LEGISLATIVE COUNCIL

Thursday 25 March 1999

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

RESIDENTIAL TENANCIES (MISCELLANEOUS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Residential Tenancies Act 1995 and to make related amendments to the Landlord and Tenant Act 1936 and the Retail and Commercial Leases Act 1995. 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 *Residential Tenancies Act 1995* ('the Act') regulates the relationship of landlord and tenant under residential tenancy agreements. Among other things, it sets out the mutual rights and obligations of landlords and tenants; a regime for the termination of residential tenancy agreements; and the constitution, jurisdiction and powers of the Residential Tenancies Tribunal ('the Tribunal').

The Act has operated without complication since its introduction in stages during late 1995 and early 1996. Both the Tribunal and the Tenancies Branch (of the Office of Consumer and Business Affairs) handle very large volumes of work, and the provisions of the Act generally appear to be working well. However, the need to make several minor amendments has arisen.

Amounts paid into Tribunal

The Act presently provides that the Tribunal may order the payment of monies into the Tribunal until conditions stipulated by it have been complied with (eg, that repairs be carried out).

However, the Tribunal holds no bank accounts and considers it has no legislative mandate to order the deposit of money into the Residential Tenancies Fund which is administered by the Commissioner for Consumer Affairs and which is the most logical place for monies to be held.

This Bill amends section 110 of the Act to make provision for amounts now paid into the Tribunal to be paid into the Residential Tenancies Fund.

Exclusion of jurisdiction

The Supreme Court of New South Wales recently held that damages for compensation awarded under the *Residential Tenancies Act 1987* (NSW) could include damages for disappointment and distress proceeding from physical inconvenience caused by a breach of a tenancy agreement.

The Residential Tenancies Act in this State includes a power in the Tribunal to award compensation for the breach of an agreement. The provision in South Australia has never been interpreted to allow for the payment of damages for personal injury. However, out of an abundance of caution the provision is amended by this Bill. It is not considered that the Tribunal is a suitable forum for the adjudication of questions relating to the liability for, and quantum of, damages for personal injury.

Landlords' costs in relation to abandoned goods

Under the provisions of the Act at present, if a tenant abandons their goods which are subsequently sold at public auction, the landlord may retain the reasonable costs of removing, storing and selling the goods, and the reasonable costs of giving notice that the goods are being held.

However, if the tenant reclaims the goods prior to sale, the Act specifies that they only need to pay the landlord the reasonable costs of removal and storage. They are not liable to pay the amount of the newspaper advertisement, which can be considerable.

The Tribunal has been reluctant to hold that the giving of notice falls within the definition of 'removal'. To make this issue clear, the Act is amended to provide that a person with a lawful right to the goods may recover the goods at any time before they are sold, by paying to the landlord the reasonable costs of removing and storing, giving the required public notice and any other reasonable costs incurred.

As the provisions in the Residential Tenancies Act relating to the sale of abandoned goods are identical to those in other Acts, the opportunity has been taken to amend those Acts in the same way so that these provisions remain consistent.

I commend this Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Amendment of s. 97—Abandoned goods

Under the current provisions of section 97, if goods are left on premises at the end of a tenancy agreement they can only be reclaimed after paying to the landlord the reasonable costs of their removal and storage. The proposed clause provides that the landlord must also be paid the reasonable costs of giving notice of the storage of the goods in a newspaper circulating generally throughout the State, and any other reasonable costs incurred by the landlord as a result of the goods being left on the premises.

Clause 4: Amendment of s. 110—Powers of the Tribunal

Clause 4 provides for rent to be paid into the Residential Tenancies Fund rather than the Tribunal, and inserts a new subsection to provide that the Tribunal does not have jurisdiction to award compensation for damages arising from personal injury.

Clause 5: Amendment of Landlord and Tenant Act 1936

Clause 5 amends the *Landlord and Tenant Act* to provide that the abandoned goods provision of that Act is consistent with the proposed amended provision of the *Residential Tenancies Act*.

Clause 6: Amendment of Retail and Commercial Leases Act 1995

Clause 6 amends the *Retail and Commercial Leases Act* to provide that the abandoned goods provision of that Act is consistent with the proposed amended provision of the *Residential Tenancies Act*.

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

STATUTES AMENDMENT AND REPEAL (JUSTICE PORTFOLIO) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Administration and Probate Act 1919, the Bail Act 1985, the Children's Protection Act 1993, the Correctional Services Act 1982, the Crimes at Sea Act 1998, the Criminal Law (Sentencing) Act 1998, the District Court Act 1991, the Magistrates Court Act 1991, the Statutes Amendment (Fine Enforcement) Act 1998, the Statutes Amendment (Sentencing—Miscellaneous) Act 1999, the Summary Offences Act 1953, the Summary Procedure Act 1921, the Young Offenders Act 1993 and the Youth Court Act 1993; and to repeal the Appeal Costs Fund Act 1979. 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 will make a number of minor uncontroversial amendments to a number of Acts largely within the Justice Portfolio. The Bill will also make consequential amendments to the *Children's Protection Act*.

Administration and Probate Act

A minor drafting amendment will be made to section 121A of the *Administration and Probate Act*. The amendment will insert reference to section 9 of the *Public Trustee Act*, which was enacted in place of section 79 of the *Administration and Probate Act*.

Bail Act

The Government has been advised that the courts are experiencing difficulty because of the failure of defendants, who are on bail, to attend directions hearings. By virtue of section 6(1)*(a)* of the *Bail Act*, failure to attend a directions hearing is not a breach of the bail agreement. That section provides that a bail agreement is 'an agreement by a person accused, or convicted of an offence, to be

present throughout all proceedings (not being of an interlocutory nature)'.

However, in practice, the accused is generally required at the directions hearings. At the arraignment, an accused person on bail is informed that he or she must attend the directions hearings unless expressly excused, and the standard bail agreement states that the person must 'appear when required'.

The Bill will amend section 6(1)*(a)* to reflect current practice and will provide that a person on bail must, subject to any directions in the agreement to the contrary, attend all hearings.

Children's Protection Act, Young Offenders Act and the Youth Court Act

The Bill will repeal section 25 of the *Youth Court Act* (which currently restricts publication of certain information) and insert new provisions into the *Children's Protection Act* and the *Young Offenders Act*, respectively, to restrict publication of reports containing specified information.

Section 25 of the *Youth Court Act* provides that a person must not publish a report of proceedings in which a child or youth is alleged to have committed an offence, or is allegedly in need of care or protection, in certain circumstances. These circumstances include the following:

- the court prohibits publication of any report of the proceedings; or
- the report—
  - identifies the child or youth; or
  - contains information tending to identify the child or youth; or
  - reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child or youth who is concerned in those proceedings either as a party or witness.

The Government has been informed that, in practice, it is accepted that the restriction on publication contained in section 25 of the *Youth Court Act* applies to proceedings dealing with young offenders that are heard in the superior courts as well as the Youth Court. However, while a problem has not arisen in practice, there is an argument that only the Youth Court can exercise the power. The matter has never been tested.

The *Children's Protection and Young Offenders Act 1979*, repealed in 1993 to favour the separation of children's protection provisions from provisions dealing with young offenders, contained a provision which covered proceedings in adult courts. It appears that Parliament did not intend to alter this position when the new *Youth Court Act* was enacted.

The current restriction on publication of reports contained in section 25 of the *Youth Court Act* will be replaced by new section 59A of the *Children's Protection Act* and new section 63C of the *Young Offenders Act*. New section 63C of the *Young Offenders Act* will also make it clear that the protection from publication applies to proceedings involving young offenders, regardless of which court is hearing the matter. However, consistent with current provisions, a court will continue to have the power to release the identity of a young offender if it considers it appropriate to do so.

Other clauses in Part 4 of the Bill will replace divisional penalties in the *Children's Protection Act* with maximum penalties expressed as monetary amounts, reflecting current policy on this issue.

Correctional Services Act

The Correctional Services Department is multi skilling officers traditionally referred to as probation officers, community service officers and home detention officers. Such officers will now be called 'community corrections officers'.

The *Children's Protection Act*, the *Correctional Services Act*, the *Criminal Law (Sentencing) Act* and the *Statutes Amendment (Sentencing—Miscellaneous) Act 1999* will be amended by this Bill to reflect the change in designation of these offices.

Crimes at Sea Act

The *Crimes at Sea Act* was enacted in 1998 with the purpose of giving effect to a cooperative scheme for dealing with crimes at sea. The Schedule to the Act encompasses the provisions of the Cooperative Scheme. Clause 12(1) of the Schedule provides that the Governor may make regulations for carrying out, or giving effect to, this Scheme. However, clause 12(1) should provide that it is the Governor General who may make such regulations. Part 6 of the Bill corrects clause 12(1) of that Schedule.

District Court Act

The Bill will make several amendments to the *District Court Act*. Currently, under section 13(3) of the *District Court Act*, a District Court Master's remuneration is the same as a Magistrate in Charge. There does not appear to be any reason for linking a Master's remuneration to the Magistrate in Charge because it would appear that there is no apparent relationship between the work of a Master of the District Court and the work of a Magistrate in Charge. Therefore, the Bill will amend section 13 of the *District Court Act* to provide that District Court Masters are entitled to the remuneration determined by the Remuneration Tribunal in relation to that office.

Section 42(1) of the District Court Act gives the Court a general discretion to order costs in any civil proceedings. Subsection (2) of that section provides that no orders of costs will be made in certain circumstances, and subsections (3) to (5) provide that the Court may order costs against an incompetent legal practitioner or a delinquent witness, neither of whom are parties to the action.

In the case of *Vestris v Cashman*, the Full Court of the Supreme Court held that Parliament did not intend to empower the District Court to generally award costs against a non party to an action. The Court determined that, because subsections (3) to (5), specifically, of section 42 provide for cost orders against certain non-parties, subsection (1) did not provide for cost orders to be made against non-parties generally. Also, the Court pointed to the fact that section 43 of the *District Court Act* only gave a right of appeal against a court judgment to 'a party to an action' and a legal practitioner or witness against whom a cost order is made.

There are, however, occasions when the court may determine that an order for costs should be made against a non-party to an action. For example, the directors of a company may be ordered to pay the costs of an unsuccessful civil action instituted by that company because the company is, and at all material times was, insolvent.

There appears to be no reason why the District Court, which has the same civil jurisdiction as the Supreme Court, should not also have the same jurisdiction to order costs against a non-party. Section 40 of the *Supreme Court Act* empowers the Supreme Court to order costs, yet the provision does not contain provisions similar to sections 42(3) to (5) of the *District Court Act*. Consequently, the Supreme Court's power to order costs has not been held to be similarly constrained.

The Bill will amend section 42 of the *District Court Act* to make it clear that the District Court has a discretion to award costs against any person, whether or not the person is a party to, or witness in, the proceedings. The Bill will also amend section 43 of the *District Court Act* to ensure that a non-party to proceedings, who is neither a legal practitioner nor a witness but who has been ordered to pay costs, will have a right to appeal against that decision.

Part 9 of the Bill will make mirror amendments to sections 37 and 40 of the *Magistrates Court Act* which are substantially the same as sections 42 and 43 of the *District Court Act*. It is considered appropriate that the same costs procedures be adopted in both the District Court and the Magistrates Court.

Section 42(3) of the *District Court Act* will also be amended by the Bill. As previously indicated, section 42(3) of the *District Court Act* makes specific provision for cost orders against negligent or incompetent legal practitioners. It also provides that the court cannot make an order for such costs until the 'conclusion of those proceedings'.

The Government is advised that a problem with the words 'at the conclusion of those proceedings' was identified in a recent District Court case. A trial had to be adjourned, and arrangements made for a new trial some months later, because the plaintiff's solicitor failed to disclose material in the case. The defendant sought costs from the plaintiff's solicitor.

Subject to any submissions by the plaintiff's solicitor, the judge had all material needed to consider the application for costs. However, the Trial Judge determined that he could not order costs under section 42(3) until the final judgment because the proceedings had not yet reached their conclusion. As a result, the issue of costs may be overlooked, particularly if no trial takes place. Deletion of the words 'at the conclusion of the proceedings' will allow the Court to order costs under this provision when the Court sees fit, which is consistent with the Court's power to order costs generally.

Again a mirror amendment will be made to section 37(3) of the *Magistrates Court Act* by Part 9 of the Bill. Section 37(3) contains the same terms as section 42(3) of the *District Court Act*.

Magistrates Court Act

Apart from the amendments to the *Magistrates Court Act* previously outlined, the Bill will insert a new section 10AB into the Act to allow the Magistrates Court to deal with matters brought in the Court's Civil (General Claims) Division or the Civil (Consumer and Business) Division as minor claims, if appropriate.

Currently, the *Magistrates Court Act* provides that monetary claims for amounts less than $5 000 may be heard as a Minor Civil Action in the Magistrates Court. However, it has been the practice for some years in the civil jurisdiction of the Magistrates Court to allow parties to agree to waive the jurisdictional limit in minor civil actions and to allow a claim in excess of $5 000 to be heard as if it were a small claim. However, the practice has been disapproved of in two recent superior court judgments.

The Government has been advised that there is a continual demand by litigants to have cases in excess of $5 000 dealt with as if they were small claims where both parties agree. If both parties consent to their matter being heard as if it were a small claim then, in principle, there appears to be no reason why they should not be permitted to have their matter heard as a minor civil matter. The amendment will allow for that to occur.

Statutes Amendment (Fine Enforcement) Act 1998

The *Statutes Amendment (Fine Enforcement) Act 1998* (the 'Fine Enforcement Act') will, amongst other things, amend the *Criminal Law (Sentencing) Act*. A number of amendments have been identified through a comprehensive implementation program.

Firstly, section 70E(1) and (2) of the *Criminal Law (Sentencing) Act* will be replace by a new section 70E(1). The Fine Enforcement Act inserts new section 70E of the *Criminal Law (Sentencing) Act* which will allow an authorised officer to suspend a debtor's driving licence for up to 60 days if there has not been payment of a fine after a reminder notice has been issued. Subsection (2) provides that, where there is less than 60 days left to run on the disqualification, the authorised officer may make an order suspending the debtor's driver's licence for the balance of the period of 60 days. This will require an authorised officer to calculate the period left to run on the existing disqualification, and then calculate the period for which the disqualification under this order should be in force.

In practice, the same result could be achieved by simply allowing the authorised officer to issue a suspension for 60 days. While for some of those 60 days, the debtor would be disqualified from driving under two orders, after the initial disqualification order ceases, the debtor will continue to be suspended from driving until the 60 days has expired. Consequently, in practice, subsection (2) is unnecessary. New section 70E(1) will make it clear that an authorised officer may suspend a person's licence for a period of 60 days, notwithstanding the fact that the debtor is currently disqualified from holding or obtaining a licence.

Secondly, under new section 70E(3) of the *Criminal Law (Sentencing) Act*, the authorised officer must cause a copy of the order to be served on the debtor personally or by post. Under subsection (4) the order will take effect 14 days from the day on which the notice is served on the debtor. However, where the suspension order is posted, it is difficult to know when the order has been served. The system employed by the court to issue orders cannot record the date the order is sent, and cannot know when the debtor has received the order.

To overcome this difficulty, the Bill will amend subsection (4) to provide that the order will come into effect 21 days from (and including) the day on which the order was made. Mirror amendments have been made to new sections 70E(3)*(b)* and 70F(2)*(b)* and (3)*(a)*.

Finally, under the new provisions, an authorised officer will be able to exercise specified powers. For example, new section 66 will allow the authorised officer to investigate the financial position of a debtor to determine his or her ability to pay the fine. New section 72A(1) makes it an offence to hinder an authorised officer, or a person assisting the authorised officer, exercising powers under the Act. The authorised officer may arrest a person who commits such an offence and, according to new section 72A(3), the person arrested must be brought before a justice or other proper authority to be dealt with according to law.

A single justice does not constitute a court or a bail authority. Therefore, a justice would be unable to grant bail or order detention of the arrested person. The Bill deletes the reference to 'justice and proper authority' and will require the offender to be brought before the nearest police station at which facilities are continuously available for the care and custody of the arrested person.

Summary Offences Act

The Government has been advised that the commencement date of a general search warrant is not clear on the face of the warrant. The form of the general search warrant is prescribed in the Schedule to the *Summary Offences Act*.

