

Clause 10: The Board's procedures

Subject to the Act, six members constitutes a quorum of the Board. At least two nurses must be present at any meeting of the Board (other than under Part 5). This clause also addresses other matters relevant to the proceedings of the Board.

DIVISION 4—REGISTRAR AND STAFF OF THE BOARD

Clause 11: Registrar of the Board

There will continue to be a Registrar of the Board appointed on terms and conditions determined by the Board. The Registrar must be a person who is registered, or who is eligible for registration, as a nurse. The Registrar is the chief executive of the Board and, subject to the direction of the Board, is responsible for managing the staff and resources of the Board and giving effect to the policies and decisions of the Board.

Clause 12: Other staff of the Board

There will be such other staff of the Board as the Board thinks necessary for the proper performance of its functions. The Board may, with the approval of the relevant Minister, make use of the services, facilities or officers of an administrative unit.

DIVISION 5—COMMITTEES

Clause 13: Committees

The Board may establish committees.

DIVISION 6—ACCOUNTS, AUDIT AND ANNUAL REPORT

Clause 14: Accounts and audit

The Board must keep proper accounting records in relation to its financial affairs, and have annual statements of account prepared in respect of each financial year. The Board's accounts will be audited by an auditor approved by the Auditor-General and appointed by the Board. The Auditor-General may audit the accounts of the Board at any time.

Clause 15: Annual report

The Board must prepare an annual report by 30 September in each year. Copies must be laid before both Houses.

PART 3
FUNCTIONS AND POWERS OF THE BOARD
DIVISION 1—GENERAL FUNCTIONS AND POWERS

Clause 16: Functions of the Board

This clause sets out the functions of the Board, which include to regulate the practice of nursing in the public interest, to approve various courses of education and training, to determine the requirements necessary for registration or enrolment, to investigate issues concerning the conduct of nurses, to endorse codes of conduct and professional standards for nurses, and to provide advice to the Minister. The Board must exercise its functions with a view to ensuring that the community is adequately provided with nursing care of the highest standard, and to achieving and maintaining the highest professional standards both of competence and conduct in nursing.

Clause 17: Powers of the Board

The Board has the powers necessary or expedient for, or incidental to, the performance of its functions.

DIVISION 2—EVIDENCE AND PROCEDURE

Clause 18: Proceedings before the Board, etc.

The Board may conduct inquiries, hearings and other proceedings and exercise various powers associated with the gathering of information and evidence.

Clause 19: Principles governing hearings

The Board is not bound by the rules of evidence and may inform itself on any matter as it thinks fit. The Board will, on the hearing of proceedings, act according to equity, good conscience and the substantial merits of the case.

Clause 20: Representation at proceedings before the Board

A party to proceedings before the Board has a general right to be represented at the hearing of those proceedings.

Clause 21: Costs

The Board may award costs against a party to proceedings before the Board. A person may request that costs be taxed by a master of the Supreme Court.

PART 4
REGISTRATION AND ENROLMENT
DIVISION 1—THE REGISTER AND THE ROLL

Clause 22: The register and the roll

The Board will keep a register and a roll for the purposes of the Act. The Registrar will be responsible to the Board for the form and maintenance of the register and the roll.

DIVISION 2—REGISTRATION AND ENROLMENT

Clause 23: Registration

A person is eligible for registration as a nurse if the person has relevant qualifications approved or recognised by the Board, has met the requirements determined by the Board for registration, and is a fit and proper person to be a registered nurse. Registration as a nurse authorises the registered nurse to practise in the field of nursing without supervision.

Clause 24: Enrolment

A person is eligible for enrolment as a nurse if the person has relevant qualifications approved or recognised by the Board, has met the requirements determined by the Board for enrolment, and is a fit and proper person to be an enrolled nurse. Enrolment as a nurse authorises the enrolled nurse to practise in the field of nursing under the supervision of a registered nurse or, with the approval of the Board, to practise in the field of nursing on conditions determined by the Board without the supervision of a registered nurse.

Clause 25: Application for registration or enrolment

An application for registration or enrolment as a nurse must be made to the Board in a manner and form approved by the Board. The Board may require the provision of any information for the purposes of determining an application. The Registrar may grant provisional registration or enrolment in an appropriate case.

Clause 26: Reinstatement of person on register or roll

This clause sets out various processes associated with the reinstatement of a person's name on the register or roll (as appropriate).

Clause 27: Limited registration or enrolment

This clause allows the Board to register or enrol a person in a specified case on a limited or conditional basis.

Clause 28: Renewal of registration or enrolment

Registration or enrolment (other than on a provisional basis) operates for a period determined by the Board or specified by the regulations, and may be reviewed by the Board from time to time.

Clause 29: Board's approval required where nurse has not practised for five years

A registered or enrolled nurse who has not practised nursing for five or more years must not practise nursing without first obtaining the approval of the Board.

Clause 30: Revocation or variation of conditions

The Board will be able, as appropriate, to vary or revoke a condition attached to a registration or enrolment under the Act.

Clause 31: Removal from register or roll on request

The Registrar may remove a person's name from the register or roll at the request of the person.

Clause 32: Removal of name from register or roll on suspension

The Registrar must remove a person's name from the register or roll on the suspension of the person under the Act.

Clause 33: Concurrent registration and enrolment

A nurse cannot, at the same time, be both registered and enrolled.

Clause 34: Fees

Various fees are payable (including a practice fee).

Clause 35: Information to be provided by nurses

The Board or the Registrar may require the provision of prescribed information relating to a nurse's employment.

DIVISION 3—RESTRICTIONS RELATING TO THE PROVISION OF NURSING CARE

Clause 36: Illegal holding out as being registered

A person who is not registered under the Act must not hold himself or herself out as being registered as a nurse or permit another to do so.

Clause 37: Illegal holding out as being enrolled

A person who is not enrolled under the Act must not hold himself or herself out as being enrolled as a nurse or permit another to do so.

Clause 38: Illegal holding out concerning restrictions or conditions

A registered or enrolled nurse whose registration or enrolment is restricted or subject to a condition or limitation must not hold himself or herself out as having a registration or enrolment that is unrestricted or not subject to a limitation or condition.

Clause 39: Other restrictions

A person must not practise nursing for remuneration, fee or other reward unless registered or enrolled under the Act.

A person must not take or use the title 'nurse', or another title calculated to induce belief that the person is a nurse, unless the person is registered or enrolled under the Act (unless otherwise provided by the regulations). A person who has not successfully completed a course leading to qualification as a midwife, as determined or recognised by the Board, must not take or use the title 'midwife', or another title calculated to induce belief that the person is a midwife. The same type of provision applies in relation to 'mental health nurse' or 'psychiatric nurse'. Various holding-out provisions also apply.

Clause 40: Offence against Division

It is an offence to contravene or to fail to comply with these provisions.

PART 5

PROCEEDINGS BEFORE THE BOARD

Clause 41: Inquiries by the Board as to competence

The Registrar or another person may lay a complaint before the Board alleging that within a period of two years immediately preceding the complaint that a nurse provided nursing care without having or exercising adequate or sufficient knowledge, experience or skill. If the case is established, the Board may impose conditions restricting the right of the nurse to provide nursing care.

Clause 42: Incapacity of nurses

The Registrar may lay a complaint before the Board alleging that a nurse's ability to provide nursing care is unreasonably impaired by physical incapacity, mental incapacity, or both. If the case is established, the Board may suspend the nurse, or impose conditions restricting the nurse's right to provide nursing care.

Clause 43: Obligation to report incapacity

If a health professional who has a nurse as a patient or client believes that the nurse's ability to providing nursing care is or may be seriously impaired by a physical incapacity or mental incapacity (or both), the health professional must provide a written report to the Board.

Clause 44: Enquiries by the Board as to unprofessional conduct

This clause sets out the powers of the Board in respect of unprofessional conduct.

Clause 45: Obligation to report unprofessional conduct

If an employer of a nurse has reason to believe that the nurse has been guilty of unprofessional conduct, the employer must submit a written report to the Board.

Clause 46: Provisions as to inquiries

This clause empowers the Governor to appoint a person as a special member of the Board, who may act as a member of the Board for the purposes of proceedings under this Part. The quorum of the Board will be three members for the purposes of proceedings under this Part. The clause also sets out other associated matters.

Clause 47: Revocation or variation of conditions

The Board may, at any time, vary or revoke a condition imposed under this Part.

Clause 48: Other matters

No civil liability will attach to a person who makes a statement honestly and without malice in a report for the purposes of this Part.

PART 6

APPEALS

Clause 49: Appeal to Supreme Court

This clause sets out various rights of appeal to the Supreme Court.

Clause 50: Operation of order may be suspended

Subject to a decision of the Supreme Court or Board, the operation of an order or requirement is not suspended pending the determination of an appeal.

PART 7

MISCELLANEOUS

Clause 51: Protection from personal liability

No personal liability attaches to a member of the Board, the Registrar or a staff member for an act or omission in good faith under the Act. The liability attaches to the Crown instead.

Clause 52: Delegations

This clause sets out a power of delegation for the Board and the Registrar.

Clause 53: Board may require examination or report

The Board will be able to require a person to undergo a medical examination, or provide a report, in appropriate cases.

Clause 54: Registrar may conduct an investigation

The Registrar will be able to exercise certain powers of inquiry or investigation, with power for the Registrar to apply to the Board if a person is not willing to answer a question or produce a record or equipment.

Clause 55: Retrievals, emergencies, etc.

A nurse registered in another State will not be taken to be practising nursing in this State by virtue only of assisting in a retrieval, patient escort, organ transfer or emergency.

Clause 56: Additional provisions concerning conditions

It will be an offence to contravene or fail to comply with a condition in relation to the provision of nursing care imposed under the Act.

Clause 57: Procurement of registration or enrolment by fraud

Clause 58: False or misleading information

Clause 59: Continuing offence

These clauses set out other provisions relevant to offences under the Act.

Clause 60: Punishment of conduct that constitutes an offence

The taking of disciplinary action is not a bar to criminal proceedings, or vice versa.

Clause 61: Service of documents

This is a service provision for the purposes of the Act.

Clause 62: Ministerial review of decisions relating to courses

The provider of a course will be able to apply to the Minister in relation to a decision of the Board to refuse to approve a course for the purposes of this Act, or to revoke an approval.

Clause 63: Regulations

The Governor may make various regulations for the purposes of the Act.

SCHEDULE

Repeal and transitional provisions

The *Nurses Act 1984* is to be repealed. The Board established by this Act will take over the assets and liabilities, staff, and processes and proceedings of the Board under the *Nurses Act 1984*. The register under the new Act will be taken to be constituted so as to include, as separate parts of the register—

(a) the general nurse register; and

(b) the psychiatric nurse register; and

(c) the mental deficiency nurse register; and

(d) the midwife register.

The roll will include the following parts:

(a) the general nurse (supervised) roll; and

(b) the mothercraft nurses roll.

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

LOTTERY AND GAMING (TRADE PROMOTION LOTTERY LICENCE FEES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 November. Page 186.)

The Hon. NICK XENOPHON: I apologise for not yet having tabled the proposed amendments but, following discussions with my colleague the Hon. the Treasurer earlier this morning, I indicate to the Council what the proposed amendments will be. I understand that the Hon. Mike Elliott may have something to say on them at a later stage once they have been drafted. This Bill relates to a new regime of lottery and licence fees for trade promotions. It is a growing field. I understand the report makes clear the revenue being sought. It is not my intention to in any way deal attack the revenue aspects of the Bill, but a number of matters ought to be addressed. First, there is the issue of the age at which a person can enter these promotions. It does not appear to be clear; I assume that under the Lottery and Gaming Act it is 16 for lotteries and 18 for other forms of gambling. The proposed amendment will include an amendment that will put some onus on the promoters to ensure that, depending on what age the members want to prescribe—my preference is 18 years—a person is 16 or 18 and eligible to play this lottery.

Secondly, there ought to be a consumer disclosure provision with respect to the amount of the cost of the phone call that is actually going to the promoter as distinct from the cost of the phone call. Also, there ought to be a consumer protection provision to allow for this disclosure overall in promotional advertising for any trade promotion lottery licence. Essentially, they are the amendments. I hope to have them tabled sometime later today, and obviously I need to discuss that with my colleagues on both sides of the Council.

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: The Hon. Terry Cameron has asked me whether this Bill would stop newsagents selling scratchies to teenagers.

The Hon. T.G. Cameron: As young as 13.

The Hon. NICK XENOPHON: My understanding is that this Bill relates to trade promotion lottery licence fees; the ring-in lotteries is another issue and it is a question of enforcement. My understanding is that you need to be 16 to play the scratchies in this State but that that law is not necessarily enforced as well as it ought to be.

The Hon. T.G. Cameron: It is not enforced at all.

The Hon. NICK XENOPHON: It is a good point of the Hon. Terry Cameron that can be raised at a later stage. But in terms of the amendments, they are confined to these specific provisions that do not affect revenue as such but would give some rights to consumers in terms of consumer protection and provide some measure of protection to children being involved in these promotions, which can be quite expensive if you are a regular participant.

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

ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL) BILL

In Committee.

(Continued from 9 December. Page 467.)

Clause 2.

The Hon. NICK XENOPHON: I did not speak on this issue last night because I thought it was important that the Treasurer put his position forward, which he did so with his usual eloquence. Given the hour of the night and the fact that the debate appeared to be quite heated at times I thought that it would be more appropriate to speak on this issue in the cool light of day this morning. Can I indicate to you, Mr Chairman, that this will not be my only contribution on this clause in the Committee stage. I understand that I have an opportunity to speak on a number of occasions and I propose to do so, either in the course of today's debate or when this matter is brought back on next year.

I can indicate that the issue of the restructuring and disposal of the electricity industry is one that I treat with a great deal of seriousness. It is an issue that I have congratulated the Premier and Treasurer on for having the courage to at least bring this issue forward in the arena. It is an issue, indeed, on which I have congratulated the Hon. Terry Cameron for having the courage to say that there is a need for reform of the electricity industry, and he has expressed that in similar terms to the position expressed by the New South Wales Labor Premier Bob Carr and the New South Wales Labor Treasurer Michael Egan.

In relation to where I have had difficulties with this in terms of my initial position with respect to the outright sale, this Council is well aware of my position: I felt that it was simply too great a breach of trust, given the explicit promises made by the Government prior to the last State election that ETSA would not be sold. Indeed, the ALP took a very strong stand on this issue as well. My position was that I believed there were merits in disposing of our State's electricity assets, potential economic benefits in the context of a new contestable competitive market. The Treasurer has actually said on a number of occasions that we face a cutthroat competitive market, and that is an area of significant concern for me.

In terms of the whole issue of the lease, I think it is important that the Council know that there were discussions from about mid to late October; 22 October is when I understand a substantive meeting took place with the Government's advisers and my advisers on this issue. My position was that a 97 year lease or a 99 year lease was a de facto sale. In terms of property law, a 99 year lease is treated very much as a sale. For instance, in the ACT the title system works on a 99 year term and, effectively, people would treat that as a de facto sale in that it covers, essentially, beyond a person's lifetime, and that was an issue that played on my mind.

I wanted to explore in good faith the issue of a compromise on this issue. I can understand how important this is for the Government, but I hope the Government can also understand that I am concerned about a number of issues relating to both the merits of the disposal process and also the issue of South Australians having some degree of choice or some say in the disposal of their largest remaining asset. I am aware that my friends on the other side of the Chamber have been involved in asset disposals in years gone by with little or no consultation with the electorate.

The Hon. L.H. Davis: None.

The Hon. NICK XENOPHON: The Hon. Legh Davis says 'None', and there may well be some merit in what the Hon. Legh Davis says. I have followed with interest his contributions in this debate and, clearly, he has taken a significant interest. His articles in the *Adelaide Review* I think make generally for quite good reading. But this is different in this respect. First, this is the State's largest remaining asset. There were explicit promises made at the last election. There was not a reasonable expectation on the part of practically anyone in the electorate that we were going to face this upheaval in terms of a disposal of the State's largest remaining asset, an asset, as I think the honourable Treasurer said last night, that is an icon for South Australians.

In terms of my approach, Mr Chairman, I have tried to find a compromise with this proposal, this dilemma that we now face. The proposal I put to the Government a number of months ago was that there ought to be a referendum to give South Australians a say on this important issue. I understand the Government says that, in the absence of bipartisanship, it is very difficult to get a referendum up. I have said publicly in the last few days that I have been disappointed with the approach of the Labor Party in terms of its policy direction on this issue, that I felt that it lacked substance in terms of dealing with the very real challenges we face, not just with the national electricity market but also the issues of debt, which do concern me. I know the Treasurer yesterday, not during this specific debate, was talking about tax increases. Well, I think that is one of—

The Hon. Diana Laidlaw: Or cuts in services.

The Hon. NICK XENOPHON: Tax increases or cuts in services, and I think there needs to be a—

The Hon. Diana Laidlaw interjecting:

The Hon. NICK XENOPHON: I wouldn't want to see the Australian Dance Theatre cut. I know the honourable Minister's passion on issues of arts funding. But I think that there is a stark choice to be faced.

The Hon. T.G. Cameron: There are some cuts to the arts which should be seriously looked at.

The Hon. NICK XENOPHON: The Hon. Terry Cameron makes a point, and I think it may have some merit. But in any respect, the whole issue of this debate is a contentious one. It is a dilemma in which I have found myself. I think I can say that I am probably one of the few members in this Chamber or the other place who did not go to the last election with any specific promise not to dispose of the State's electricity assets. In some way I had the liberty of being constrained in having only a single issue, which, arguably, is also a burden in some respects, because I do not have—

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: Well, no-one asked me; perhaps someone ought to have, and it would have made life easier for me in the lead-up to the election. I was asked about all sorts of other issues but not this one. In relation to the approach with respect to the lease negotiations, I think it is fair to say that I did enter into these negotiations in the hope that a compromise could be reached. I did enter into these negotiations in the hope that a compromise could be reached which would give South Australians a genuine degree of choice in relation to the question of the disposal of the State's electricity assets.

In terms of the negotiations, it is fair to say that the issue of a 25 year lease was raised, although my clear understanding is that there were discussions started by the Government. The whole issue of the lease came to the forefront after the Premier returned from an overseas trip where he had received advice from overseas investment bankers or advisers on electricity utility reform that a long-term lease would deliver a fairly small reduction in the purchase price, as distinct from the advice given to the Government or the Government's belief several months earlier that a long-term lease (a 97 year lease) would have led to about a 25 per cent reduction. That is my clear understanding of the Government's position, but that position changed after the Treasurer returned from overseas, I think some time in late September or early October—

The Hon. R.I. Lucas: I never went overseas.

The Hon. NICK XENOPHON: I apologise to the Treasurer; I have him confused with the Premier. I meant to say that the Premier, when he returned from overseas—

Members interjecting:

The Hon. T. Crothers: I am promoting Rob Lucas as the—

The Hon. NICK XENOPHON: I see that the Treasurer has a lot of fans on both sides of the Council—and that is encouraging. In terms of the Government's proposal for a lease, that came to the forefront after the Premier returned from overseas and after he was given advice that a long-term lease could be looked at and could be viable. In the context of my position I made it clear that a 99 year lease was a de facto sale. That concerned me because, effectively, for all but a tiny number of South Australians none of us would be around to see the assets returned to the State in the event of a 99 year disposition of those assets via a lease.

That is why I was willing in good faith to deal with the Government on the question of a compromise. I flagged that I thought a 25 year lease would be seen not as a long-term disposition but as a measure which would give some degree of choice or option to South Australians. To this extent, I need to be careful not to disclose matters commercial in confidence that were given to me; of course, I honour that confidence. But I think I can say that—

The Hon. Caroline Schaefer: You said you weren't given any detail.

The Hon. NICK XENOPHON: That is not the case. The Treasurer can confirm that I was given material in confidence. I have honoured that confidence and I will continue to do so. I appreciate the information that the Treasurer gave me in terms of the proposal. In terms of the Government's proposal for a 25 year lease, some discussions did take place. A proposal was discussed around the table with the Government's advisers and with the people who were advising me to the effect that there might be a mechanism to give some degree of genuine choice to South Australians, the proposal being that we allow for an extension of the lease by having a trigger at the next election to extend the terms of the lease.

I had some reservations in terms of the viability of a 25 year stand-alone lease on the basis of information which I received and which I believed had some merit. I was also concerned in relation to the Auditor-General's Report tabled subsequent to my initial discussion with the Government about the lease where, after making a number of assumptions from material provided to him by Treasury, the Auditor-General suggested that the benefit of an outright sale of our State's utilities would be in the order of $35 million to $65 million a year, and that falls short of the $100 to $150 million a year that the Government set out. That was an area of concern. I would like to think that all members of this Parliament have a great deal of regard for the independence and integrity of our State's Auditor-General. That was one of

the matters that I considered in weighing up the respective merits of the proposal.

The Government's proposal for a staged lease, subject to the result of the next election, had a lot of initial appeal to me. I felt that it would give South Australians some degree of choice on this issue. However, on 24 November 1998 in a news release the Leader of the Opposition (Hon. Mike Rann) said:

> Mr Xenophon must know that a future Labor Government would be financially bound to renew the leases. . . If Mr Xenophon votes for a long-term lease then ETSA and Optima are lost to South Australians.

At the time I did say that I found it an exercise in some degree of cynicism on the part of the Opposition in terms of the approach that it took. But it was material in weighing up the Government's proposal, in that it put me in the position of almost having a Hobson's choice on this in the sense that the Opposition, for whatever reason, I say cynical—

The Hon. T.G. Cameron: That is exactly what they wanted you to do.

The Hon. NICK XENOPHON: Well, the Hon. Terry Cameron says—

The Hon. R.I. Lucas: What about the Democrats? They would still be the alternative; they would claim to be winning seats hands over fist because all these people out there would be opposing the Liberal Party and the Labor Party position.

The Hon. NICK XENOPHON: The Treasurer makes the point that—

The Hon. T.G. Cameron: Labor's Caucus decision will last until the next State Council.

The Hon. NICK XENOPHON: Fortunately, I am not privy to the discussions of the Labor Caucus or the Council.

Members interjecting:

The CHAIRMAN: Order! The honourable member is on his feet.

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Xenophon has the call.

Members interjecting:

The CHAIRMAN: Order! I warn both sides that, if they continue interjecting after I have called 'Order', I will take further action.

The Hon. NICK XENOPHON: Thank you, Sir. I am reminded of the vote I got at the last election. I think they put a greater onus on me to look at this matter in good conscience, particularly in the absence of any policy platform on this issue. However, when the Labor Party on 24 November, through its Leader the Hon. Mike Rann, made clear its position that, effectively, it would lock the State into a 97 year lease, I regarded that as an act of breathtaking cynicism on his part. To be fair to the Leader of the Opposition, I can understand that the commercial reality may be that, effectively, it would lock the State into a 97 year lease, that the electorate would be faced with a Hobson's choice—that they would have no choice but to approve this because of the commercial realities involved.

I am also aware that at the next election we will have either a Liberal Government or a Labor Government. With all respect to my Democrat friends, I do not think it is realistic to assume that they would be forming a Government of any type. I do not think the No Pokies campaign will get too many seats in the Lower House, either. So, in terms of this approach I was faced with a difficult choice: if I agreed to the Government's proposal, that would lead, effectively, to the electorate being locked into a 97 year term without any degree of choice—given to a significant degree the Labor Party's position, which I found to be breathtaking in its approach. There was also the other issue of the merits of a 25 year lease or a long-term lease in the context of a competitive framework.

I understand that the Treasurer has said that this is all about a competitive market. However, he has also said that Riverlink and Pelican Point really have nothing to do with the Bill. In a very strict, narrow and legalistic sense, that perhaps is correct: there is no mention of Pelican Point or Riverlink in this Bill. However, the fact is that the whole ethos of the Bill is very much about selling the assets in the context of a competitive market. Before you sell the assets, the people who are buying them need to know what they are getting, and what they get would vary in the context of whether we have a truly competitive market, for instance, whether there is a Pelican Point and whether there are vesting contracts for up to seven years at Pelican Point, which many would say would lock in the price of power on this issue. That is something that concerns me.

I am aware that the Treasurer made an eloquent explanation in terms of Riverlink and Pelican Point last night. I propose at a later stage to speak to those issues. The Treasurer's response last night deserves a lengthy, detailed and comprehensive response. It is an important matter because, if you get the competitive market wrong, if a mistake is made, then we are potentially locking in South Australian consumers and businesses to long-term increased power prices or, at the very least—

Members interjecting:

The CHAIRMAN: Order!

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Xenophon is on his feet and honourable members are showing no courtesy to him.

The Hon. NICK XENOPHON: Thank you, Mr Chairman. This is an important issue and we need to get it right. I have also been influenced by the contact I have had with members of the business community in recent weeks. Some of those contacts were on a confidential basis. I am not talking about my greengrocer down the road being concerned about electricity prices: I am talking about some significant users of electricity in this State.

I have a copy of a letter from the SA Gas and Electricity Users Group addressed to the Treasurer headed 'Introduction of the National Electricity Market' and signed by Ron Graves, Chairman of that important group which consists of a number of major users of electricity in this State. I will quote briefly from the letter, which begins by saying:

> The South Australian Gas and Electricity Users Group is an organisation consisting of a high proportion of the major gas and electricity users in South Australia. Members comprise a large number of organisations with divisions in the Eastern States who have been involved in this process prior to the South Australian situation.

South Australia apparently has the second highest power charges in the country, with Western Australia being the highest. That is an area of concern to industry, consumers and businesses that want to create jobs in this State. The letter goes on to state:

> As a group we are very concerned with the current progress of the introduction of the national electricity market in South Australia. There currently is a great deal of confusion within all sectors of the process. Whilst you have a good insight into the current situation and have access to all the information, consumers (who consist of voters) are not in the same position. The credibility of all parties concerned

in the introduction of the NEM, especially the Government, is very low. Users have been issued with so many dates for NEM introduction over the past 12 months that the dates have now become a standing joke. This is not a congenial situation when trying to expand or attract industry to South Australia.

The letter goes on to say that members of the South Australian Gas and Electricity Users Group:

. . . are also very concerned in the way electricity retail licences are progressing. Again confusion seems to have seized control. Although the market was to start on 15 November, energy prices have been unavailable. Even at the time of writing this letter ETSA (who are the only current retailer) cannot issue energy prices and cannot even estimate a date for the new energy prices, and the electricity generators are saying they may not want to be retailers. Many organisations have not renewed electricity contracts on the basis that the NEM would have started and they are very anxious to set a contract in place to enable them some degree of certainty in predicting their costs. However, they are unable to do so. ETSA are indicating that this is not a concern as they will keep supplying electricity to customers, but it may be at a higher tariff. How can this be assisting industries whose interstate competitors already experience lower energy, TUOS and DUOS prices?