The Bill will amend the schedule to the *Summary Offences Act* to make it clear on the face of the document that the warrant is effective for a specified number of months from the date of the warrant.

Summary Procedure Act

Currently, section 104(1) of the *Summary Procedure Act* provides that the prosecution must file and serve copies of any documents on which the prosecution relies as tending to establish guilt, irrespective of the relative evidentiary weight or merit of the document. The provision adopts a very wide test of relevance and does not provide for any discretion as to which documents must be filed and served.

While there is no difficulty in most cases, complex fraud investigations commonly involve the collection of vast quantities of documents and many of those documents are only of peripheral relevance to the prosecution. However, there is an onerous burden on the police to find and copy all documents tending to establish guilt. As a result, the expense of the prosecution is greatly increased with little benefit to either party.

To overcome this problem, the police have adopted the practice of filing and serving copies of all documents of primary importance or the relevant portions of such documents. In addition, the police file and serve a list of all other documents of lesser importance on which the prosecution may potentially rely, together with a description of their significance. To complement this practice, the Director of Public Prosecutions allows the defence to inspect any original documents on the list prior to trial and will provide the defence with a copy of any documents required after such inspection.

This practice does not disadvantage the defendant, because the defendant is put on notice of all relevant evidence regardless of whether the evidence supports or is adverse to the prosecution case. It also avoids unnecessary waste of police time, labour and resources, and consequently, reduces the expense of the prosecution.

The Bill will amend section 104(1) to accord with the current fair and practical approach of the police. The prosecution will be required to file and serve on the defence documents of primary importance and a list of all documents of lesser importance with a description of the document's potential relevance to the prosecution case.

Repeal of the Appeal Costs Fund Act

The *Appeal Costs Funds Act 1979* establishes a fund to indemnify parties to an appeal or proceedings in a nature of an appeal, who have suffered loss by reason of an error of law on the part of a court or tribunal. Under the Act, the fund is also established to indemnify parties to civil or criminal proceedings where the proceedings have been aborted due to the death, illness or retirement of the trial judge, where the Crown (in criminal proceedings) has caused the proceedings to be aborted due to default, or other reasons where the parties to the proceedings are not in fault. The Act has remained unproclaimed for around 19 years. In that time, the financial climate has not allowed the Act to be funded. With it becoming more difficult to obtain funding, it is anticipated that the Act will never be adequately funded to allow proclamation.

It can also be argued that the Act is fundamentally flawed in today's climate. Under the provisions of the Act, the available funds can as easily be provided to a successful wealthy appellant as to a person who would more appropriately benefit from the Fund. In a time when legal aid funding is a major issue for Governments, it is difficult to justify providing funds to all comers in relation to appeals.

Additionally, there is no consideration of the merits of the appeal. For example, a person may avoid conviction due to an obscure technical point of law on appeal. It is doubtful that the public will support funding the appeal if they believe the person should have been convicted. The other point to be made is that the Fund operates on the basis that a person will have sufficient funds to initiate and contest the appeal and thus be reimbursed at the end of the appeal. The reality is that the people who require most assistance are those who cannot obtain justice because they cannot fund the appeal in the first place. The Bill will repeal the *Appeal Costs Fund Act*.

I commend the Bill to honourable members.

Explanation of Clauses

PART 1: PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

A reference in the Bill to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2: AMENDMENT OF THE ADMINISTRATION AND PROBATE ACT 1919

Clause 4: Amendment of s. 121A—Statement of assets and liabilities to be provided with application for probate or administration
This clause replaces an obsolete cross-reference with the correct cross-reference.

PART 3: AMENDMENT OF THE BAIL ACT 1985

Clause 5: Amendment of s. 6—Nature of bail agreement
The effect of this amendment will be that persons on bail will be required to attend hearings for directions unless specifically excused by the court.

PART 4: AMENDMENT OF CHILDREN'S PROTECTION ACT 1993

Clause 6: Amendment of s. 11—Notification of abuse or neglect
The Department for Correctional Services now refer to various officers of the Department (including probation officers) as community corrections officers. The reference in the principal Act to a probation officer is to be changed to a reference to a community corrections officer.

The penalty clause is amended to reflect the current drafting style.

Clause 7: Amendment of s. 13—Confidentiality of notification of abuse or neglect
The penalty clause is amended to reflect the current drafting style.

Clause 8: Power to remove children from dangerous situations
These amendments replace obsolete references to certain ranks of police officers with the modern references.

Clause 9: Amendment of s. 19—Investigations

Clause 10: Amendment of s. 21—Orders Court may make

Clause 11: Amendment of s. 23—Power of adjournment

Clause 12: Amendment of s. 24—Obligation to answer questions or furnish reports

Clause 13: Amendment of s. 44—Non-compliance with orders

Clause 14: Amendment of s. 58—Duty to maintain confidentiality

Clause 15: Amendment of s. 59—Reports of family care meetings not to be published
In each of these amendments, the penalty provision (expressed as a divisional penalty) is struck out and a provision expressing the penalty as a maximum monetary amount is substituted.

Clause 16: Insertion of s. 59A
New section 59A is substantially the same as what is currently provided for in section 25 of the *Youth Court Act 1993*. It is more appropriate for the contents of that provision to be separately provided for in the *Children's Protection Act* and the *Young Offenders Act* (*see clause*). Section 25 of the *Youth Court Act* is to be repealed (*see clause*).

59A. Restrictions on reports of proceedings

New section 59A provides that a person must not publish a report of proceedings in which a child is alleged to be at risk or in need of care or protection, if—

- the court before which the proceedings are heard prohibits publication of any report of the proceedings; or
- the report identifies the child or contains information tending to identify the child or reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child who is concerned in the proceedings, either as a party or a witness.

The court may, on such conditions as it thinks fit, permit the publication of particulars, pictures or films that would otherwise be suppressed from publication.

A person who contravenes this section, or a condition imposed under new subsection (2), is guilty of an offence (maximum penalty: $10 000).

Clause 17: Amendment of s. 60—Officers must produce evidence of authority

Clause 18: Amendment of s. 61—Hindering a person in execution of duty

Clause 19: Amendment of s. 63—Regulations
These amendments substitute the penalty provisions to reflect current drafting styles.

PART 5: AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

Clause 20: Amendment of s. 4—Interpretation
A definition of community corrections officer is inserted to mean an employee of the Department for Correctional Services whose duties include the supervision of offenders in the community.

Clause 21: Amendment of s. 74AA—Board may impose community service for breach of non-designated conditions
This amendment is consequential on the Department's new policy of referring to assorted officers of the Department as community corrections officers.

PART 6: AMENDMENT OF CRIMES AT SEA ACT 1998

Clause 22: Amendment of Sched.—The Cooperative Scheme
The amendment corrects a drafting error. The incorrect reference to the Governor is struck out and the correct reference to the Governor-General is substituted.

PART 7: AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Clause 23: Amendment of s. 3—Interpretation
A definition of community corrections officer is inserted to mean an employee of the Department for Correctional Services whose duties include the supervision of offenders in the community. Consequently, the definition of community service officer is struck out.

Clause 24: Amendment of s. 3A—Application of Act to youths

Clause 25: Amendment of s. 23—Offenders incapable of controlling sexual instincts

Clause 26: Amendment of s. 42—Conditions of bond

Clause 27: Amendment of s. 46—Ancillary orders for supervision

Clause 28: Amendment of s. 47—Special provisions relating to community service

Clause 29: Amendment of s. 48—Special provisions relating to supervision
References to community service officers are substituted by references to community corrections officers.

PART 8: AMENDMENT OF THE DISTRICT COURT ACT 1991

Clause 30: Amendment of s. 13—Judicial remuneration
Currently, section 13(3) provides that a Master is entitled to the same remuneration as a Magistrate in Charge. This subsection is to be struck out and subsection (1) amended so that all of the judicial officers of the District Court (including the Masters) will be entitled to the various remunerations determined by the Remuneration Tribunal.

Clause 31: Amendment of s. 42—Costs
The amendment to section 42(1) is to make it clear that it is the intention of the Parliament, through this provision, to allow the District Court full and complete discretion in awarding costs in civil proceedings against any person (whether or not a party to or a witness in the proceedings) and that subsections (3) to (5) (inclusive) do not fetter this complete discretion of the Court.

The amendment to section 42(3) enables the Court to make an order for costs against a legal practitioner at any time that is appropriate during the course of civil proceedings and not just at the conclusion of the proceedings.

Clause 32: Amendment of s. 43—Right of appeal
This amendment matches that made to section 42(1) and reinforces the fact that the Court has a complete discretion in awarding costs in civil proceedings. It also makes it clear that a person may appeal against any order made under section 42.

PART 9: AMENDMENT OF MAGISTRATES COURT ACT 1991

Clause 33: Insertion of s. 10AB

10AB. Certain civil actions may be taken to be minor civil actions

New section 10AB provides that if proceedings involving a monetary claim have been duly commenced in the Civil (General Claims) Division or the Civil (Consumer and Business) Division—

- the Court may, if it thinks it appropriate to do so, on application by or with the consent of the parties, hear and determine the action as a minor civil action; and
- if that occurs, the proceedings will, for the purposes of the principal Act, be taken to be a minor civil action.

Clause 34: Amendment of s. 37—Costs

Clause 35: Amendment of s. 40—Right of appeal
The amendments to these two sections of the principal Act mirror the amendments to the *District Court Act 1991* provided for in Part 8.

PART 10: AMENDMENT OF STATUTES AMENDMENT (FINE ENFORCEMENT) ACT 1998

Clause 36: Amendment of s. 25
Section 25 of the principal Act inserted certain new sections relating to fine enforcement into the *Criminal Law (Sentencing) Act 1988*. The amendments contained in this clause—

- enable a penalty enforcement order suspending a driver's licence for 60 days to be made despite the fact that the debtor is currently disqualified from holding or obtaining a licence. (If the debtor's licence is already suspended, the suspensions will operate concurrently.);

- provide that such an order will take effect 21 days from the day on which the order is made (rather than 14 days from when the debtor is served with notice of the order);
- provide that a penalty enforcement order restricting a debtor from transacting any business with the Registrar of Motor Vehicles takes effect when the Registrar is notified of the order (rather than when the debtor is served with notice of the order);
- clarify how a person arrested for hindering an authorised officer is to be dealt with—the person is to be taken forthwith to the nearest police station with appropriate facilities to be dealt with according to law.

PART 11: AMENDMENT OF STATUTES AMENDMENT (SENTENCING—MISCELLANEOUS) ACT 1999

Clause 37: Amendment of s. 7

Clause 38: Amendment of s. 12

These amendments are consequential on the policy of the Department for Correctional Services to refer to probation officers now as community corrections officers.

PART 12: AMENDMENT OF SUMMARY OFFENCES ACT 1953

Clause 39: Amendment of Sched.

The schedule sets out the form of a general search warrant. The proposed change is minor making it clear that the date to be completed on the warrant is the date of the warrant (*ie* the date the warrant is issued and signed by the Commissioner of Police).

PART 13: AMENDMENT OF SUMMARY PROCEDURE ACT 1921

Clause 40: Amendment of s. 104—Preliminary examination of charges of indictable offences

Section 104 currently provides that the prosecution must file in court copies of any documents on which the prosecution relies as tending to establish the guilt of the defendant. The amendment excludes the prosecution from having to file in court copies of documents that are only of peripheral relevance to the subject matter of the charge.

Clause 41: Transitional provision

The amended section 104 will apply in relation to proceedings commenced before or after the commencement of the amendment.

PART 14: AMENDMENT OF YOUNG OFFENDERS ACT 1993

Clause 42: Insertion of s. 63C

63C. Restrictions on reports of proceedings

New section 63C provides that a person must not publish a report of proceedings in which a youth is alleged to have committed an offence if—

- the court before which the proceedings are heard prohibits publication of any report of the proceedings; or
- the report identifies the youth or contains information tending to identify the youth or reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any youth who is concerned in the proceedings, either as a party or a witness.

The court may, on such conditions as it thinks fit, permit the publication of particulars, pictures or films that would otherwise be suppressed from publication.

A person who contravenes this section, or a condition imposed under new subsection (2), is guilty of an offence (maximum penalty: $10 000).

New section 63C mirrors new section 59B inserted in the *Children's Protection Act 1993* (*see clause*).

PART 15: AMENDMENT OF YOUTH COURT ACT 1993

Clause 43: Repeal of s. 25

This section is repealed as a consequence of the insertion of new section 63C into the *Young Offenders Act 1993* (*see clause*) and new section 59B into the *Children's Protection Act 1993* (*see clause*).

PART 16: REPEAL OF THE APPEAL COSTS FUND ACT 1979

Clause 44: Repeal

The principal Act is repealed.

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

STATUTES AMENDMENT (TRUSTS) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Trustee Act 1936 and the Trustee Companies Act 1988. 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 aim of this Bill is to introduce greater accountability for trustees, in managing funds held on trust. It must be appreciated that this Bill is introduced for the purpose of wide-ranging consultation. It has been the subject of limited consultation but it is recognised that the provisions of this Bill will be of interest to, and have the potential to affect, trustees (companies and individuals) and beneficiaries (including charities and fundraisers).

The Bill seeks to hold more accountable the trustees of charitable trusts, so as to ensure that the charitable intentions of settlors and testators are effectively carried out. It does this by broadening the class of persons who may apply to the Supreme Court for orders and directions in respect of charitable trusts and for orders to remove, replace and appoint trustees. It also makes clear that the Court has power to remove or replace trustees for any reason in the interests of beneficiaries and properly interested persons, but it places reasonable constraints on applications to minimise the risk of frivolous or vexatious applications. Further, it widens the class of persons who may apply to a trustee company for information about a charitable trust, and makes special provision in relation to the investment of trust monies in common funds.

A person who desires to benefit a charitable purpose may choose to do so by setting up a trust, either during his or her lifetime, or, more commonly, in his or her will. For example, the will or trust deed may provide that a fixed sum is set aside for investment, so as to produce income in perpetuity, to be applied to the desired charitable purpose, such as to provide housing for aged and infirm persons, to offer academic scholarships to deserving candidates, to conduct medical research into the cure for a certain disease, or suchlike purposes.

The settlor or testator will appoint a person, company or Public Trustee to be the trustee. The trustee's role is to see that the money or asset is well managed and is applied as intended. In some cases, the settlor or testator appoints a private individual to this role, but very commonly in the case of a charitable trust, a trustee company or the Public Trustee is chosen, both for money-management skills, and because that company or the Public Trustee will have perpetual succession, so there will be no need to provide for the appointment of new trustees in future as a trustee dies or becomes incapable of performing the function of trustee.

One difficulty which has been observed from time to time, however, is that once the settlor or testator has died, there may be no independent person other than the trustee who is in a position to see that the trust is indeed well-managed and its purposes carried into effect. In the case of trusts for the benefit of particular individuals (which are not charitable trusts), the beneficiaries themselves have an interest in the management of the trust assets, but in the case of charitable trusts, there may be no individual or body directly entitled to the funds generated, and thus no-one to scrutinise the management of the trust. The Ontario Law Reform Commission, reporting on the topic of Charities in 1996, noted the problem thus created:

> The form's chief advantage is that it permits wealth to be endowed to a charitable purpose, in perpetuity if desired. Its chief deficiency is the lack of any reliable mechanism of accountability: who is there to ensure that the trustees diligently devote the endowed capital to the charitable purpose?.

Historically, in South Australia, it has long been the case that in relation to charitable trusts, this role has devolved upon the Attorney-General. By s.60 of the Trustee Act, the Attorney-General may petition the Supreme Court for orders or directions in respect of a charitable trust. However, in practice, it is rare that the details of the management of such trusts are brought to the attention of the Attorney. In many cases, there may be no person except the trustee who knows how the trust is being administered and whether its purposes are being achieved or not. Even if the matter is brought to the Attorney's attention, he or she must then assess whether to commit public resources to the litigation of the matter. There may be cases in which the Attorney is, for proper reasons, not persuaded to commit public funds, although interested parties, if endowed with standing, would choose to commit their own funds. While those persons for whose benefit the trust was created may also petition the Court, by definition they are unlikely either to be aware of the existence of the trust, or to be in a position to take legal action. In practice, therefore, there is very often no sufficient means of scrutiny of the administration of such trusts.