I will not quote much more from this letter but it goes on to refer to Riverlink and says:

Whilst it is the intention of the Government to facilitate the construction of another generation facility and not proceed with the Transgrid Riverlink proposal, the South Australian Gas and Electricity Users Group wishes to understand the reasoning and benefits to electricity users and welcomes any comments that you may wish to submit.

The letter goes on to say that they are concerned about the state of play within the national market and, if honourable members wish, I am happy to quote more extensively from the letter. But there is some concern that South Australia will miss out on the benefits of Eastern States electricity. I know that the Treasurer in his impassioned speech on this matter last night said that I have got my facts wrong. Well, there has been a fair degree of correspondence between the Treasurer and me, and between the Government's advisers and London Economics on this issue. I hasten to add that London Economics, as it confirmed to me in writing, is being paid for its consultancy on an hourly basis, and it was previously the consultant for ETSA on this issue.

This is a genuine concern that I have in terms of the whole nature of the competitive market which we are getting into and which, in turn, will impact on the price of lease assets and, more importantly, on the price of electricity in this State. I can foreshadow that there is some merit in having an inquiry into the whole nature of the competitive market in this State, on Riverlink, on Pelican Point and on the challenges that we will face in the context of a national market and the risks that we face. There is some merit in an inquiry.

The Treasurer shakes his head in disbelief, but I am disappointed that he takes that approach. I do not believe that the whole issue of Riverlink and the competitive market generally will go away over the Christmas break—not with the level of concern that has been expressed to me by members of the business community.

The Hon. R.I. Lucas: What's the point in having another inquiry? You will just agonise for months and months. You will take months and months and come to the same decision.

The Hon. NICK XENOPHON: This is independent, and there are some questions that need to be answered in the context of Riverlink and Pelican Point.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: You have my statement and that is what I have said. There are still some issues in which the Labor Party and the Democrats ought to be engaged concerning the whole nature of the competitive market and the risks it brings to taxpayers and consumers.

The Hon. Diana Laidlaw interjecting:

The Hon. NICK XENOPHON: To say that I have been approached on this issue for a year—

Members interjecting:

The Hon. T.G. Cameron: Who has the floor, Mr Chairman?

The CHAIRMAN: That is a good point.

The Hon. NICK XENOPHON: For the record, I have become seriously involved in this issue since the Hon. Sandra Kanck made an announcement on or about 28 June indicating the Democrats' position, and more seriously since that time, when the Hon. Terry Cameron made clear his position on the merits of the disposal of these assets. Last night it was not a case of my not wanting to participate in the debate. I thought it was important for the Treasurer to set out his position. I know it was an area of great concern to the Treasurer, and I did not think it would be productive or constructive to engage in further debate in the early hours of the morning.

My concern on these issues has been cumulative in terms of the context of the loss of choice for South Australians in relation to the disposal of the largest remaining asset, on the question of a competitive framework and on the question of Riverlink, in particular. This is not an issue that I have enjoyed. I have not wanted to draw out this matter. It has caused me a great deal of grief and angst. I have tried in good conscience to deal with these issues. A final decision was only made late in the weekend. I thought that a compromise could be reached, but in the end it could not be reached. To those in the Government who are bitterly disappointed by this, I express my regrets, but at the end of the day I felt that it was the only decision on balance I could make. I know that the issues of electricity reform, debt and a competitive framework will not go away. However, I would like to think there can continue to be constructive dialogue between all Parties in this Chamber with respect to dealing with this issue. To personalise the debate does not seem to be helpful and I do not seek to do that in any way, but I would like to think that there is scope to deal with these challenges. For the Government to say that my decision alone has been a catastrophe does not reflect the true position and at the end of the day I am simply one vote and there are other votes in this Chamber that need to be convinced.

In terms of my position on this clause, I will oppose it with a degree of reluctance because I can see the challenges that face the Government and the electorate on this issue. In good conscience I felt that at the end of the day I could make no other decision. I hope the Government can respect that as I respect its position. In terms of matters raised by the Treasurer that I did not contact him on the day before the decision, I kept well away from the Labor Party on this issue and I thought that I needed to keep my own counsel in that I felt lobbied out by that stage. It was a case of saying 'Enough'. It was not a slight to the Treasurer; he may have taken it as that. He has always been prompt and approachable in his dealings with me and I hope he can continue to be so on this and any other issue.

At the end of the day I felt that I needed to keep my own counsel as it was a momentous decision. It has caused some anger and frustration on the part of the Government, but I hope it realises the dilemma I face. There are potential merits in this reform, but in terms of the dilemmas I face, which I have outlined to date, I could not bring myself to support this proposal. I will say more about it in Committee but I thought

it important that the Government not think that I was unwilling to put my position on the record. I hope that the Government can continue in constructive dialogue. I propose to contribute to the debate later in Committee.

The Hon. L.H. DAVIS: It is important to review exactly what has happened in debating the most important measure the State has faced in legislative terms since the Roxby Downs Indenture Bill of 1982. Then, one Hon. Norm Foster, Labor Party member, resigned from his Party, became an Independent and crossed the floor to make possible the go ahead for Roxby Downs, as described by the then Leader of the Opposition, the Hon. John Bannon, as a mirage in the desert. Roxby Downs was described by Mike Rann, a key adviser to John Bannon at the time, in a 30 page booklet as an economic beatup by a desperate Premier of the time, David Tonkin. We now know that Roxby Downs is not a mirage in the desert but, as we speak, is being upgraded with a $1.6 billion capital expenditure program—the biggest private sector capital expenditure program in Australia currently. It will be further entrenched as one of the great underground mines in the world, generating hundreds of millions of dollars annually in export earnings for South Australia, generating tens of millions of dollars for the State Government annually in royalties and providing a wonderful, splendid town called Roxby Downs, which will in time, after this development, house 4 000 people.

The Hon. T.G. Roberts: Have you bought a block up there?

The Hon. L.H. DAVIS: Whilst the Hon. Terry Roberts may laugh and joke about this matter, I take it seriously because we are dealing with a watershed issue every bit as important to the future of this State as was the debate on Roxby Downs. I will revisit the Labor Party view on this, the Australian Democrat view on it, and, lastly, the No Pokies approach to this important matter.

The Hon. Sandra Kanck: It will be a long speech then.

The Hon. L.H. DAVIS: Well, it deserves some consideration—more than one thousand hours of research. I find the Labor approach to this important legislation contemptible beyond belief. I put on the record again that the decision to oppose privatisation of the Electricity Trust was made by the Labor Party over two years ago at a convention where there was no debate on the subject whatsoever because a deal had been done by the factions in the Labor Party. Over two years ago the Labor Party committed itself to opposing privatisation, irrespective of the economic benefits to the State, irrespective of the changing circumstances that have occurred in the two years since that decision was made, and irrespective of the fact that other States around Australia, which we happen to compete with, are reducing their debt dramatically. This enables them to compete much more effectively than can South Australia in terms of attracting business and in terms of providing important services in the area of health, education and welfare.

The flim flam man who masquerades as the Leader of the Opposition, the Hon. Mike Rann—a policy free zone in his own right—in this debate has been consistently absent, with no logic, no policy, no argument against the privatisation; a person who was silent while the Labor Party in the period 1991-93 in Government, in a de facto sense privatised the South Australian Gas Company by selling 82 per cent of the shares that it owned in that company. The Hon. Mike Rann I am told voted for it—supported it—in the Cabinet. He supported an 82 per cent sale of shares in an energy company called the South Australian Gas Company, now run by Boral Energy, reticulating gas to hundreds of thousands of South Australians, without incident or criticism from the Hon. Mike Rann.

There was no mandate for this at all—hundreds of millions of dollars were raised from the sale and the Hon. Frank Blevins, who then had a key place in the Government, and such luminaries in the Party as Bob Catley, are both on the public record saying this was done to reduce the State debt and to use the money more effectively. Strange, that argument. So, when it comes to the Liberal Government's selling or leasing 100 per cent, as the case may be, of the electricity assets of South Australia, that is not okay. On top of that, without a mandate, the Government of which Mr Rann was a member, committed for sale 100 per cent of the State Bank of South Australia and sold other numerous Government assets.

The Hon. Mike Rann was also a key member of the State Government at a time when the Federal Governments of Bob Hawke and Paul Keating were privatising, in order, the Commonwealth Bank (admittedly in three tranches, but it initiated that), Qantas Airways (after bringing in and effectively privatising Australian Airlines), and the Commonwealth Serum Laboratories, with all three stocks now listed on the Stock Exchange. And it also committed in principle to the privatisation of Telstra. That is on the record: the Federal Labor Government was committed to the first stage of privatising Telstra.

The Hon. T.G. Cameron interjecting:

The Hon. L.H. DAVIS: There was not a peep from the Hon. Mike Rann on this issue, but the Hon. Terry Roberts, to be fair, has been consistent to his Socialist Left beliefs on this issue. I accept that and record that publicly. Let me underscore the enduring hypocrisy and sanctimonious nature of the Labor Party position. Let me tell the House that the Deputy Leader of the Labor Party in another place, Annette Hurley, has had, through family interests, shares in Telstra; let me inform the Chamber that the Leader of the Labor Party in the Legislative Council, the Hon. Carolyn Pickles, owns shares in Telstra; let me tell the House that the Hon. Paul Holloway, the Deputy Leader of the Labor Party in the Legislative Council, owns shares in Telstra; let me tell the House that Trish White, shadow spokesperson in another place, owns shares in Telstra; let me tell the House that John Hill, a Leader in waiting in another place for the Labor Party, also owns shares not only in Telstra but also in the Commonwealth Bank.

I have always believed that, if you are against something, you actually practise what you preach. If you are against gambling, you do not go to the Casino and play the roulette wheel.

Members interjecting:

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: If you speak out publicly and proselytise against alcohol, you do not drink. If you are a strict vegetarian, you do not eat meat. If you are a Labor member of Parliament who speaks out publicly—as have the Hon. Carolyn Pickles, the Hon. Paul Holloway, Annette Hurley, John Hill and Trish White—then not only—

The Hon. T.G. Cameron interjecting:

The Hon. L.H. DAVIS: Apparently, you can speak out and vote against it, but you can quite happily own shares in Telstra. What hypocrisy is that?

Members interjecting:

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: The Labor Party's hypocrisy on this is exposed for all to see. In reviewing the Democrats' attitude to the privatisation of ETSA and Optima, I was fascinated to read in the *Australian* in February 1998 that they were opposed to the sale of ETSA and Optima; they were against the privatisation of the electricity assets. That goes back to February 1998. Yet, the Democrats went through the masquerade of 1 000 hours of research—most surely one of the highlights in a Democratic video for 1998; I do not know whether I could stand the pace to watch it.

That was the claim of the Democrats—that they had an open mind. Even though publicly their spokesperson, the Hon. Sandra Kanck, had said in February that they were opposing the sale, she went through the masquerade of saying, 'We have an open mind on this. We will look at it during our 1 000 hours of research.'

The Hon. Sandra Kanck: That is not what I said.

The Hon. L.H. DAVIS: The inaccuracies of the Australian Democrats in their facts—

The Hon. Sandra Kanck: You do not know what the word means.

The Hon. L.H. DAVIS: What word? Research?

The Hon. Sandra Kanck: 'Inaccuracies'. You do not know what it means.

The Hon. L.H. DAVIS: If I do not know what the word 'inaccuracy' means let me perhaps give some examples of what I think it means by using the Australian Democrats.

The Electricity Supply Association of Australia wrote a letter which was published and which condemned the Australian Democrats for making inaccurate statements. This letter has been the subject of reference in this Chamber. The well respected Managing Director of ESAA, Keith Orchison, was most scathing in his criticism of the Hon. Ms Kanck.

The Hon. Sandra Kanck interjecting:

The Hon. L.H. DAVIS: Well, the honourable member should just listen so she can better understand what the word 'inaccuracy' means. The Hon. Ms Kanck alleged—and it is all on file; it is on the record; she has said this publicly—that the service in Victoria and overseas had suffered since privatisation, and the association pointed out that reports published in Victoria by the Regulator-General show that privatised distribution had in fact significantly reduced the amount of time customers are without power.

The Hon. Sandra Kanck interjecting:

The Hon. L.H. DAVIS: Well, the honourable member will have her chance to tell everyone how they are wrong. Similarly, ESAA said that the Chairman of the Electricity Consumers Committee of the 14 British electricity regions had highlighted a significant improvement in the standard of service since privatisation. The association Managing Director, Keith Orchison said, and I quote him directly—are you listening?

The Hon. Sandra Kanck: No—

The Hon. L.H. DAVIS: Do you not want to know what an inaccurate statement means? This is what he said: he is saying this to you:

> Mrs Kanck knew about this statement of support for privatisation by the Leader of British Consumers Committee before putting out her media statement because I wrote to her in late June to provide the information.

Let me confirm the inaccuracy of the Hon. Ms Kanck's comments about Victoria by referring to information from the National Competition Council which has documented the facts about the improvement in the delivery of electricity services in Victoria. Are you listening to this, because this is all about accuracy, the Hon. Ms Kanck?

Members interjecting:

The Hon. L.H. DAVIS: Since 1993 electricity prices have been frozen or pegged below the rate of inflation in 1997-98. The average Victorian household will save $74 on their electricity bills in real terms in 1997-98. In addition to that, there is a winter power bonus which will enable households and small businesses to have $60 savings annually if they are not in a position yet to choose their own retailer. That bonus will continue over the next two winters.

In fact, it is interesting to note that the recent Australian Bureau of Statistics surveys in October showed that, of all the capital cities, Melbourne had the lowest CPI increase over the past year. What was one of the reasons that it gave for Melbourne having one of the lowest increases in prices?

The Hon. Sandra Kanck: Artificial prices.

The Hon. L.H. DAVIS: No, if you don't believe me, Sandra, you can take it from the reference itself: the ABS cited the Government's winter power bonus as one of the reasons. The other point that emerges is that the Office of the Regulator-General has noted that electricity supplies in Victoria are now more reliable.

The Hon. Sandra Kanck interjecting:

The Hon. L.H. DAVIS: Shaking your head with disbelief: does not believe the Regulator-General! Spoils a thousand hours of research, I guess. The Regulator-General noted that customers without electricity—

Members interjecting:

The Hon. L.H. DAVIS: Listen to this—had more than halved, with a substantial decrease from 510 minutes in 1989-90 to just 200 minutes in 1997. To my humble observation, that is almost impressive; that almost might have brought a glowing endorsement from the Australian Democrats. The Regulator-General found that—

Members interjecting:

The Hon. L.H. DAVIS: Listen to this: if you do not believe this, you might believe this one. The Regulator-General found fewer customers were being disconnected for non-payment of their electricity bills, that in the past year alone there had been a 55 per cent reduction in the number of customers disconnected. The Regulator-General, in his most recent report, stated that customers are now better off than under the old State Electricity Commission.

The Hon. Sandra Kanck: It's funny that the customers aren't saying that.

The Hon. L.H. DAVIS: So why would the Regulator-General be saying that then?

The Hon. Sandra Kanck: Ask him.

The Hon. L.H. DAVIS: That should be put in the record: 'Ask him' was the reply from the Democrats.

The Hon. Sandra Kanck interjecting:

The Hon. L.H. DAVIS: As a result of the privatisation of electricity assets in Victoria, State debt has fallen from a peak of $32 billion in 1992 to $10 billion today. This represents a saving in interest payments of more than $500 a year for each and every Victorian household; and taxes and charges have been reduced by $2.57 billion in the past six years. Those are not my facts, those are the facts from the National Competition Council and the Regulator-General. If you want to know more about it, just ask them. That's what the Hon. Sandra Kanck has suggested. But I think those facts speak for themselves.

I want next to examine the attitude of the Hon. Nick Xenophon to this most important legislation. I was trying to

reflect on what drove the Hon. Nick Xenophon, what was motivating him, and what was his focus in debating, exploring and researching this most important issue. I found it fascinating that, as you will see in the chronology of events which I will document in detail in a few minutes, he always enjoyed the media spotlight. If the Treasurer, for instance, arranged a briefing of Treasury officers and the people from Morgan Stanley, the Hon. Nick Xenophon would arrive with advisers and the media would be there, too. The media was being invited to those conferences not by the Treasurer but by the honourable member himself.

The Hon. Nick Xenophon: That's not true though.

The Hon. L.H. DAVIS: When 16 businessmen signed off on a letter which was published in the *Advertiser* imploring that the electricity assets be sold for the benefit of South Australia the Hon. Nick Xenophon invited them down to lunch at Parliament House, of course with a reporter—and it duly got very good press coverage. This puzzled me a bit: I was not sure what this was all about.

It reminded me very much of the film *The Secret Life of Walter Mitty*—members might remember that it was a lovely, glorious, I think 1950s, technicolour movie on cinemascope starring Danny Kaye. Walter Mitty imagined that he was all sorts of different people and through his fantasies he became all these different people. In many ways the Hon. Nick Xenophon has been trying to please everyone. I have a great respect for his integrity and sense of morality. I understand that those issues are very important to him: he has made that point both in his public statements and in this Council. He has used it as one of the key reasons for his rejection of this most important legislation.

We have the paradoxical situation that whilst he accepts the economic benefits that might flow to the people of South Australia he believes that, because the Government did not have a mandate for this and went to the people at the last election 14 months ago saying that it was not its intention at the time to privatise the electricity assets, he cannot support the subsequent turnaround in the Government's attitude to this matter. In other words, he was arguing logically that if we had gone to the people with a promise that we would privatise the assets of ETSA we were committed to privatising the electricity assets in South Australia so as to reduce the debt and provide additional services to the people, and also, arguably in time, to reduce the taxation burden on the people and therefore he would have supported that proposition because we had a mandate.

Let us test that: let us test the integrity and morality of the honourable member when he applies his own logic to another situation, because he had the opportunity to do that with voluntary voting. Here there could be no better example of a Government with a mandate because not once, not twice, but three times the Liberal Party had gone into an election with a policy position—in fact, included in the policy speech itself—of supporting voluntary voting. In 1987 the then Leader of the Opposition, John Olsen, for the first time, said the Party was committing itself to voluntary voting; and that was carried into the 1989 election as a key part of our policy speech, and it was an election we narrowly lost. When Dean Brown led the Liberal Party to victory in 1993, again it was part of the policy speech; again in 1997 when Premier John Olsen was re-elected it was part of the policy speech.

What happened in the Council when the Hon. Nick Xenophon had the opportunity to apply his own test to jump the hurdle that he had set himself was that he stumbled and fell. He said, 'I went to America and I did not happen to like voluntary voting. I thought it wasn't very good and so I decided to oppose it.' The honourable member cannot argue against the logic of the proposition I put or the facts, because that is the truth.

The Hon. P. Holloway interjecting:

The Hon. L.H. DAVIS: I am not talking about you for a change, Paul. It is very tempting, but I am not: I am addressing my remarks to the Hon. Nick Xenophon. You just stay with your Telstra shares. So, the Hon. Nick Xenophon falls over his own moral hurdle; he has tripped on it. Let me just revisit the past six months to see what has actually happened. It is worth just remembering how many of these facts which the honourable member seems to have difficulties with have been put on the record. For instance, on Monday 15 June the Treasurer, Hon. Rob Lucas, put out a press release where he stated:

> The South Australian Government accepts today's decision of NEMMCO that Riverlink should not be constructed as a regulated power interconnect between New South Wales and South Australia for service by the summer of 1999-2000.

It was not the Treasurer's call: NEMMCO actually made the decision. The press release went on to state:

> The interconnect has been a joint proposal of ETSA Transmission and NSW's Transgrid and the project had in principle support from both State Governments. Since that time, however, the South Australian Government has made the decision that its power assets should be sold. Within the preparation of the sale process there has been a reappraisal of several assumptions on which the sale was based. Within the same time frame, two New South Wales generating companies have withdrawn generating units from service. South Australian Treasurer Rob Lucas says his advice is that this may have a significant impact on the power price structure and equilibrium within the Victorian, New South Wales and South Australian market and that requires evaluation of the original proposal by ETSA.

That is the first fact of life that the honourable member seems not to appreciate. As a lawyer he has had some practical commercial experience. He knows that nothing is fixed forever, that we live in a world that is forever changing and that we have moved from a time when we had inefficient public monopolies in electricity, gas (in some States), telecommunications and rail. The world is changing to the point where Boral, for example, recently announced that it would establish a plant to develop 35 megawatts of power in the South-East, where WMC, the owner of that wonderful Roxby Downs development, is speculating on the possibility that it may build its own generation plant.

We are also aware that, with the national market coming on stream shortly, within the immediate future the 30 largest consumers in South Australia will be able to buy power from interstate at much reduced prices. Already we have a link into the national market in the sense that 35 to 40 per cent of our power comes out of Victoria. So, this is a world where the change is rapid. We have co-generation plants being developed too, in this and other States.

So, on 26 June 1998, the Hon. Nick Xenophon told ABC Radio he would not rule out supporting the sale of ETSA, hinting at a possible trade-off on poker machine restrictions. In my view that is the statement of a sensible politician: that he would do a deal, he might say, 'Look, I have'—

The Hon. T.G. Cameron: He's got too much principle to do a deal.

The Hon. L.H. DAVIS: Well, on 26 June he was saying, 'I might support a sale, but I might want to do a deal on poker machine restrictions.' We did not hear any more about deals afterwards, because on morality and principle he did not want to do that. Yet, curiously he rang up Senator Brian Harradine

for advice, and we will come to that in a minute. I imagine that Senator Brian Harradine would have said, 'You are in a very strong bargaining position, Nick; you should able to do a deal on this.' Whatever we might think of Senator Brian Harradine, we all respect his ability to do a deal as a Senator for Tasmania. I am sure that politicians on both sides in positions where they can deliver more money to Tasmania have had their arm twisted by Brian Harradine to make sure that he gets what he wants—and that is *real politik*.

Then, on Saturday 27 June the Hon. Nick Xenophon said he was still undecided on his stance and planned to meet all Parties. He was perhaps becoming the Chancey Gardener of South Australian politics—from that lovely Peter Sellers movie *Being There*. He certainly was. Then on 3 August, when problems were emerging for the then Deputy Leader of the Liberal Party, the Hon. Graham Ingerson, the Hon. Nick Xenophon made this statement, in direct reference to the Hon. Graham Ingerson's position. His actual words, on the record, were:

> Unless the Premier acts decisively in the immediate future to remedy the obvious damage to the reputation of his Government and, more importantly, to the Westminster system of ministerial accountability, I will find it increasingly difficult to accept at face value the Government's case on the proposed sale.

Now, what is that saying? It is saying, quite clearly, 'If you do not dump Deputy Premier Ingerson quickly, all bets are off on the sale.' There is no other way to construe that statement.

Then, the Hon. Graham Ingerson resigned and states in part in his resignation speech in June, 'I've done this in the best interests of South Australia; I don't want to stand in the way of this ETSA sale proceeding.' The Hon. Rob Lucas at the time said words to the effect that it was a very brave and noble thing that the Hon. Graham Ingerson had done. However, Mr Xenophon appeared on *ABC News* disowning responsibility for Mr Ingerson's demise and intimating that he would make his decision on ETSA and Optima the next day. So, there again we have the X factor at work—the enigma, the paradox. Clearly, whilst just a few days before Deputy Premier Ingerson resigned Mr Xenophon has made an unequivocal statement that unless the Premier acts decisively he will have difficulty in accepting at face value the Government's case on the proposed sale, when it happens, he says it has nothing to do with him. At the same time he said that he would make his decision on ETSA and Optima the next day. I saw this statement being made on *ABC News* on Monday 3 August. He said that he would make his decision on ETSA and Optima on 4 August. That is over four months ago.

On that day—it is a matter of public record—he had a bowl of cold spaghetti and talked with Terry Cameron and close friend and mentor the Reverend Tim Costello. According to the record, it is stated in the *Advertiser* of Tuesday 4 August, under the heading 'The X Files', that the Hon. Nick Xenophon at midnight could not sleep; and at 1 p.m. on Tuesday 4 August he visited the Treasurer for half and hour. He then said something with which we all agree: 'The Treasurer has always been a thorough gentleman in my dealings with him.'

On that same day, the Hon. Mr Xenophon was quoted as saying that Mr Ingerson's resignation would not influence his vote on ETSA, an issue that he would be judging on his merits. So, he said that he would make a decision on 4 August; he made that commitment on ABC television on 3 August, but on Tuesday 4 August, the appointed date, he did not deliver on his decision. The *Advertiser* records it thus:

> Mr Xenophon kept the Government in suspense, reneging on a statement made on Monday night that he would make his final decision on the sale yesterday [4 August].

In a major article on Wednesday 5 August, Mr Xenophon was quoted as saying that he has often said he was amazed to be elected to Parliament. This same article—a detailed feature article on Mr Xenophon because, understandably, he has had a lot of press—gave some background to his role and how he came to be in politics. It is worth remembering that Nick Xenophon was elected on the lowest vote that anyone has ever received to be elected into the Legislative Council since the voting system was changed 25 years ago. I think he received a vote of 2.86 per cent, which is barely a third of a quota. The Australian Democrats used to squeak in with 5 per cent plus, but 2.86 per cent was by far the lowest. Of course, it reflected the very canny deals that Mr Xenophon did with preferences, something which is of great credit to his political agility in that area.

It is quite clear that during the past six months when Mr Xenophon has been under pressure to make a decision, he has not wanted to hurt anyone, because he is very generous and, as he said quite understandably, he has often been amazed to find himself in the political process. The greatest irony of all is that the decision might not hurt us so much, although we all feel passionately—as do the Treasurer and I—about the fact that he has voted against it.

However, the ultimate irony is that whilst Nick Xenophon's mantle in life is not to hurt people, the fact is that the decision he has made will hurt the people whom he represents. Ultimately, as Legislative Councillors we represent the whole State, not just the people who voted directly for us. In effect, we are State senators—we represent one million voters—and the people who will be most hurt by this decision will be those who will be forced to pay higher taxes or suffer reduced services because we are not able to sell or lease our electricity assets.

The honourable member's having not made his decision on 4 August, the *Advertiser* recorded the Hon. Nick Xenophon's next move. In an article on Thursday 6 August, the *Advertiser* reports:

> Mr Xenophon will retreat to a secret location over the weekend accompanied by two legal advisers—one a prominent Adelaide QC—and an economic adviser who are volunteering their time to help him decide on the issue. 'I just need a breathing space,' Mr Xenophon said yesterday.

The *Advertiser* of that same day reports:

> . . . Mr Xenophon will not show his hand on the ETSA-Optima sale until next week at the earliest [the week beginning 9 August].

On 8 August, I think for the first time, Mr Xenophon attacked the ALP (excluding Mr Cameron) because he said that it had failed to contribute constructively to the debate. That is an observation that I made earlier: that the ALP at no time had been constructive in the debate. To that extent, Mr Xenophon was spot on.