In some jurisdictions, such as the United Kingdom, the problem has been addressed by the appointment of public officers (Charity Commissioners) specifically to act as a watchdog in respect of charitable trusts. However, such a system is only cost-effective where there is a large number of such trusts, justifying the permanent dedication of resources. In South Australia, the number of charitable trusts is understood to be small, in the order of a few hundred, so that this solution is not justified.

As a matter of policy, however, it is desirable that there be an effective mechanism of scrutiny and review of the administration of charitable trusts. Otherwise, the intentions of the settlor or testator may not come to fruition. The trust may be neglected. There may be no incentive for the trustee to see that the money earns an appropriate rate of return, and that it is applied to the intended purposes. There may be a tendency simply to allow the money to accumulate, rather than to prudently maximise the amount actually devoted to the charitable purposes. There may be a temptation to charge unjustified fees. Or there may be an overly conservative investment strategy, such that although no money is lost, no great good is done with it either. The result may be very different from what the settlor or testator had hoped.

One important aim of the Bill in respect of charitable trusts is to give charitable bodies or other persons with a proper and genuine interest in a particular charitable trust, a measure of influence over the administration of the trust estate. This is achieved by adding a new provision to the Trustee Act 1936. Proposed section 9B provides that a trustee of a charitable trust must have regard to relevant information and expert advice which may be tendered to the trustee in writing, by certain classes of persons. This means that where a properly interested person wishes to draw information or advice to the attention of the trustee in relation to the administration of the trust, he or she may do so. Of course, the trustee is free to decide whether to take action in response to the advice or information.

In order that trustees may be accountable, it is necessary that there is, where possible, some properly interested person, who may inquire as to the state of the trust, make submissions to the trustee about the use of the money, bring matters before the Court, and even seek the addition or substitution of a trustee, where necessary.

At present, standing to apply to the Supreme Court for the appointment of a new trustee is conferred by section 36 of the Trustee Act, and standing to petition the Court for orders or directions in respect of a charitable trust by section 60. The way in which those sections are framed tends to limit the persons who may make applications to the Court, and may be thought to suggest that trustees may only be removed in case of wrongdoing or incapacity. It is proposed to broaden the scope of these sections, firstly, to negate any suggestion in section 36 that the Court's power is limited to cases of wrongdoing by a trustee, and secondly, in the case of a charitable trust, to widen the class of persons who may apply under either section.

By amending the present section 36, the Bill makes clear that the Court may, on application, make orders removing, replacing or appointing trustees, whether or not there is any evidence of wrongdoing or incapacity. The criterion will not be whether the trustee has done anything wrong, but only whether the order sought is desirable in the interests of the beneficiaries, or, in the case of a charitable trust, will advance the intended purposes. A properly interested person will be able, for example, to apply to the Court for the removal and replacement of a trustee in whose hands the assets of the trust are not generating a reasonable rate of return. This should provide an incentive to all trustees to be vigilant in the management of trust assets, and competitive in the fees charged to them. It will also encourage trustees to address the complaints of properly interested persons effectively, such that matters which can at present only be addressed by litigation can be solved by negotiations instead.

The Bill also provides that an application to appoint new trustees, or a petition for any order concerning a charitable trust, may be made by any of several classes of persons, who under this Bill will have a recognised legitimate interest in the affairs of the trust. Another important aim of the Bill in respect of charitable trusts is to give standing to those persons who have some proper and genuine connection with the charitable purposes to be advanced, such that they ought to be heard by the Court as to the administration of the trust.

These include persons named in the trust deed as persons who may receive distributions of money or property for the purposes of the trust. For example, if trust money is required to be paid to a particular charitable institution, to be applied for charitable purposes, then that person or body would have standing to apply to the Court. They also include persons named in the trust deed as persons appropriate to be consulted by the trustees as to the distribution of the monies. For example, a trust deed may provide that the trustee should disburse trust funds in accordance with the advice of a particular person or body, and in that case that person or body would have standing. They also include any person who has in the past received a distribution from the fund. Clearly, such a person has a sufficient connection with the charitable purpose as to be an appropriate applicant to the Court. They further include any other person who satisfies the Court that he or she has a proper interest in the matter.

It is possible that some of these persons may have standing under the existing provisions of the Act, but this amendment puts this beyond doubt. It is not desirable that charitable bodies, or the objects of charity themselves, should have to engage in expensive litigation merely to discover whether they have standing to make an application to the Court.

As an ancillary to these provisions, the Bill also seeks to amend the Trustee Companies Act to make clear that such persons are also properly interested persons for the purposes of requiring copies of trust accounts, auditor's reports and like documents. This will increase transparency and accountability, and provide a basis for any disputes to be resolved by negotiation, rather than litigation.

Particular provision is made in respect of the investment of trust funds in common funds. The purpose of common funds, generally speaking, is to aggregate the funds of small investors, which individually would not earn high rates of return, so that collectively, a better rate can be achieved. However, where the individual trust fund is already very substantial, there may be no real benefit in investing it in a common fund except, perhaps, for the purpose of spreading risk. If it causes the fund to earn a lesser rate than would have been otherwise available, it may be detrimental.

Accordingly, the Bill requires that before investing a trust fund in a common fund, the trustee must be satisfied that this is preferable to any other form of investment. Of course, this may well be the case in respect of some smaller funds. However, it should not be assumed that this will always be so. Instead, the aim of the Bill is that the trustee should in each case compare common fund investment and spread of risk with other investment strategies so as to determine whether, in the circumstances of each case, it is the preferable investment strategy. If challenged, the trustee will need to be able to demonstrate, in the case of the particular fund, why this was so.

In the case where the trustee company has chosen to invest the trust funds in a common fund, a properly interested person can also require an explanation from the company as to its reasoning and also other information relating to the investment as required by regulation. This will permit the properly interested person to evaluate and, perhaps, seek independent advice on, the trustee's financial management strategy. This could form the basis for an application to the Court, or alternatively may satisfy the inquirer as to the effective management of the trust. However, so that such requests shall not be a burden on trustee companies, the same person may only make a request in respect of a particular investment once a year.

The Bill also closes a loophole in the present Trustee Companies Act, in respect of the fees which may be charged by a trustee company. At present, the company may charge both an administration fee under section 10 and, where the fund or a portion of it is invested in a common fund, a management fee under section 15(11). However, in the case of charitable trusts in perpetuity, it is not uncommon that the whole, or some portion, of the fund is simply invested in the trustee company's common fund. In that case, no additional work is entailed in administering it, additional to what is involved in managing it. However, at present, each fee may nevertheless lawfully be charged. The effect of this Bill is to preclude the charging of an administration fee in addition to the management fee, in respect of that portion of the fund which is simply placed in the common fund. The company must elect. If it charges a section 15 fee, then it is not entitled to charge a section 10 fee in respect of the same monies.

A further feature of this Bill is that it will permit a trustee company to vary the classes of investment of a common fund. At present, while the Public Trustee is permitted by the Public Trustee Act to vary the classes of investment of its common funds from time to time, trustee companies are precluded from doing so by section 15(2) of the Trustee Companies Act. This section currently provides that the company must determine in advance in what classes of investment the fund will be invested. It is proposed that private trustee companies should be placed in the same position as the Public Trustee in this respect.

However, it is important not to disadvantage any investor who may have invested in a common fund in reliance on representations as to the classes of investment open to the fund. For this reason, the Bill provides that while a company may in future vary the classes of investment, before commencing to do so, it must notify existing investors in the fund and they must have the opportunity to withdraw from the fund without penalty. This does not apply, of course, in the case of every variation, but only at the time the fund converts from one, the classes of investment of which are fixed in advance, to one in which the classes may vary from time to time.

In keeping with Government policy in relation to penalties, also, the Bill converts the present divisional penalties to monetary amounts. There is no change in the severity of penalties.

In summary, the Bill does not detract from either the general fiduciary duty of trustees, or the broad inherent jurisdiction of the Supreme Court to supervise trusts, nor does it reduce the role of the Attorney-General as parens patriae in respect of charitable trusts. Rather, it increases the accountability of trustees in respect of the beneficiaries, or benevolent purposes, for which the trust was established. It gives standing, in the case of charitable trusts, to several classes of properly interested persons. It requires the provision of relevant information about charitable trusts, on request, to such persons. This increases the likelihood that matters of concern will be resolved directly with the trustee, or if not, will be brought before the Court, rather than ignored.

In particular, the Bill seeks to encourage the trustees of charitable trusts to have regard to the views and concerns of relevant charitable bodies which may have proper interests in the management of the trust concerned, and to provide properly interested inquirers with information. It encourages diligent attention to the advancement of the charitable purpose, as originally intended by the creator of the trust.

And in respect of all trusts, it makes clear that the Court has a very broad power to make orders appointing, removing and replacing trustees as the interests of the beneficiaries, or the advancement of the trust purposes, may require.

Whether any and what order is made in a given case will remain a matter for the Court to consider, having regard to the interests of the beneficiaries, or to the advancement of the charitable purposes, in every individual case. Needless to say, the Court will still need to be satisfied by the evidence before making any order. It is not to be thought that the Court will remove trustees capriciously or to no purpose. Nor is it likely, given the cost risks of litigation that parties will make such applications lightly or unadvisedly. However, the Bill provides a mechanism whereby beneficiaries, and in the case of charitable trusts, properly interested persons, may bring matters to the Court's attention. The Court's discretion is not cut down, but the scope of its scrutiny is potentially increased.

It is appreciated that those who act as trustees, and their advisers, may have views as to the desirability of the measures proposed by this Bill, and their effects on the day-to-day work of the charitable trustee. That is why, as I have said, the Bill is introduced at this time for the purpose of public comment and discussion before it progresses through later stages. It will be widely circulated. Those who wish to make comment are encouraged to do so by making a written submission to my office.

I commend this Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

These clauses are formal.

PART 2

AMENDMENT OF TRUSTEE ACT 1936

Clause 4: Amendment of s. 4—Interpretation

Clause 4 inserts new subsection (3) in section 4 of the principal Act. Subsection (3) provides that where an unincorporated body is named in a trust instrument, the persons for the time being comprising the body will be taken to have been individually named in the instrument. This provision gives definition to an unincorporated body named in a trust instrument, in the context of sections 9A, 36 and 60 as inserted or amended by this Bill.

Clause 5: Insertion of s. 9A

Clause 5 inserts new section 9A in the principal Act. Subsection (1) of section 9A requires the trustee of a charitable trust, in the administration of the trust estate, to take into account written expert advice or information relevant to the administration of the estate and furnished to the trustees by persons listed in subsection (2). The persons listed in subsection (2) are:

(a) a person who is named in the instrument establishing the trust as a person who is entitled to, or may, receive money or other property for the purposes of the trust; or

(b) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustees before distributing or applying money or other property for the purposes of the trust; or

(c) a person who in the past has received money or other property from the trustees for the purposes of the trust; or

(d) a person of a class that the trust is intended to benefit.

The new section has the effect of giving charitable bodies and persons with an interest in a particular charitable trust a measure of influence in the administration of the trust estate.

Clause 6: Amendment of s. 36—Power of the Court to appoint new trustee

Clause 6 amends section 36 of the principal Act by substituting the current subsection (1) with subsections (1), (1a), (1b), (1c) and (1d). The new subsections provide that the Supreme Court may, on application of persons who have standing (that is, persons referred to in subsection (1c)), make orders for the removal, replacement or appointment of trustees if it is in the interests of the trust. Subsection (1b) provides that there is no need for the Court to find any fault or inadequacy on the part of the existing trustees before it makes such an order. Subsection (1c) provides that the categories of persons who may apply for an order under section 36 are:

(a) the Attorney-General; or

(b) a trustee of the trust; or

(c) a beneficiary of the trust; or

(d) in the case of a trust established wholly or partly for charitable purposes—

(i) a person who is named in the instrument establishing the trust as a person who is entitled to, or may, receive money or other property for the purposes of the trust; or

(ii) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustees before distributing or applying money or other property for the purposes of the trust; or

(iii) a person who in the past has received money or other property from the trustees for the purposes of the trust; or

(iv) a person of a class that the trust is intended to benefit; or

(v) any other person who satisfies the Court that he or she has a proper interest in the trust.

Subsection (1d) provides the Supreme Court with an additional power to make any orders that are ancillary to the orders under subsection (1) for the removal, replacement or appointment of trustees.

The amendment effectively clarifies, and in the case of charitable trusts, broadens, the categories of persons who have standing to seek an order under section 36.

Clause 7: Amendment of s. 60—Petitions to the Supreme Court

Clause 7 amends section 60 of the principal Act by extending the list of persons who may seek a remedial order or direction from the Supreme Court in cases of actual or suspected breach of trust, or actual or suspected deficiency in the management of the trust. The section deals only with charitable trusts. The amended section provides that those persons are:

(a) the Attorney-General; or

(b) a trustee of the trust; or

(c) a person who is named in the instrument establishing the trust as a person who is entitled to, or may, receive money or other property for the purposes of the trust; or

(d) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustees before distributing or applying money or other property for the purposes of the trust; or

(e) a person who has in the past received money or other property from the trustees for the purposes of the trust; or

(f) a person of a class that the trust is intended to benefit; or

(g) any other person who satisfies the Court that he or she has a proper interest in the trust.

The amended section has the effect of affording a degree of control over the running of a charitable trust to a broader category of people than is currently the case.

PART 3
AMENDMENT OF TRUSTEE COMPANIES ACT 1988

Clause 8: Amendment of s. 3—Interpretation

Clause 8 divides section 3 of the principal Act into two subsections and adds the definition of "person who has a proper interest" or "person with a proper interest" to newly formed subsection (1) (which also contains the current definitions). Under the proposed definition, persons that have a proper interest in relation to charitable trusts are:

(a) the Attorney-General;

(b) a person who is named in the instrument establishing the trust as a person who is entitled to, or may, receive money or other property for the purposes of the trust;

(c) a person who is named in the instrument establishing the trust as a person who must, or may, be consulted by the trustees before distributing or applying money or other property for the purposes of the trust;

(d) a person who in the past has received money or other property from the trustees for the purposes of the trust;

(e) a person of a class that the trust is intended to benefit.

The effect of this amendment is that trustee companies managing charitable trusts will be open to a greater degree of scrutiny than before in that a larger pool of persons will have rights of access to information relating to the management of the trust.

New subsection (2) further defines a "person who has a proper interest" or a "person with a proper interest" where the person is an unincorporated body named in the trust instrument. New subsection (2) provides that, where an unincorporated body is named in the trust instrument, the persons for the time being comprising the body will be taken to have been individually named in the instrument. The effect of this subsection is that where an unincorporated body is the "person named in the instrument establishing the trust" (under proposed section 3(1)(c) or (d)) it will be the individual persons making up the unincorporated body who will have a proper interest in relation to a charitable trust.

Clause 9: Amendment of s. 10—Fee for administering perpetual trust

Clause 9 amends section 10 of the principal Act by inserting new subsection (4). The effect of subsection (4) will be to prevent a company from charging both an administration fee under section 10 and, where that fund or a portion of it is invested in a common fund, a management fee under section 15(11).

Clause 10: Amendment of s. 15—Common funds

Clause 10 substitutes subsection (2) of section 15 of the principal Act with a subsection that provides that trustees may vary the classes of investment of a common fund from time to time.

Clause 10 further inserts new subsection (3a) in section 15 of the principal Act, with the effect of requiring trustee companies who intend investing trust funds in a common fund to be satisfied that is clearly preferable to any other form of investment (in the interests of the persons who are to benefit from the trust or in order to advance the purposes of the trust). The amendment will require trustee companies to pay close regard to the optimum manner of investing trust funds.

Clause 11: Insertion of ss. 15A and 15B

Clause 11 inserts new sections 15A and 15B in the principal Act. These new sections relate, respectively, to proposed subsections 15(2) and (3a) (discussed above).

New section 15A, headed "*Notice to be given on initial change in investment of common fund*", requires a trustee company, before varying a class of investments of a common fund for the first time, to notify all persons who have invested money in that fund of the company's intention to vary the class and of the investor's right to withdraw without penalty, the money invested within 6 months. Subsection (5) of the new section provides that the method of service of the notice may be personally or by post addressed to the investor at his or her last address known to the trustee company.

New section 15B, headed "*Provision of reasons for certain investments*", requires the trustee company which holds money in trust and invests the money in a common fund, to furnish the company's reasons for so investing the money and such other information relating to the investment as is required by regulation if a request for reasons is made in writing by a person with a proper interest in the matter. Subsection (2) requires the reasons to be furnished in writing, as soon as practicable and without charge. Subsection (3) provides that the company need not provide reasons in respect of the same investment more often than once per year. The effect of this new section is to make accountable certain investment-related decisions made by the trustee company.

Clause 12: Amendment of s. 19—Accounts, audits and information for investor etc. in common funds

Clause 12 inserts new subsection (2a) in section 19 of the principal Act. Subsection (2a) provides that a person with a proper interest in an investment in a common fund of the company may seek, and the company must furnish to that person, copies of accounts, auditor's report and other documents laid before the company at its last annual general meeting. The effect of this subsection is to give persons with a proper interest in a charitable trust, access to the trustee company's documents.

Clause 13: Further amendments of principal Act

Clause 13 up-dates the penalty provisions in the principal Act.

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

CITY OF ADELAIDE (RUNDLE MALL) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning) obtained leave and introduced a Bill for an Act to amend the City of Adelaide Act 1998 and to repeal the Rundle Street Mall Act 1975. Read a first time.

The Hon. DIANA LAIDLAW: 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 Rundle Street Mall Act 1975 was originally enacted to establish a pedestrian mall in the heart of Adelaide's city centre. At the time, existing legislation did not provide the necessary powers for the creation, management and promotion of a city centre mall. Hence, dedicated legislation was enacted.

In 1996, the Statutory Authorities Review Committee of Parliament conducted an inquiry into the Rundle Mall Committee established under Part V of the Rundle Street Mall Act to market, promote, manage and control the Mall. On 3 July 1996, the Review Committee tabled its Report entitled 'Review of the Rundle Mall Committee'. In its Report, the Review Committee recommended that the Rundle Street Mall Act be repealed and the Rundle Mall Committee abolished. The Review Committee also recommended that the Corporation of the City of Adelaide be made responsible for the operation, maintenance and control of the Mall, and have prime responsibility for development of the physical infrastructure of the Mall. Furthermore, it recommended the establishment of a body to oversee the promotion and marketing of the city centre as a whole; structured in such a way that interests of stakeholders in the City Council, including the State Government and its institutions, the City Council and the private sector are represented.

Since the Review Committee's inquiry, the Adelaide 21 Project recommended new marketing arrangements for the City Centre culminating in the creation of the Adelaide City Marketing Authority by the City Council in July 1997. The City of Adelaide Act 1998 has also come into operation, establishing the Capital City Committee to enhance and promote the development of the City of Adelaide as the capital city of the State. The Capital City Committee's functions include responsibility for the marketing functions that have been performed by the Rundle Mall Committee. The creation of the Adelaide Marketing Authority and the Capital City Committee is in recognition that it is no longer appropriate to consider the marketing of the Mall in isolation from the marketing of the city centre as a whole.

Following the Review Committee's Report, the then Minister for Housing and Urban Development, the Honourable Stephen Baker MP, sought advice from the City Council about its attitude toward the suggested repeal of the Rundle Street Mall Act. Council agreed with the proposed repeal, subject to processing new by-laws to replace those operating under the Rundle Street Mall Act. The City Council's By-law No. 2—Streets and Public Places, made under the Local Government Act 1934, was published in the Government Gazette on 18 December 1997 and is now in operation.

This Bill repeals the Rundle Street Mall Act 1975.

Parts 1, 1V, V and V1 of the Rundle Street Mall Act provide for preliminary matters, Government grants, the establishment and operation of the Rundle Mall Committee and the sale of a car park site.

The Government considers that, notwithstanding the recommendations of the Review Committee, a number of key provisions of the Rundle Street Mall Act should be retained. These provisions are—

- section 5 which establishes the Rundle Mall; and
- sections 6 and 10 which regulate vehicles in the Mall; and
- section 11 which provides the Council with special by-law making powers; and
- sections 29 and 30 which provide for evidentiary matters.

The Bill provides for the substance of those provisions of the Rundle Street Mall Act that should be preserved to become part of the City of Adelaide Act.

The inclusion of provisions regulating vehicles and traffic in the Mall in the City of Adelaide Act is intended, however, to be an interim measure only. Later this year, the Government intends to include those matters in legislation proposed in respect of the draft Australian Road Rules, currently being considered by all of the Transport Ministers of the Australian States and Territories.

The Council has recently advised that it supports the transfer of certain matters to the City of Adelaide Act and the repeal of the Rundle Street Mall Act. The purpose of this Bill is to preserve the essential provisions of the Rundle Street Mall Act by re-enacting them substantially in the City of Adelaide Act (the most appropriate place for the provisions) whilst repealing redundant provisions.

The Bill does not introduce any new policy initiatives.

I commend the Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Insertion of s. 37A

This clause proposes to insert a new section at the end of Part 3 (Special Arrangements for the Adelaide City Council) of the City of Adelaide Act 1998 (the principal Act). New section 37A provides for the continuation of Rundle Mall and the regulation of Mall activities by the Adelaide City Council.

37A. Rundle Mall

Rundle Mall (the Mall) is to continue as a pedestrian mall.

New subsection (2) provides that a person must not drive a vehicle on any part of the Mall or allow a vehicle to be or remain on any part of the Mall, otherwise than in accordance with a notice or permit published or given by the Adelaide City Council (the Council). The penalty for an offence against this new subsection is a fine of $750 (expiable on payment of a fee of $105). What is provided for in this subsection is substantially the same as what is provided for in section 6 of the Rundle Street Mall Act 1975 (the Mall Act).

Section 10 of the Mall Act provides for notices to be published in the *Gazette* by the Council regulating vehicles that may enter or remain within the Mall and the hours or occasions during which they may do so. New subsection (3) provides for the Council to continue to regulate these activities in the Mall in the same manner.

New subsection (4) provides that the Council may, by notice in writing, permit a vehicle to enter and remain in the Mall for the purpose and for the period, and subject to the conditions (if any), specified in the permission. A person who contravenes or fails to comply with a condition imposed under subsection (4) is guilty of an offence and liable to a penalty of $750 (expiable on payment of a fee of $105).

New subsection (7) provides the Council with by-law making powers to—

- regulate, control or prohibit any activity in the Mall, or any activity in the vicinity of the mall, that is likely to affect the use or enjoyment of the Mall; and
- provide for the fixing, and varying or revoking, by resolution of the Council, of fees and charges for the use of the Mall or any part of the Mall; and
- regulate any matter or thing connected with the external appearance or building or structure on, abutting or visible from the Mall; and
- regulate, control or prohibit the movement or standing of vehicles on access or egress areas to the Mall; and
- fixing a penalty not exceeding $250 for a breach of a by-law.

This subsection is substantially the same as what is currently contained in section 11 of the Mall Act.

New subsections (8) and (9) provide for evidentiary matters (*cf:* current section 29 of the Mall Act).

New subsection (10) provides that the Local Government Act 1934 applies to and in relation to by-laws made under new section 37A as if they were by-laws made under that Act.

Clause 4: Repeal of Rundle Street Mall Act 1975

This clause provides for the repeal of the Rundle Street Mall Act 1975 and for transitional matters.

A notice or permit in force under the Mall Act immediately before the commencement of this clause will continue and have effect as if published or given under new section 37A of the principal Act (as enacted by this amending Act).

A by-law in force under the Mall Act immediately before the commencement of this clause will continue in force as if made under new section 37A of the principal Act (as enacted by this amending Act).

The repeal of the Mall Act does not affect the operation or recovery of a special rate declared under section 9 of that Act before the commencement of this clause.

Any asset or liability of the Rundle Mall Committee immediately before the repeal of the Mall Act vests in The Corporation of the City of Adelaide.

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

AUSTRALASIA RAILWAY (THIRD PARTY ACCESS) BILL

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning) obtained leave and introduced a Bill for an Act to establish as a law of South Australia a code making provision for the regulation of third party access to railway infrastructure services in relation to the AustralAsia Railway; and for other purposes. Read a first time.

The Hon. DIANA LAIDLAW: 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 *Australasia Railways (Third Party Access) Bill 1999* establishes a process whereby third parties can obtain access to operate services on the Tarcoola to Darwin Railway when they have been unable to obtain it through usual business negotiations.

National Competition Policy agreements and the Commonwealth Trade Practices Act require that the owners of major infrastructure make it available to third parties in order to prevent monopolistic pricing behaviour and to increase competition for the products involved with the infrastructure.

The Commonwealth, Northern Territory and South Australian Governments have committed funds to the building of a railway from Alice Springs to Darwin on the basis that the project is commercially viable and that it can provide a net benefit to the wider Australian community, helping to open up a developing region of the national economy. Three consortia have been short-listed to develop proposals for the project. The successful consortium will provide debt and equity funding to meet the gap between infrastructure costs and government funding and be required to operate services on the railway for the duration of the concession period, including the Tarcoola-Alice Springs section which will be transferred from the Commonwealth as part of its contribution to the scheme.

The financiers supporting the bidding consortia require a high degree of certainty regarding the revenue return, otherwise they will either not commit themselves to the project or will look to the Governments for further contributions to cover revenue risks. The Bill will provide this certainty in the context of access to the railway infrastructure facilities by third parties.

Mirror legislation has been introduced into the Northern Territory Parliament. The access regime, called the Third Party Assess Code and forming a schedule to both Bills, is intended to apply in the same way in both jurisdictions. It will apply only to the Tarcoola to Darwin railway. This Access Code is currently being assessed by the National Competition Council to see whether it is an 'effective' regime in terms of the Competition Policy Agreement requirements. If it is regarded as effective, the NCC would then recommend that the Commonwealth Minister for Financial Services and Regulation certify the regime. The uncertainty presented by the possibility of a

successful declaration under the Trade Practices Act, with unknown consequences for access prices, would thus be removed.

The access regime established by the *South Australian Railways (Operation and Access) Act 1997* cannot be applied to this railway for two reasons. First, our current legislation makes no provision for joint administration or coverage of a railway across both South Australia and the Northern Territory. Second, the pricing principles upon which the current legislation was based are not designed for a green fields venture where the cost of capital investment must be recovered.

The Third Party Access Code is similar in many aspects to the *South Australian Railways (Operations and Access) Act 1997*. Key features of the Code are:

- appointment of a regulator jointly by the Transport Ministers of South Australia and the Northern Territory, who may not direct the regulator to suppress information or recommendations made under the Bill or direct who the regulator should appoint as an arbitrator;
- separate pricing principles for passenger and freight services;
- access applications where the parties must negotiate in good faith access disputes with the possibility of conciliation by the regulator, or arbitration by a qualified arbitrator/s appointed by the regulator;
- appeal to the Supreme Court from an award of an arbitrator, on a question of law;
- monitoring costs of service provision by the regulator;
- reporting by the regulator to the Ministers;
- enforcement of awards; and
- segregation of records of infrastructure provision, service provision and other businesses of the operator.

The Pricing Principles are also detailed in the Code. They are based on what is called the Competitive Imputation Pricing Rule (CIPR). The rule is designed for greenfield projects involving large initial investment.

Such projects face demand uncertainty which make revenue flow difficult to estimate. CIPR allows the railway owner to retain the benefit of profits if the project is successful. Under alternative pricing regimes, which are based on controlling the rate of return so that high profits are regulated away, average expected revenues are reduced. This would stop investment in a new project, such as this one, with high up front costs where profits are not expected until late in the life of the project.

In general terms, CIPR takes into account the fact that road freight rates will act as a ceiling for rail freight rates due to road-rail competition in the Tarcoola to Darwin corridor and that rail services would have to be cheaper or provide better service in order to attract business. The road rate is therefore used as a price cap. The access price is calculated by deducting from this the cost the railway owner would have incurred if it had run the service itself. A floor price is also calculated for the situation where the access price, as calculated above, is lower than the cost of providing the infrastructure, for example if the road price falls below rail costs.

If there is no competitive alternative to use as a price cap, for example a new mine off the road network, the access price is the cost of maintaining the part of the infrastructure used by the access seeker plus the cost the railway owner would have incurred if it had run the service itself.

In developing the Bill, the three bidding consortia, the National Competition Council, the Northern Territory Government and appropriate South Australian Government agencies (for example, the Department of Industry and Trade) have been consulted.

The building of the railway from Alice Springs to Darwin will have economic benefits for South Australia. The Bill will provide greater certainty for the three consortia in respect to the price competitors would need to pay for access and thus increase the likelihood of suitable bids being made. It will also establish a process whereby third parties can obtain access to the railway when other negotiations have failed. This will provide an access regime to allow consortia to bid for the project with certainty regarding access prices while at the same time the presence of the railway will increase the competition on the corridor and keep prices down.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Definition

The Access Code to which this measure applies is the AustralAsia Railway (Third Party Access) Code contained in the schedule.

Clause 4: Application of Access Code

The Access Code will apply as a law of the State.

Clause 5: Crown to be bound

The measure will bind the Crown.

Clause 6: Non-application of Commercial Arbitration Act

The Access Code sets up a discrete arbitration procedure and does not need to be affected by the *Commercial Arbitration Act 1986*.

Clause 7: Subordinate Legislation Act to apply to certain instruments under Code

The Access Code allows for various matters to be dealt with by the Northern Territory Minister and the South Australian Minister by notice published in the *Gazette*. A notice will be required to be laid before both Houses of Parliament and will be disallowable as if it were a regulation made under an Act.

Clause 8: Minister to cause copies of regulator's reports to be tabled in Parliament

The Minister will be required to table the annual report of the regulator under the Access Code.

SCHEDULE

The following notes are provided in relation to the provisions of the Access Code.

PART 1—PRELIMINARY

Division 1—General

Clause 1. Title

Clause 2. Application of Code

This clause allows for the application of the Code progressively as parts of the line are commissioned.

Clause 3. Interpretation

This Clause contains the key interpretations and should be self explanatory. In particular—

'prescribed' is defined to deal with the joint nature of the administration of the Code.

'pricing principles' are contained in the Schedule to the Code itself.

'railway infrastructure facilities' is a key definition and is the thing to which access is provided. Exactly what is included can be controlled by the Ministers prescribing what is to be included and prescribing what is not to be included.

Subclause (2) caters for the situation where there is more than one arbitrator.

Clause 4. Joint ventures

Parties affected by the Code may construct their affairs in numbers of ways and this clause is to provide some basic presumptions about liability of partners, and the means of facilitating communications.

Division 2—The Regulator

Clause 5. The Regulator

This clause provides for the assigning of functions to a regulator.

Subclause (2) places the regulator under the joint control of the Territory and State Ministers but subclause (3) excludes ministerial direction in relation to certain of the regulators function, being largely those relating to the dispute resolution process or the exercise of discretion.

Clause 6. Powers and functions of regulator

This clause is a standard provision

Clause 7. Regulator to report to Ministers

The regulator is to report to both Ministers.

Clause 8. Regulator may delegate

This is a standard provision except that special mention has been made of the ability to delegate to persons in either jurisdiction or outside the jurisdictions.

PART 2—ACCESS TO RAILWAY INFRASTRUCTURE SERVICES

Division 1—Negotiation of Access

Clause 9. Obligation of operator to provide information about access

This clause is to facilitate negotiations for an agreement between parties by giving a potential access seeker information he or she may require in connection with an application for access.

Clause 10. Access proposal

This clause allows a person seeking access to put a proposal to the facility owner (access provider) and obliges the facility owner to advise the regulator and interested parties. It also allows the access provider to request information about the proposal that the access provider may reasonably require to enable an assessment of the proposal. (See also clause 15(2)*(b)*.)

Clause 11. Duty to negotiate in good faith

This clause is self explanatory.

Clause 12. Limitation on access provider's right to contract to provide access

This clause ensures that all interests and disputes have been catered for or dealt with as a condition precedent to parties entering into an agreement about access.

Subclause (2) makes such an agreement void if the subclause (1) has not been satisfied.

Division 2—Access Disputes and Requests for Arbitration

Clause 13. Access disputes

Spells out the situation in which a dispute will be taken to exist.

Clause 14. Request for reference of dispute to arbitration

This clause is self explanatory.