For the first time (Saturday 8 August), the *Advertiser* ran a story which obviously was based on information from Mr Xenophon. It came as a surprise to many Liberals that:

> During the course of last week Mr Xenophon, his staff and a team of voluntary advisers have developed three possible scenarios:
>
> 1. A referendum to decide on the sale of both the Government's electricity generating assets—Optima Energy as well as ETSA;
> 2. The sale of Optima Energy and a referendum to decide the fate of ETSA; or

3. That Parliament monitor progress of the sales, even down to the detail of approving a final price.

Those were the three options. The *Advertiser* went on to report on 8 August:

Mr Xenophon has promised a decision on the issue early next week after a weekend retreat with advisers.

In the *Sunday Mail* of 9 August, there was further speculation about what option Mr Xenophon favoured. He obviously had a discussion with the *Sunday Mail*, which surmised:

It now appears likely that the sale will go ahead, but the question will be in what form—

In other words, would it be selling Optima and retaining ETSA, selling both, but with the condition that State Parliament monitor the sales, or a referendum to decide on the sale of ETSA and Optima? The report continued:

Mr Xenophon revealed he received a final 'sales pitch' from the Premier (Mr Olsen) and the Treasurer (Mr Lucas) on Friday. Mr Xenophon said he planned to meet Mr Cameron who has defied the ALP and indicated support for the sell-off. . . 'He is a person whose views I want to consider', Mr Xenophon said.

So, clearly at that point in the second week of August, Mr Xenophon in discussions with both the *Advertiser* and the *Sunday Mail* was hinting at the way he was thinking. On 10 August, Mr Xenophon said he would announce his decision tomorrow (11 August), but he also said that it could be pushed back to as late as Thursday (13 August) as he continued to canvass opinion. Mr Xenophon said:

The last thing I want to do is hold the State to ransom. . . The people of South Australia have been let down by the debate on ETSA by the Government and Opposition.

Then he said:

Once we are part of the national electricity market, it won't be the ETSA we know and love.

That is absolutely right. I will move on to 10 August, when the *Advertiser* reports:

Mr Xenophon indicated yesterday [9 August] he was convinced of the economic merits of selling the assets, but he was still grappling with the dilemma that if he voted for the sale he would be supporting the Government in breaking a pre-election promise.

That was the first time (9 August) that he actually said in public that he was supporting the economic merits of selling the assets. On 11 August, the *Advertiser*, under a headline 'Mr X makes up his mind', stated:

The *Advertiser* understands Mr Xenophon will support the sale on the condition there is a referendum on the issue or strict parliamentary scrutiny of the sale process.

So, the referendum, which had been hinted at as an option a few days earlier, was now coming into focus. In that same article Mr Xenophon was quoted as saying that he could:

. . . see the potential (economic) merits of the sale, but the Government pre-election promise not to privatise the assets was 'still a significant issue'. 'With qualification, I can see the sale working. . . '

But then, on 11 August, he finally made a decision when he refused to support the sale without a referendum. Mr Xenophon told Parliament that he supported the sale of ETSA for economic reasons but that the Government had no electoral mandate to sell the assets. As I have previously observed, it is curious he used the argument that the Government did not have an electoral mandate to sell the asset yet could not bring himself to support voluntary voting because there was an electoral mandate. That is a hole of Mr Xenophon's own making which he cannot dig himself out of.

During the days that followed, there was dismay from a range of leaders in the business community and the community generally. Roger Cook, Chairman of the Government's Project Delivery Task Force, a very respected businessman, said the Xenophon decision was 'a very real blow to confidence and our consequent ability to go forward'. Lindsay Thompson said that South Australians' wellbeing was ignored. Robert de Crespigny, whom I personally admire enormously and who is the Managing Director of a gold mining company that is ranked in the top half-dozen in the world, is passionately committed to South Australia and is Chairman of the South Australian Museum. Mr de Crespigny wrote to Opposition Leader Rann and other members as:

. . . a father who questions whether South Australia will in the future offer the employment opportunities which will keep my children here in a city which has been so good to me and my family.

Mr Barry Fitzpatrick, Managing Director of the Adelaide Bank—again, a very highly respected and literate person—said:

South Australia can no longer afford the crippling debt which is kneecapping growth and preventing vital funds from going to education, health and welfare. . . to call for a referendum is ridiculous: we do not need to add another $5 million to our current prohibitive level of State debt. Instead, our politicians must do what they are elected to do—make decisions which are in the best interests of the people of South Australia.

However, the Hon. Nick Xenophon was unphased, because in the *Advertiser* of 13 October he was quoted as saying that the sky would not fall in if ETSA was not sold. Further, he said:

This is a political crisis of the Government's making. If they levelled with the people of South Australia I don't think they'd be in this position.

All I can say—and it is worth putting on the record—is that I have had no telephone calls against privatisation and just one letter against the sale of ETSA. That is the level of importance which has been attached to it by the electors of South Australia. I know that that is not always a barometer, but it is not seen as something which is as dramatic as some of the other issues that we have faced, such as shop trading hours, or poker machine legislation.

One matter which will be of particular interest to Liberal senators in Canberra is that on 13 August Mr Xenophon noted that he had a brief conversation before making his decision with Senator Brian Harradine to help confirm his feelings. Mr Xenophon was quoted as saying that Senator Harradine was prepared to vote for the Telstra sale because the Government had the courage to go to an election on it. That makes interesting reading, because my understanding is that, even though the Government did go to the polls recently to sell a little more of Telstra, Senator Harradine is not all that enamoured of the idea, which seems to be contrary to his advice to Mr Xenophon.

On 13 August Labor MLC the Hon. Terry Cameron, as quoted in the *Advertiser*, said that he was going to support the sale of ETSA and that the decision by the Premier, Mr Olsen, to sell the assets was 'the first time I have seen real leadership and courage'. The Hon. Mr Cameron was quoted as saying that he blamed politics for not allowing the Government to say before the election it wanted to sell the power utilities. He also said that previous Labor Federal Governments started the trend of privatisation and there was no option left but to sell the asset. Further, he said:

What a disaster awaits us when we win the next election if ETSA is not sold. We'll inherit the nightmare; that's what we'll do.

Of course, he is referring to the Labor Party.

On 17 August 1998 there was the famous lunch where Mr Nick Xenophon wanted to explain himself over lunch with the 16 business leaders who called for the sale of ETSA. So, they had a meal, and Mr Xenophon said:

> I had the captains of the Adelaide business community almost have me for dinner over the issue. The least I could do is invite them over to lunch to explain my position.

Well, they came to lunch, and Mr Xenophon brought along a reporter. Phil Coorey duly reported it, and there was a 'splash up' photograph in the newspaper. None of the honourable member's guests agreed with him, but, of course, the honourable member did not budge.

We now move to the end of the session, when the Hon. Terry Cameron, who had already committed himself publicly to support the ETSA-Optima sale, decided to initiate a select committee to try to keep the issue alive. Of course, the supreme irony of all this is that, at the same time that the Hon. Nick Xenophon was voting down the sale of ETSA and Optima (which would arguably bring net benefits to the State of $100 to $150 million—after taking out all the factors involved with the sale), and cutting out a net annual benefit of $100 to $150 million to the State, he announced the introduction of legislation to phase out all poker machines within a five year period—and poker machine revenue brings in to the State at least $160 million annually. So, not content with knocking out $100 to $150 million annually by rejecting the sale of ETSA and Optima, the honourable member proposed a double whammy by knocking out poker machines over five years, phasing out $160 million in revenue.

That was not accompanied by any statement from the Hon. Mr Xenophon as to how we fill that black hole in the budget, because that is one of the luxuries of being an Independent: you do not have to be accountable for what you say. The supreme irony, as we all know, is that poker machine legislation went through this Parliament because 17 of the 21 supporters of poker machine legislation in another place were members of the Labor Party and, of course, the vast majority of the votes in the Legislative Council in favour of poker machines were also from the Labor Party, including from Mario Feleppa, after a session under the arc light for a couple of hours with Premier Bannon in the early hours of a morning.

So, that select committee initiated by the Hon. Terry Cameron was set up with eight members. The Democrats could hardly be accused of taking a lively interest in that committee, which, in time, reported to say that the referendum issue was unresolved.

Of course, at no stage did the Labor Party say, 'Let's look at ETSA again.' At no stage did it have the interests of South Australia at heart. The best it could do was illustrated by what the Hon. Ron Roberts said in reference to the Hon. Mr Cameron's brave decision to leave the Party he loved and served so well for 40 years. The Hon. Mr Roberts accused the Government of getting into bed with scabs. That is what the Hon. Ron Roberts said and that was the level of debate and contribution that came from the Labor Party side on this important subject.

In late September there was a further development in this case when the Premier came back from overseas and said, 'Leasing could well be an option because we would have less of a discount on a leasing proposal than we had earlier thought.' As we know, the Hon. Nick Xenophon said he would be interested in supporting a 20 to 25 year lease as long as the lessee maintained the assets during the lease term and the agreement was financially viable. He said that on 27 October. Again, on 4 November he was quoted in the *Advertiser* as saying:

> A 25 year lease would not breach the commitment by the Government not to sell ETSA before the election.

He also said:

> The possibility of large losses to the State from a short-term lease were balanced by the fact the people of South Australia would regain the assets after 25 years. Twenty-five years is a reasonable period for leasing a company and I do not think the Government is uncomfortable with that time.

There he was, heading down the track to a lease. Ironically, on Guy Fawkes' Day, 5 November, the Hon. Mr Xenophon, when talking about the lease, was quoted in the *Advertiser* as saying:

> It has to be taken in the context that while 25 per cent may be reduced off the price under a 25 year lease the people of South Australia would be getting back an asset which under the lease agreement has been well maintained. I think that would be far more palatable than losing the biggest assets forever.

Then we headed down the track to a situation where the road again took an unexpected turn because, for the first time, on 24 November Mr Xenophon raised questions about the Riverlink interconnector and Pelican Point, neither of which is mentioned anywhere in the Bill. There was no discussion of that. Also, Mr Ian Webber, a prominent businessman, came into the debate on Riverlink in which he had shown no previous interest—something the Treasurer has previously outlined.

There was then countervailing argument from John Lesses, who articulated what many Labor members are privately saying. John Lesses said that ETSA would not be able to compete in a future deregulated national electricity market without its being leased to private operators. John Lesses' view should be respected because he had been a member of the ETSA board for many years and was obviously a key member of the Labor Party for many years—

An honourable member: No, the trade union movement.

The Hon. L.H. DAVIS: The trade union movement for many years. When the Hon. Nick Xenophon finally made his decision on 8 December 1998, he was quoted in the *Australian* as saying:

> It is time for new politics on this issue. I have been disappointed by the Liberal and Labor approach. They are both gambling with our future on this issue.

That was the statement I read on the morning Mr Xenophon made his announcement that he was not going to support the sale. I do not know what the new politics on this issue is, but I would be very interested to know. We understand that the Hon. Mr Xenophon has suffered discomfort over many months in resolving his view on this matter, but the many twists and turns that he has taken on this issue have been surprising.

To hear him say earlier today that perhaps there is hope for this legislation, that it could be revived by having another inquiry, is, quite frankly, something that I find bizarre.

Finally, I ask the Hon. Mr Xenophon, following the Hon. Mr Lucas's observations yesterday, whether he is in a position to table in this Council today the London Economics report documenting the alleged $1 billion plus savings which the Treasurer has yet been unable to obtain, although he requested it in September.

The Hon. T.G. CAMERON: I want to make a brief explanation rather than a contribution. I have gone on the public record as stating that I support the Government's

decision to go ahead and build Pelican Point, and I want to take the opportunity to clarify my reasoning. I say with respect that the Hon. Nick Xenophon has missed the point on Riverlink and Pelican Point. The main reason, as I see it, why I was prepared to support Pelican Point over Riverlink was the critical nature of supply that we will have in November 2000, when, on a day like today when it is expected to reach about 38 degrees outside, we will have blackouts in South Australia.

That point is not in dispute. It is a point with which ETSA agrees, as do Riverlink, Transgrid and the South Australian Government. Indeed, it does not matter whom you talk to; everyone recognises that in November 2000 we will have a critical situation in relation to the supply of electricity on extremely hot days during that summer. What Government, irrespective of whether it is a Liberal Government or a Labor Government (or perhaps there is the possibility of a Democrat Government, in view of the way in which people are looking at the major Parties), would want to go to an election in the year 2001 having just gone through a summer in South Australia with power blackouts? That is the clear situation. It is not something that is in doubt. In November, December, January and February in the year 2000 and 2001, if we do not find an additional supply of electricity—all the figures I have seen indicate that we need a minimum of 150 megawatts—we will have blackouts here in South Australia.

This means that businesses will have their electricity supply interrupted or people, when they are hoping to get some relief from the heat when they turn on their air-conditioners in South Australia, will find that they will not be able to get an electricity supply. I do not know why the Government should be criticised for trying to guarantee that consumers in South Australia will not suffer from blackouts in the year 2000. That begs the question whether or not that shortfall in electricity supply could have been met by Riverlink. I will only speak until 1 o'clock, and I have no intention of traversing the material that was put forward by the Hon. Mr Lucas. However, some matters need to be repeated.

First, there is no environmental approval for Riverlink. Fourteen different lengths of route have so far been identified. The original links that they wanted to use went through the biosphere, which I have never seen but which environmentally should be kept exactly how it is. In other words, the risk to the environment by putting this cable through it would be too great. I can imagine the howls of protest that would be laid at the Government's feet if it decided to support Riverlink and wanted to build it through an area which is apparently environmentally sacred. They would be assailed by the Democrats, probably by the Australian Labor Party and by environmentalists and greenies. From what I have read about it you would be attacked correctly. The Riverlink link, if it goes ahead, whether regulated or deregulated, should not go through that environment.

The Hon. Sandra Kanck interjecting:

The Hon. T.G. CAMERON: The Hon. Sandra Kanck interjects and says 'Absolutely'. I agree with her. That is one of the rare occasions on which we are in complete agreement. Of the other problems associated with Riverlink (and I will get to some of the problems, but will deal with this question of timing and will only briefly canvass the other problems), the first major problem we have are the environmental considerations. I fail to see why, on the question of environmental considerations, that we should be embarking on a course of action that could mean that environmental considerations would have to be put aside. Quite clearly, in order to meet the November 2000 deadline, get the 150 megawatts of supply and guarantee it to the consumers of South Australia, the Government would have to have taken that risk, that is, would it run into an environmental problem? I do not know of a major project going through an environmentally sensitive area that has not run into major environmental problems here in South Australia or in Australia over the past 10 years. Everyone would be out arguing against this link.

That does not even take on board the problems associated with native title. Does anybody realistically believe they would be sorted out quickly and easily, notwithstanding the problems if this route has to go through Victoria? For the life of me I cannot see why Jeff Kennett, who is currently shipping 500 megawatts of electricity a year to South Australia and would want to protect that market, would want to assist.

The Hon. Sandra Kanck interjecting:

The Hon. T.G. CAMERON: Again, I agree with the Hon. Sandra Kanck—twice in a day, it is a record. Why would Jeff Kennett, the Premier of Victoria, want to assist South Australia to ensure its electricity supply and perhaps damage his own Victorian market, even though it is privately owned, by going out of his way to take on the environmentalists and the Aboriginal communities as they sought to have their environmental and native title concerns considered? It stands out like bull's bollocks that there is no guarantee you will get Riverlink up and running by November 2000. I want the Hon. Nick Xenophon to hear this, so perhaps the Labor colleagues would stop interrupting him.

The Hon. R.I. Lucas: They don't want him to hear.

The Hon. T.G. CAMERON: Maybe they do not want him to hear, but I want him to hear this. Timing was what drove the Government's decision to opt for Riverlink. It was all about the simple fact of guaranteeing that South Australians would not have blackouts in the year 2000. Who could blame them? They might have an election three or four months after the summer of November 2000. What political Party does not act to cover its political backside? I would be surprised if it did not. That is the critical decision as to why Pelican Point or a power station here in South Australia has to go ahead and why the Riverlink option is not viable.

I say to the Hon. Nick Xenophon that I put aside all of the environmental considerations (and will deal with them in more detail later) on greenhouse gases. Why any Government in South Australia would want to jump into bed with a New South Wales Government and commit South Australians to an additional $600 million or $800 million a year in charges over the next 40 years is beyond comprehension. Obviously any Government—Labor, Liberal or Democrat—would have resisted that temptation. The correct position to go back to the New South Wales Government with is that the electricity consumers of South Australia will not commit themselves to this $600 million or $800 million of charges and fees over the next 40 years. Under a regulated link those charges would be absorbed by every consumer in South Australia. I will have to pay them, you will have to pay them and every household will have to pay them.

But if the link is not regulated—and that is a decision for NEMMCO—the Government has gone as far as it possibly can by saying it will not oppose it and if NEMMCO wants to do it, and so on; I will let the Government speak for itself. Under a regulated link every electricity consumer pays. If the link is not regulated, only those users—commercial and industrial users—who access the electricity that comes along

the link will be required to pay. From my viewpoint that is the way it should be. Why should every consumer in South Australia have to face a commitment of between $600 million and $800 million over the next 40 years when the electricity that comes down it will probably be used by industrial and commercial consumers.

I come to the question of the London Economics report. It has been trumpeted around by all and sundry. We have heard of savings of $900 million and $1.4 billion and so on. I met the mysterious Mark Duffy. I bought him lunch and shared a bottle of wine with him and spent a couple of hours going through this issue.

The Hon. L.H. Davis: Who bought the lunch?

The Hon. T.G. CAMERON: I bought the lunch—not from the same lofty principles that the Hon. Nick Xenophon has about accepting a free lunch; I will accept a free lunch. However, in relation to Mark Duffy it was convenient for me to have dinner with him here at Parliament House. We know the rules at Parliament House: unless you are a Minister you have to pay for it yourself. At the end of that meeting I told Mark Duffy that I believed that the weakness in his argument was that the report had never been publicised and that there had been no opportunity for any independent assessment of the London Economics access report. At the conclusion of that meeting he promised to try to get me a copy of the report. If it was not available he agreed that—I do not know exactly who he works for, Transgrid or whatever they want to call themselves—there would have to be an independent auditing of the London Economics report and that they would go ahead and do that. I say to Mark Duffy that I have not seen the London Economics report and I have not seen any independent assessment of that report. I was none the wiser after having listened to a 50 minute report by their highly paid adviser who came over here to advise us.

There has been a great deal of criticism that this Pelican Point power station will have a vesting contract with guaranteed prices for seven years. My understanding of it—and I stand to be corrected on this—is that the Government would not be able to enter into that contract without NEMMCO approval and in any case, as I understand it, the contracts or tenders provide for bidders to lodge a bid with no vesting contract or guaranteed contract at all. I will only skirt across the issues as I have only 15 minutes, but I will spend more time going into the detail of them later.

The question that seems to be exercising the mind of the Hon. Nick Xenophon is: would Riverlink, if it went ahead, lower prices here in South Australia? Well, you have to accept as a *fait accompli* that Pelican Point or some other power station will have to be built in South Australia to avoid blackouts in the year 2000—and no-one, anywhere, has disagreed with that premise. Even the Hon. Sandra Kanck agrees with that. That is three in a row today Sandra; we have hit the hat-trick.

If you assume that Pelican Point will go ahead, because Riverlink cannot meet the deadline in relation to timing, then why should South Australian consumers, that is, pensioners and the unemployed—I do not care about Western Mining Corporation or BHP; I am talking about ordinary South Australians who consume electricity—pay out over the next 40 years $600 million to $800 million for a link that even they will not guarantee can be built on time. They cannot guarantee it will be built by November 2000. And, at the end of the day, they say, 'We will only go ahead and build it if it is regulated'—in other words, 'We will only go ahead and build it if there is no risk, that is, that the risk element has been removed.' And why? Because ordinary household consumers in South Australia will have to pay for it.

That cost will be borne under a regulated link by ordinary consumers. If it is mandated by NEMMCO that it be a regulated link, then the South Australian Government and the consumers of South Australia will have no choice. I am very interested in all this material that London Economics have got. I have a bit of a hobby of going through financial material. I suspect I share that habit or hobby in common with the Hon. Legh Davis. I would just as soon sit down and read a balance sheet as read a good novel—but that is my problem and I will wear it.

If Pelican Point is going ahead, would Riverlink, if it came into South Australia, whether it be a regulated or an unregulated link, impact upon prices here in South Australia? It should be remembered that Riverlink, if it does go ahead, will supply only about 7 per cent of the market. Riverlink's capacity to impact upon the market here in South Australia will be in direct correlation to power prices in New South Wales. Well, we have seen power prices there rise from those historically low prices of $10 a megawatt all the way up to $20 to $23 with forecasts that they might go as high as $30 or $32. You must take into account the transmission losses and you must take into account, if it is an unregulated link, that they will have to pay for the cost of maintaining that link and recoup the cost back from those customers who use the electricity which is sent down the link—which, in my opinion, is the way it should be. I do not believe I should be subsidising the big industrial consumers who might use Riverlink, nor do I believe that pensioners and low income earners should be supporting the likes of Western Mining or BHP.

However, I will not close the door on Riverlink because under the new arrangements, with Pelican Point up and running, if Riverlink does become either regulated or unregulated then it may—but time does not permit me to debate whether or not it would—impact on prices in a competitive market. They are the reasons—and I wanted the Hon. Nick Xenophon to hear them; I wanted to place them on the record—why I made a public statement. It is not really my concern. It is up to the Government whether or not Pelican Point is built. It has nothing to do with the Bills before us, and they do not require parliamentary approval to go ahead with it.

The Hon. T.G. Roberts: Are you concerned about the environmental aspects of Pelican Point?

The Hon. T.G. CAMERON: I am concerned about ensuring that we do not face blackouts in the year 2000. If the honourable member can show me where else we can build a power station to meet that timetable and with fewer environmental concerns than Pelican Point, I am more than happy to talk to him about it. But I suggest to him, with respect, that he should not come and talk to me but should go over and talk to the Treasurer. I am not the Government; I am just a backbencher, an Independent. Members opposite are the ones the honourable member should be talking to. But feel free to talk to me: if you can convince me and you do not want to talk to the Treasurer then I will talk to him.

All I wanted to do was to place on the record why, at this early stage, I was prepared to come out and say with regard to Pelican Point that a decision had to be made and had to be made now to guarantee that we would not have blackouts here in the year 2000. I look forward to the ongoing debate about Riverlink and whether it should be regulated or unregulated. But there is one thing I am absolutely positive

about, and that is that I do not want to see ordinary consumers of electricity subsidise the New South Wales Government taxpayers by supporting a regulated link so that they all end up having to pay that $600 million to $800 million, because at the end of the day they are the ones who will have to pay it.

The big companies like Western Mining will be able to play the market to guarantee that they get decent prices. We all know that the biggest beneficiaries of this unregulated market—or deregulated market—will, first, be the big industrial consumers, followed by the big commercial consumers and then the smaller commercial consumers, and at the end of that line will be the household consumers. This is because the price of electricity in this country has been distorted for decades because State Governments facing elections have made industrial and commercial users pay a higher price for electricity than they should have in order that household consumers, because they voted, would get slightly lower prices. That does not do much for the competitive position of Australia.

It is probably why the Federal Government and a Labor Government, and a whole bunch of State Labor Governments and Liberal Governments, decided to walk down this path in the first place. I am not suggesting that this new market is something that I feel comfortable with or am happy about, but something had to be done. It was done years ago and all we are now trying to do, as the Hon. Mr Xenophon has correctly pointed out, is deal with the reality of that. We do not have a choice. We cannot go back five or six years and wind back the clock and create the world as we would like it to be. We have to deal with reality.

I say, with respect, that if this lot had lost the last election and the Labor Party was now having to deal with it I wonder whether we would have the same position that we have now. I know the chorus of cries would be, 'We certainly would have,' but I wonder.

Progress reported; Committee to sit again.

[Sitting suspended from 1.7 p.m. to 2.15 p.m.]

GAMING MACHINES

A petition signed by 258 residents of South Australia concerning gaming machines and praying that this Council will—

1. Support the passage of legislation to give local residents the power to object to the operation and availability of poker machines at venues on economic and social grounds; and

2. Support a ban on advertising and promotion of poker machines; and

3. Support the holding of a State-wide referendum to reduce or phase out poker machines from hotels over a five year period;

was presented by the Hon. Nick Xenophon.

Petition received.

OMBUDSMAN'S REPORT

The PRESIDENT laid on the table the South Australian Ombudsman's report for 1997-98.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Regulations under the following Act—
- National Electricity (South Australia) Act 1996—Connection

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

Reports, 1997-98—
- MFP Development Corporation (incorporating MFP Projects Board)
- Land Management Corporation
- Mining and Quarrying Occupational Health and Safety Committee South Australia
- South Australian Totalizator Agency Board
- South Australian Totalizator Agency Board—Financial Statements
- WorkCover Corporation
- Privacy Committee of South Australia
- State Records of South Australia

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

Report, 1997-98—
- Commissioners of Charitable Funds.
- Institute of Medical and Veterinary Science
- Local Government Superannuation Board
- Occupational Therapists Registration Board of South Australia
- Optometrists Board of South Australia
- Radiation Protection and Control Act 1982—Administration
- South Australian Psychological Board

Optometrists Board of South Australia—Report, 1996-97

Review of Simpson Desert Regional Reserve, 1988-1998

Review of Innamincka Regional Reserve, 1988-1998

By the Minister for the Status of Women (Hon. Diana Laidlaw)—

The 1998 Women's Statement—Benchmarking for Diversity.

JOBS WORKSHOPS

The Hon. R.I. LUCAS (Treasurer): I seek leave to table a ministerial statement made by the Minister for Employment in another place on the subject of jobs workshops.

Leave granted.

MOTOROLA

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement about the Motorola inquiry.

Leave granted.

The Hon. K.T. GRIFFIN: I have today appointed former Chief Magistrate, Mr J.M.A. Cramond, to undertake an inquiry into issues related to allegations by the Opposition that the then Minister for Industry, Manufacturing, Small Business and Regional Development (Hon. John Olsen MP), now Premier, misled the House of Assembly on 21 September 1994 and subsequently when answering questions relating to a contract the subject of which was the Motorola Software Development Centre and its relationship to the Government Radio Network development. The Hon. John Olsen MP vehemently denies misleading the House of Assembly.

As a result of the appointment of Mr Cramond, I have varied the instructions to the Solicitor-General, Mr Brad Selway QC, the Second Law Officer of the Crown. Mr Selway will no longer conduct the inquiry, but he has been instructed to assist Mr Cramond as required by Mr Cramond. I had every confidence (and still do) that, notwithstanding the handful of criticisms of Mr Selway's capacity to act

properly, he would have acted with propriety as one of Her Majesty's Counsel. Those criticisms were misguided, and misunderstood the conventions and practices surrounding his office and mine and, in some instances, were politically motivated.