Division 3—Conciliation and Reference to Arbitration

Clause 15. Conciliation and reference to arbitration

The regulator, with the approval of the parties, can attempt to conciliate an access dispute; otherwise he or she is obliged to appoint an arbitrator or arbitrators and refer the dispute to arbitration, unless all access seekers withdraw. Triviality, failure of an access seeker to provide requested information, lack of negotiation in good faith or, on the application of a party, other good reason, is justification for not attempting to conciliate or refer a dispute to arbitration. (A good reason might, for example, be the collapse of a contract that the access seeker might have had with a third party the transportation of whose product was the reason for seeking access in the first place.)

Clause 16. Arbitrator to be qualified

This clause requires the regulator to keep a list of potential suitably qualified arbitrators.

An arbitrator is to be independent of both government and the parties, be properly qualified and have no interest in the outcome.

The regulator must attempt to appoint an arbitrator who is acceptable to all parties.

Division 4—Arbitration of Access Disputes

Clause 17. Parties to arbitration

This clause specifies who are to be parties to an arbitration.

Clause 18. Manner in which decisions made

This clause requires the regulator, where there are 2 or more arbitrators, to appoint one to preside. Where there is a deadlock the decision of the presiding arbitrator is to prevail.

Clause 19. Award by arbitrator

This clause provides for the contents of arbitrators' awards and requires an arbitrator to provide to the parties a draft of any proposed award and to take into account representations on the proposed award made by them. The arbitrator shall give the parties and the regulator the reasons for making the award. An award does not have to require the provision of access.

Clause 20. Restrictions on access awards

An award cannot delay or add to the cost of the construction of the railway or compel an access provider to bear the costs of extending facilities unless he or she agrees. Neither can an award be made that purports to grant access where it could not be satisfied because another rail user has already been granted access and is using the facility.

An arbitrator is not to make an award prejudicing the rights of existing access holders unless they agree or their entitlement is excess to their requirements and there is no reasonable likelihood they will need the excess and the new access seeker's requirements cannot be met except by transferring some of the excess to him or her.

Clause 21. Matters arbitrator must take into account

This clause lists the matters an arbitrator must take into account in making an award. It also provides that other relevant matters may be taken into account, provided they are not inconsistent with those that must be taken into account.

The matters that must be taken into account are largely those dictated in the Competition Principles Agreement.

Clause 22 Arbitrator may terminate arbitration in certain cases

This clause lists the circumstances in which an arbitration may be terminated.

Division 5—Pricing Principles

Clause 23. For access relating to passenger and freight services

This clause provides that the principles and calculations to be applied in arriving at the price for access to be applied on an arbitration are those spelt out in the Schedule to the code.

Clause 24. Access provider may agree different price

Despite the pricing principles, the parties may agree on a different price.

Division 6—Procedure in Arbitration

Clause 25. Hearing to be in private

This clause is self explanatory.

Clause 26. Right to representation

This clause is self explanatory.

Clause 27. Procedure of arbitrator

This clause is self explanatory.

Clause 28. Particular powers of arbitrator

This clause is self explanatory.

Clause 29. Power to take evidence on oath or affirmation

This clause is self explanatory.

Clause 30. Failing to attend as witness

This clause is self explanatory.

Clause 31. Failing to answer questions, &c.

This clause is self explanatory.

Clause 32. Intimidation, &c.

This clause is self explanatory.

Clause 33. Party may request arbitrator to treat material as confidential

This clause is self explanatory.

Clause 34. Costs of arbitration

Costs of arbitration are to be split between parties except where an access seeker seeks termination, in which case they are to be borne by him or her.

The regulator may recover costs of an arbitration as a debt.

Division 7—Effect of Awards

Clause 35. Operation of award

Awards are to be binding on the parties unless the access seeker, by written notice to the regulator within the specified time elects not to be bound, in which case the access seeker is precluded from making another application within 2 years unless the access provider agrees or the regulator authorises it; and the regulator may authorise subject to conditions or without conditions.

Division 8—Variation or Revocation of Awards

Clause 36. Variation or revocation of award

Variation of an award may be by agreement of all parties or by arbitration. The regulator is not to refer for variation unless there is sufficient reason having regard to whether there is a material change in circumstances, the nature of the proposed variation, time that has elapsed and other matters the regulator considers relevant.

The provisions of the Part relating to disputes in relation to an access proposal apply equally to a dispute about a proposed variation

Division 9—Appeals

Clause 37. Appeal to Supreme Court on question of law

Appeals lie only on questions of law and cannot be raised, or the award or decision called into question, except under this section. The Court has a range of powers listed in this clause, including the power to award costs.

An appeal does not suspend the operation of an award pending the determination of an appeal unless the court decides that it should.

PART 3—HINDERING ACCESS TO RAILWAY INFRASTRUCTURE SERVICES

Clause 38. Prohibition on hindering access to railway infrastructure service

This clause imposes the criminal sanction for interfering with the right of a person to access to a railway infrastructure service. An offence attracts a penalty of up to $100 000 and $10 000 for each day during which it continues.

PART 4—MONITORING POWERS

Clause 39. Registrar's power to obtain information

This clause gives the regulator the necessary power to obtain from an access provider sufficient information about the operation of the provider's business in a form that enables the regulator to separate out that which is relevant to particular aspects of that business.

Clause 40. Confidentiality

This clause requires confidentiality to be observed in relation to information obtained under the Part but lists situations in which it may be disclosed, including to an arbitrator at the arbitrator's request in the course of an arbitration. However, parties may request the arbitrator, in turn, to observe confidentiality.

Clause 41. Duty to report to Ministers

This clause requires the regulator to report to the relevant Ministers, at their request, on matters relating generally to railway infrastructure services and on the operation of the Code.

PART 5—ENFORCEMENT

Clause 42. Injunctive remedies

This clause gives the Supreme Court power to grant relief by way of injunction to enforce or restrain a person from contravening a provision of the Code or an award of the arbitrator and sets out various circumstances in which such relief may be granted.

Clause 43. Compensation

This clause allows for the granting of compensation against a person for loss resulting from a contravention of the Code.

Clause 44. Enforcement of arbitrator's requirements

This clause allows the court, after appropriate inquiry, to enforce compliance with the directions or requirements of an arbitrator.

Clause 45. Access contracts specifically enforceable

This ensures that the courts may specifically enforce an access contract rather than being compelled to award damages only.

PART 6—MISCELLANEOUS

Clause 46. Segregation of access provider's accounts and records

For the proper assessment of matters relating to access it is necessary that relevant information is not mixed with that which is not relevant. This clause requires the access provider to ensure that its books (and those of any of its associated corporations) are kept in such a manner as to give a true picture of its activities.

Clause 47. Removal and replacement of arbitrator

This clause provides for the removal of an arbitrator by the regulator on certain grounds, and for his or her replacement.

Clause 48. Amendment of Code

This clause provides for the amendment of the Code during the initial settling-in period by the joint action of the Territory and State Minister. After the time that this facility expires or is brought to an end any amendment will be by a normal amendment. An instrument amending the Code will be a tabled, and disallowable, document.

Clause 49. Prescribing of matters for purpose of Code

This clause is the equivalent to a regulation making power in an ordinary Act. It provides for the Ministers to act jointly.

Clause 50. Review of Code

The Competition Principles Agreement to which the State is a party requires a review of effective access schemes implemented by States and/or Territories. This clause provides for such a scheme.

SCHEDULE

The Schedule sets out the principles and methods of calculation of prices for access which the arbitrator will be obliged to take into account in determining the terms and conditions subject to which access to railway infrastructure facilities will be given (see clause 21). It also contains some worked examples of the application of the principles, for the assistance of the arbitrator.

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

ROAD TRAFFIC (ROAD RULES) 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 and to make related amendments to the City of Adelaide Act 1998 and the Local Government Act 1934. Read a first time.

The Hon. DIANA LAIDLAW: 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 purpose of this Bill is to make necessary amendments to the *Road Traffic Act 1961* to allow the Australian Road Rules (ARR) to be made as South Australian subordinate legislation in place of conflicting sections of the *Road Traffic Act 1961* and Regulations and the *Local Government Act 1934* and Regulations.

The ARR provide for more consistent laws around Australia, eliminating the great majority of current differences, making driving easier and safer. This is a major advance and a great start for traffic law for the next century. This will be of great benefit to Australian motorists on holidays, interstate transport drivers and people moving interstate.

Draft Rules were widely circulated for public comment in 1995. Comments from the public, industry and all levels of governments were generally all supportive. The Rules will affect every road user in Australia: drivers, pedestrians, cyclists, motorcyclists, riders of animals and people on skateboards, when they are on the roads, footpaths, nature strips and parking areas. Introduction of the Rules will provide an opportunity for all road users to become more familiar with their rights and responsibilities.

Many traffic rules around Australia are already the same, but a number of differences exist. These can present difficulties for everyone; for example, would South Australian motorists travelling interstate know how far they can park from an intersection, whether they can cross barrier lines, do U-turns at traffic lights, carry passengers without seatbelts? In all these areas and many more, differences currently exist.

Most of South Australia's traffic rules will remain unchanged and where changes are necessary these have been minimised, with all States and Territories making compromises in order to achieve consistency and minimise the effect in individual jurisdictions. There are some Rules which can be tailored for local circumstances which vary from State to State, for example, provide on which roads roller blades can not be ridden, such as the Southern Expressway.

Although the ARR contain a number of new offences these are more specific about good driving and are therefore much easier for road users to obey, for police to enforce and for the community to understand. These include a prohibition on tailgating, details on how traffic must merge and a requirement to dip your headlights when following another vehicle.

The ARR have been drafted in a modern style, in contrast to the older Road Traffic Act. As a consequence the structure and provisions of the ARR are clearer and easier to understand. For example, rule 72 (ARR) and section 63 (RTA) both provide that a driver turning left at an intersection from a slip lane must give way to an oncoming vehicle turning right at the intersection. However, while the ARR explicitly provides for a slip lane including use of a diagram which shows both vehicles, the RTA only implicitly refers to slip lanes in section 63(1)(c) which may not be recognised by a lay reader. This is an example of the many minor differences that generally clarify the law rather than change the law in South Australia.

The Rules contain many provisions currently contained in Local Government legislation affecting traffic management and parking control. As provided in the Local Government Act Review, it is proposed that these powers be moved to the Road Rules. The amendments resolve a number of minor inconsistencies which currently exist but do not significantly affect Local Government's powers to control traffic on roads under their care and control. Currently similar traffic provisions are located in different Acts and Regulations and persons accessing the law may only locate part of the answer. The Road Rules will be a significant improvement for accessing the law as all minor traffic provisions will be located in the Road Rules including parking matters contained in various other legislation such as the Rundle Street Mall Act, 1975. Where necessary, the Rules contain cross references to other Rules and Regulations.

The Bill also contains a provision dealing with temporary road closures which will require Local Government to consult with affected road authorities in the event that a road closure is proposed. The provision mirrors amended provisions contained in section 31 of the City of Adelaide Act 1998.

The Bill contains further amendments to the Road Traffic Act that relate to administration of the law. An approval process is provided that will allow the temporary use of traffic control devices by persons other than a Road Authority. Currently, temporary approval can only be given to certain persons to use hand-held stop signs such as for pedestrian crossings and the Tour Down Under. Many persons now work on roads performing work that was formerly reserved for Government authorities and require the use of a wide range of traffic control devices. Entities such as Optus, a plumber or a cementing contractor undertake work on roads each day but, because such work is not undertaken on behalf of an Authority, cannot currently use traffic control devices. The proposed amendment will allow the Minister to give approval for the temporary use of devices and thereby increase safety for such workers. The amended section will also apply to persons currently approved under section 23. As currently provided under section 23, approval may be subject to conditions imposed by the Minister.

To ensure that only authorised persons use or install traffic control devices, the Bill creates an offence for any person who,

without authority, installs a device or intentionally interferes with a device.

The Australian Road Rules prohibit the use of any device that detects or interferes with a speed measuring device. In contrast, section 53B of the Road Traffic Act only applies to radar detectors and jammers and does not apply to other technologies. With advances in technologies and to ensure consistency with the Australian Road Rules, it is proposed that the provisions of section 53B (including provisions allowing forfeiture and seizure of radar detectors) be amended to apply to any device that detects or interferes with a speed measuring device.

Parking controls around Parliament House will continue to be located in the Road Traffic Act. A minor amendment to section 85 reflects that there is no longer a Minister of Public Works and provides that permission for parking in the prohibited area adjacent to Parliament House be granted by the Presiding Member of the Joint Parliamentary Services Committee.

Attempts to introduce uniform Road Rules for Australia have been made since 1948. In the 1990s, State Governments began working together to develop uniform rules with the assistance of the National Road Transport Commission in order that Australia as one country, can have one set of basic road rules. Implementation of the Road Rules is also required for South Australia to continue to receive competition payments from the Commonwealth Government.

It is proposed that the new Road Rules will come into effect in South Australia from 1 December 1999—and by this time will be effective across Australia.

I highlight again that this Bill does not introduce the 351 proposed Australian Road Rules. The Bill provides that the Road Rules be made as South Australian subordinate legislation. However, I will provide all Honourable Members with a copy of the Rules and any additional information they may seek to assist in understanding this important initiative.

Overall, the Australian Road Rules will be of significant benefit to all South Australians. They also will be a significant part of national infrastructure reforms that will make Australian exports more competitive, with benefits delivered to interstate transport operators who will no longer have to cope with a variety of different road laws in every State. The adoption of nationally uniform road rules, developed through cooperation of all States and Territories and the Commonwealth, is a major achievement as we move towards the next millennium and the Centenary of Federation. Certainly as Minister for Transport and Urban Planning I welcome the opportunity to introduce this long overdue reform to the Parliament.

I commend this Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Insertion of s. 2

This proposed new section replaces section 8 of the principal Act (to be repealed by clause 7 of the Bill). The provision makes it clear that the principal Act binds the Crown in all its capacities but does not give rise to any criminal liability on the part of the Crown itself as distinct from its agents, instrumentalities, officers and employees.

Clause 4: Amendment of s. 5—Interpretation

This clause substantially revises definitions of terms used in the principal Act to bring the definitions into line with those adopted in the draft Australian Road Rules. In some cases, existing definitions are omitted because the terms defined are no longer used at all or their use is confined to the draft Australian Road Rules.

Clause 5: Substitution of s. 6

Existing section 6 of the principal Act is an interpretation provision providing in effect that driving, riding, etc., is to be taken to be driving, riding, etc., on a road. The new section 5A conveys the same message but in the form adopted in the draft Australian Road Rules. The new section 6 goes on to provide that references to drivers or driving are to include references to riders or riding unless otherwise expressly stated.

Clause 6: Drivers of trailers

This amendment is consequential on the change from the term "pedal cycle" to the term "bicycle".

Clause 7: Repeal of s. 8

The matter dealt with by section 8 of the principal Act is now to be dealt with by the proposed new section 2.

Clause 8: Repeal of s. 9

Section 9 of the principal Act is not required under the proposed new scheme and is repealed.

Clause 9: Repeal of s. 10

Section 10 (which provides for the principal Act to be committed to a particular Minister) is repealed as this process is carried out under the *Administrative Arrangements Act 1994*.

Clause 10: Amendment of s. 11—Delegation by Minister

Section 11 provides for delegation by the Minister. The clause amends the section to make it clear that delegations may be made to councils and that there may be subdelegations subject to conditions fixed by the delegator.

Clause 11: Amendment of s. 17—Installation, etc., of traffic control devices

Section 17(1) of the principal Act authorises an Authority, with the approval of the Minister, to install, maintain, alter or operate traffic control devices on or near roads in accordance with Part 2 of the Act. The requirement that the process be in accordance with Part 2 is removed. Controls on the process will, in future, be imposed through the Ministerial approvals which, under section 12, may be conditional. The reference to installation, etc., "on or near a road" is amended to "on, above or near a road" to conform to the draft Australian Road Rules provisions.

A new subsection (3) is added to section 17 to provide for temporary installation or display of traffic control devices by any authority, body or person with the approval of the Minister. This would allow and govern the display of hand held stop signs at road works or pedestrian crossings, or the temporary placement of speed limit signs at road works or the installation or display of barriers or signs in aid of temporary road closures.

Clause 12: Amendment of s. 18—Direction as to installation, etc., of traffic control devices

Section 18(1) of the principal Act empowers the Minister to give directions relating to the installation, etc., of traffic control devices on or near a road to the Authority responsible for the care, control or management of the road. The clause would allow directions relating to devices on, above or near a road and directions to an Authority in connection with a road whether or not the Authority has the care, control or management of the road.