In conducting this inquiry, Mr Cramond will be given access to any Government documents and papers which he requests, including Cabinet documents and legal advice, and he will be at liberty to interview any person he wishes. He has been asked to submit his report to me as Attorney General as soon as possible and, in any event, no later than 5 February 1999, so that it can be tabled in Parliament on 9 February, the first sitting day next year.

Until May 1998, Mr Cramond was Chief Magistrate of the Magistrates Court of South Australia, and since then he has served for one month as Acting Senior Judge of the Youth Court. He has an excellent reputation as a man of integrity and a person who will act fairly in the discharge of the responsibilities which he has accepted.

It is of concern that, already, as one should, I suppose, have expected, he has been the subject of politically motivated character assassination. The political objectives are clear—undermine him now and thereby undermine his report; and send a message that a potential inquirer's past will be trawled over in depth to drag up any information that could be used to try to embarrass that person and thereby discourage him or her from ever accepting this sort of appointment. Mr President, the tactic has not worked—Mr Cramond is not a person who is easily intimidated.

Let me outline just a few of his achievements. He graduated with a first class honours degree in law, making his way through law school while he worked to support his family. He was appointed by a Labor Administration as a magistrate in 1971 and served until 1976. He was Deputy Crown Solicitor from 1976 to 1984 and was Presiding Officer of the Public Service Appointments Appeal Committee from 1984-1986.

Mr Cramond was appointed a magistrate again in 1985 by the then Attorney-General (Hon. C.J. Sumner MLC). He was appointed in the same year by the same Government as a supervising magistrate and in 1990 as Deputy Chief Magistrate. He was appointed in 1993 as Acting Chief Magistrate and as Chief Magistrate in 1994. He was from 1993 until this year a member, along with the Chief Justice and the Chief Judge, of the Judicial Council which runs the courts. As Chief Magistrate he presided over the busiest court in the State.

The terms of reference for Mr Cramond are as follows:

1. Were any of the statements, set out in an Appendix to the terms of reference (relating to the allegations of misleading the House), which were made by the then Minister for Industry, Manufacturing, Small Business and Regional Development (now Premier) in the House of Assembly, in relation to contractual obligations of Government to Motorola, false or misleading in the context of the questions which were asked?

2. If any of the statements referred to in paragraph 1 above are found to be false or misleading, did the Minister believe them to be true, or believe that they represented the facts which were the subject of the question in respect of which the statements were made?

As part of the terms of reference Mr Cramond is requested to inquire into and report on whether any of the statements of the then Minister for Industry, Manufacturing, Small Business and Regional Development (now Premier), identified in paragraph 1 were not correct, whether any misstatement was a material misstatement in light of the question asked, whether any such misstatements in fact led Parliament into error, and whether he at the time believed the statement to be a true representation of the facts in issue.

Mr Cramond has been requested to set out in his report the facts of each event addressed in these clauses in so far as they are relevant. Mr Cramond will determine the facts. Ultimately, the question whether or not the Minister (now Premier) misled the House of Assembly is a matter for that House, but in that context the belief of the Premier at the time each statement was made is clearly relevant.

In the appointment of Mr Cramond I have also indicated that if any significant matters come to light which do not reflect good and proper public administration they should be identified. I seek leave to table a copy of the letter of appointment of Mr Cramond.

Leave granted.

The Hon. K.T. GRIFFIN: Mr President, there is one other matter. This morning's *Advertiser* newspaper makes reference to the Liberal Movement. While that issue seems to have assumed disproportionate relevance to Mr Cramond's appointment, with some persons mischievously trying to tie it in with the now Premier, it is in my view completely irrelevant. It relates to events which are nearly 30 years old, at a time when most of the journalists were not even born. This means that they have no recollection of the events of that time.

I was the President (not John Olsen) at the time the Liberal Party invited the Liberal Movement back to the Liberal Party and worked with the then President of the Liberal Movement to achieve reunification. Whatever the circumstances, however, it cannot be said that membership for a short time 25 to 30 years ago can have any bearing on the way in which Mr Cramond will do his job. At least, all fair minded citizens would have that view.

Now that the review has been established and is to be conducted in a manner which I believe should satisfy reasonable and objective people in South Australia, it is important that Mr Cramond be allowed to get on with the job without public criticism. I have every confidence that Mr Cramond will act fairly and competently.

WOMENS' STATEMENT—*BENCHMARKING FOR DIVERSITY*

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to make a ministerial statement about the 1998 Women's Statement—*Benchmarking for Diversity*.

Leave granted.

The Hon. DIANA LAIDLAW: Earlier I tabled the 1998 Women's Statement. Over the past five years much has been achieved to recognise the enormous contribution made by women in every sphere of life, and to guarantee equality of opportunity and access to services. The 1998 statement reports on the diverse and innovative programs being delivered across Government which provide positive outcomes for women and for South Australia.

Today, women's contribution in society is increasingly being recognised. South Australia is now leading Australia in the representation of women on Government boards and committees—now almost one-third (32.04 per cent). In order to increase this number, the Office for the Status of Women will continue to work with agencies in identifying women

with appropriate skills and expertise, through the Women's Register and Executive Search.

In the meantime, I am pleased to report that this year the Department of Primary Industries and Resources launched the Rural Women's Interactive Database for rural women interested in serving on boards and committees. Across Government agencies, more women are being employed at executive level and are being offered specific professional training and development opportunities. I instance some examples:

1. Over the past 12 months there has been a 26.7 per cent increase in the number of women employed at executive level. Over the past 10 years, there has been a 216.7 per cent increase in the number of women at executive level.

2. There are now 20 women in senior management positions within SA Water, compared with five only two years ago. SA Water is supporting 80 women to undertake professional development programs.

3. Women comprise 48.6 per cent of participants in the Leadership Development Program run by the Department for Correctional Services.

4. Women represent 29 per cent of the graduate intake in Transport SA.

All members will be aware that balancing work and family commitments is a daily challenge for families. By providing greater flexibility in the workplace, women and men are able better to integrate work and family commitments. The South Australian Government has become a national leader in the development of best practice in family friendly work environments—and I am particularly pleased that the Department of Transport, Urban Planning and the Arts, in association with the Office for the Status of Women, has led this push.

In July this year I launched the Government's first city based vacation care program within Roma Mitchell House, North Terrace, for employees of the Department of Transport, Urban Planning and the Arts. This initiative caters for children between 5 and 12 years of age and is based on the successful Transport SA vacation program commenced about two years ago at Walkerville. There are plans to expand the city based program to employees of other Government agencies on North Terrace and Parliament House for the first term school holidays in April 1999.

Diversity is the essence of a multicultural society. By building on diversity, public sector agencies are able to deliver appropriate and responsive services to the community. I note a number of specific initiatives are highlighted in the Women's Statement:

1. The Government is recruiting young people in order to maintain a work force that is diverse in its age profile. Over the past year, well over half of the young people recruited under both the Youth Recruitment Initiative and the Government Youth Training Scheme have been young women.

2. In the transport sector, officers and operators from the Passenger Transport Board, Transport SA, Serco and TransAdelaide have been involved in training programs to improve customer service delivery for people with disabilities.

3. The Department for Environment, Heritage and Aboriginal Affairs has established a Youth and Aboriginal Employment Task Force and an Aboriginal Reconciliation Task Force to improve work and training opportunities for young people generally and young Aboriginal people in particular.

4. The Office of Multicultural and International Affairs within the Department of the Premier and Cabinet is holding forums on a range of subjects for women of diverse cultural and linguistic backgrounds.

This year's Women's Statement profiles five of the many women whose skills and work are contributing to the State's well-being. One of these is a young indigenous woman artist, Violet Buckskin, who was commissioned to produce a mural 'The Gathering' for the Rural Women's Gathering held at Kadina earlier this year. Working with the full support of the Narungga Aboriginal Art and Craft Enterprise, the mural was painted as part of her TAFE studies.

Finally, in addition to tabling the 1998 Women's Statement in this place today, I will ensure that copies of the Women's Statement are circulated to all members by the Office for the Status of Women either today or tomorrow.

QUESTION TIME

O'LOUGHLIN, MR T.

The Hon. CAROLYN PICKLES: Will the Minister for the Arts confirm her recommendation for and the subsequent appointment of Mr Tim O'Loughlin, the Executive Director of Arts SA, to the board of the Adelaide Symphony Orchestra to fill the vacancy created by Mr Rob Gerard? Does the appointment represent a direct conflict of interest for Mr O'Loughlin and what are the implications for other arts organisations in this State? Were other candidates also recommended by the Minister in addition to Mr O'Loughlin, and how does this appointment fit in with the Minister's alleged hands-off approach to boards when clearly this appointment is very much hands-on?

The Hon. DIANA LAIDLAW: 'Yes' to the first question; 'No' to the second question. The appointment was canvassed with the Chairman, Mr John Uhrig, who agreed to it on the basis of Mr O'Loughlin's skills in administration and management generally. He also agreed that the orchestra would benefit from a closer association with Arts SA and that, in terms of Mr O'Loughlin's earlier appointment prior to the current appointment as the CEO of Arts—that appointment being as Chair of State Opera—Mr O'Loughlin would be an outstanding appointment.

Mr O'Loughlin, when Chair of State Opera, was responsible for putting together, in conjunction with the General Manager at the time, Mr Bill Gillespie, the submission to the Government for the Government of South Australia to sponsor the *Ring*. As late as yesterday, we congratulated State Opera for that. I add that, until recently, Mr O'Loughlin chaired the Symphony Australia Working Party. He has now resigned that position. That was an appointment of the ABC and the Federal Government. He has a strong knowledge of orchestra policy and practice across Australia. So, on each of those grounds the appointment has been endorsed as a quality appointment.

The honourable member has never understood the arrangements between boards and Ministers. If she did and if she also chose to look at the articles and the fact that the company reports to—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Well, just listen for a moment. There is no direct conflict of interest, because this company actually reports to the ABC. It does not report directly to me, yet the South Australian Government has a

very big investment in this company: $1.5 million in additional funds being provided to the orchestra during the last financial year and the next financial year.

I would have thought that watching that investment might be a good idea. Certainly, Mr Uhrig absolutely endorses that. If the honourable member wants to take up this issue with Mr Uhrig and present to him her concerns about potential conflict of interest, I suspect he would be interested to hear but he would certainly never agree with her.

MOTOROLA

The Hon. P. HOLLOWAY: My questions, which are directed to the Attorney-General and concern his statement on the Motorola inquiry, are as follows:

1. What powers, if any, have been given to Mr Cramond to conduct his inquiry, and in particular does he have powers to call for documents and compel witnesses to answer questions?

2. What protection will be provided to witnesses who give evidence to the inquiry?

3. What involvement did the Premier have in establishing the terms of reference before they were tabled by the Attorney-General in the Council this afternoon?

The Hon. K.T. GRIFFIN: That sort of question follows from a question raised by the Leader of the Opposition earlier this week seeking to establish a framework within which an argument could be raised that this inquiry should be something akin to a judicial inquiry or royal commission. That has never been intended, so no specific powers have been given to the inquiry. You can only give specific powers if you establish an inquiry under the Royal Commissions Act. The Government has never intended, and I do not think that, apart from the Opposition, anyone else has ever intended that such status be given to this inquiry.

It should also be recognised that, at least in relation to the public sector, where public servants are involved the provisions of the Public Sector Management Act apply providing both powers and protections for public servants. It is recognised, of course, that some persons may be interviewed who come from outside the public sector, but one presumes that they will communicate willingly and provide information without difficulty, because no-one has ever hinted that there is any corruption or illegality in respect of this matter.

People will only decline to answer questions if the answers may tend to incriminate them. If there is not even the suggestion of criminality—I do not think even the Opposition is suggesting that—there is no reason at all for those sorts of coercive powers. For that reason, witnesses will not need to be protected.

As I understand, Mr Cramond will not—unless he decides that he wants to go down this path—sit in a courtroom and hear evidence across the table all the time. Mr Cramond will take statements, gather information, talk to people, look at documents and papers and put together a report which will have to be judged on its merits. It is as simple as that, and it will be tabled.

In terms of the Premier, I do not think it is relevant what role anybody had in determining the terms of reference. The terms of reference are there on the table of this Council; they will be on the table of the House of Assembly; they are there for everybody to see. People can make their own judgments about whether or not they mean this or that and what may be the significance of them. But, if you look at them carefully, they are very significant terms of reference which should carry some fear for anyone who is, in a sense, guilty of misleading. They require facts to be enunciated and set out; they also require the Premier's belief to be identified. They also propose that Mr Cramond try to determine, first, whether any of the misstatements—if there were any—made to the Assembly were material misstatements and if they did have the effect of leading the Parliament into error.

I do not know how much broader you can get than that in determining the facts because, ultimately, the question of whether or not the Premier misled the House of Assembly as Minister for Industry, Manufacturing, Small Business and Regional Development is a matter for the House of Assembly. Ultimately, it has to be a matter for the House of Assembly; but to make that judgment it has to have all the facts before it. You can get your facts in a number of ways: you can get them from reading the newspaper, but they will not necessarily be the facts; you can get them from reading *Hansard*, but that will not necessarily give you the facts, either; you can set up the sort of review and inquiry which has been set up today and which is designed to provide assistance to the House of Assembly; or you can get them from a committee of the House of Assembly.

We all know how committees operate. It is very difficult for a committee of five, six, seven or however many people to focus properly, objectively and fairly on getting the facts, particularly in something which is a highly politically charged issue.

The Hon. R.R. ROBERTS: I have a supplementary question: as the commissioner of the independent inquiry will the Attorney now rule out any claim for legal professional privilege to ensure the people of South Australia that this will be a thoroughly open and transparent process so that we do not have a similar situation to that of the Dale Baker inquiry which was formed in similar terms to this one?

The Hon. K.T. GRIFFIN: I am not going to say 'Yes' to that. The honourable member must think that I am stupid to be giving a categorical 'Yes' or 'No' to a statement such as that. I have indicated that the report will be tabled. That should satisfy the honourable member—

The Hon. R.R. Roberts: That's exactly what you said with the Dale Baker report.

The Hon. K.T. GRIFFIN: Well, I tell you that the report will be tabled. Take it or leave it. If you do not want the report tabled, you say so, and we will not table it. I should retract that because I do not think we would want to rely upon the request of the honourable member. It is going to be tabled anyway.

INDIGENOUS EDUCATION

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister—

Members interjecting:

The PRESIDENT: Order! I cannot hear the honourable member who has been called to his feet.

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer, representing the Minister for Education, Children's Services and Training, a question about the Senate inquiry into indigenous education.

Leave granted.

The Hon. T.G. ROBERTS: I have received a number of complaints in my time as shadow Minister for Aboriginal Affairs about some of the problems emanating from commu-

nities with young Aboriginal people who, in the main, are unemployed and who have no prospects of employment. It is quite clear that the education system is failing young Aboriginal people and that the job market and job training programs are failing them as well. We all have to take some blame in a bipartisan way for that, because it is not something that has developed in the last two or three years: it has been happening for some considerable time; in fact, it is endemic. It is built into a system that is absolutely failing Aboriginal people in terms of their ability to break the poverty cycle and that of unemployment.

In the *Transcontinental* of Wednesday 27 August there is a subeditorial heading, 'Youth needs not being addressed very well'. It is certainly not over the top, but the article states that:

> Racism, harassment and the suspension and expulsion of students were some of the issues discussed at a community forum held by the South Australian Aboriginal Education Training and Advisory Committee at Davenport Community Hall on Tuesday and Wednesday of last week.
>
> The group comprises representatives from across the State and its aim is to ensure the 'community voice' is heard at a policy level within education and training provider service organisations and State and Commonwealth Governments.

It has been drawn to my attention that a Senate inquiry into indigenous education is being established. I understand that the cut-off date for those submissions is soon. I have been given some information that the Government submission is slow in reaching the desk of the inquiry or that it is in a preparation stage ready for sending. My questions are:

1. Has the Government prepared and lodged a submission to the Senate inquiry into indigenous education?

2. If not, why not?

3. What was the consultation process with the stakeholders, that is, the Aboriginal people and their representatives, the Department for Education, SAIT, etc.?

4. How many Aboriginal children are in the South Australian public education system, and how many year 10, 11 and 12 students are there?

5. From 1993-97, how many Aboriginal students graduated to tertiary institutions?

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

STATE SUPPLY BOARD

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Administrative Services a question about the State Supply Board.

Leave granted.

The Hon. J.S.L. DAWKINS: The report of the State Supply Board was tabled in this Council on 8 December. The report referred to the procurement reform strategy launched earlier this year. That strategy identified a commitment to better purchasing using innovative techniques and was designed to deliver savings of $72 million per annum. Will the Minister indicate whether this strategy is on track?

The Hon. R.D. LAWSON: I can confirm to the Council that the Government's procurement reform strategy is on track. Yesterday in this Council the Hon. Sandra Kanck raised a number of issues concerning procurement in relation to certain medical products, and those issues will be addressed in detailed responses to be provided. However, the honourable member did, on my understanding of her contribution in support of her motion, seek to denigrate the procurement reform strategy. I assure the Council that whatever be the result of matters concerning medical products—and I make no comment upon that at all, because I have not yet undertaken a sufficient investigation—the procurement reform strategy itself is on track and performing well.

There are a number of important issues in this strategy, the first of which was the devolution from the State Supply Board of procurement responsibilities out to Government departments.

Previously, procurement had been handled centrally and an important leg of the new proposals is that purchasing units be established in the agencies. These are called Accredited Purchasing Units (APUs). The second important leg is tied to the first, that is, to raise the degree of professionalism in procurement across the whole of government. That process of recruiting and training has been undertaken. I am glad to see that 16 graduates from procurement related disciplines have been appointed, mostly during this year, and placed in six Government agencies as part of an officer graduate procurement/recruitment program and the standard of expertise and training across the whole of the public sector is being enhanced.

The process of evolution, which I mentioned at the outset, will occur as each agency obtains appropriate levels of accreditation by reason of expertise and training. It has been gratifying to learn that many people who have been involved in procurement over the years have undergone training courses during the course of this year since the reform was announced in June this year. Also, there are strategies to optimise savings potentials while providing links between agencies and trading partners and they are being actively pursued.

The purpose of the Procurement Reform Strategy is to effect savings as well as to improve efficiencies across the whole of government and also to ensure that appropriate prudential standards are met. The Government procures about $2.2 billion of goods and services each year and significant savings can be made on that procurement bill provided there is the appropriate level of satisfaction.

Another element of the reforms has been the inclusion in the responsibilities of the State Supply Board for both goods and services. Hitherto the board has solely been concerned with the acquisition of goods but, as honourable members will know, the provision of services to Government is an increasingly important component and the inclusion, within the Treasurer's instructions, of those services as well as goods is important. Savings have already been made and I am glad to advise the Council, as I mentioned at the outset, that we are on track to provide $70 million of savings as mentioned by the honourable member.

TRANSADELAIDE, DRUGS POLICY

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning a question about TransAdelaide's drug free workplace policy.

Leave granted.

The Hon. SANDRA KANCK: TransAdelaide recently adopted a drug free workplace policy as part of its occupational health, safety and welfare policy. The policy covers any drugs or other substances that may affect behaviour, intentionally or otherwise. It is designed to ensure that all employees are drug free when reporting for duty or whilst at work, nor use or have illegal drugs or substances in their

possession whilst at work. All TransAdelaide employees will be subject to tests for the presence of drugs during periodic medical assessments or if 'sufficient cause' exists, sufficient cause being an accident, a breach of traffic regulations or at the request of an authorised person. In effect, the policy amounts to random drug testing.

An employee testing positive for elicit or illegal drugs, or prescription or pharmaceutical drugs, where the drug metabolites are present at levels which exceed a therapeutic dose, will be subject to a disciplinary hearing and his or her future employment will be in serious jeopardy. In short, an employee testing positive to a range of legal or illegal substances will be sacked. The policy is designed to improve public safety, a goal I fully support. Unfortunately, the outcomes in terms of public safety and natural justice are problematic at best. In respect of public safety the policy may merely drive employees to use drugs that are more difficult to detect, which is what happens in our prison system.

Urine tests are employed to detect drug usage. Some drugs are easier to detect than others. For example, due to the fact that marijuana is not water soluble it can be detected by urine analysis weeks after being consumed. By way of contrast, heroin disappears from the system within a day. The possibility of drug users moving from easy to detect marijuana to hard to detect narcotics is self evident, which defeats the purpose of the policy and is a terrible outcome for public health and public safety.

Another problem is the possibility of an individual innocently having traces of drugs in their system. Exposure to passive marijuana smoke is an obvious example. There is also the possibility of an individual having a drink spiked or unwittingly eating a marijuana cookie at a party, which cannot be dismissed, yet under this very strict policy these people would still face the sack. Again, this entirely defeats the purpose of the policy.

I believe a more effective means of enhancing public safety would be to introduce a number of simple physical tests to determine if the person was impaired. A random assessment of individuals' response times and peripheral vision would be far more effective for identifying employees impaired by drugs, alcohol or indeed other problems. My question to the Minister is: will the Minister investigate the efficacy of TransAdelaide's drug free workplace policy?

The Hon. DIANA LAIDLAW: I am not quite sure what the honourable member is suggesting. I know she made reference to physical tests and I can certainly have that explored. The whole aim is to ensure that it is a drug free environment. In my view that is absolutely critical, otherwise we have an environment where one cannot say with confidence to our passengers and other road users that we have people driving who have not taken drugs. When we see this issue addressed in public safety terms, whether it be in aviation or, for instance, in sport, there are drug free environments in a whole range of areas. I am not sure if the honourable member would be suggesting that going to heroin addiction or use is the response that one sees amongst athletes or pilots. I suspect it is not. I do not find it a strong case for undermining the approach that TransAdelaide has taken at this time.

I should indicate that discussions are still continuing with the unions about this policy. There is a general understanding of why it has been adopted and the implementation of it is still under discussion. The metalworkers are having more difficulty than other unions and their members in reaching some accommodation in terms of the policy. I have asked that there be further consideration on one matter. When I was shown the policy in more recent times in terms of prescription drugs I was not confident that enough thought had been given to that area of the policy, but I can certainly assure the honourable member I will look at this physical test issue as she has asked.

KUMARANGK LEGAL DEFENCE FUND

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Attorney-General a question about defamation laws on the internet.

Leave granted.

The Hon. A.J. REDFORD: A few weeks ago I raised an issue of an action between the Chapmans of Hindmarsh Island fame and the *Green Left Weekly* and Dr Draper, wherein I advised this place that the *Green Left Weekly* and Dr Draper, who was represented by the member for Mitchell, had been ordered to pay the Chapmans $100 000 damages for defamation, an amount that took away the breath of the Hon. Sandra Kanck.

The Hon. K.T. Griffin: And $10 000 of interest as well.

The Hon. A.J. REDFORD: I remember that, yes. Today I have had given to me an Internet article purportedly issued by an organisation described as 'SISIS'—Settlers in Support of Indigenous Sovereignty, purportedly based in Canberra. The article states:

> The Kumarangk Legal Defence Fund Incorporated has been established to support Aboriginal women defending a sacred site near Adelaide, Australia. The website for the group was originally housed in Australia but was closed by legal action from the developers of a bridge to the sacred site at Hindmarsh Island. A second website was established in the UK, however this has just been closed following legal threats to the service provider. The KLDF is now urgently seeking secure space. Space must be 100 per cent secure with the server owners agreed to house the site despite legal threats from the bridge developers. We don't want to close the site for a third time. The site will be one of a few ways in which we can now get out the information about what is happening at Hindmarsh.

It goes on and says:

> Regardless of the motivation of the plaintiffs or the merit of individual cases, Pring and Canan argue that the overall effect is to silence some people in organisations.

This is in reference to SLAPP writs. It continues:

> This can be seen to represent a curtailment of the basic civil rights of freedom of speech. . .

It then goes on to state:

> The KLDF—

which I assume is the Kumarangk Legal Defence Fund Incorporated—

> is asking for financial assistance for costs associated with legal research, court and legal fees.

It then refers to a number of articles, one of which is 'Hindmarsh Island: An Australian Democrat Issue Sheet'. One would hope that more than 1 000 hours were put into that. In any event, the concern I have is that the Chapmans as I understand it have issued proceedings and sought injunctions on the basis that the Kumarangk Coalition, which is an unincorporated body, has no money and it is extraordinarily difficult to establish the identity of people who publish documents and they tend to slip away into the night. As a consequence the courts have issued injunctions restraining the issue of some of the statements they are making because, in the long run, they cannot be held accountable for those comments.

The other issue that concerns me is that on the face of it it would appear that the Settlers in Support of Indigenous Sovereignty are seeking to invite people to invest or deposit money with the Kumarangk Legal Defence Fund Incorporated, which I understand is a body incorporated pursuant to the Associations Incorporation Act 1985. In that regard my questions to the Attorney are:

1. Will the Attorney investigate whether or not the conduct on the part of the incorporated body Kumarangk Legal Defence Fund Incorporated is in breach of section 53 of the Associations Incorporation Act in seeking to invite deposits?

2. Will the Attorney-General advise whether the use of the Internet is creating problems with people seeking to avoid their obligations pursuant to our defamation laws?

3. Will the Attorney-General raise this issue at the Standing Committee of Attorneys-General to see what response can be taken to prevent this obvious circumvention of the law?

The Hon. K.T. GRIFFIN: We know that there are many issues in relation to the Internet, and fundraising is one of those as well as defamation. The fundraising issues which the honourable member has referred to may well be issues that have to be addressed under the Corporations Law, which has wide-ranging provisions relating to fundraising, including fundraising by incorporated associations. I acknowledge that the provisions of the Associations Incorporation Act place tight restriction upon invitations to the public by such incorporated associations. If the honourable member has any more information I am prepared to forward it off to the Australian Securities Commission to see if it can provide a response. I will also have my own officers look at it from the viewpoint of the Associations Incorporation Act.

In terms of the use of the Internet, particularly in the context of defamation issues, anyone who defames another on the Internet obviously commits a tortious act which might be the subject of civil litigation. If the cause of action is there, there is nothing we could or should do to prevent people from exercising their normal legal rights. It does not matter whether it is in the newspaper.

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: Litigate—simple! One has to say, 'Why should they not do that if they have been defamed and a tortious act has been committed?' It is as simple as that. If members opposite are suggesting that we ought to somehow constrain the law so that some people can defame while others may not, with impunity, let the Opposition and the Australian Democrats say so and we will have perhaps have a new approach to rights, interests and principles of the law.

I will not undertake to raise the issue at the Standing Committee of Attorneys-General at this stage, but will undertake to look at the issues. If such action is required, we can take it from there but for the moment I do not want to give a categorical 'Yes' or 'No' to whether or not the issue would be raised at the Standing Committee of Attorneys-General.