Clause 13: Amendment of s. 19—Cost of traffic control devices and duty to maintain

A new section 19(2) is proposed allowing regulations (or another Act) to require that costs associated with specified traffic control devices be borne by an authority, body or person other than the Authority responsible for the road in question. The clause also provides that the authority, body or person liable for the costs associated with a traffic control device is responsible for maintaining it in good order. This provision is to the same effect as existing section 25(4) and (5) which are to be repealed (*see clause 15*).

Clause 14: Amendment of s. 20—Duty to place speed limit signs in relation to work areas or work sites

This clause makes a drafting clarification to subsection (2) and removes subsection (4) of section 20. Subsection (4) requires compliance with speed limit signs erected at work sites or areas—a matter that will, in future, be dealt with by Part 3 of the Australian Road Rules which creates an offence of disobeying speed limits specified in speed limit signs.

Clause 15: Substitution of ss. 23 and 25

Sections 23 and 25 of the principal Act are to be replaced. Section 23 deals with the exhibition of stop signs at pedestrian crossings or work sites or in connection with temporary road closures. This matter is now to be dealt with by the proposed new section 17(3) (*see clause 11*). Section 25 regulates traffic control device design and placement—matters now to be dealt with by the Ministerial approval process under section 17 and by Part 20 of the Australian Road Rules. The section also creates conclusive evidentiary presumptions as to the lawful installation of traffic control devices and deals with the maintenance of traffic control devices (for the latter, *see clause 13*).

Proposed new s. 21—Offences relating to traffic control devices

Proposed new section 21 makes it an offence (with a maximum penalty of $5 000 or imprisonment for one year) if a person, without proper authority, installs or displays a sign, signal, etc., on, above or near a road intending that it will be taken to be a traffic control device, or intentionally alters, damages, destroys or removes a lawfully installed or displayed traffic control device.

Proposed new s. 22.—Proof of lawful installation, etc., of traffic control devices

Proposed new section 22 provides for there to be a conclusive presumption in officially instituted proceedings for a traffic

offence that a traffic control device proved to have been on, above or near a road was lawfully installed or displayed there.

Clause 16: Amendment of s. 31—Action to deal with false devices or hazards to traffic

This clause amends section 31 of the principal Act to clarify the powers of road authorities and the Minister to deal with false traffic control devices and other traffic hazards.

Clause 17: Substitution of ss. 32 and 32A and headings

Sections 32 and 32A of the principal Act deal with the establishment of speed zones and shared zones—matters now to be dealt with by the installation of speed limit signs and shared zone signs under section 17 of the Act and by Part 3 of the Australian Road Rules.

Proposed new s. 32.—Road closing by councils for traffic management purposes

Proposed new section 32 is grouped together with existing sections 33 and 34 which deal with road closures for road events and emergency use by aircraft. The proposed new section reproduces (with minor drafting variations) section 31 of the *City of Adelaide Act 1998* (which is repealed by the Schedule of the Bill). The provision imposes a special consultation and approval process on the closure of roads by councils for traffic management purposes. The minor drafting variations are limited to—

- adjustments to (1) to reflect the fact that closures will now be effected by the installation or alteration of traffic control devices
- adjustments to (1) to require that the installation or alteration of the devices must be in pursuance of a council resolution
- widening of (8) so that a "prescribed road" will include a road that runs up to another road running along or containing the boundary of another council area.

Clause 18: Amendment of s. 33—Road closing and exemptions for road events

Section 33 of the principal Act empowers the Minister to introduce temporary road closures and exemptions for road events. The clause widens the definition of "event" so that the road closure powers are not limited to sporting, recreational or similar events but extend to political, artistic, cultural or other activities, including street parties (powers currently contained in the *Local Government Act* which are to be repealed).

Clause 19: Repeal of heading

The heading above section 34 is repealed in view of the more general heading to be inserted by clause 17 above new section 32.

Clause 20: Amendment of s. 34—Road closing for emergency use by aircraft

Section 34 of the principal Act (relating to road closing for emergency use by aircraft) is amended so that it is clear that signs or barriers erected by the police at the closed section of road are traffic control devices.

Clause 21: Amendment of s. 35—Inspectors

Section 35 of the principal Act provides for the appointment of inspectors by the Commissioner for Highways. The clause amends the section—

- to make the Minister the appointing authority
- to provide that authorised persons under the *Local Government Act* will be inspectors for the purposes of enforcing prescribed provisions (intended to be Part 12 of the draft Australian Road Rules—Restrictions on stopping and parking)
- to enable the Minister to impose conditions on the exercise of the powers of an inspector.

Clause 22: Substitution of heading

This clause substitutes a wider heading for the heading presently above section 37.

Clause 23: Insertion of s. 38A

Proposed new s.38A.—Marking of tyres for parking purposes

Proposed new section 38A brings over from the *Local Government (Parking) Regulations* the power for inspectors to place erasable marks on tyres in the course of official duties relating to the parking of vehicles.

Clause 24: Amendment of heading to Part 3

This clause widens the heading to Part 3 so that it refers to the duties of passengers as well as drivers and pedestrians.

Clause 25: Repeal of ss. 39 and 40 and heading

Sections 39 and 40 of the principal Act (which deal with the application of the Act to animals, animal-drawn vehicles and trams and exemptions for police, emergency workers, etc.) are repealed. These matters are now provided for by—

- the new definitions of "vehicle" (which includes animals that are being ridden, animal-drawn vehicles and trams) and "rider"; and
- Part 19 of the draft Australian Road Rules—Exemptions.

Clause 26: Amendment of s. 41—Directions or for clearing road or investigation purposes

Section 41 of the principal Act provides, amongst other things, power for a member of the police force to give directions for the safe and efficient regulation of traffic. This power is removed from the section as a similar power is provided in Rule 304 of the draft Australian Road Rules.

Clause 27: Substitution of s. 43 and heading

Proposed new s. 43.—Duty to stop and give assistance where person killed or injured

Section 43 of the principal Act deals with duties of drivers involved in vehicle accidents. The proposed new section is limited to the duty of a driver involved in a vehicle accident to stop and give assistance where a person is killed or injured. Rule 287 of the draft Australian Road Rules deals with the duty of a driver to exchange details with another driver involved in a vehicle accident and to report the accident to the police.

Clause 28: Repeal of s. 45A

Section 45A of the principal Act (Entering a blocked intersection) is repealed. This matter is dealt with in Rule 128 of the draft Australian Road Rules.

Clause 29: Amendment of s. 47E—Police may require alcotest or breath analysis

Section 47E(1)*(a)* and *(b)* of the principal Act deal with the power of police to require an alcotest or breath analysis where there are reasonable grounds to believe that a person has committed a driving offence against Part 3 of the Act or an offence against section 20 (Speed limit at work areas or sites), section 111 (Duty to comply with requirements as to lamps and reflectors) or section 122 (Duty to dip headlamps). Paragraph *(b)* will not be required as the offences (against section 20, 111 or 122) will become offences against the Australian Road Rules. Paragraph *(a)* is redrafted and limited to offences against "this Part" where driving is an element, that is, offences against Part 3 of the principal Act and (through the operation of section 14BA(2) of the *Acts Interpretation Act 1915*) offences against the Australian Road Rules where driving is an element.

Clause 30: Repeal of ss. 48 to 53 and heading

Sections 48 to 53 of the principal Act are repealed. These relate to speed restrictions which are dealt with in Part 3 of the draft Australian Road Rules.

Clause 31: Amendment of heading

The heading above section 53A of the principal Act is widened so that it refers to "Radar Detectors and Jammers" as well as "Traffic Speed Analysers".

Clause 32: Amendment of s. 53B—Sale and seizure of radar detectors, jammers and similar devices

The offence contained in section 53B of the principal Act is narrowed so that it applies only to sale, or storing or offering for sale, of a radar detector or jammer. The Australian Road Rules at rule 225 will provide an offence of driving a vehicle that contains such a device. "Radar detector or jammer" is defined to include any device for detecting the use, or preventing the effective use, of a speed measuring device (whether or not the speed measuring device employs radar in its operation).

Clause 33: Repeal of ss. 54 to 79 and headings

Sections 54 to 79 of the principal Act are repealed. These relate to—

- driving on the left and passing (dealt with in Part 11 of the draft Australian Road Rules)
- driving on footpaths or bikeways (dealt with in Rule 288 of the draft Australian Road Rules)
- giving way (dealt with in Part 7 and various other Parts of the draft Australian Road Rules)
- turning to the right (dealt with in Part 4 of the draft Australian Road Rules)
- driving signals (dealt with in Part 5 of the draft Australian Road Rules)
- traffic lights, signals and signs (dealt with in Part 6 and various other Parts of the draft Australian Road Rules).

Clause 34: Amendment of s. 79B—Provisions applying where certain offences are detected by photographic detection devices

Section 79B of the principal Act deals with the use of photographic detection devices to detect various listed offences against the Act. These offences will now be found in the Australian Road Rules and

the new list will, as a result, be contained in regulations that are proposed to be made in conjunction with the Australian Road Rules.

Clause 35: Substitution of ss. 80, 81 and 82A and headings

Sections 80 (Restrictions on entering road crossings), 81 (Certain vehicles to stop at railway level crossings) and 82A (Council not to authorise angle parking on a road without Minister's approval) are repealed. The matters to which sections 80 and 81 relate are dealt with in Part 10 of the draft Australian Road Rules. Controls on the introduction of angle parking can be applied through the process for Ministerial approval of traffic control devices.

Proposed new s. 80.—Australian Road Rules and ancillary or miscellaneous regulations

Proposed new section 80 is the empowering provision for the making of the rules that will replicate the draft Australian Road Rules. The power is expressed in general terms—rules to regulate traffic movement, flows and conditions, vehicle parking, the use of roads and any aspect of driver, passenger or pedestrian conduct. Power is also conferred for regulations to be made that are ancillary to the Australian Road Rules or Part 3 of the principal Act or deal with miscellaneous traffic matters not contained in the Australian Road Rules.

Proposed new s. 81.—Requirement for speed limiting modifications to certain vehicles exceeding 115 kilometres per hour

Proposed new s. 82.—Speed limit while passing a school bus

Proposed new sections 81 and 82 provide for speed limiting of heavy vehicles detected speeding and a speed limit while passing a school bus. These provisions match existing provisions (sections 144 and 49(1)*(b)*) and are relocated to improve the order and structure of the Act. The draft Australian Road Rules contain no provisions on these topics.

Clause 36: Amendment of s. 85—Control of parking near Parliament House

This clause corrects several outdated references in section 85 of the principal Act (Control of parking near Parliament House).

Clause 37: Amendment of s. 86—Removal of vehicles causing obstruction or danger

This clause is consequential to a change in terminology resulting from the draft Australian Road Rules—references to "expressways" become references to "freeways".

Clause 38: Repeal of heading

A heading is repealed in view of a more general heading inserted by an earlier clause.

Clause 39: Repeal of ss. 88 to 90A and heading

Sections 88 to 90A of the principal Act are repealed. These provisions relate to pedestrian duties—matters dealt with in Part 14 of the draft Australian Road Rules.

Clause 40: Repeal of ss. 92 to 94A and heading

Sections 92 to 94A of the principal Act are repealed. The sections relate to miscellaneous matters—stopping at ferries, opening vehicle doors and driving with a person on the roof or bonnet or with a portion of the driver's body protruding from the vehicle. These matters are dealt with in Parts 7 and 16 of the draft Australian Road Rules.

Clause 41: Repeal of ss. 96 to 99

Sections 96 to 99 of the principal Act are repealed. These provisions relate to cyclists—matters dealt with in Part 15 of the draft Australian Road Rules.

Clause 42: Amendment of s.99A—Cyclists on footpaths, etc., to give warning

This clause makes amendments of a drafting nature consequential on new terminology adopted in the draft Australian Road Rules.

Clause 43: Substitution of ss. 99B to 105 and heading

Sections 99B to 105 of the principal Act are repealed and replaced with a new section 99B relating to wheeled recreational devices and wheeled toys. This new section continues various provisions in the current section 99B that are not adopted in the draft Australian Road Rules and do not conflict with the Australian Road Rules.

Matters dealt with in sections 100 to 104 are now dealt with in Rules 224, 291, 297, 245, 269 and 303 of the Australian Road Rules. Section 105 deals with leading animals in towns or townships—a matter now to be dealt with by local government by-laws.

Clause 44: Amendment of s. 106—Damage to roads and works

This clause makes a drafting change consequential on the wider definition of "traffic control device".

Clause 45: Repeal of s. 109

Section 109 of the principal Act (relating to tyre pressures) is repealed. This is a matter for vehicle standards.

Clause 46: Repeal of s. 116 and heading

Section 116 of the principal Act is repealed. This section (inserted by an earlier amending Bill) deals with the towing of vehicles—a matter now to be dealt with in the new regulations imposing mass and loading requirements and in Part 18 of the draft Australian Road Rules.

Clause 47: Repeal of ss. 161 and 162

Sections 161 and 162 of the principal Act are repealed. Section 161 gives the Commissioner of Police power to suspend the registration of unsafe vehicles. This power is not exercised—the Registrar of Motor Vehicles suspends the registration of unsafe vehicles under the *Motor Vehicles Act*. Section 162 of the principal Act deals with a matter now to be dealt with in the new regulations imposing mass and loading requirements.

Clause 48: Substitution of s. 162AB

Section 162AB is repealed. The section deals with the wearing of seat belts—a matter dealt with in Part 16 of the draft Australian Road Rules. This section is replaced with a new provision for regulations dealing with the design and construction of motor bike and bicycle helmets—matters previously dealt with in section 162C.

Clause 49: Amendment of s. 162C—Safety helmets and riders of wheeled recreational devices and wheeled toys

Section 162C of the principal Act deals with the wearing and the design and construction of helmets for the riders of motor bikes, bicycles and small-wheeled vehicles. The section is narrowed so that it deals only with the wearing and design and construction of helmets for riders of wheeled recreational devices and wheeled toys. The Australian Road Rules (Parts 15 and 16) will require the wearing of helmets by cyclists and motor bike riders.

Clause 50: Repeal of s. 163B

Section 163B is repealed. The section provides for the appointment of inspectors for the purposes of Part 4A. This will now be dealt with under the provision for the appointment of inspectors contained in Part 2 of the principal Act.

Clause 51: Amendment of s. 164A—Offences and penalties

The general penalty for offences against the Act is increased from $1 000 to $1 250 which conforms to the currently approved scale of penalties.

Clause 52: Repeal of s. 169

Section 169 requires courts to disqualify drivers for repeated driving offences. This provision is obsolete in view of the introduction of expiation notices and the demerit point system.

Clause 53: Insertion of ss. 174A to 174E

This clause inserts a series of new sections to deal with various matters relating to parking.

Proposed new s. 174A.—Liability of vehicle owners and expiation of certain offences

Proposed new section 174A relates to offences against prescribed provisions of the Act and provides for the owner of a vehicle to also be guilty of an offence if the vehicle is involved in such an offence. The section corresponds to sections 789b, 789c and 798d of the *Local Government Act 1934* which will be repealed at a later stage. The provisions to be prescribed will be Part 12 of the Australian Road Rules (Restrictions on stopping and parking).

Proposed new s. 174B.—Further offence for continued parking contravention

Proposed new section 174B corresponds to regulation 30 of the *Local Government (Parking) Regulations 1991*. The provision creates an offence for each hour that a parking offence continues.

Proposed new s. 174C.—Council may grant exemptions from certain provisions

Proposed new section 174C would allow councils to grant exemptions from the parking provisions. This section corresponds to section 475 of the *Local Government Act 1934* which is repealed by the schedule to this Bill.

Proposed new s. 174D.—Proceedings for certain offences may only be taken by certain officers or with certain approvals

Proposed new s. 174E.—Presumption as to commencement of proceedings

Proposed new sections 174D and E continue the restriction on prosecuting parking offences to be found in section 794b of the *Local Government Act 1934* and section 176(6) of the principal Act (to be repealed by clause 55). Under new section 174D, parking offences may only be prosecuted by the police or council officers, or with the approval of the Commissioner of Police or the chief executive officer of a council. New section 174E is an evidentiary provision about authority to commence parking prosecutions.

Clause 54: Amendment of s. 175—Evidence
This clause revises the evidentiary provisions of the principal Act in view of other amendments and the Australian Road Rules.

Clause 55: Amendment of s. 176—Regulations and rules
This clause revises the general regulation making provision of the principal Act in view of other amendments and the Australian Road Rules.

Clause 56: Amendment of s. 177—Inconsistency of by-laws
This amendment is consequential on the proposal to make rules as well as regulations under the principal Act.

Clause 57: Transitional provision
This is a transitional provision to retain the effect of existing council exemptions from parking controls.

SCHEDULE

Related Amendments

The schedule makes consequential amendments to the *City of Adelaide Act 1998* and the *Local Government Act 1934*.

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

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning) obtained leave and introduced a Bill for an Act to amend the Motor Vehicles Act 1959 and to make related amendments to the Expiation of Offences Act 1996 and the Road Traffic Act 1961. Read a first time.

The Hon. DIANA LAIDLAW: I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill amends the *Motor Vehicles Act 1959* and the *Road Traffic Act 1961* to make South Australian law governing the registration of motor vehicles, the licensing of drivers and the issue of defect notices for defective motor vehicles consistent with nationally developed and agreed practices.

Premiers at Special Premiers Meetings approved the Heavy and Light Vehicle Agreements in 1991 and 1992 respectively. These reforms, subsequently developed by the National Road Transport Commission and approved by the Australian Transport Council, are aimed at bringing about national consistency in the regulatory and operating environment for road transport. The reforms are detailed in national laws or policy on heavy vehicle registration and driver licensing. It was agreed that the heavy vehicle registration reforms would be applied to light vehicles where applicable, to ensure that all road users benefit from the changes.

The reforms will reduce costs for complying with different rules from State to State (which is particularly important for heavy vehicles and interstate fleet operators). They will also help reduce fraud and vehicle theft through stricter identification requirements and streamline the registration process. The Commonwealth Government calculated that the national regulatory framework for heavy vehicle registration would have a recurring benefit to vehicle operators of $14 million and would reduce frustration, delay, inefficiencies and costs associated with differences across the jurisdictions.

The Bill incorporates into the Motor Vehicles Act those aspects of the National Driver Licensing Scheme and the National Heavy Vehicle Registration legislation that have not already been dealt with by amendments to the Act or regulations over the last two to three years. Licence classes and conditions, heavy vehicle registration charges and quarterly registration have already been implemented by recent amendments to the Act and regulations. The majority of the amendments do not alter the law substantially and are designed to make administrative requirements and procedures the same across Australia.

This Bill concludes the legislative changes that are an essential precursor to the system changes required to deliver the full benefits to the public. Examples of the areas where system changes are necessary include Transport SA's Registration and Licensing computer, forms and procedure manuals.

Changes to the Acts include:

- introducing a right to internal review of decisions of the Registrar, by requiring the Registrar to review the decisions and making the consultative committee an internal review committee for certain decisions of the Registrar
- making the District Court the forum for external appeals from internal reviews by the Registrar or review committee;
- ensuring that all motor vehicles that are exempt from the requirement to be registered are either covered by compulsory third party insurance or have public liability insurance to an acceptable level;
- introducing probationary licences (subject to conditions requiring zero blood alcohol and carriage of licence, and allowing the incurring of not more than two demerit points) for persons applying for a licence after a period of licence cancellation by virtue of section 81B of the Act or a court order;
- amending the definition of road to separate it into road and road related area, and empowering the Minister to declare that the Act or parts of it do not apply to particular roads or road related areas;
- empowering the Registrar to delegate powers and functions, rather than to authorise agents to exercise specific powers and function, and making it an offence to contravene a condition of a delegation;
- implementing the national concept of 'use of a vehicle' by regulating driving or standing a motor vehicle where appropriate, and extending penalties for standing an unregistered vehicle on a road, to allow more effective enforcement against unregistered vehicle owners and operators;
- introducing the concept of the registered operator, requiring this person to be recorded in the register of motor vehicles, requiring notification of change of the registered operator or their address, and extending to the registered operator many of the obligations placed by the Act on the registered owner;
- providing for the issue of major vehicle defect notices and minor vehicle defect notices, depending on the level of safety risk perceived by the member of the police force or inspector issuing the notice, requiring the Registrar to record defect notices on the register of motor vehicles, and empowering members of the police force and inspectors to issue formal written warnings instead of defect notices where vehicles do not comply with the vehicle standards but do not pose a safety risk;
- altering definitions to ensure consistency with national definitions;
- adding to the information requirements for applications for registration of motor vehicles and for driver licences, to ensure national standards for data integrity can be met thus increasing protection against fraud in relation to multiple licence holders and the re-identification of stolen vehicles;
- empowering the Registrar to require information and evidence from holders of licences and registered owners and operators of vehicles where the Registrar believes information on the register of motor vehicles or register of licences is inaccurate, incomplete or misleading;
- clarifying the term and expiry of vehicle registration and driver licences;
- requiring an application for transfer to include the same information as an application for registration, and empowering the Registrar to refuse to transfer registration on the same grounds as refusing to register;
- removing the requirement that a licensed driver training for a higher licence class obtain a learner's permit provided that an appropriately licensed driver accompanies the learner driver;
- requiring medical tests for assessing medical fitness and competence to drive to be conducted in accordance with national guidelines;
- clarifying the conditions under which and the period for which a visiting motorist with a foreign licence and an International Driver's Permit is permitted to drive in South Australia (to bring South Australia into line with the international convention on road traffic);
- making it an offence to possess a licence acquired on the basis of false information;
- removing the provisions that prevent a member of the police force from requiring a provisional licence driver to submit to an alcotest or breath analysis under section 47E of the Road Traffic Act;

- allowing applications under the Act to be made by a person's agent;
- allowing for the Minister to suspend parts of the Act in all or parts of the State by application of emergency orders;

DEMERIT POINTS

The Bill incorporates a number of matters related to demerit points, including—

- moving the schedule of offences that attract demerit points from the Act to the regulations (made necessary as a result of the introduction of the Australian Road Rules as subordinate legislation);
- requiring the Registrar to notify interstate registration authorities of demerit points incurred in South Australia by interstate-resident drivers

The Bill also introduces a 'good behaviour bond' option for drivers who accumulate 12 or more demerit points and face disqualification from holding or obtaining a licence. In these circumstances the driver can either accept disqualification or undertake a 12 months 'good behaviour bond', conditional upon not incurring more than one demerit point. If the condition is breached, it is proposed the driver would be disqualified for twice the period they would have been had they not taken the 'good behaviour' option.

The National Scheme supports a sliding scale of periods for disqualification ranging from three months for 12 to 15 demerit points, 4 months for 16 to 19 points and 5 months for 20 or more points. Thus a driver who had 20 demerit points accumulated at the time of being disqualified and who accepted the 'good behaviour bond' but then breached it, would be disqualified for 10 months.

The reform provides for a formal mechanism of internal review and external appeal to the District Court.

The 'good behaviour bond' proposal replaces the current practice where a driver can appeal to the Magistrates Court, on the grounds of undue hardship, to have the number of demerit points reduced from 12 to 10. In 1998, over 6000 appeals were heard of which 87.6 per cent were upheld. Incidentally, since 1996 the Magistrates Court has recommended that current practice be changed to an administrative process. The National Driving License Scheme accommodates this recommendation, and already in terms of interstate practice Victoria, NSW, Queensland, Tasmania and the ACT have introduced the driver 'good behaviour bond' option.

At this time the Bill does not include the application of demerit points to speeding offences detected by speed cameras and red light cameras. Currently the penalty for offences detected by such means is an expiation fee, whereas the penalty for speed offences detected by laser and radar devices is an expiation fee plus demerit points, e.g. 1 demerit point for a speed 15 km over the maximum set speed.

Across Australia only South Australia and the Northern Territory continue to apply a different penalty system for speeding offences depending on the means of detection. However, in Government there remains some enduring and fundamental concerns about the application of demerit points to offences that can be expiated and therefore do not attract a conviction.

There are further practical concerns with the use of signs to notify drivers that speed cameras are in operation, the issue of notices and photographs and the identification of the driver. Until these concerns have been resolved the Government will not act to apply demerit points to speeding offences irrespective of the means of detection.

Overall the practical implications of the measures in this Bill are minimal. Where relevant, however, the Government will ensure information on the changes will be provided to vehicle owners, operators and licence holders at the time of a vehicle registration or driver licence transaction.

The national driver licensing and vehicle registration schemes were developed by the National Road Transport Commission in close consultation with the road transport industry, registration and licensing authorities, law enforcement and third party insurance agencies in all States and Territories.

I commend the Bill to Hon. Members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure by proclamation.

Clause 3: Insertion of s. 2

2. Crown is bound

This section provides for the Act to bind the Crown in all its capacities (so far as the legislative power of the State extends).

Clause 4: Amendment of s. 5—Interpretation

This clause amends the interpretation provisions. The changes include replacing the terms farm implement and farm machine with agricultural implement and agricultural machine (for national consistency), removing the definition of authorised agent (see the amendments to section 7 of the principal Act), removing the definition of business name (consequential on the removal of the provision enabling registration of a motor vehicle in a business name), and substituting nationally consistent definitions of gross combination mass, gross vehicle mass, motor bike, motor vehicle, prime mover, road, road related area and trailer.

Clause 5: Insertion of s. 6

6. Power of Minister to include or exclude areas from application of Act

This section gives the Minister the power to declare areas to be road-related areas and to declare that the Act or specified provisions of the Act do not apply to a specified road or portion of road (either indefinitely or for a specified period).

Clause 6: Amendment of s. 7—Registrar and officers

This clause provides that the Registrar is to be taken to be an inspector under the Act, and empowers the Registrar to delegate any of the Registrar's powers or functions under any Act to a person or body that, in the Registrar's opinion, has appropriate qualifications or experience to exercise the relevant powers or functions. A delegation may be subject to conditions, and contravention of, or failure to comply with, conditions by the delegatee is an offence with a maximum penalty of $10 000 or imprisonment for two years.

Clause 7: Substitution of s. 9

9. Duty to register

This section makes it an offence for a person to drive an unregistered motor vehicle on a road, or cause an unregistered motor vehicle to stand on a road. The maximum penalty is an amount equal to double the registration fee that would have been payable for registration of the fee or $750, whichever is the greater amount.

Where the registration of a vehicle was not in force by reason of suspension, and the defendant was not the registered owner or the registered operator of the vehicle, it is a defence for the defendant to prove that a registration label was affixed to the vehicle and the defendant did not know, and could not reasonably be expected to know that the vehicle's registration was suspended.

The section also provides that the owner of an unregistered vehicle commits an offence if the vehicle is found standing on a road. The maximum penalty is the same as for the offence of driving or causing an unregistered vehicle to stand. However, it is a defence to either offence to prove that the vehicle was driven or left standing on a road in circumstances in which the Act or regulations permit a vehicle without registration to be driven on a road. Where the defendant is the last registered owner or last registered operator of the vehicle, it is a defence for the defendant to prove that he or she was not the owner or operator at the time of the alleged offence.

Clause 8: Repeal of s. 11

This clause repeals section 11 of the principal Act. The exemption from registration for fire-fighting vehicles is to be relocated to proposed new section 12B.

Clause 9: Amendment of s. 12—Exemption for certain trailers, agricultural implements and agricultural machines

This clause removes all references to farm implement and farm machine and replaces them with agricultural implement and agricultural machine. It also inserts a provision requiring a person who drives a prescribed agricultural machine on a road without registration or insurance under Part 4 of the Act as authorised by the section to produce evidence of the person's public liability insurance on request by a member of the police force, either forthwith or within 48 hours. The maximum penalty for failure to comply is $250.

Clause 10 : Substitution of s. 12A

12A. Exemption of self-propelled wheelchairs from requirements of registration and insurance

This section permits self-propelled wheelchairs and motor vehicles of a prescribed class to be driven on roads without registration or insurance by a person who, because of some physical infirmity, reasonably requires the use of a wheelchair or such motor vehicle. These vehicles are taken to be subject to a policy of insurance under Part 4 of the Act.

12B. Exemption of certain vehicles from requirements of registration and insurance

This section permits the following motor vehicles to be driven on roads without registration or insurance: a motor vehicle driven

for the purpose of fire-fighting, a motor vehicle driven on a wharf for the purpose of loading or unloading cargo, and a self-propelled lawn mower driven for the purpose of mowing lawn or grass or to or from a place where it is or has been so used.

However the section requires a vehicle exempted under this section to be subject to a policy of public liability insurance indemnifying the owner and any authorised driver for at least $5 million for death or bodily injury caused by or arising out the use of the vehicle on roads. A person who drives a motor vehicle on a road without registration or insurance under Part 4 of the Act as authorised by section 12 to produce evidence of the person's public liability insurance on request by a member of the police force, either forthwith or within 48 hours. The maximum penalty for failure to comply is $250.

Clause 11: Substitution of s.19A

19A. Vehicles registered, etc., interstate or overseas

This section permits a motor vehicle with a garage address outside the State to be driven in this State without registration under the Act for the purpose of temporary use if the vehicle is registered interstate or in a foreign country or allowed to be driven in another State or a Territory under a permit or other authority, and there is in force a policy of insurance that complies with Part 4 of the Act or the law of the other State or Territory where it is permitted to be driven, and under which the owner and driver of the vehicle are insured against liability in respect of death or bodily injury to any person caused by or arising out of the use of the vehicle in this State.

The section also permits a motor vehicle to be driven in this State for the purpose of temporary use without registration under the Act until the end of the prescribed period if while so driven the garage address of the vehicle ceases to be outside the State or the vehicle is brought into this State for use from a garage address in this State and the requirements specified in the previous paragraph are satisfied in relation to the vehicle. The prescribed period is the period of 90 days from the day on which the garage address of the vehicle ceases to be outside the State or the vehicle is brought into the State to be used from a garage address in the State, or the period ending on the day on which the registration, permit or other authority by which the vehicle is permitted to be driven interstate or in a foreign country expires, whichever is the lesser period.

Clause 12: Amendment of s. 20—Application for registration

This clause specifies the particulars that must be stated in an application for registration of a motor vehicle, and prohibits the making or granting of an application if the vehicle's garage address is outside the State. It also prohibits a person under 18 years from being registered as the owner or operator or a heavy vehicle, and a person under 16 years from being registered as the owner or operator of a vehicle other than a heavy vehicle.

Clause 13: Amendment of s. 21—Power of Registrar to return application

This clause makes a minor consequential amendment.

Clause 14: Amendment of s. 24—Duty to grant registration

This clause amends section 24 to allow for periods of registration nominated by an applicant, to allow renewals of registration to be made within 12 months after expiry, and to empower the Registrar to refuse registration if the registration of the vehicle in another State or Territory has been cancelled or suspended for reasons that still exist, or if there are unpaid fines or pecuniary penalties arising out of the use of the vehicle in another State or Territory.

Clause 15: Amendment of s. 25—Conditional registration

This clause amends section 25 to enable the Registrar to vary conditions of the registration of a motor vehicle under that section, and to impose further conditions.

Clause 16: Substitution of s. 26

26. Duration of registration

This section specifies the duration of registration.

Clause 17: Repeal of s. 32

This clause repeals section 32 which is made obsolete by new section 2.

Clause 18: Amendment of s. 40—Balance of registration fee

Clause 19: Amendment of s. 43—Short payment, etc.

Clause 20: Amendment of s. 43A—Temporary configuration certificate for heavy vehicle

These clauses add references to registered operator.

Clause 21: Amendment of s. 44—Duty to notify alterations or additions to vehicles

This clause provides for the kinds of alterations and additions to a motor vehicle required to be notified to the Registrar to be prescribed, and makes both the registered owner and the registered operator guilty of an offence and liable to a fine of $750 if the section is not complied with.

Clause 22: Amendment of s. 45—Refund where vehicle altered

This clause adds a reference to registered operator.

Clause 23: Amendment of s. 47—Duty to carry number plates

This clause adds a new offence of causing to stand on a road a motor vehicle that does not carry number plates, and makes both the registered owner and the registered operator guilty of an offence if a motor vehicle is driven on a road or caused to stand on a road in contravention of the section.

Clause 24: Amendment of s. 47A—Classes of number plates and agreements for the allotment of numbers

This clause makes minor consequential amendments.

Clause 25: Amendment of s. 47B—Issue of number plates

Clause 26: Amendment of s. 47C—Return or recovery of number plates

These clauses adds references to registered operator.