HEALTH COMMISSION, CHIEF EXECUTIVE OFFICER

In reply to **Hon. M.J. ELLIOTT** (28 October).

The Hon. K.T. GRIFFIN: I have not been involved in providing legal advice to the Department of Human Services or the South Australian Health Commission regarding the appointment of the chief executive officer, South Australian Health Commission or the Memorandum of Understanding between the Commission and the chief executive of the department.

However, advice has been regularly sought from and provided by the Crown Solicitor's office in respect of both matters.

As regards the issue surrounding the appointment of the chief executive officer, South Australian Health Commission, on 26 October 1998, the Crown Solicitor's office recommended that the chief executive of the Department of Human Services be concurrently appointed chief executive officer of the South Australian Health Commission.

The Crown Solicitor's Office confirmed that contrary to the Auditor-General's suggestion, there is no legal impediment to this course of action provided that the Commissioner for Public Employment approves the arrangement. Moreover, the Crown Solicitor's office concluded that such an appointment does not give rise to incompatibility of public offices.

The Auditor-General was advised accordingly on 26 October, 1998. A response was received on 19 November 1998, and is yet to be considered.

The Crown Solicitor is also of the opinion that the chief executive of the Department was holding defacto office as chief executive officer of the South Australian Health Commission prior to the irregularity surrounding the appointment coming to light. Accordingly, any action taken was and is lawful.

The Memorandum of Understanding was prepared by the Crown Solicitor's Office and advice has been sought from that Office regarding the Auditor-General's concerns. It is not conceded that the Memorandum of Understanding is or may be contrary to law.

The Memorandum of Understanding does not impinge upon the principle of 'transparency of government financial transactions' since payment made by the Commission to the Department will be recorded in both sets of accounts and expenditure of those funds will be fully documented in the department's accounts.

The Auditor-General's suggestion that the Memorandum of Understanding does not address a number of issues raised in the Crown Solicitor's advice of 16 July 1998, is also refuted.

The administrative arrangements put in place between the Commission and the department do not defeat the intention of Parliament and are not unlawful. The department and the Commission have continually sought and relied upon advice from the Crown Solicitor's office and it is apparent that the Auditor-General's conclusion are primarily based upon a misunderstanding of both that advice and the precise terms of the Memorandum of Understanding.

CROWN SOLICITOR'S OFFICE

In reply to **Hon. P. HOLLOWAY** (18 November).

The Hon. K.T. GRIFFIN: The proceedings against Homestead Award Winning Homes was commenced in 1993 by way of a complaint before the Commercial Tribunal. These proceedings were injuncted by Homestead Award Winning Homes which then issued defamation proceedings in the Supreme Court. The defamation proceedings were successfully defended but Homestead Award Winning Homes then lodged an appeal to the Full Court of the Supreme Court. After lengthy negotiations the appeal was withdrawn and Homestead Award Winning Homes agreed to pay the Crown's costs which were fixed in the sum of $300 000. The amount of $300 000 covers all costs incurred by SAICORP and includes an allowance for some of the work done by the Crown Solicitor's Office.

LEGAL AID

In reply to **Hon. T. CROTHERS** (19 November).

The Hon. K.T. GRIFFIN:

1. I refer to my response in Parliament on 19 November 1998, and only wish to add that the question of assigning priorities for the expenditure of legal aid moneys remains a matter of critical importance for the Legal Services Commission.

2. No.

3. The question of any increase in State legal aid moneys is now, as it always has been, a question for resolution within the context of the demands of the entire State budgetary process.

This Government has honoured its commitments under the Commonwealth/State legal aid agreement, and this Government has contributed significantly more to legal aid, on a comparative basis, than the previous Government.

DRAPER, Dr N.

In reply to **Hon. A.J. REDFORD** (26 November).

The Hon. K.T. GRIFFIN: Tom, Wendy and Andrew Chapman instituted defamation proceedings in the District Court against Dr Neale Draper and Ms Margaret Allan, the publisher of *Green Left Weekly*, in relation to a number of statements published in the *Green Left Weekly*. The District Court found comments in the article to be defamatory and entered judgment against Dr Draper and Ms Allan. $111 000 was awarded to Tom and Wendy Chapman inclusive of interest.

The *Green Left Weekly* publication in question occurred on 12 March 1997. Dr Draper had concluded his employment with the Department of State Aboriginal Affairs in late 1994. I understand that the reporter who wrote the article in question was a student at Flinders University whilst Dr Draper was a member of staff there.

There is no connection between the publication of the article in the *Green Left Weekly* and Dr Draper's employment with the State and no possibility of the State being required to indemnify Dr Draper in relation to the publication. No request has been received from Dr Draper for the State to indemnify him.

OFFICE OF MULTICULTURAL AND INTERNATIONAL AFFAIRS

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Treasurer representing the Premier and Minister for Multicultural and Ethnic Affairs a question on the review of the Office of Multicultural and International Affairs (OMIA).

Leave granted.

The Hon. CARMEL ZOLLO: I refer to the report of the review of the Office of Multicultural and International Affairs released several months ago, which examined the activities, functions and services provided by that office as well as those of the South Australian Multicultural and Ethnic Affairs Commission (SAMEAC). The review made a number of findings concerning the structure and functions of both of OMIA and SAMEAC. The review also refers to the 'Report of the evaluation of the access and equity strategy, June 1997'. This report is yet to be released, despite its being submitted to the Premier in June 1997, some 18 months ago. My questions to the Minister are:

1. What action has been taken to implement the findings of the review and will the Minister provide details of any changes to the structure and function of both OMIA and SAMEAC arising from this review?

2. Will the Minister advise why the access and equity report, despite its having been with his office for 18 months, is yet to be released and when it is expected that the report will be made available to the public?

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

SEABED POLLUTION

In reply to **Hon. R.R. ROBERTS** (29 October).

The Hon. R.I. LUCAS: The Deputy Premier, Minister for Primary Industries, Natural Resources and Regional Development has provided the following response:

1. No.

Canyon (Australia) Pty Ltd as licensee of the petroleum exploration license has confirmed a commitment to restoring the seabed as far as reasonably practical to its original condition.

Agreement was previously reached to cut the remaining leg one metre below the natural seabed so as not to interfere with trawling operations. However it has been observed that there is a depression in the seafloor surrounding the leg, and the steel beam is now protruding 0.3 m above the surface of the sea floor in the depression.

The Department of Primary Industries and Resources (PIRSA) is currently in the process of validating this information in consultation with Marine Operations (DTUPA), EPA and Fisheries. This will be done by divers verifying the depths of leg no. 2 and the natural seabed and observing the current rate of sediment infill to the depression, which is over time likely to cover any remaining steel work by approximately 1 metre.

However if it is confirmed by the divers that the leg does require further cutting, this will be carried out. The two drums and remaining steelwork will be recovered once the requirement for further cutting of the leg has been established.

2. The origin of the drums is unknown. They may possibly be drums of engine oil from the *Maersk Victory*, however this cannot be determined until recovery occurs.

ELECTRICITY, PRIVATISATION

In reply to **Hon. T. CROTHERS** (4 November).

The Hon. R.I. LUCAS:

1.

- The honourable member's concern about a reduction in privatisation proceeds due to the prospective need for enhanced system maintenance and capital works expenditures appears to be misplaced. The article quoted fails to consider that in a regulated business, such as the distribution and transmission businesses, the opportunity to build a better, more reliable, more efficient business and receive a fair return on investment is precisely what strategic buyers will be interested in doing. Thus, their capital expenditures, which increase the value of the businesses, safeguard the system through capital investment in poles and wires, transformers, meters, etc. (It should be noted that such capital investment would not result in 'gold plating' as it is intended that the role of the South Australian Independent Industry Regulator (SAIIR) will be to, amongst other things, ensure against such outcomes.)

  As a consequence, the answer to the question is that the Government does not expect the price to be reduced due to this factor.
- The honourable member raises the spectre of the Auckland power outage and the Sydney water crisis as if there is a lesson to be learnt about privatisation. In fact, both entities were State or Council owned businesses during the period when deteriorating standards were allowed to take place, and when the failures ultimately occurred. Private enterprises, who own the right to deliver reliable, safe products and services, have a financial incentive to directly avoid such crises. Proper regulation will ensure the maintenance of these standards of supply.

  As to the Victorian gas crisis, it is expected that, upon privatisation of the now publicly owned gas distribution network, the new private operators will seek a diversity of suppliers. They will recognise that such diversity is critically important to the financial health and reliability of the Victorian gas system. No longer will the customers need to rely on a single producer (i.e., Esso) to supply all gas requirements—as has been the case under government-ownership.
- In conclusion, no reduction or discount in the sale price is anticipated—privatisation proceeds will not be diminished by the prospect that the future investment opportunities exist in enhancing the poles and wires in South Australia; to the contrary, this is expected to generate ordered expansion of the systems.

2.

- First, the Government has established the South Australian Electricity Supply Industry Planning Council. This Council has the role of monitoring and regularly reviewing the reliability of the South Australian electricity system. It will notify the Government if enough capacity to ensure reliable supply is not being provided. If such a situation arises the Government may choose to provide a safety net by encouraging more generation plant to be built in SA than otherwise may have been provided by the market.

  In addition, the Council will participate as the jurisdictional representative in dealings with the NECA Reliability Panel, NEMMCO, and other bodies. A key concern of the Council is the extent to which sufficient generating capacity is available to meet peak demand for electricity.
- Second, NEMMCO and NECA will assume key roles in ensuring the reliability of the South Australian electricity system at the time of National Electricity Market start. NECA

has established a Reliability Panel that is tasked with examining the capacity and demand situations in all the regions in the National Market (e.g., NSW, VIC, QLD, and SA) and developing reserve margins for each region. NEMMCO has a day to day and hourly requirement to match capacity to demand, and retains a role to take action to intervene in the market until mid-2000 (by which time a review of its role will be completed) using the reserve trader concept.

- Finally, the market itself will provide strong economic incentives to the owners of generating plants and to consumers of electricity that will serve to maintain reliability:
  - Prices in the spot market will be higher if there are fewer power plants in operation in any hour, so that the power plants that are available will gain additional revenue compared to those power plants that are not available. The existing power plants will have incentives to keep power plants available for operation during times when demand (and therefore prices in the market) are expected to be high (e.g., summer peak periods).
  - If spot prices are higher, then contract prices are likely to be higher, and both will provide incentives to developers of new power plants to build additional capacity in South Australia.
  - Electricity consumers will see higher prices (either in the spot market or in the contract market through a retailer) if there are relatively short supplies of generation compared to demand. These consumers will see economic incentives to lower demand when the overall system is at high demand, because of high prices. We expect to see retailers offering packages to customers that capture the implicit capacity value in dispatchable demand and related products, fostering demand-side response to high prices.

The experience in Victoria suggests that these market forces quickly and strongly affect the generation sector. Hazelwood, an old power station and slated for retirement, was not expected to be a major attraction in the sale of assets. After sale, the new owner made appropriate capital and operating investments and Hazelwood has operated at availabilities that were never achieved in its 30 plus years as a generator owed by the old State Electricity Corporation of Victoria.

Likewise, about 300 MW of dispatchable demand was offered by consumers in the summer of 1997-98 in response to a request from Victoria Power Exchange, for sources of power to use in the summer peak.

GOODS AND SERVICES TAX

In reply to **Hon. T. CROTHERS** (18 November).

The Hon. R.I. LUCAS: Contractors will charge GST on services provided to Government through outsourcing arrangements.

As a registered business, Government agencies which are responsible for outsourcing contracts will be able to claim refunds of the GST paid to the contractor from the Australian Taxation Office. Therefore the net impact on their outlays is nil.

The only exception arises with respect to agencies which are in the business of residential rents or financial services. Such activities are input taxed under the GST, which means that they do not charge GST on their own outputs, but will not be able to claim GST refunds on their inputs. In these instances the operation of the GST will bias against outsourcing.

State Treasury officials are investigating a wide range of issues associated with the impact of the GST on State Government activities including any possible cost impacts on operations which are input taxed. However, it is noted that the number of entities involved is small, and for the majority of Government agencies the impact of the GST on outsourcing will not result in increased outlays.

HORIZONTAL FISCAL EQUALISATION

In reply to **Hon. P. HOLLOWAY** (25 November).

The Hon. R.I. LUCAS: The Commonwealth Grants Commission, in deriving the relativities to apply to the distribution among the States of financial assistance grants, uses measures of revenue capacity, rather than revenue effort as indicated in the question. That is, the revenue effort made by a State does not impact on its level of grants; rather it is the State's capacity to raise taxation which is the relevant measure.

The Commonwealth Government's tax reform package as it is presently formulated involves the abolition of a number of State taxes which, as noted in the question, would then drop out of the Grants Commission's calculations. However, these taxes are estimated to comprise only about 11 per cent of total taxes, fees and fines in the year 2000-01.

Revenue accruing to States from the business franchise fee replacement arrangements (put in place following the 1997 High Court decision disallowing State business franchise fees) will also cease under the new package. Adding this revenue to that from the abolished taxes means that in aggregate the States will face a reduction of about 30 per cent of their total taxes, fees and fines under the new package.

The Grants Commission's assessments would then be restricted to capacity differences in the remaining 70 per cent of State revenues, plus its assessments of relative expenditure disadvantages.

Under the terms of the agreement reached at the November Special Premiers' Conference, the Commonwealth has guaranteed that no State will be worse off under the new arrangements in the initial period of not less than three years following the introduction of the GST. The estimated growth in GST revenues is such that after this initial period all States will be better off than under the present arrangements.

The Commonwealth Grants Commission is presently completing a comprehensive methodology review, on which it will report in late February 1999. The relativities it will recommend in that report will apply to the 1999-2000 financial assistance grants. In accordance with the tax reform agreement, the Grants Commission will be requested to make recommendations for the distribution of GST revenue in accordance with horizontal fiscal equalisation (HFE) principles, once the new package is put into place.

That is, HFE will continue to be used to allocate funds among the States, thus protecting the smaller States including South Australia.

NATIONAL COMPETITION POLICY

In reply to **Hon. P. HOLLOWAY** (28 October).

The Hon. R.I. LUCAS: The Premier has provided the following information:

The letter referred to in the Audit Overview, Part A.2, p 98 was sent to the Premier on 19 June, 1998 by the President of the National Competition Council. In many respects South Australia is satisfied with the National Competition Council's interpretation of the elements of water reform; however, in some areas, the NCC's interpretation is unrealistic, thereby creating some potential risks to the State's achievement of tranche payments in these areas.

The treatment of community service obligations in the letter of 19 June is yet another example of the National Competition Council attempting to push out the boundaries of reform, in this case beyond the boundaries of the Strategic Water Reform Framework which was agreed by the Council of Australian Governments (COAG) in February 1994.

When COAG reached agreement on national competition policy in April 1995, COAG signed three inter-governmental agreements. The 'Agreement to Implement the National Competition Policy and Related Reforms' linked competition payments to, among other conditions, implementation of COAG Strategic Water Reform Framework.

The Framework covers water pricing, including the treatment of cross-subsidies. The Framework allows for transparent subsidies consistent with clause 3(a)(ii) of the Framework (which is '. . . that where service deliverers are required to provided water services to classes of customer at less than full cost, the cost of this be fully disclosed and ideally be paid to the service deliverer as a community service obligation').

South Australia does not agree with the NCC's interpretation, as set out in its letter of 19 June, of the community service obligation requirements of the Strategic Water Reform Framework. Such an interpretation would, if unchallenged, present a very real threat to maintaining a community service obligation which establishes a statewide price for water.

South Australia raised the need to clarify the scope of water reforms for purposes of competition payments at the Senior Officials meeting on 22 May, 1998. Senior Officials agreed the matter needed attention, and referred it to their Committee on Regulatory Reform. However, the Committee on Regulatory Reform has not progressed the issue. The Chief Executive of the Department of the Premier and

Cabinet has written to the chair of the Committee on Regulatory Reform to express his concern at the lack of action.

In order to reduce the interpretation risk referred to in the Auditor-General's report, the Premier is writing to the NCC President to request officer-level discussions in order to clarify and where necessary challenge the NCC's interpretation of South Australia's reform obligations. South Australia would be represented by officers of the Department of the Premier and Cabinet and the Department of Environment, Heritage and Aboriginal Affairs. Cabinet has given its approval for these bilateral discussions to proceed. Other jurisdictions (specifically NSW, Victoria and Queensland) have begun bilateral discussions with the NCC in an attempt to clarify water reform obligations.

NITRE BUSH

In reply to **Hon. T.G. ROBERTS** (29 October).

The Hon. R.I. LUCAS: The Minister for Environment and Heritage has provided the following information.

The recent case of Aboriginal concerns being raised about the clearance of nitre bush on a property near Quorn, following a clearance consent from the Native Vegetation Council, is the first such instance that I am aware of after many hundreds of clearance applications to the Native Vegetation Council.

The Native Vegetation Council and the Department have in place a consultation process if there are known Aboriginal concerns about clearance proposals which can operate at an early stage of the clearance assessment process.

GOODS AND SERVICES TAX

In reply to **Hon. T. CROTHERS** (18 November).

The Hon. R.I. LUCAS:

1. The Commonwealth Government has advised the likelihood of costs savings not being passed on to consumers over time is remote. The Commonwealth Government has stated that it will require the Australian Competition and Consumer Commission (ACCC) to take a key role in monitoring prices in the transitional period to ensure that any price falls resulting from the GST are passed to consumers. The ACCC will be given special transitional powers for this monitoring role. The Commonwealth Government will also ensure the ACCC will be able to take action against, and impose severe penalties of up to $10 million on, businesses that price in a manner inconsistent with changes to tax rates under the GST. It is also the case that firms that do not pass on lower taxes into lower prices will be undercut by their competitors.

2. While the States and Territories will have a budgetary interest in the rate of GST, any proposal to vary the GST rate must:

- Have the unanimous support of the States and Territories;
- Be endorsed by the Commonwealth Government; and
- Be subject to the passage of the relevant legislation through both Houses of the Commonwealth Parliament.

Thus for the GST rate to be altered then all State and Territory Governments, the Commonwealth Government, the Commonwealth House of Representatives and the Senate must all agree with such a course of action. This is obviously a significant hurdle to overcome.

3. See answer to question 1.

COURT CASES

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Attorney-General a question about the length of time it takes to finalise court cases.

Leave granted.

The Hon. CAROLINE SCHAEFER: There have been numerous reports about the length of time it can take before court cases are finalised interstate. One newspaper has recently quoted a Melbourne lawyer who complained about having to wait a year to have either criminal or civil cases heard. Can the Attorney tell us how our courts compare with those interstate regarding the time it takes for court cases to be finalised?

The Hon. K.T. GRIFFIN: There are frequently reports, particularly in relation to New South Wales and to a lesser extent in Victoria, about delays in the legal system, and some of those delays are unavoidable because it does take time to get cases ready for trial. It may be that a particular witness is not available so you cannot bring a case on at a certain time and have to defer it. There are a whole range of reasons why a matter may take a longer period of time to get to trial than might normally be the case. In general terms, South Australian courts compare very well with those interstate both in the way cases are managed and also in respect of the length of time it takes for cases to be finalised.

A report on Government services compiled by the Productivity Commission issued this year has some quite interesting information. It showed that 91 per cent of criminal cases which go to appeal in the Supreme or Federal Courts are finalised within six months in South Australia. That result is well above the national average of 64 per cent. The New South Wales average is only 35 per cent and Victoria is 56 per cent. In the South Australian Supreme Court only 10 per cent of non-appeal cases take longer than 18 months, whereas 47 per cent take that long in New South Wales.

In respect of civil cases, our average for completion within six months in the District Court is 49 per cent, which is just over double the national average; and in the Coroner's Court 94 per cent of cases are finalised within six months.

In several areas we may not be quite as good as all that, but it is encouraging to know that we are well above the average in a number of areas of litigation in respect of the time it takes a matter to get on for trial. We are not complacent about the position in South Australia. We have been a leader in case load management, and our courts have embraced mediation and conciliation quite readily. We have in place a lot of pretrial processes which are designed to eliminate as much litigation as possible and only get to court those matters which really cannot be resolved in the civil area, and in respect of the criminal area bring to court for trial those matters which have been through a fairly significant filtering process to determine the appropriate charges, as well as, from the defendant's point of view, determining whether or not there should be a plea of guilty.

As I say, there is always room for improvement. We are endeavouring to keep that, through the Courts Administration Authority, in front of us, but it is reassuring that we are making very good progress with courts management as well as in the finalisation of cases.

O'LOUGHLIN, Mr T.

The Hon. DIANA LAIDLAW: I seek leave to make a short statement in relation to the Adelaide Symphony Orchestra Board appointment.

Leave granted.

The Hon. DIANA LAIDLAW: Earlier in Question Time today the Hon. Carolyn Pickles sought to allege that there would be a conflict of interest arising from the fact that Mr Tim O'Loughlin is my and the State Government's nominee to the board of the ASO. As I said before, I would like to highlight that there is no basis to such an allegation, and I reject any inference on the character of Mr O'Loughlin in that regard.

The State Government is not a shareholder of the Adelaide Symphony Orchestra. The State Government's interest in its investment is safeguarded by board nominations consummate with the level of State Government investment. We have three nominations and the ABC has eight, including one staff position. The ABC has also appointed one of its board

members to the board of the Adelaide Symphony Orchestra—that is, the Hon. John Bannon.

So, the ABC has definitely got one of its board members there to protect its interests, and it seemed to me, on that basis, a very wise idea that we should look at the same sort of arrangement from Arts SA as the funding agency. If you look at that structure and the arrangement that the Hon. Carolyn Pickles is suggesting, I am not sure whether the Hon. John Bannon has a conflict of interest as well and whether she wants to pursue that with the former Premier and ABC board member.

I highlight that Mr O'Loughlin is not paid for his work as a member of the board. I highlight, too, that South Australian taxpayers invest $260 000 per annum in the Adelaide Symphony Orchestra as a direct payment plus a further $230 000 for its State Opera commitments, making $490 000 per annum. As I noted earlier, this Government has increased that sum by $500 000 per annum for three years.

I point out that Mr O'Loughlin, as head of Arts SA, has been appointed to a board of which the State Government is not a shareholder, which does not report directly to me and which has been set up by a Federal Government agency. This is in contrast to an appointment that was made by the Hon. Anne Levy when she was the Minister for the Arts—the appointment of Ms Anne Dunn, her CEO in the Arts, then the Department for the Arts and Cultural Development.

Ms Dunn was appointed first to the Adelaide Festival Centre Trust and later became its Chair. This occurred notwithstanding the fact that the Adelaide Festival Centre Trust is a statutory authority and reported directly to the Minister for the Arts through Ms Anne Dunn, as CEO of the department, and that the Adelaide Festival Centre Trust was fully funded in terms of its subsidy arrangements by the State Government through the Department for the Arts and Cultural Development. In this instance with the Adelaide Symphony Orchestra, the State Government is the minority funder.

PILCHARDS

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, Natural Resources and Regional Development, a question relating to management of pilchard stocks in South Australia.

Leave granted.

The Hon. IAN GILFILLAN: The South Australian Research and Development Institute (SARDI) has put out a study, 'Use of the daily egg production method to estimate the spawning biomass of pilchards in shelf waters of central and western South Australia in 1998: Tim Ward and Lachlan McLeay, September 1998.' As members will know, this is the ultimate in scientific authoritative information regarding the fishing industry in South Australia. In the executive summary, they say:

> 6. Estimates of the 1998 spawning biomass range from 86 000 to 109 000 tonnes.

I indicate to the House that spawning biomass estimates the total weight of pilchards in South Australian waters. It continues:

> The mean estimate was 95 000 tonnes. This is considerably lower than the estimate of the 1997 spawning mass of 117 450 tonnes [which was estimated as being unrealistically high].

Point 7 is significant:

> It is recommended that the exploitation rate for the 1999 fishing season should not exceed 12 per cent of the 1998 spawning biomass. Increases in the exploitation rate or total allowable catch may not be appropriate while the fishery remains restricted to a small geographical area.

They also indicated that there is considerable uncertainty as to the estimate of egg production and that a catch ought to be set on a conservative level. It was well spelt out in all detail in this particular study.

It is, therefore, rather confusing and alarming to note that, bearing in mind the estimate of the SARDI committee is that the total pilchard population in South Australian waters is approximately 100 000 tonnes (to put a good spin on it), on 18 November the *Australian* newspaper quoted the SA Fisheries Director, Gary Morgan, as saying that 100 000 tonnes of pilchards have already died in South Australian waters. If he is correct (and Morgan's figures appear to be in conflict with the estimates of the biomass of pilchards in South Australia waters made by the South Australian Research and Development Institute; as I remind the House they estimated approximately 109 000 tonnes in total), the only reasonable interpretation that can be made is that more pilchards have died than existed. However, things get even more confusing. Despite no stocks of pilchards being left, according to SARDI's figures, the commercial fishery was reopened at midnight on 20 November. An article in the *Advertiser* of 3 December stated:

> More than 50 tonnes of pilchards have been caught by two Port Lincoln fishing boats in the one night's catch in the southern Spencer Gulf area.

It is inferred that something has gone wrong in the management of the natural resource and it raises doubt about the way in which the fishing stock is currently being managed. My questions are:

1. On what scientific basis of biomass was the commercial fishery reopened at midnight of 20 November?
2. What is the likely recovery time for pilchard stocks?
3. Have any sea bird or seal monitoring programs been put in place to determine the impacts of potential food shortages as a factor affecting productivity or survival of marine fauna?
4. Have any species other than pilchards been affected by the current marine virus recently?
5. Does a current pilchard fishery management plan exist for South Australia?
6. The data that has come to me through the SARDI report and the conflicting reports throws in doubt the question: what is the quality of management of our fish stocks in South Australian waters?

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

FAMILY COURT

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question on the subject of waiting lists in the Family Court.

Leave granted.

The Hon. L.H. DAVIS: While the news in South Australian courts is good, that cannot be said about the Family Court of Australia. The last three annual reports of the Family Court of Australia detail performance standards in respect of the timely delivery of services provided. In these annual reports, tables list the desirable time standards for a range of procedural matters.

In June 1996, the average time for dealing with so-called long matters such as financial settlements was 60 weeks in

Adelaide as against a desirable standard of 12 months, that is, 52 weeks. In other words, in June 1996 we were reasonably close to the desirable time standard.

However, in the 1997-98 annual report for the Family Court, the wait for financial matters had increased dramatically to 98.7 weeks or nearly two years against a prescribed standard of 48 weeks. For child matters it had blown out to an unacceptable 93.3 weeks against the desired time standard of just 43 weeks. Other complex matters were designated with a prescribed time standard of 52 weeks, but the average wait in Adelaide was an extraordinary 139 weeks—which, of course, is heading towards three years.

My understanding of some of these reasons is that there has been a delay in appointing judges. There was a four month delay by the Federal Government in appointing a new judge in South Australia. I understand, too, that in South Australia we suffer in terms of comparative sources. For example, Form 7s per judge in South Australia over the past year were 598 per Family Court judge processed versus only 351 per judge in Sydney. So, one can see that the Family Court judges in South Australia are doing their work.

Also, the Attorney-General would be well aware that new Family Court facilities have been promised to Adelaide for four or five years and that has not yet occurred. Whilst this is a Federal matter, obviously it is a matter of some concern in South Australia, and the Attorney-General has obviously followed these matters closely, intervening successfully, of course, to achieve more Legal Aid funding from the Commonwealth Government in recent years, and no doubt he is monitoring this matter closely.

My question is: is the Attorney-General aware of the significant blow-out in waiting time for important matters to be processed by the Family Court in South Australia; the fact that judges in the Family Court in South Australia are under some stress and pressure; and has he any information in relation to the new court facilities which have been promised in South Australia for some years?

The Hon. K.T. GRIFFIN: In respect of the last question, there are continuing negotiations with the Commonwealth in relation to a Federal Courts building in South Australia. It is correct that South Australia is the only State in which there is not a Federal Courts building, and we want very much to encourage the Commonwealth to commit to a Federal Courts building for this State.

In terms of the existing premises, it is my understanding that the Commonwealth does have more than adequate space there and, quite obviously, if they move to a new Federal Court building, it may be that the space in their present premises will have to be relinquished before the end of any tenure, but I am not familiar with the details of that.

In respect of the Family Court, it is a Commonwealth court, and I am not in any way responsible for what does or does not occur there. I am familiar with the concerns being expressed in relation to legal aid and generally the long waiting lists. It seems that the response of the court is more judges when in fact the response of the Federal Government is no more judges but better practices to eliminate those delays. I think there is some value in looking at alternative mechanisms for dealing with some of these disputes. I do not agree with the appointment of Commonwealth magistrates, but I note that only yesterday the Federal Attorney-General indicated he would proceed with the system of Federal magistrates. I think that is directed toward dealing with a lot of the relatively minor matters of a procedural nature, and some of substance, in various Federal jurisdictions. The Commonwealth is unfortunately bedevilled by the problems of the judicial power under the Federal Constitution, which means that registrars in the Family Court cannot do a lot of the work and, unless they have magistrates, it all has to be done by judges.

I did not agree with Federal magistrates. We have a perfectly good system in operation in this State. Other Attorneys around Australia made the same point. Why does the Commonwealth not move to using State magistrates, as it does in a lot of areas at the moment, where State magistrates exercise Federal jurisdiction, which has been conferred upon them? Be that as it may, the Federal magistracy looks as if it is going ahead and, on that basis, there is probably not much more that could be done about that. In terms of the Family Court, if I have not addressed some issues I will arrange to examine *Hansard* and, if an additional reply is required, I will make sure one is given.

GAMBLERS' REHABILITATION FUND

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, a question in relation to the Gamblers' Rehabilitation Fund, known as the GRF.

Leave granted.

The Hon. NICK XENOPHON: The GRF Advisory Committee is comprised of an independent Chair, one representative each from Treasury and the Department of Human Services and one representative each from the hotels and clubs respectively. The fund administers $1.5 million from the hotels and clubs for problem gambling services. In a comprehensive evaluation of the GRF carried out for the Department of Human Services by Elliott Stanford and Associates earlier this year, the report prepared raised issues of other gambling codes contributing. It also—and very importantly—referred to restructuring the GRF to avoid inherent conflicts of interest in the fund's structure, with consequential questions that ought to be raised on the independence of the Break-Even Gambling Service providers. My questions to the Minister are:

1. Will he act on the matters raised in the report and restructure the GRF to allow for a greater degree of independence for problem gambling service providers and researchers away from the Government and the gambling industry?

2. Will he also consider the issue of other gambling codes contributing to the fund?

The Hon. DIANA LAIDLAW: I will refer those questions to the Minister and bring back a reply.

TAFE, DISABILITY SERVICES COURSES

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister for Disability Services a question about disability services courses.

Leave granted.

The Hon. R.R. ROBERTS: The Opposition has a copy of the minute advising board members and staff of the Community Bridging Services that TAFE has decided to cut 20 000 student hours from nationally accredited preparatory education programs. The Executive Director of CBS states that some institutes will no longer offer entry level programs and that people with disadvantages are particularly vulnerable. The Director of CBS states in another letter that the adult education programs which have been suggested as alterna-

tives are not a substitute for nationally accredited TAFE entry programs, because they are very much one-off, short term courses that do not specifically target people with a disability. My questions to the Minister for Disability Services are:

1. Given the budget announced by the Minister for Education, Children's Services and Training that vocational education was a priority this year, why has the Government cut 20 000 student hours from preparatory education that will cut courses and further disadvantage people with disabilities?

2. What action will the Minister take to reinstate access to these courses for disabled persons?

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Is the Treasurer answering this?

The Hon. R.I. LUCAS: No, Sir.

The PRESIDENT: Order! I could not see: there are so many people standing.

The Hon. R.D. LAWSON: I thank the honourable member for his question. I am aware of changes to the practices of TAFE colleges and in particular the number and type of programs specifically designed for those with disability. It is a matter of concern that those organising TAFE syllabuses appear to be focusing on purely vocational courses, to the detriment of some developmental courses which have been offered over the past few years and which have been of benefit to those with disability. I am not specifically aware of the entry level programs to which the honourable member referred in his question. I have taken up with various TAFE colleges and also with the Minister the issues surrounding the provision of appropriate courses for those with disability, and I have received certain information. As I do not have to hand the particular details of the entry level programs referred to by the honourable member, I will take his question on notice and bring back a more considered reply in due course.

However, I think it is worth saying that the pressure which the TAFE colleges and the entire disability services budget are under is considerable. It is not of this Government's making: it has been building up over a number of years. Regrettably, the attitude taken by the Opposition to the sale of the electricity utilities will have the inevitable consequence of preventing our establishing any budget headroom which will enable us to more appropriately respond to these challenges.

PETROLEUM (PRODUCTION LICENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 December. Page 455.)

The Hon. SANDRA KANCK: This Bill arrived in the Council on 25 November: it has effectively been in this Chamber for four working days. It was not in the House of Assembly for a particularly long time either, having arrived there on 18 November. When it did arrive in the Council, I asked my researcher to ring the Minister's office and find out whether there was any sense of urgency about the Bill, because I had to determine, amongst all the other things I was dealing with (a couple of different transport related Bills, an arts Bill, an arts motion and, of course, the four electricity related Bills) where my priorities lay.

My researcher was told by the Minister's office that this Bill was not a priority. Obviously, there was some sort of a mix-up in the messages given by the Minister's office. I was under the impression until about 9 o'clock last night when the Attorney-General asked me whether I was ready to deal with this Bill that I had until February. Until that point I had not even opened it up and looked at it.

Later in the evening, I checked the fax machine and found that a fax had arrived from the Chief of Staff of the Minister's office advising that it was his understanding that the matter would be debated today in the Legislative Council. He provided a briefing note on it which does not appear to say much more than the Minister's second reading explanation.

Having been led to believe that I had until February to deal with this matter, I had not even begun to consider consulting with anyone. The arrival of the fax last night was the first indication from the Minister's office that there was any sense of urgency. Certainly, no attempt had been made to contact my office to offer me a briefing on the Bill.

I consider that, given there are environmental ramifications in the licences concerned, a few other bodies ought to have been consulted. The briefing note sent to me by the Minister's Chief of Staff states at the end:

> The proposed amendment has been agreed to by Santos Ltd, Boral and the South Australian Chamber of Mines and Energy.

Well, goody, goody for them, but I think perhaps that a few environmental groups might have liked to be consulted. Because I have not had the opportunity to study this Bill at close hand and because I am very unhappy about the way this has been processed up to this point in terms of communication with me, I indicate that the Democrats will oppose the second reading.

The Hon. K.T. GRIFFIN (Attorney-General): I know that the Hon. Terry Cameron wishes to speak on this Bill. I do not intend to deny him that opportunity, but it seems to me that he can do that just as conveniently in Committee as in the second reading debate. I am prepared to be very flexible in terms of the Committee consideration of the Bill. Although my reply will close the second reading debate, it is only for the purpose of expeditiously dealing with the business before the Council that I do so. However, I will keep very much open the opportunity for the Hon. Mr Cameron to speak later in the day. So, I intend to reply and, if the second reading is carried, which I am sure it will on the basis of the indications that have been made, I will then make the Committee stage a matter to be taken into consideration on motion.

The Minister apologises for the misunderstanding in relation to the Bill as far as that relates to the Hon. Sandra Kanck. I regret that there was that difficulty. I understand why she has taken her stand, but it is critical that the Bill pass because PELs 5 and 6 in the Cooper Basin expire on 27 February 1999 with no right of renewal.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: Not that much. We are meeting on 9 February, and there is no guarantee that we will get it through on that day. Then it must go to Executive Council. I think those who presently have rights are entitled to have some reasonable notice that those rights will not be compromised. I note that the Hon. Paul Holloway recognises that as appropriate. It is not something which overrides other rights; it merely preserves existing rights because of administrative difficulties in processing other documentation.

I will make a few observations in respect of the matters raised by the Hon. Mr Holloway. His introductory comments in the first three paragraphs of *Hansard* on the history and expenditure by Santos and its partners in the Cooper Basin are substantially correct. His comments in the subsequent paragraph on access regimes are also correct: third party access rights will be provided to gas transmission and distribution pipelines to progressively smaller classes of customers over the next several years. Access to gas production infrastructure is contentious and currently being actively debated.

The Deputy Premier has publicly announced that there will be a transparent process for such access in the Cooper Basin preferably achieved by an industry self-regulatory regime. The comments by the Hon. Mr Holloway on the purpose of the Bill are correct, including the fact that the quantity or quality of petroleum must be sufficient to warrant production before a production licence can be issued.

With regard to the issue of production licences over the Nappamerri Trough, which has been the subject of a critical article in the *Business Review Weekly*, the Government won significant concessions from Santos and its partners including: a major investment in exploration in the trough, which I understand to be $100 million over 15 years; conditional area relinquishment from time to time; retention beyond 15 years of only areas proven productive; and, most importantly, an agreement that in future all production licence applications will be bound by the criteria under the Petroleum Act rather than such licences being able to be granted on demand as applies under the Cooper Basin Ratification Act.

With regard to the Coongie Lakes, the Deputy Premier has advised conservation group representatives that there will be no decision on future exploration activities in the area once PELs 5 and 6 expire without a thorough assessment of the options, which will also involve a public consultation process. Arrangements are being made to initiate discussions with conservation groups in January 1999. The Hon. Mr Holloway made the observation that there is no commercial discovery in the Coongie Lakes area, and I am not able to make any observation on that.

All in all, I thank the Hon. Paul Holloway for his indication of support, note the concerns raised by the Hon. Sandra Kanck but in the explanation which I have given express the hope that she is not so uncomfortable about the substance of this; although, as I said, I can appreciate her concern about the breakdown in communication which meant that she was caught unawares when I indicated that we wanted to bring this on quickly.

Bill read a second time.

ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL) BILL

In Committee (resumed on motion).

(Continued from page 494.)

The Hon. SANDRA KANCK: Much of the debate in the last 24 hours on clause 2 has related to the position taken on the Bill overall by the Hon. Nick Xenophon. Someone made the comment to me the other night that Mr Xenophon was holding the State to ransom, and I sprang to his defence because it is a little unfair. It takes more than one person to be able to do that within our parliamentary system and, in effect, it is perhaps the luck of the draw or the way things fall in terms of who makes a decision first. If, for instance, the Democrats had announced outright on day one that we were going to oppose it and the ALP had just announced its decision last Tuesday, it would have been the ALP that that claim would have been made against. It is really a question of the order in which announcements are made that puts the pressure on people.

At the end of June, when we made our announcement about opposing the sale and lease of ETSA, we came under similar pressure with similar sorts of *Advertiser* editorials, photographs and captioning and some of the sorts of comments, snide remarks and interjections that we have heard from Government backbenchers in this debate. In that regard, the Hon. Legh Davis, with his capacity for rewriting history—a capacity that is probably only bettered by Chairman Mao—has once again misrepresented me. I ought to place on the record the position that the Democrats had and where we moved from in the process.

On day one, when John Olsen in February announced that we were going to sell our assets and the ALP immediately announced it would oppose it, I announced the Democrats' position, namely, that we had a mandate to oppose such legislation because it was the promise that we had made during the election, and, in fact, it had been the basis of our slogan during the election. So, we had that mandate, but, given the seriousness of the Premier's claims at that time to substantiate his argument that we needed to sell, we said that we would investigate it seriously but that we would need a lot of convincing. That is what I said on day one, and if the Hon. Legh Davis cares to check the archives he will see from any of the television coverage on that day that that is what I said.

In May, at one of the meetings I had with the Treasurer, who by that stage had taken control of the legislation and the whole issue of sale or lease of our electricity utilities, I told him at that point that the arguments the Government was presenting to us were not convincing and that it would have to come up with much better evidence. At all times when I was making any statements either publicly or to relevant MPs I was saying, 'You have to do better than this.' We believed that it needed to be seriously investigated because of the claims that the Premier made, but, in the end, we found that those claims did not stack up to analysis. We have remained consistent in that position since the day John Olsen made his announcement.

With respect to the general debate we have been having over the last 24 hours, a great deal of it has focused on Riverlink. I was surprised that the Hon. Mr Xenophon was linking the sale of ETSA to whether or not Riverlink went ahead. Throughout the process of him making up his mind I have not attempted to lobby him. However, last Thursday—because I was getting frustrated by the fact that we were being told that we might be sitting on Friday, Saturday and Sunday of this week—I rang him and asked whether he could explain why he was making that link. We met, and he made his point as to how and why he was coming to that particular position. At the heart of it is a problem of information.

As an example of this, back in March I asked a question of the then relevant Minister, Hon. Dr Armitage, about Riverlink and the timing of the announcement of support for Riverlink and the sale of ETSA and Optima and just what it was the Government was doing. That question was never answered. If you are into conspiracy theories, one would have to say that the Government was withholding information. If you do not know why you are not getting information back when you ask questions, there is perhaps a tendency to jump to the wrong conclusions and ask what the Government is

hiding. Certainly, in the process of trying to obtain information, I could not get the information I was seeking from the Government. It is that link, the lack of information from the Government in the process and the continual presence of the spin doctors, the knowledge that the US advisers are going to get a success fee if the sale proceeds that leads at the very least to a degree of cynicism about what the Government is saying.

However, the Hon. Mr Lucas would be pleased to know that he and I agree on one aspect of the debate, that is, the Democrats think that Riverlink is one of the most stupid things that could happen for this State and I support the Government on that position. We have heard from others about the environmental impact if Riverlink passes through the Bookmark Biosphere Reserve, but little attention has been given to greenhouse gases. A couple of weeks ago I asked the question of the Treasurer which, again, he has not answered. It was a golden opportunity for him to have almost a free kick at my expense. I asked him how much extra carbon dioxide would go into the air each year as a consequence of Riverlink. The figure is roughly 1¼ million extra tonnes of CO_2 each year as a consequence of having Riverlink built and using power over that distance.

The documents the Treasurer sent to the Hon. Nick Xenophon at the end of last week and which he provided to us as well indicate that, when power is being generated in the Hunter Valley (assuming that Riverlink goes ahead) and passes over that transmission line into South Australia, there will be a 50 per cent loss of power. That means that, if you are asking for 25 kilowatts of power, 50 kilowatts will have to be generated in order to get the 25 kilowatts. The consequences in terms of greenhouse gas emissions for South Australia are enormous. My concern about the whole issue of SANI or Riverlink is that it has been looked at only in terms of economics and what I see as being very illusory cheap prices. Again, the Treasurer has referred to the increases in prices that have already occurred in New South Wales over the past six months as an example of that.

It is what seems to have fuelled this and seems to keep propelling those who are backing Riverlink. My belief is that ultimately it will prove to be a very big mirage. Riverlink is not going to deliver cheap prices. As well as not delivering cheap prices it will deliver a huge environmental downside. When (and I say when and not if) a carbon tax is finally put in place in Australia, then the cost for Riverlink will be huge. In fact, it will put Riverlink out of action.

Members interjecting:

The Hon. SANDRA KANCK: Yes. The Victorian connector will as well, without doubt. If TUOS charges are applied properly, too, it will also have a big impact on something like this. At the moment we are still on clause 2 in the Committee stage and it would appear we are not going far. I do not think the Government is going to take the matter to a vote.

The Hon. R.I. Lucas: In the next millennium.

The Hon. SANDRA KANCK: That might be a good time for it to pass. We have been going through this saga for 10 months and what has been particularly concerning for me in this whole process is that basically the Government wants to leave it to private industry to decide what sort of energy future we have in South Australia. The Hon. Terry Cameron talks about the need to have Pelican Point up and running so that by the summer of 1999 we have the extra kilowatts we need to meet the demand for power in the middle of summer.

Nowhere in all of this does anyone seem to be saying, 'What can we do from a conservation viewpoint?' Yet it is perfectly possible to do things. When New South Wales had its major power crisis in the early 80s and a number of generators went down at the one time the people of New South Wales were asked to pull their belts in and conserve power. They did so and they did it remarkably well when they knew the need was there. Similarly, those sorts of savings can be made and there are examples in the United States which is an energy profligate country where the equivalent of a whole power station has been saved in energy by those sorts of measures, by encouraging people to conserve energy, by retro fitting houses with insulation, by fitting skylights and double glazing, putting in dual flush toilets, which saves on the use of electricity. People forget that we use electricity to pump water.

These are the sorts of things that could be done but on which our Government is taking no lead at all. It is relying on private industry to come in and make the decisions for us. I am grateful that the Hon. Mr Xenophon has made the decision that he has because it might put the onus back on the Government to undertake its responsibilities so far as this is concerned. I urge the Government to withdraw the Bill at this point, to get rid of the advisers to whom it is having to pay thousands per week, and to cut its losses.

Progress reported; Committee to sit again.

LOTTERY AND GAMING (TRADE PROMOTION LOTTERY LICENCE FEES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 482.)

The Hon. R.I. LUCAS (Treasurer): I thank honourable members for their contributions to the second reading. On 17 November the Hon. Paul Holloway spoke in the second reading debate. He raised some questions and I will endeavour to respond to them in my reply. First, he was concerned that the complete intention of the Bill could not be determined without knowledge of the applicable regulations. I am told that the development of regulations is dependent upon the enactment of the Bill and will not be promulgated until the Act is in force. That is obviously a statement of the obvious.

I am told that the regulations have not been finally determined or concluded. We are aware that the Hon. Mr Xenophon has flagged some amendments, and I will express a view in relation to those amendments in a little while, but until the Bill is finally settled the final structure and nature of the regulations will not be concluded. That is not uncommon in terms of Bills and regulations.

The honourable member also asked exactly what is a gradated licence fee. I am told that two systems of charging fees for trade promotion licences apply in the various Australian jurisdictions. Both New South Wales and the Australian Capital Territory apply gradated fees based on the total retail value of prizes to be awarded up to a maximum, as is proposed for South Australia. Victoria applies a percentage fee on prizes offered up to a maximum of $1 000. The maximum fee for an application suggested for South Australia is $1 000. This maximum also applies in New South Wales. The term 'gradated' refers to the splitting of prize values into classes to facilitate the application of a given fee for each class. The gradated fee approach of New South Wales and the ACT is easier to apply and administer, as it is

less susceptible to unreliable reporting of prize valuations in applications. Consequently, the approach enables the speedy issue of trade promotion lottery licences.

The alternative approach to fee calculation derived from percentage prize value would require prize value confirmation or uncertainty of fees at the time of application. Prize value confirmation certificates would be an additional cost on applicants. Regulator initiated requests for fee adjustments based upon different assessment of prize value would result in delays in the issue of the lottery licences.

The honourable member's third question was why the revenue from trade promotion lotteries varies from the number of applications received multiplied by the application fee. I am advised that trade promotion applications are subjected to scrutiny prior to the granting of a licence. This scrutiny identifies both instances of incomplete applications and potentially non-complying promotions.

Following communication with lodging parties, a percentage of the applications received are withdrawn. Where an applicant fails to address requisition, their applications will be deemed withdrawn. Innovative promotions are common. The scrutiny process ensures that only complying promotions are licensed.

The member then asked whether the volume of trade promotion lottery applications will be impacted by the change in fee and what is the experience interstate. I am advised that, despite the introduction of fees in other jurisdictions, the volume of trade promotion licences issued continues to increase. Whilst some drop in volume could be expected with the introduction of the new fees, interstate experience and the general trend in licence volumes suggests that any drop will be only temporary. As trade promotions become more prevalent as tools to facilitate business, competitive pressures may well further entrench their use.

The next question related to which groups the Minister had consulted in relation to the trade promotion fee amendments. I am advised that, in developing the amendments to the Lottery and Gaming Act 1936 and regulations, organisations representing the parties that seek to promote their goods and services have been consulted by Government officials. The views of the Retail Traders Association of South Australia, the Small Retailers Association, the Australian Hotels Association and the Property Council of Australia, amongst others, have been sought.

The final question was whether the revenue received from telephone usage in a trade promotion lottery exceed the value of lottery prizes. I am advised that no research has been undertaken to assess the extent to which revenue derived from telephone usage in a trade promotion exceeds the value of prizes. There is no statutory obligation for licensees to supply this information to the Government.

The Hon. Mr Xenophon earlier today flagged some concerns and issues that he had in relation to trade promotion lotteries generally. I am not sure yet whether the honourable member's amendments are available. I had a discussion with him an hour or so ago, suggesting an alternative process that he might like to consider.

The first point I need to make is that this is part of the final part of the 1998 budget process, albeit somewhat delayed. The Government is budgeting in a full year on getting $600 000 from this initiative. I advise the honourable member that the advice I received this morning is that if the passage of this Bill is delayed until February or March the net cost to the budget might be of the order of perhaps $150 000 to $200 000 as a result of the delay.

The honourable member's concerns, as I understand them, relate to the ability of persons under the age of 18 years to use a telephone and enter a particular trade promotion lottery or, indeed, to write a letter or to send in a cereal box coupon in a stamped envelope. I have two comments on this. I can understand the honourable member's concern. We had a similar debate about other lottery products in this Chamber two or three years ago in relation to the access of under age persons to various lottery products.

In relation to the trade promotion lotteries, it would seem to be an extraordinarily difficult process to develop something that would in some foolproof way prevent young people under the age of 16 or 18 years from using a telephone to enter a trade promotion lottery. It is not my intention to discourage the honourable member from exploring that notion or other options in terms of tackling this issue.

However, I have put to the honourable member that it might be advisable that this Bill be allowed to pass through this Council today. I understand that the Australian Labor Party is supporting the Bill in terms of its revenue impact. The honourable member may well want to undertake further work, in which event I am happy to have my officers consult with him, if need be, in terms of the options that he might be wanting to explore. He may want to pursue something by way of a private member's Bill early next year.

The Hon. P. Holloway: Are you supporting a select committee on it?

The Hon. R.I. LUCAS: I am not sure that that has much to do with children sending in cereal coupons via an envelope. I am happy to discuss the honourable member's motion for a select committee at the appropriate time. That process would allow further consideration of this proposition. I have been advised that we have moved substantially towards, or some way down the track of, national legislation, regulation, agreement or cooperation between the States in terms of the regulation of trade promotion lotteries.

In the end that does not necessarily prevent one State from moving in a different direction, but there would appear to be some commonsense, particularly with some of the big trade promotions that are advertised nationally, to have some degree of uniformity in relation to regulation in this area.

The other issue that the honourable member was talking about was trying to provide greater disclosure. I am prepared to have that issue explored with the honourable member over the coming weeks and months. I suggest that, given the revenue impact of further delaying this Bill, it be allowed to pass, and the issues raised by the Hon. Mr Xenophon can be explored by him and, indeed, others over the coming weeks. It may be that a private member's Bill might be introduced by the honourable member at some subsequent stage.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2.

The Hon. M.J. ELLIOTT: I did not speak during the second reading debate and I do not intend to speak at any length now, either. However, I want to pick up one issue which was raised by the Hon. Nick Xenophon and which was then referred to by the Hon. Robert Lucas. I am not sure whether I misunderstood Mr Xenophon or Mr Lucas, but my understanding of what Mr Xenophon was about—and I am very supportive of the notion—was not the people who cut something off the back of a Weetbix packet and go into those sorts of lotteries but the people who phone in, often on television promotions, and the people who are running the

promotion make a profit out of every telephone call. Clearly, they are running a lottery in any regularly understood sense of the word in that you are, essentially every time you make a phone call, buying a ticket. I know there is no piece of paper, but by making a telephone call they are making a profit and you have effectively bought a ticket, and there is a prize.

We have laws in relation to young people buying tickets in lotteries elsewhere, so why should it be any different because they choose to do it over the telephone. It is one form of gambling with young children which is totally unregulated. It might be fair to say that it is very difficult to regulate, but should that be the Government's problem or should that be the problem of the people who chose to run those sorts of lotteries, because indeed that is what they are? It is an important issue and I think it deserves to be addressed. I am not talking about (and I did not think the Hon. Mr Xenophon was talking about) where you get the bar code off a Weetbix pack or something like that, but where there is a—

The Hon. R.I. Lucas interjecting:

The Hon. M.J. ELLIOTT: Yes, but the more serious sort again. Certainly, the one that I think is beyond dispute is where you ring up a television promotion and they make a profit out of every phone call, and you have, de facto, as far as I am concerned, bought a ticket, and very young children are gambling in that sense. I think we need to recognise that. It is a clear issue that should be addressed. I can accept what the Treasurer is saying, that he needs to get this through; it involves a bit of money and the State can do with it at the moment. However, I would hate to think that that issue is brushed aside, because there is a clear moral inconsistency in allowing that sort of promotion to occur and yet putting an age limit on other forms of gambling.

The Hon. NICK XENOPHON: I endorse the Hon. Mike Elliott's comments. This is not about the back of a Weetbix packet, but relates to where a consideration is involved in the context of a telephone call and where a clear component of that call is effectively the cost of entry into a lottery set aside from the cost of the telephone call. I have had some amendments drafted but will not proceed with them. I understand from my discussions with the Treasurer that there are some national implications in terms of a national code for trade promotion lotteries that needs to be looked at, as well as the context of the proposed select committee on interactive home gambling and gambling by other means of telecommunications, and I believe that there will be a vote on that when we resume early next year.

I expect that this will be one of the aspects of the committee's deliberations. It needs to be addressed, particularly since this is a growing field. I think there is concern amongst some parents about 11, 12, and 13 year olds, and perhaps even younger children, being able to participate in these lotteries, given their aggressive promotion.

Clause passed.

Title passed.

Bill read a third time and passed.

SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

In Committee.

(Continued from 8 December. Page 405.)

The CHAIRMAN: I explain to the Committee that, when we reported progress, the Hon. Terry Roberts had moved his amendment for a new clause 10. That has been moved and we have had some debate on that. Since then the Attorney-General has filed his own new clause 10. I ask the Attorney-General to move his amendment.

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

Page 4, after line 7—insert new clause as follows:

Amendment of Retail and Commercial Leases Act 1995

10. The Retail and Commercial Leases Act 1995 is amended by inserting the following subsection after subsection (2) of section 61:

(2a) A meeting to approve core trading hours, or to approve a change in core trading hours for the purposes of subsection (1)(c) may be called in accordance with the regulations—

(a) by the lessor under a retail shop lease; or

(b) by the number of lessees under retail shop leases prescribed by regulation.

We reported progress on the amendment moved by the Hon. Terry Roberts which is almost a play from left-field in the sense that it was raised by Mr Ralph Clarke in another place 10 days ago or so. There has been no opportunity to have proper consultation with all the interest groups involved in retail commercial leasing, and my concern about the amendment by the Hon. Terry Roberts is that it is unworkable and leaves a number of issues, which have not been addressed, now still very much up in the air. For example, when is the ballot to be taken? What form of notice? What numbers of lessees can actually requisition the meeting for conduct of a ballot to vote on a resolution in relation to core trading hours? Can it be one out of 300? Can it be once a month or once a year or whatever?

My amendment is designed to address that. I know there is some caution about regulations, but all I can say is that I give a commitment to explore the issues with the Retail Shop Leases Advisory Committee and diligently endeavour to reach a satisfactory conclusion in relation to outstanding matters. My amendment is that a meeting to approve core trading hours or to approve a change in core trading hours for the purposes of subsection (1)(c) may be called in accordance with the regulations either (a) by the lessor under a retail shop lease—and I do not think anyone is quarrelling with that—or (b) by the number of lessees under retail shop leases prescribed by regulation.

So, we have a procedure established by regulation, but we also have the number of lessees who may requisition and call a meeting also prescribed by regulation. The Hon. Terry Roberts's amendment leaves so much open, including representation of an association in respect of the convening of a meeting—an issue which I have explored in depth. I do not believe it will work. I think the association must identify for whom it is acting to ensure that the meeting is a valid meeting.

Be that as it may, I probably will not have the numbers. I am a realist enough to know that there has been some active work being done in respect of this, but I just say that I think it is unworkable. Nevertheless, we will divide on it if I do not win my amendment on the voices and see where that takes us.

The Hon. IAN GILFILLAN: As the Attorney-General and the Hon. Terry Roberts well know, there has been a lot of extended discussion about this amendment. I enthusiastically support the amendment. I think it is appropriate to mention to the Committee what should be already obvious. The Democrats oppose the Bill in its totality on the issue of extended shop trading hours, but it is facing the inevitable that this legislation will pass. It is important that this measure is brought into effect because of the real fear—

The Hon. K.T. Griffin interjecting:

The Hon. IAN GILFILLAN: Justified or not—that is not what we are debating—that lessees have that they will suffer

if they are seen to be the instigators of moves to change or to oppose the change to core trading hours.

The protection of having their association trigger it off and for a representative of the association to represent their interests in discussing a matter at a meeting before the secret ballot takes place is an essential part of giving a reasonable, fair and equitable approach by lessors and lessees to the issue of changes to core trading hours.

The Attorney-General did question, I think (as he is perfectly entitled to), whether the issue of intimidation was a reality. I believe he has seen the memo that was sent to me from the Executive Director of the Small Retailers Association, John Brownsea. I made that memo available to him yesterday. But, he may not have seen material sent to me by Max Baldock of the Small Retailers Association. It was a memo from Westfield at Arndale dated 3 December 1998. It is addressed to 'All Retailers' from Antony Ritch and the subject is 'Christmas trading hours'. The memo states:

> I know that extended trading hours can strain our resources during the busy Christmas period, but we are a service industry and must satisfy our customers' expectations if we wish to succeed. At all times we must portray a service oriented and professional image to our customers, and nothing is less professional than a customer expecting stores to be open and turning up only to be disappointed.
>
> These hours form part of the centre's core trading hours, hence all stores need to be open. There is not only an obligation to our customers, but also to your fellow retailers to make sure that your store is open during all extended trading hours. As such, please review the attached trading hours and ensure that you are open for all the days and hours listed. These hours are statewide and designed to service our customers and increase sales. If you require any further information please do not hesitate to call. Kind regards, Antony Ritch, Centre Manager.

The first comment on that from Max Baldock was sent to Ralph Clarke and was made available to me, and I quote:

> Ralph, I thought you would be interested in noting that this letter was given to all Arndale retailers.

That is what I have just read. He continues:

> It was reinforced verbally by centre management that they [the lessees] had no choice but to trade on Sundays. Some retailers contacted me [that is, Max Baldock of the Small Retailers Association]. I contacted centre management and they eventually reversed the compulsory trading which they [centre management] asked me to tell their retailers in the centre.
>
> Your amendment is supported by this incident. The association was able to achieve what the individual retailers were unable to achieve. Your amendment is moving in the right direction to balance incidences of intimidation.

After a conversation with Max Baldock last night, I was encouraged that it was a move in the right direction and, in spite of the Attorney-General's doubts about how it would work, the main principle concerned continued to be the anonymity of the people who triggered off the meeting, those fearful of retribution or some form of intimidation. It is not easy to look at a method which could still allow an association to call for a meeting in a genuine context without revealing the specific names of those people or the lessees who had asked for it. There was some further discussion today about it, when Ralph Clarke suggested to me a procedure which I felt could be effective, that is, that the commission or tribunal—I am not sure which body it is—

The Hon. K.T. Griffin: The Commissioner for Consumer Affairs.

The Hon. IAN GILFILLAN: The Commissioner for Consumer Affairs—

The Hon. K.T. Griffin: It's not acceptable to the Government. It is not a function of the Commissioner for Consumer Affairs.

The Hon. IAN GILFILLAN: I should not be diverted; I was making my argument in a substantially progressive way. Ralph Clarke suggested that the Commissioner for Consumer Affairs could be the body to which an association—say, for example, the Small Retailers Association—could provide the *bona fide* names of those people who had asked for the special meeting to consider the ballot for altering the core trading hours, thus retaining the anonymity of the people who had instigated the move. That seems to be an effective, practical way to achieve both things: that the lessor and the full body of the lessees could be assured that the request for the meeting made by their representative of the Small Retailers Association stemmed from a genuine request from a lessee of the precinct. That would be achieved. Secondly, the anonymity would also be retained so that all the lessees who may have felt that they wanted to have this matter revisited would feel they could make that initiative and still retain their anonymity.

I thought that was a good procedure and thought the member from the other place would proceed to get an amendment drafted so the Hon. Terry Roberts could present it to this Chamber. That has not happened, but in my view the fact that it has not happened does not mean it is not still quite a good idea. However, it looks as if the original amendment is the one which will follow through. In fairness to the Small Retailers Association I think it is important to realise that the Democrats did not see this amendment until a couple of days ago, so we have not had a chance to canvass it in depth, but I got this response back from Max Baldock, dated today. He writes:

> Thank you Ian for your pursuit of the issue discussed last night.
>
> With regard to Ralph Clarke's amendment:
>
> As this amendment refers to an association pursuant to section 60 of the Act, it already establishes that only associations that have members or a particular interest in the lessees of a shopping centre are able to call a meeting with regard to trading hours. Hence, it reinforces section 60 where it states '. . . to represent or protect the interests of lessees'.
>
> The *bona fides* of the association might well be challenged in section 60, but it is interesting that the Attorney-General chose not to have any such clauses in this section of 'his legislation' (or felt the necessity for such a clause).
>
> I believe that the Clarke amendment is a natural follow-on from section 60—

perhaps I ought to refer to it as the 'Roberts amendment' in this context—

> reinforcing the rights of a lessee to have representation by an acceptable and relevant association. However, we will be pleased to accept any amendment that reduces the opportunity for intimidation by a landlord (or his agent) to lessees.

He says he sent me a copy of the letter of the centre management to retailers at Arndale, which I have already read to the Chamber. The letter then continues:

> Whereas we might agree with some of the sentiments expressed by the letter [from the manager of Westfield, Arndale], it is deliberately misleading to suggest or link Sunday trade to core trading hours or to direct the retailers to 'ensure that they are open for all the days and hours listed'. Verbal contact with centre management, I believe, by these retailers reinforced the 'no choice but to trade' ultimatum. My first contact with the centre manager on Friday 4 on this matter reinforced the above position, but he agreed to check with others (I suppose within Westfield hierarchy). An hour later he rang me back, agreeing that the retailers did have the choice to trade on Sundays and would I [Max Baldock of the Small Retailers Association] let them know of that choice.

I comment that it is remarkable that the manager chose not to do so himself, having tried to push the lessees, somewhat

deceptively, into accepting this Sunday trading and the full extent of the hours. Max Baldock goes on:

> This I did. Retailers can be produced to support the incident, but again are reluctant to be named, because of fear of future intimidation.

He then thanks me for my continued interest in the plight of small retailers.

The Hon. R.R. Roberts interjecting:

The Hon. IAN GILFILLAN: Justified thanks, don't you think? It is absolutely clear that lessees in large shopping centres do feel intimidated. I assume that either the Attorney is not aware of it or he is denying that it exists, but it is no good his saying that it does not exist, because the evidence is there and it keeps coming up. So, the Clarke-Roberts amendment goes at least some way to ensure that an association can be up-front in asking for or arranging that such a meeting can take place to consider changes to core hours and will be able to play a leading role in the discussion precluding the ballot. The Democrats support the famous Roberts—Clarke amendment moved by the Hon. Terry Roberts.

The Hon. K.T. GRIFFIN: I am not sure whether the Hon. Terry Roberts wishes to be associated with the amendment in that way, but acceptably the formal mechanism by which it is moved. My concern is that this has not been the subject of consultation across the industry. There are other groups representing retailers beside the Small Retailers Association, such as the Retail Traders Association, the News Agents Association, the Pharmacy Guild and the Small Business Association—a whole range of them—and it may be that they are not even supportive of the way in which this has been proposed. Be that as it may—

The Hon. T.G. Roberts: They don't have to avail themselves of it.

The Hon. K.T. GRIFFIN: No, they don't have to avail themselves of it, but their members might be adversely affected by it, particularly if they have one member who keeps calling meetings all the time on the basis that the vote to change core trading hours has to be 75 per cent of those who are present, not of those in the centre. Be that as it may, I have a very strong view that the amendment being proposed by the Hon. Terry Roberts is not a workable proposition. I note the contribution made by the Hon. Mr Gilfillan; I think it is a matter that we will have to revisit again at some time in the near future.

The Committee divided on the Hon. T.G. Roberts's new clause:

AYES (11)

Crothers, T.	Elliott, M. J.
Gilfillan, I.	Holloway, P.
Kanck, S. M.	Pickles, C. A.
Roberts, R. R.	Roberts, T. G. (teller)
Weatherill, G.	Xenophon, N.
Zollo, C.	

NOES (9)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Laidlaw, D. V.
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

Majority of 2 for the Ayes.

The Hon. T.G. Roberts's new clause thus inserted.

Long title.

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

Page 1, line 7—After '1977' insert 'and to make a related amendment to the Retail and Commercial Leases Act 1995.'

Amendment carried; long title as amended passed.

Bill read a third time and passed.

PETROLEUM (PRODUCTION LICENCES) AMENDMENT BILL

In Committee (resumed on motion).

(Continued from page 507.)

The Hon. K.T. GRIFFIN: I asked for the Committee consideration of the Bill to be taken on motion because I believed the Hon. Terry Cameron wished to make a contribution. He has intimated to me informally that that is not now the case and that, whilst he wished to raise several questions, he will do that directly and informally with the Minister.

Clauses 1 and 2 and title passed.

Bill read a third time and passed.

ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL) BILL

In Committee (resumed on motion).

(Continued from page 508.)

Clause 2.

The Hon. R.R. ROBERTS: I understand that I may well be the last speaker on this subject in this session. As it is not the intention of the Council to conclude any of this business today, what we are unfortunately seeing is another chapter in the charade that has been the Government's inappropriate or mishandling of its attempt to break its election promise which it made to the people of South Australia just 14 months ago.

One could pick apart the pathetic efforts of the Treasurer last night to try to shift the blame from his Government's incompetence to the Hon. Nick Xenophon. We witnessed the shameful exhibition last night by the Treasurer who tried to trap the Hon. Nick Xenophon into making a contribution so that he could justify the unjustifiable and blame the victim. He tried to shift the blame away from the Government's incompetence and try to place it at the feet of the Hon. Nick Xenophon.

It was well known around the halls of Parliament House yesterday—the press were all teed up—that the Treasurer was going to take the stick to the Hon. Nick Xenophon last night. I understand that the briefing notes were distributed to some selected members of the press, but not all of them.

I will not go over all the history of this debacle as the Hon. Legh Davis did today, selectively I might add, leaving out all the relevant bits, all the incompetence that has been displayed by the Government in this sorry saga from day one. I concentrate on the remarks made by the Hon. Mr Lucas (page 461 of *Hansard)*, where he actually started to talk about some of his philosophy on political life. If one had not actually been in this place one would have had a good old laugh, but it is really quite tragic. The Treasurer said:

> . . . I have great respect for people who may well have very strongly differing views to my own but who have the courage to look you in the eye, to call you a so and so or whatever else it is, and at least argue their point of view and tell you what they think of you and where they disagree with you.
>
> I also have great respect for people who, when they speak with you in relation to a particular issue and a particular approach, are prepared to follow that approach right through to the very end.

Well, the Hon. Nick Xenophon told this Government on 8 August what was his position on the sale of ETSA. Since then, probably the most intense pressure that I have ever seen in my nine years here has been put on that one member of this Legislative Council. The Government used every trick it could, in cooperation with its friends at the *Advertiser* in particular. They have run every story and every rumour. We have seen today, in the Hon. Mr Xenophon's history, that he has stuck to his position. Let us compare that with the position when, prior to the last election, members opposite looked 1.5 million South Australians in the eye and promised them faithfully that they would not sell ETSA. What did they do after looking them in the eye? On the standard set by the Hon. the Treasurer they went out and broke their word comprehensively, within one or two months.

I only wish there was one decent investigative journalist in South Australia who really wanted to look into the performance of this Government. The Government went to the people, and the Hon. Mr Davis has had about four attempts in trying to describe a 'mandate'. I can tell the Hon. Legh Davis that a mandate has never been given to any Government or any Opposition to break an election promise. That is what the Hon. Legh Davis and his comrades have done. They gave an unequivocal assurance to the people of South Australia, looked them right in the eye and said, 'We will not sell your ETSA.'

I could have accepted a couple of months after the election the Government saying to the people of South Australia that things had changed and that we needed a review. I mentioned what the Hon. Tom Playford did in the late 1940s. The Hon. Legh Davis laughed with derision and said that things have moved on. Well, things have moved on. We now have political midgets within the Liberal Party, whereas we had political statesman in Parliament in 1946. Tom Playford was faced with a somewhat similar dilemma and he could not get it through so he took it out of the hands of the politicians, he took it away from politics, and established an independent inquiry.

In his contribution this morning the Hon. Mr Xenophon, in another effort to try to bring some sense and cooperation into the handling of the ETSA Bill, suggested an inquiry. Again, there were laughs of derision from Government members who said, 'We do not need another inquiry.' I challenge them to tell me when the last one was. When did we have the first one? We have seen an absolute shambles. We have seen side arguments with one or two members. They cajoled the Hon. Mr Cameron into accepting their side of the argument. They have roundly praised his 'courageous decision' as they call it. They roundly defended the Hon. Nick Xenophon on the last occasion we visited this. When I suggested that the Treasurer and the Hon. Terry Cameron claimed the credit on that occasion for suckering the Hon. Nick Xenophon, because of his integrity and his honesty, he believed them, when they put up that charade of a motion about a committee to discuss a referendum.

Let us remember what happened. They came back to this Parliament and said, 'We are going to sell ETSA.' The Hon. Mr Xenophon, after much heartburn and scrutiny, said, 'No, I cannot accept that you had a mandate to break your election promise, having looked the people of South Australia right in the eye, telling them that you would not break that promise but then reversing that decision.' So, they went for the compromise. They asked, 'How can we buy some time?' The Hon. Mr Xenophon did not ask for time. The Government and its advisers went to him at that time and asked him whether he was in favour of a trade sale. They then put to him that it would be a 99 year lease. The Hon. Mr Xenophon was too smart to fall for that old trick. In those circumstances you might as well have a sale, because in 99 years none of us will be here to find out whether we were right or wrong. So, they tried every trick, every ploy.

The Treasurer talked about all the negotiations that took place and about the transfer of all this information. Well, no information was transferred to me as a member of the Labor Party and there was very little transferred to the Democrats. The cajoling (that is the only way you could put it), trickery, smoke and mirrors related to putting pressure on the Hon. Nick Xenophon. The Government did not have to do it any more to the Hon. Terry Cameron, because by that stage he had made his commitment. He was like the lemming in mid air; he could not come back. The Hon. Terry Cameron could not come back once he had jumped from the cliff.

However, the Hon. Mr Xenophon, learning very quickly on this steep learning curve that he has had in the Parliament, no longer fell for the trap of locking in early—as he did when he was tricked into saying, 'I will vote for the second reading and then I will put my amendment on file in respect of the referendum.' Mr Xenophon was tricked by the Government into saying, 'Look, we will set up this committee to look at the referendum. We have seen the farce of that committee; it was just a shambles and a farce. It was only about buying time.

They have put enormous pressure on the Hon. Nick Xenophon. It is my understanding that advisers have promised the Hon. Nick Xenophon almost anything he wanted on poker machines, bar a total ban. I put that proposition to the Hon. Nick Xenophon, because I am sure he will not mind me repeating this. He said, 'My arguments in respect of poker machines will have to stand on their merits and if they fail on their merits they will fail.' That is the sort of integrity that has been displayed by the Hon. Nick Xenophon, and we have seen the sort of integrity displayed by the Government. So, there is a difference.

What did we see last night? The Treasurer used all these fancy words about looking people in the eye, political integrity, and all those sorts of things. When you compare their record with the record of the Hon. Nick Xenophon, with all their experience, with the Hon. Legh Davis's 20 years and the Hon. Mr Lucas's 20 years, they look like rank amateurs if we are talking about honesty and integrity.
If we are talking about political trickery and smoke and mirrors, they win by half.

Last night I tried to detach myself and just look at what the Government has been doing. My old grandmother, in trying to describe her eight children when they fought, said, 'If only we had the gift to see ourselves as others see us.' This Government ought to have a look at itself and see how it has been operating, despite what the Hon. Legh Davis said about things having changed since 1946. Things such as honesty and political nous do not change. The ability to convince people and get people involved with decisions which affect their day-to-day working lives is as valid in 1998 as it was in 1946 to 1948, when the Hon. Tom Playford was handling this issue.

The difference is that we are talking about people with honesty and decency who are prepared to do the hard work. The Hon. Tom Playford saw that the only way he could convince the people of South Australia and the politicians in his own Party during those years was to take the decision out of the hands of politicians and have independent experts and

impartial people look at the proposition and come up with recommendations to the Parliament, and then to accept or reject those propositions.

Clearly, we are in the same position today. This Government has only one way out. I am not prepared to close the door and say that it may not have an argument, but it has lost the debate because it has successfully destroyed any faith that the electorate had in the Government. Its activities have lowered the credibility of politicians so much in South Australia that the electorate is not necessarily interested in what the Democrats have to say or in what the Labor Party has to say; it has become cynical of us all.

The only member who gets any credibility, if we talk to members of the public, is the Hon. Nick Xenophon. The Hon. Legh Davis claimed today that he received two letters. He ought to see the pile of letters and faxes that the Hon. Mr Xenophon has received. Look at the number of letters that the Hon. Legh Davis received, with all his political smarts and his 20 years experience, and then look at the response received by the Hon. Nick Xenophon—this political babe in the woods, as the Government would have us believe. He beats all of us.

It is about time that the Government stopped this stupid charade. In August, this Government said, 'There is only one option; this facility must be sold. That is it and there are no ifs or buts. If it does not come in, we will tax you senseless and we will blame Mike Rann, Foley, Xenophon and anyone else who votes against it.' The Government then initiated the delay.

Members will recall that we were to be here until we passed the legislation but, as soon as the Government ran into a hurdle, it put off the issue. Frankly, we have been stuffing around in this Parliament ever since, not talking about ETSA or the merits of the case. Some people have been involved in the merits of the case but others, like members of the Labor Party, have not been involved in discussions.

We are not having a proper parliamentary debate with representative democracy by the elected members of the Parliament. We have the American spin doctors, working for the Treasurer, along with the professional lobbyists from, South Australia—the home grown spin doctors—trying to convince the Hon. Nick Xenophon that wrong is right. I believe it is to his credit that he has not been convinced that wrong is right. We have a break in the forthcoming weeks and I only hope that the Government comes to its senses because, if it is right in its argument, we ought to get it fixed.

I had a conversation with a television journalist, Chris Kenny, prior to the debate, when the rumours were rife that Labor members would cross the floor. He rang and asked me my view, and I said that I had a different view from other members and that certain action should be taken. He wanted me to come outside for an interview, guaranteeing me that I would get a run. However, I declined to do that. I made the announcement in the Parliament that I thought we had to have an independent inquiry—probably a Royal Commission—to get some integrity and believability back into the electorate.

However, we heard not a word. I will tell the Council why I would not do the interview with Chris Kenny. Unfortunately, I had a bad experience with Chris Kenny in the past. During the 1993 election we were at the Waterside Workers Hall, and Mr Kenny was one of those present at the press conference. We had the flag at half mast to honour past waterside workers as a mark of respect. As I saw the press were assembled, I said that we should put the flag up whilst we did the interviews. After the interviews were finished, we lowered the flag as a mark of respect, and Mr Chris Kenny decided that he would hang around to desecrate that flag of remembrance to those waterside workers to get one smart line about this being indicative of what was happening to the Labor Party.

That is the sort of press we have got in this State, and they were baying at the door of the Hon. Nick Xenophon this morning, asking him why he did not have the guts to speak last night. Obviously, they were sent by the Treasurer and his cronies, and this is the sort of pressure that has been put on the Hon. Nick Xenophon on a daily basis.

We then have the temerity of the likes of the Hon. Legh Davis talking about the Hon. Nick Xenophon being involved with the press. There are not too many members in this Parliament who do not use every opportunity to go before the press. It is part of the game, and my only wish is that, if the press is interested in the true welfare of South Australia, it would be even handed and honest in its reporting. If members of the press have any ability whatsoever, they will look at just how this issue has been handled by the Government.

If we had had an independent inquiry back in February conducted by people who are recognised by the community as being independent, it would probably would have reported by now. However, this vital manoeuvre had to be dealt with last February, just a couple of months after the Treasurer stood alongside John Olsen and looked 1.5 million South Australians in the eye and said, 'We will not sell ETSA.' Yet, just four months after that they came in with this vital program.

Every time we have sat in this Parliament we have been told that this issue was vital, yet these are the very people who told us that the budget was fixed and that it was all downhill from here. I thought the future was going to be rosy, but what they really meant was that it was downhill and we were going down the gurgler. South Australia is becoming the State of despair.

Although I could continue for some time, my colleagues and I are sick and tired of this charade. I will not go on anymore about this, because we will be revisiting it. Let me give the Government one bit of advice, even though I am just a boy from the country and not clever like you people opposite. I got here despite all these clever people, and I do not hold myself out to be a political genius like the Treasurer—

The Hon. T.G. Cameron: That's very smart of you.

The Hon. R.R. ROBERTS: —and the Hon. Terry Cameron. Well, you, Mr President, are very smart. The Hon. Terry Cameron wants to enter the debate, but I am always happy to leave him out of the debate.

The Hon. T.G. Cameron: If I stopped hearing your repetition, I would.

The Hon. R.R. ROBERTS: He wants to air his credentials on his political nous. This is the man who ran the campaign for the Labor Party in 1989 when we had a record majority and got back into power with a majority of one. This is the man, along with Pol Pot his mate Anderson (the adviser to Mr Bannon), who would not have Mike Rann on the team because he was too clever. We went from a record majority to a majority of one. This is the man who masterminded the 1993 election, when the Labor Party suffered the worst defeat in history. This is the political genius. When he left the Labor Party and we ran a campaign last year, we had the record comeback of all time—and without the Hon. Terry Cameron. If he wants to trot out his credentials by way of interjection,

we will have a good look at the record and see what his political genius has really thrown up.

The Hon. T.G. Cameron: I've had a good look at your record, too, Ron, but I've been reading the same speeches over and over again.

The Hon. R.R. ROBERTS: He doesn't like the lash, but what do you expect from people who show the sort of credentials that the Hon. Terry Cameron shows? He will learn one day to keep his mouth shut; then he will not get the whip and it will do him the world of good.

The Hon. T.G. Cameron: I might learn, but it is a pity you don't learn to do the same thing.

The Hon. R.R. ROBERTS: We have learnt just how well you learn. You are the person who leapt over the cliff. You jumped into bed with your mortal enemies. You have been kissing and cuddling with them for the past three months, and they have been praising you roundly. It is not what they said about you in 1989. People such as Mr Lucas, the President, the Hon. Legh Davis and the Hon. Mr Griffin were not praising you so well. These are the people whom you have chosen to jump into bed with after standing before all those delegates at the preselection conferences of the Labor Party, looking all the members of the Labor Party in the eye and saying, 'I will stick with the Caucus.' That is what you did: you looked them in the eye and signed a pledge that you would not break the pledge.

The Hon. T.G. Cameron: What pledge did you sign when you ratted on them to come across to the Centre?

The Hon. R.R. ROBERTS: We want to rewrite history—

The Hon. T.G. Cameron: It would have been a wonderful phone call to Don Farrell, wouldn't it?

The CHAIRMAN: Order!

The Hon. R.R. ROBERTS: I know about the phone call to Don Farrell.

The CHAIRMAN: Order! I ask the honourable member to make his remarks relevant to the clause.

The Hon. R.R. ROBERTS: He has already tried to put this in *Hansard* through the Hon. Mr Redford and failed badly. I well remember the conversation when he asked me to join the Centre Left, and I said, 'I will have to talk to the ETU.' He then said, 'I have already discussed it with Don Farrell and it is agreed.' That is what he said and I was happy with that.

The Hon. T. CROTHERS: On a point of order, Sir, we are straying. Both the speaker—

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: —and the still interjecting Mr Cameron are both straying away from the substance of the debate. I ask you to bring them back to order, Mr Chairman.

The CHAIRMAN: I appreciate your advice, the Hon. Mr Crothers. I have already given advice to be relevant, and I ask that if the Hon. Ron Roberts has concluded he stay seated.

The Hon. T. CROTHERS: Are you upholding my point of order, Sir?

The CHAIRMAN: I am trying to ask the Hon. Mr Roberts to be relevant and the Hon. Terry Cameron to cease interjecting.

The Hon. R.R. ROBERTS: Many people have claimed credit for the plan that got me into Parliament, and I am glad that they showed the good sense to make those decisions. I only wish that the Government would show some good sense and decency towards the people of South Australia and keep those promises, including the promise it made to the 1.5 million South Australians when this Treasurer looked them in the eye and promised them that it would not sell ETSA and then ratted on the decision. I look forward to the continuing saga of the *Blue Hills* of South Australian politics—the feeble attempts of this Government to sell ETSA after promising faithfully all the people of South Australia that it would not do so. I look forward to the furtherance of the debate.

The Hon. T.G. CAMERON: I will be very brief, Mr Chairman. I did attend a meeting with the Government, the Hon. Nick Xenophon and Riverlink representatives to discuss the pros and cons of Riverlink versus Pelican Point, and Professor Blandy, from whom I received a press release today, also attended that meeting. Whilst it was a somewhat tedious meeting during which nothing new, in my opinion, was placed on the table, comments by Professor Blandy still stick out in my mind.

His proposition was quite simple: Professor Blandy preferred power blackouts in South Australia in the summer of 2000 rather than entertaining the prospect of building Pelican Point. His view was that, if Riverlink is not finished, so what if we have a few blackouts in the summer of 2000. He was looking at it from purely an economic rationalist viewpoint. He was more interested in the dollars and cents and saving money and was not concerned at all that we would have power blackouts in the summer of 2000.

The Hon. L.H. Davis: What did you say?

The Hon. T.G. CAMERON: I was unusually constrained. I was tempted to say something, but fortunately bulldog Blandy was reined in by his minder and did not speak again. My recollection quite clearly is that Professor Blandy preferred blackouts in the summer of 2000 rather than entertain the idea of going ahead with Pelican Point. It was a disgrace.

The Hon. P. HOLLOWAY: I will not make too many comments.

The Hon. L.H. Davis: That is very wise, in view of your past contributions.

An honourable member: Tell us about your Telstra shares!

The Hon. L.H. Davis: Yes, tell us about your Telstra shares. Did they go up for you today, Paul?

The Hon. P. HOLLOWAY: I don't know. I am sure that the Hon. Legh Davis keeps a much closer eye on them. I do not intend to sell my shares—I am pleased to own the shares of a great Australian company. I wish that the Government would take—

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: I hope the Federal Liberal Government does not go ahead and sell off more of that issue.

The CHAIRMAN: I ask the honourable member to make his remarks relevant to the argument.

The Hon. P. HOLLOWAY: I wish to make some response to the comments made by the Treasurer last evening. If you take out the abuse of Nick Xenophon, the Treasurer at least initiated the debate that we should have had back after the Premier's statement on 30 June or, better still, we should have had the debate even earlier than that, before the 1997 election. The issues of the future power needs of South Australia are indeed important.

The Hon. L.H. Davis: Are you sure about that, Paul? That is a very big statement. You are making a very big statement.

The Hon. P. HOLLOWAY: Legh Davis loves being patronising on these issues, but he does not speak out on these big issues himself. When he has the opportunity to

speak, as he did today, he simply abuses other people. In the past, during the 1980s when Labor Governments were in office and attempted to deal with these important questions about our future power supplies, they set up an advisory committee. There were some important decisions to be made during the 1980s on whether we should have the Victorian interconnect, what the future of the northern power station should be, and so on. That Government set up advisory committees which involved not only independent consultants but also State Treasury officers, senior public servants and people from ETSA itself. That is one of the problems that we have at the moment.

In this issue of Pelican Point versus Riverlink, which is an important issue for this State, the Government has apparently received most of its advice from its consultants. It is fine that the Government obtains advice from those people, but others should have a say on this matter, and I would be interested to know from the Treasurer the viewpoint of ETSA and what the experts in our electricity system say about this. I am interested also in what other senior Public Service officials, such as Treasury officials in particular, have to say. If there is some debate over the future costings and benefits of these alternative power supply systems, I should have thought that the views of Treasury and ETSA would have been entirely pertinent to that.

I mention again that when the previous Labor Government looked at some of these issues about the future power supply options for this State it set up independent committees to review these important decisions, and I think it is a pity that this Government did not do the same some time ago. There is the suspicion in the community that while the Government is being advised on these matters by the same people who are advising it on the sale of ETSA the advice may in some way be tainted in that direction.

If the Government were to supply us with some alternative advice it would be an important contribution to the debate. As I say, it is a very important issue and it is important that we get it right because there have been some claims put around—and the Treasurer referred to these yesterday—about how much money was at stake over whether we choose Pelican Point or Riverlink. I suspect that the $1 billion figure is a best case scenario. It is very easy, when you are comparing these sorts of statistics, to put the best picture on it. The Treasurer himself knows all about this because if we are analysing the supposed benefits of a sale or lease of ETSA then the Treasurer's figures are somewhat bloated in excess of those that the Auditor-General suggested might be available to us.

Depending on what assumptions you make it is very easy to come up with certain benefits. No doubt the proponents of Riverlink will take those figures that give it the most inflated figure. Nevertheless, even if the benefits were only 10 per cent of that they still could be important for the State if in fact they were savings for this State. I have referred in the past to the NEMMCO report and its contribution to this Riverlink versus Pelican Point debate. As I pointed out then—

The Hon. R.I. Lucas: It's not part of this Bill.

The Hon. P. HOLLOWAY: Well, the two are linked.

The Hon. R.I. Lucas: They aren't.

The Hon. P. HOLLOWAY: There are clauses in this Bill that we come to later that relate to the building of the new power station. There are particular provisions in relation to amendments—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: One of them is, but there are still amendments to the Development Act for any future power station developments and there are also amendments to the Environmental Protection Act. One of the arguments that has been put—and the Hon. Terry Cameron has raised this matter—is whether we can build Riverlink in time. Are we competing on the same basis in relation to the timing?

What needs to be pointed out in this debate is that Pelican Point has been given development guarantees by the Government. As I understand it it is going ahead as a sponsored Crown project under section 49 (I think) of the Development Act. I would be interested to know—and I am sure if we get the chance next year we will be pursuing this matter—exactly who has sponsored this project and how the Government is using section 49 of the Development Act to support it. Also, there are the requirements that go with that.

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

The Hon. P. HOLLOWAY: The point is—

The Hon. R.I. Lucas: What are you supporting?

The Hon. P. HOLLOWAY: The point is that the Treasurer has not provided the details that relate to the Pelican Point power station deal, so how can we in the Opposition possibly decide this matter when we have no idea what we are getting ourselves locked into in relation to the Pelican Point deal. That is the whole point. Certainly, the NEMMCO report has put some figures in relation to Riverlink. I think the Treasurer would no doubt claim that they are dated, and indeed they are, and there is probably a need for some work on them. However, in relation to Pelican Point we have very little information.

The Hon. R.I. Lucas: So you don't know.

The Hon. P. HOLLOWAY: I should place on the record that the Treasurer did arrange a briefing with his advisers for some members of the Opposition. That was very useful in relation to informing us about some aspects of the deal, but since at the end of the day this will be a financial decision as to which gives the most benefit to the State we are in no position to make that judgment without those figures being made available to us. I think it is the Government's job to take these sorts of decisions but it is our role as an Opposition to ensure that these decisions—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, it is our job as an Opposition to ensure that these sorts of decisions are properly scrutinised. At the end of the day the Government will have to justify to the people of this State its decision on this matter. If Pelican Point is a good decision then I guess that will become obvious in time: on the other hand, if it is a bad decision then I guess that will also come out and the Government will be judged accordingly. What is our role within this Parliament is to ensure that—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, it is not to oppose everything; it is to ensure that the information is available. In relation to Pelican Point the information is not available. I wish to make a couple of points in relation to the Treasurer's address last night. He suggested that the NEMMCO decision was not a decision that the State Government made, and of course that is correct. However, the point that needs to be made and put on the record is that if this Government is providing assistance to the Pelican Point project by way of development approvals and vesting contracts then that will inevitably affect the viability of any alternative project.

The way that I see it is that, essentially, we have a choice. If we need an extra 250 megawatts of power in a couple of years' time it will either come through an interconnect such as Riverlink or a new power station. If the Government has

a preferred option and locks in contracts and gives preferred developmental and environmental approvals for one then clearly that will impact on the other one. It is not a level playing field in that sense between the two options.

It is interesting to note what impact this decision will ultimately have on the future of the national electricity market. In past debates in this Council I have put on the record my support for the national electricity market on the basis that it would help reduce the overcapitalisation of electricity assets in this country. Of course, because they are to be distributed unevenly the benefits from this process, from all these potential savings and overcapitalisation, are to be distributed back to the States through the competition payments.

I await with some interest whether the ACCC or the NCC approves the arrangements in relation to Pelican Point, because that is clearly a key point. If, as a result of the decisions we take, we end up with power stations being mothballed in one State and new ones being built in other States then is that really achieving the original objectives of the Hilmer report? Will those gains be actually realised?

I have somewhat mixed views on the national electricity market because on one hand I can see some benefits for this State—it should be acting very much in its own interest because there are some sharks out there in the other States—and on the other hand, if we are to get the Hilmer benefits from the national electricity market, decisions have to be taken in the national interest rather than in the State's interest.

I think that that really goes to the heart of the NEMMCO decision on Riverland. It could make that decision on two bases: on a customer benefit, and the customers are in South Australia; or on a public interest benefit. What the NEMMCO decision found was that on public interest Riverlink was a winner. However, on customer benefit NEMMCO decided that it would not make it a regulated interconnect. It found that, after legal advice, it had to take a decision based solely on customer benefit and not on the public benefit.

The way I see it is that the public benefit is really the benefit to the country as a whole by the national electricity market. The point I am trying to get at here is that the decisions the Government is taking will have a profound impact on the operation of the national electricity market into the future. I suggest that the ACCC will inevitably become involved in some of these decisions and it may very well be that ultimately the decision on Riverlink versus Pelican Point is taken on that national basis rather than a State basis.

So, I will not go on any longer. I just wish to place on record some of those points in relation to comments the Treasurer made yesterday. I do not think by any means we have seen the end of this debate in relation to Riverlink and Pelican Point. It is an important debate, and I make the plea to the Government—and I hope the Treasurer will provide the information—that I would like to see the Treasury and ETSA figures in relation to the analysis of the relative merits of these projects.

Again, I repeat that in the past when the Labor Government made decisions in the 1980s on the interconnect with Victoria and the Northern power station and other options, it had considered—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, it set up advisory committees and advisory committee reports are available. I remember one in 1984 that was looking at—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, they are reports on the future electricity supply options for this State.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: No, we are not talking about leasing: we are talking about an analysis which was undertaken by the State of its requirements for future electricity needs. It was done with consultants and with public servants.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, they were studies which were looking at alternative sources of power supply, the sort of question we are looking at here: should it be Riverlink or Pelican Point?

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Mark Duffy has his point of view and so do the Treasurer's advisers. But, at the end of the day, it will be a complex decision and it will be made on detailed economic analysis and, of course, the assumptions.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: We have not got all yours; that is the problem.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: We do not have the details of the vesting contracts.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It is the Government's decision, but if the decision wants credibility it should involve Treasury and ETSA. Let us see what ETSA and Treasury have to say about the relative merits.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: The Treasurer says it does: let us see it.

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: No: go back and read the speech and you will see that earlier I gave credit to the Treasurer for providing a briefing.

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: The honourable member has missed the point: I am sure the Treasurer knows what I am talking about.

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order!

The Hon. P. HOLLOWAY: I attended that briefing and it was always my attention—

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order! The Hon. Mr Davis can comment from his feet at a later time.

The Hon. P. HOLLOWAY: I conclude by asking whether the Hon. Legh Davis knows all the details of the vesting contracts in relation to Pelican Point. Even last night the Treasurer himself admitted that on advice from his advisers on grounds of commercial confidentiality he could not provide all that information—and I understand that—but at the end of the day the decisions and the merits for this State will be based on those sorts of economic analyses. I look forward to rejoining this debate next year when we will discuss some of these issues in much more detail.

The Hon. NICK XENOPHON: Further to a comment made by the Hon. Legh Davis earlier today, I would like to table a number of documents, and I will table further documents in the new year.

I seek leave to table a number of documents: a letter from London Economics dated 30 November 1998 addressed to me and consisting of some 15 pages; a summary response to the Treasurer's questions from London Economics dated 30 November 1998 consisting of four pages; a document headed

'Competitive benefits of Riverlink' from London Economics dated 30 November 1998 consisting of two pages and appended to that document is Table 1—customer price effects; a document from London Economics dated 1 December 1998 comprising six pages; a one page document from London Economics dated 30 November 1998; a two page document headed, 'Introduction to London Economics Australia'; a further document from London Economics dated 8 December 1998 comprising 12 pages; and a document from London Economics dated 8 December 1998 comprising four pages and including a table.

Leave granted.

The Hon. NICK XENOPHON: Obviously, these are matters which will be revisited in the new year. Briefly, in response to a comment made by Mr Hon. Terry Cameron in relation to Professor Blandy, I think it is important that the remarks of Professor Blandy be put in context. Given the Hon. Terry Cameron's very sensible reform which he has proposed in relation to the right of reply, I propose to obtain clarification from Professor Blandy and, hopefully, table that in the new year.

The Hon. R.I. LUCAS: In concluding this section of the debate, I think I referred last night to the particular meeting to which the Hon. Mr Cameron referred, and I can only say that I cannot find any disagreement in the general summation that the Hon. Mr Cameron gave of that meeting. So, if the Hon. Mr Cameron wants an independent third party witness, I did refer to that meeting last night. I am not sure whether I referred to Mr Blandy by name: I might have said 'one of Mr Xenophon's advisers' but I can confirm the statements I made last evening about that meeting. Now that the Hon. Mr Cameron has made his statement, I did in fact refer to Dick Blandy.

As I indicated last evening, I think Professor Blandy went on to say that you should do a cost benefit analysis of the costs of a blackout for a few days in February compared with the costs of not going ahead with Riverlink, and that the notion of the prospect of blackouts in February 2001 should not be given the significance that the State Government had given it.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Holloway interjects and says, 'It is people like Mr Blandy who are running the NEM and that's the problem.' I will not comment on that interjection from the Deputy Leader of the Opposition: I will let that go straight through to the keeper.

I want to make three comments in summation. In response to comments made by the Hon. Ron Roberts, I do not want to be diverted but all I can say is that his continued personal abuse of another member of this Chamber—which he obviously enjoys—and upon seeing the response from his own colleagues to that continued personal abuse (and I am talking about his present colleagues within his Party), I just place on the record that the Hon. Mr Roberts is fast losing what remaining level of support he might have had from his colleagues. I know he is on the backbench: it is the equivalent of being moved from centre to the back pocket—and the next step is over the fence. I guess, as a note of caution from someone who can see the faces of his colleagues, I can say he is fast losing what remaining support he might have had from his colleagues with that approach that he is adopting. I do not think any other member in the Chamber appreciates the sort of personal abuse tactics that the honourable member likes to se against another member of this Chamber.

The Hon. R.R. Roberts: Look me in the eye and say that.

The Hon. R.I. LUCAS: I am happy to. I certainly would not want you looking anywhere else in relation to me, the Hon. Mr Roberts. I will not respond to the other issues raised by the Hon. Ron Roberts. They are matters we can take up at another time.

The Hon. Mr Cameron did refer to the issues of Professor Blandy in his comments today.

I want to place on the public record the views developed by Mr Blandy just two years ago when he was wearing another hat. This is not a public document: it is a confidential document. When just two years ago Mr Blandy was working for the Government—

The Hon. T.G. Roberts: He had his Party hat on.

The Hon. R.I. LUCAS: No, not the Party: he was working for the Government. It is a confidential document. These views were expressed by Mr Blandy and his team when he was working with the South Australian Development Council.

An honourable member interjecting:

The Hon. R.I. LUCAS: Because it is confidential.

An honourable member interjecting:

The Hon. R.I. LUCAS: It is only one section; the remaining sections have nothing to do with ETSA.

An honourable member interjecting:

The Hon. R.I. LUCAS: Because the remaining sections have nothing to do with ETSA. There is one section on what the South Australian Government should do. There is a whole series of suggestions about development initiatives, and one paragraph which relates to this debate. I will read this section.

The Hon. T.G. Roberts: It might play right into our hands.

The Hon. R.I. LUCAS: It may well do. The headline might give it away. It is just two words: 'SELL ETSA'. One paragraph states:

> The sale of ETSA generation and distribution would bring in $2-3 billion—

that was the assessment—

> massively reducing the State's debt and assuring the State of electricity at prices equivalent to the eastern States at all times.

I will repeat that:

> . . . massively reducing the State's debt—

and that is $2 billion to $3 billion he was talking about—

> and assuring the State of electricity at prices equivalent to the eastern States at all times.

An honourable member interjecting:

The Hon. R.I. LUCAS: 1996. It continues:

> That was the objective of Sir Thomas Playford when he created ETSA. Attaining the necessary cost reductions to make ETSA generation nationally competitive under public ownership seems difficult, if not impossible.

They were the views put together by Mr Blandy and his team in providing advice on a whole range of areas.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I would need to check for you because I am not an expert in these areas. I think the Chairman of the SADC at that time might have been Mr Ian Webber, but I will check that for the Hon. Mr Holloway. He asked me that question and I will do him the courtesy of checking to see who might have been the Chair of the SADC. Given that the Hon. Mr Holloway has asked me that question I will do him the courtesy of checking, because I would not want to mislead him. My gut reaction is that the Chairman of the SADC at that time might have been Mr Ian Webber but

I will check that for the Hon. Mr Holloway and bring back a reply for him.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: Well, I wonder if you could actually get $5 billion or $6 billion; yes, exactly. The final point I would make is again in response to the issues that have been raised indirectly by the Hon. Mr Roberts about the need for a royal commission or inquiry; it has gone under various descriptions at various times. The challenge I leave with the Hon. Mr Roberts when he comes back in February, is whether he is prepared to commit Mike Rann, himself and the Labor Party to accepting an independent assessment of the report. If it recommends the sale of ETSA and Optima, would he and Mike Rann support it? If the Hon. Mr Roberts is not prepared to answer 'Yes' to that, it is the stunt that many of us suspect it has been all along in relation to the statements he has been making here in this Chamber.

I leave the challenge with the honourable member. If he is prepared to have the courage to look me in the eye and say that, if it is independent and says 'Yes' to the sale of ETSA, he will cross the floor and vote for it and Mike Rann will do the same and we can talk turkey. If he does not have the guts to say it, then he is exposed as the political stunt merchant that many of his colleagues whisper in my little ear that they think he is.

Progress reported; Committee to sit again.

SITTINGS AND BUSINESS

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

That the Council at its rising adjourn until Tuesday 9 February.

Speaking to the adjournment motion it will give us the opportunity, as we wait for our colleagues in another place—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: No, not to kiss us—to return messages to us, to thank first you, Mr President, for your presidency during this session, which has seen a number of complex and difficult and controversial issues, not the least being the one on which we have remained at clause 2. We have appreciated your presidency, and I know I speak on behalf of all Government members and I suspect all members of this Chamber: we respect the role you undertake and we thank you for it. We thank the Clerk and all the table staff for their work. We thank *Hansard* staff for their work. I am sure they will be delighted that this year we will be finishing at a respectable hour—at 6 o'clock closing. I am sure the *Hansard* party will be able to kick off early and I am sure that members will be able to catch up with members of *Hansard* to say 'Thank you' for their sterling work through the year.

We thank all the other staff in Parliament House for the work they undertake for us: in the kitchen and in the Blue Room, the Attendants, and everybody else. We thank them for their assistance. I thank George and Caroline for their work as Whips. I know that George will be delighted that he will not have to be organising pairs for people after 6 o'clock tonight: he will be able get to whatever is important for him. I thank the Leader of the Opposition, the Leader of the Democrats represented by the Deputy Leader of the Democrats, the Leader of the No Pokies and the Leader, Deputy Leader and Whip of the Independent Labor movement, the Hon. Mr Cameron.

Government members believe it is a very reasonable end to the session in terms of timing: not perhaps in terms of what the Government might otherwise have wanted to achieve but we have appreciated the goodwill that generally exists in this Chamber amongst all members of Parliament in processing the Government and private members' business and we look forward to working with you again in the new session. I wish all members of the Chamber and staff a happy Christmas and a little bit of a break between now and February. I hope that whatever it is that you do with family and friends it will be a period of some relaxation and enjoyment for each and every one of you. Thank you.

The Hon. CAROLYN PICKLES (Leader of the Opposition): I support the motion on behalf of the Opposition. I thank you, Sir, for your tolerance and nearly at all times your good humour. I think that in this Chamber we do not seem to have the problems that they have in the other place. I cannot recall a member being ejected from this place during the years that I have been in Parliament, so I think that says something for the tolerance—

The Hon. L.H. Davis: I think Dunstan was the last.

The Hon. CAROLYN PICKLES: That would be right—of this place and our Presidents. So, I thank you, Sir. I thank Jan, Trevor and the Clerks as well as *Hansard* and all the staff of this place including the kitchen staff, my own staff and the staff of the Opposition members. I would also like to thank the Hon. Diana Laidlaw and her staff. At all times they are willing to give us briefings. Of course, it is in their interests to do so, but I think sometimes other Ministers have not been quite so cooperative.

The Hon. T. Crothers: Put your name up for preselection, Di.

The Hon. CAROLYN PICKLES: It's more like the kiss of death, I think, Di.

The Hon. Diana Laidlaw interjecting:

The Hon. CAROLYN PICKLES: Well, it is interesting that in my shadow portfolio areas I deal only with women, and I must say that it does make a difference. So, one can only hope that there will be more women in this place.

I think the Council has worked fairly productively. There is a difference in this Chamber. Although we have our spirited and at times quite hostile debates, I think members tend to cooperate with one another. I thank George and Caroline who work well as the Whips. Having performed that task when we were in Government, I know that it is not easy. Pairs have been arranged at most times amicably, and I hope that tradition will continue.

The Hon. R.I. Lucas: We hope they're back on again in February.

The Hon. CAROLYN PICKLES: Yes, we all hope that they are back on again in February, but that depends largely on you. I thank you all, I thank my colleagues, the Independent members, the Australian Democrats and the Leader of the Government in this place. I wish you all a merry Christmas and a very prosperous new year.

The Hon. M.J. ELLIOTT: On behalf of the Democrats, I would like briefly, first, to thank you, Sir. I know that it is a matter of tradition that one says nice things at this time of the year, but you have done a good job in your role as President.

Honourable members: Hear, hear!

The Hon. M.J. ELLIOTT: That is not just a matter of being nice because it is Christmas. I also thank the table staff, the Clerks, *Hansard*, the Messengers and the other staff of Parliament House, especially the staff of the Democrats. We

have a very dedicated and capable crew and we are thankful for that.

The Hon. Ian Gilfillan interjecting:

The Hon. M.J. ELLIOTT: I was talking about quality not depth. Finally, I wish everyone all the best for Christmas and the new year. Whilst it is true that the Council works better than the other place, during the 13 years I have been here I think I have observed a little more personal attack than there used to be some years ago. I think we must be careful that we do not fall into the trap of—

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: No. I am sorry, I think we just have to be a little careful that we do not go the whole way, because this Chamber has worked extremely well over the years and I hope and expect that it will continue to do so.

The Hon. T.G. CAMERON: Briefly, as it was stated by the Leader of the Government that I am the Leader of my own movement—

Members interjecting:

The Hon. T.G. CAMERON: We haven't managed to split yet. I echo the sentiments of the Hon. Robert Lucas, the Hon. Carolyn Pickles and the Hon. Mike Elliott. I have not sent out Christmas cards for over 20 years. I have received a few from some of you, but as you will not get a card from me I take this opportunity—

The Hon. Carolyn Pickles: Scrooge!

The Hon. T.G. CAMERON: No, I am not being a Scrooge. You will remember that when I was Secretary of the Labor Party I cut out the sending of Christmas cards, and that saved $3 000 a year. I put that money into a marginal seat and we won it. In my opinion, that was money well spent. On a more serious note, I would like to take this opportunity to wish all members and their families a very merry Christmas and a happy and prosperous new year.

The PRESIDENT: On behalf of the Leaders of the Parties who represent the members and friends here, I would like to respond briefly for those who cannot respond to you. I refer to Jan, Trevor, Chris, Noelene, Margaret, Sue, Graham, Todd and Ron for the terrific work they do to help us.

The Hon. T.G. Cameron: What about *Hansard*?

The PRESIDENT: I will get to that. I thank you on their behalf for the nice words you have said about them, and on your behalf I thank them from my point of view for what they, together with the Leaders of the Parties, do towards the organisation of the business of this Council. I also thank the Whips, Caroline and George, for the work they do. It is a great help to me to have some idea of what the Council is going to do and who is going to do it. I hope we have Question Time nearly right now, but that is always a bit of a calculated juggle.

I thank the Acting Deputy Presidents, the Hon. Trevor Crothers and the Hon. John Dawkins. It is great to have some relief from the Chair every now and then so that I can get up and stretch my legs. I very much appreciate both of you for that. It is a way of grooming others for the intricacies of being a President.

I will now take the hint from the Hon. Terry Cameron and go on to thank *Hansard*, the catering division and the Library who, although mostly hidden from the public eye, operate on our behalf. What they prepare and have ready for us is much appreciated by all members. Finally, I wish all members a happy Christmas and a prosperous new year, and I hope that Australia wins the test match that is about to start.

Motion carried.

EDUCATION (GOVERNMENT SCHOOL CLOSURES AND AMALGAMATIONS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

PASSENGER TRANSPORT (SERVICE CONTRACTS) AMENDMENT BILL

The House of Assembly did not insist on its amendment to which the Legislative Council had disagreed, and agreed to the alternative amendment made by the Legislative Council without amendment.

TRANSADELAIDE (CORPORATE STRUCTURE) BILL

The House of Assembly did not insist on its amendment No. 1 to which the Legislative Council had disagreed, agreed to the alternative amendments made by the Legislative Council without amendment, and agreed to the consequential amendments made by the Legislative Council to amendment No. 2 without amendment.

SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the Legislative Council's amendments without amendment.

ADJOURNMENT

At 6.23 p.m. the Council adjourned until Tuesday 9 February 1999 at 2.15 p.m.