Clause 27: Insertion of s. 47D

47D. Offences in connection with number plates

This section makes it an offence for a person to drive on a road, or cause to stand on a road a motor vehicle that carries a number plate with a number other than that allotted to the vehicle, a number plate that has been altered, defaced, mutilated or added to, or a colourable imitation of a number plate. It also makes it an offence for a person to have unlawful possession of a number plate or an article resembling a number plate that is liable to be mistaken for a number plate, and makes both the registered owner and the registered operator of a motor vehicle guilty of an offence if the section is contravened. The maximum penalty for all offences against the section is a fine of $250.

Clause 28: Amendment of s. 48—Certificate of registration and registration label

This clause adds references to registered operator, and makes both the registered owner and the registered operator of a motor vehicle guilty of an offence if the vehicle is driven without carrying the vehicle's registration label. The maximum penalty is a fine of $250.

Clause 29: Substitution of ss. 50 and 51

50. Permit to drive pending receipt of registration label

This section enables a registered motor vehicle for which the registration label has not been received by the registered owner or registered operator to be driven without carrying a registration label under a permit issued by the Registrar or a police officer stationed more than 40 kilometres from the Adelaide GPO.

Clause 30: Amendment of s. 52—Return or destruction of registration label

This clause adds references to registered operator.

Clause 31: Amendment of s. 53—Offences in connection with registration labels and permits

This clause makes it an offence for a person not only to drive, but also to a cause to stand on a road a motor vehicle, on which is affixed or which carries an expired registration label, a registration label issued in respect of another motor vehicle, a registration label or permit that has been altered, defaced, mutilated or added to, a colourable imitation of a registration label or permit. It also makes the registered owner and registered operator of a motor vehicle guilty of an offence if those other offences are committed. The maximum penalty is $250.

Clause 32: Substitution of heading

Clause 33: Amendment of s. 54—Cancellation of registration and refund on application

This clause adds a reference to registered operator.

Clause 34: Substitution of s. 55A

55A. Suspension and cancellation of registration by Registrar

This section expands the powers of the Registrar to suspend or cancel the registration of a motor vehicle, and introduces a requirement for the Registrar to notify the registered owner or registered operator of the decision, the reasons for it, and the action required to avoid suspension or have the suspension or cancellation removed.

Clause 35: Amendment of s. 56—Duty of transferor on transfer of vehicle

This clause amends the penalty provision of the section to convert the divisional fine to the equivalent monetary amount.

Clause 36: Amendment of s. 57—Duty of transferee on transfer of vehicle

This clause sets out the particulars that must be stated in an application for transfer of registration of a motor vehicle, and prohibits

a transfer where the vehicle has a garage address outside the state or the person to be registered as the new owner or operator of the vehicle is under the minimum age required by the Act for an application for registration to be granted.

Clause 37: Amendment of s. 58—Transfer of registration

This clause expands the powers of the Registrar to refuse to transfer the registration of a motor vehicle by including the same grounds as for refusal to register a vehicle.

Clause 38: Substitution of s. 71A and heading

Property in and Replacement of Plates, Certificates or Labels

71A. Property in plates, certificates or labels

This section provides that number plates, trade plates, registration certificates and registration labels issued under the Act remain the property of the Crown.

71B. Replacement of plates, certificates or labels

This section empowers the Registrar to issue a replacement number plate or trade plate or duplicate registration certificate or label if satisfied that the original has been lost, stolen, damaged or destroyed. It also requires the person to whom the replacement plate or duplicate certificate or label is issued to return the original to the Registrar if it is found or recovered. The maximum penalty for a failure to comply is $250.

Clause 39: Amendment of s. 72—Classification of licences

This clause relocates to section 72 the provisions of the current section 85(1), namely, the power of the Registrar to endorse on a driver's licence additional classifications at the request of the holder.

Clause 40: Substitution of s. 74

74. Duty to hold licence or learner's permit

This section makes it an offence for a person to drive a motor vehicle on a road without holding a learner's permit, a licence under the Act authorising the holder to drive a motor vehicle of the class to which it belongs, or a licence under the Act and the minimum driving experience required by the regulations for the grant of a licence that would authorise the driving of a motor vehicle of the class to which the vehicle belongs.

Clause 41: Amendment of s. 75—Issue and renewal of licences

This clause relocates to section 75 the provisions of current section 78(2), namely the minimum age requirement for the issue or renewal of a licence, and introduces a requirement of South Australian residency.

Clause 42: Insertion of s. 75AAA

This clause relocates to the new section the provisions of the current section 84 dealing with the term of driver's licences and surrender of licences.

75AAA. Term of licence and surrender

The section introduces a provision enabling driver's licences to be renewed up to five years after expiry.

Clause 43: Amendment of s. 75AA—Only one licence to be held at any time

This clause introduces a requirement that an applicant for a licence under the Act to surrender a foreign licence unless the Registrar is satisfied that it would be unreasonable in the circumstances to require the surrender of the licence and exempts the person from that requirement.

Clause 44: Amendment of s. 75A—Learner's permits

This clause relocates to section 75A the provisions of current section 78(1), namely the minimum age requirement for the issue or renewal of a learner's permit, and introduces a requirement of South Australian residency.

Clause 45: Repeal of s. 77

Clause 46: Repeal of s. 78

Clause 47: Repeal of ss. 79B, 79BA and 79C

These clauses repeal these sections for the purpose of relocating them.

Clause 48: Amendment of s. 80—Testing and ability or fitness to be granted or hold licence or permit

This clause provides that medical tests required by the Registrar under the section must be conducted in accordance with guidelines published or adopted by the Minister by notice in the Gazette and the results of the tests must be applied by the Registrar, in accordance with any policies published or adopted by the Minister by notice in the *Gazette*, in assessing the person's competence to drive motor vehicles or motor vehicles of a particular class. This clause also relocates to section 80 the power of the Registrar (currently in section 85(2)) to remove classifications from a person's licence.

Clause 49: Amendment of s. 81—Restricted licences and learner's permits

This clause makes minor drafting changes.

Clause 50: Amendment of s. 81A—Provisional licences

This clause is consequential on the insertion of new section 81AB.

Clause 51: Insertion of s. 81AB

81AB. Probationary licences

This section provides for the issue of a probationary licence instead of a provisional licence following a period of disqualification that results in the cancellation of a licence (other than where a provisional licence is required to be issued). A probationary licence will be subject to conditions requiring carriage of the licence while driving, zero concentration of alcohol in the holders's blood while driving or attempting to put a motor vehicle into motion, and a condition that the holder must not incur two or more demerit points.

As in the case of a provisional licence, the conditions will be effective for a period of one year or such longer period as the court may order, and if the applicant is not willing to accept a probationary licence the Registrar must refuse to issue a licence to the applicant. Breach of conditions is an offence, and in the case of the zero concentration of alcohol condition, sections 47b(2), 47C, 47D, 47E, 47G and 47GA of the Road Traffic Act will apply to the offence as they apply to the same condition on provisional licences and learner's permits.

Clause 52: Amendment of s. 81B—Consequences of holder of learner's permit, provisional licence or probationary licence contravening conditions, etc.

This clause amends section 81B to make breach of conditions of a probationary licence subject to the same consequences as breach of conditions of a provisional licence or learner's permit, namely, cancellation of the licence and disqualification from holding or obtaining a licence for a period of six months.

Clause 53: Substitution of ss. 82, 84, 85, 88, 89 and 90

82. Vehicle offences and unsuitability to be granted or hold licence or permit

The proposed section gives the Registrar power to refuse to issue or renew a licence or learner's permit, to suspend or cancel a licence or learner's permit or to cancel an unconditional licence and issue a provisional licence or probationary licence if a person has been convicted or expiated an offence or series of offences involving the use of a motor vehicle (whether in South Australia or elsewhere) such that it appears that the person should not hold a licence or permit, or should hold a licence subject to conditions, in order to prevent accident or injury or a repetition of the offence or offences by the person.

83. Action following disqualification or suspension outside State

This section replaces the current section 89. At present the Registrar has a discretion to refuse to issue a licence to an applicant or suspend the licence of a person if he or she is disqualified, prevented or prohibited from driving in another State, a Territory or a foreign country. The proposed section removes that discretion from the Registrar in the case of disqualifications and suspensions imposed in another State or Territory.

84. Cancellation of licence or permit where issued in error

This section empowers the Registrar to cancel a licence or learner's permit if satisfied that it was issued or renewed in error.

85. Procedures for suspension, cancellation or variation of licence or permit

This section requires the Registrar to notify the holder of a licence or learner's permit of the Registrar's decision to suspend, cancel or vary the licence or permit, giving reasons for the decision and the date on which it is to take effect.

Clause 54: Amendment of s. 91—Effect of suspension and disqualification

This clause adds a reference to learner's permit.

Clause 55: Amendment of s. 93—Notice to be given to Registrar

This clause adds a reference to probationary licence.

Clause 56: Amendment of s. 96—Duty to produce licence or permit

Clause 57: Amendment of s. 97—Duty to produce licence or permit at court

These clauses add references to learner's permit.

Clause 58: Amendment of s. 97A—Visiting motorists

This clause authorises a person to drive a motor vehicle on roads in this State without holding a licence under the Act if the person holds an interstate licence or foreign licence and has not resided in the State for a continuous period of three months, or has not held a current permanent visa for more than three months, or holds a valid Driver Identification Document issued by the Department of Defence, and the person has not been disqualified from holding or

obtaining an interstate licence in any State or Territory or a foreign licence in any country.

If the Registrar is of the opinion that a person is not suitable to drive a motor vehicle in this State or a person's ability to drive safely is impaired by a permanent or long-term injury or illness, the Registrar may give the person a notice prohibiting them from driving without a licence under this State, stating the reasons for giving the notice and specifying the action (if any) that may be taken by them to regain the benefit of the section.

Clause 59: Amendment of s. 98AAA—Duty to carry licence when driving certain vehicles

Section 98AAA presently requires persons who drive heavy motor vehicles with a GVM exceeding 15 tonnes or a prime mover with an unladen mass exceeding 4 tonnes to carry their licence while driving within Metropolitan Adelaide or outside a radius of 80 kilometres from a farm occupied by the person. This clause changes the definition of heavy vehicle to a motor vehicle with a gross vehicle mass exceeding 8 tonnes.

Clause 60: Amendment of s. 98AA—Duty to carry licence when teaching holder of learner's permit to drive

This clause makes a consequential amendment.

Clause 61: Insertion of ss. 98AAB to 98AAF

98AAB. Duty to carry probationary licence, provisional licence or learner's permit

This section currently requires a person who holds a provisional licence or learner's permit to carry the licence or permit at all times while driving a motor vehicle and to produce it immediately if requested to do so by a member of the police force. The maximum penalty for failure to comply is $250. The new section extends these requirements to holders of probationary licences.

98AAC. Issue of duplicate licence or learner's permit

This section has the same effect as the current section 77.

98AAD. Licence or learner's permit falsely obtained is void

This section has the same effect as the current section 79B, and makes it an offence to have, without lawful excuse, possession of a licence or learner's permit issued or renewed on the basis of a false or misleading statement of the applicant or false or misleading evidence produced by the applicant. The maximum penalty is $750.

98AAE. Licence or learner's permit unlawfully altered or damaged is void

This section has the same effect as the current section 79BA.

98AAF. Duty on holder of licence or learner's permit to notify illness, etc.

This section has the same effect as the current section 79C.

Clause 62: Amendment of s. 98A—Instructors' licences

This clause substitutes references to the consultative committee with references to the review committee.

Clause 63: Amendment of s. 98B—Demerit points for offences in this State

This clause removes a provision made obsolete by the substituted section 98BC and provides for offences which attract demerit points and the number of demerit points to be prescribed by the regulations.

Clause 64: Substitution of s. 98BC

98BC. Liability to disqualification

This section introduces a scale of disqualification periods based on the aggregate number of demerit points incurred within a period of three years. The scale is:

- where not less than 12 points but not more than 15 points are incurred—disqualification for 3 months;
- where not less than 16 points but not more than 19 points are incurred-disqualification for 4 months;
- where 20 or more points are incurred—disqualification for 5 months.

Clause 65: Notices to be sent to the Registrar

This amendment makes consequential amendments.

Clause 66: Disqualification and discounting of demerit points

This clause allows the holder of a licence who is liable to be disqualified to elect in lieu of suffering disqualification to accept a condition on the licence requiring the holder to be of good behaviour for a period of 12 months. If the holder incurs two or more demerit points within that period, the Registrar must suspend the person's licence, and disqualify the person from holding a licence, for a period twice the period of suspension and disqualification that would have applied if the person had not accepted the condition.

Clause 67: Repeal of ss. 98BF and BG

This clause repeals the provisions that provide for an appeal to a local court against a disqualification and require compliance with conditions imposed by a court on such an appeal.

Clause 68: Insertion of s. 98BI

98BI. Notification of demerit points to interstate licensing authorities

This section requires the Registrar to notify interstate licensing authorities of demerit points incurred under this Act in respect of offences that are part of the national scheme of demerit points by persons who hold licences or learner's permits issued in that State or Territory or unlicensed persons who reside in that State or Territory, giving such information about the person and the offences as the Registrar considers appropriate.

Clause 69: Amendment of s. 98C—Interpretation

This clause deletes a definition which is to be relocated to section 5 of the Act.

Clause 70: Amendment of s. 98F—Entitlement to be granted towtruck certificates

Clause 71: Amendment of s. 98J—Suspension of towtruck certificate

These clauses remove references to obsolete licence classes.

Clause 72: Repeal of s. 98PB

This clause repeals section 98PB which requires the Registrar to refer to the consultative committee a decision to refuse a towtruck certificate or temporary towtruck certificate, or to impose a condition on a certificate.

Clause 73: Repeal of s. 98PH

Clause 74: Repeal of s. 98W

These clauses repeals review and appeal provisions which become unnecessary as a result of the general rights of review and appeal inserted by this measure.

Clause 75: Insertion of Part 3E

PART 3E

RIGHTS OF REVIEW AND APPEAL

98Y. Review committee

This section requires the Minister to appoint a review committee for the purposes of the Act. The review committee is to have the same membership as the current consultative committee.

98ZA. Review by Registrar or review committee

This section gives a person aggrieved by a decision of the Registrar to exercise a power conferred by Part 2, 3, 3A, 3C or 3D of the Act in a manner adverse to the aggrieved person the right to apply for a review of the decision. The Registrar may refer the application to the review committee if in the Registrar's opinion it is desirable that the review be conducted by the review committee rather than the Registrar. The Registrar must refer to the review committee an application for review of certain specified decisions of the Registrar. On a review the Registrar or review committee may confirm or vary the decision, or set aside the decision and substitute a new decision.

The applicant must if, required by the Registrar or review committee, appear personally before the Registrar or committee, provide any information sought by the Registrar or committee, and verify information provided to the Registrar or committee by statutory declaration. The applicant may be assisted by an agent or representative, but not by a legal practitioner.

98ZA. Appeal to District Court

This section gives persons aggrieved by a decision of the Registrar or review committee on a review the right to appeal to the District Court against the decision, and empowers the Court to confirm or vary the decision under appeal, or set aside the decision and substitute a new decision, and make any further or other orders as to any matter that the case requires. The section also requires the review committee to give written reasons for a decision on request by a person affected by the decision.

98ZB. Operation of decision subject to review or appeal

This section provides that the making of an application for a review or an appeal does not affect the operation of the decision that is the subject of the application or appeal. It empowers the Registrar or Court to stay a decision the subject of an appeal, and the Registrar to stay a decision the subject of an application for review.

Clause 76: Amendment of s. 99—Interpretation

This clause makes a consequential amendment.

Clause 77: Amendment of s. 102—Duty to insure against third party risks

This clause amends section 102 to make an offence to cause an uninsured motor vehicle to stand on a road, and to make the owner

of a uninsured motor vehicle found standing on a road guilty of an offence. However, it is a defence to prove that the vehicle was driven or left standing on a road in circumstances in which the Act or regulations permit a motor vehicle to be driven on a road without insurance.

Clause 78: Repeal of s. 134A

This clause repeals section 134A which is obsolete as a result of new section 98ZA.

Clause 79: Insertion of ss. 135B and 135C

135B. Applications made by agent

This section empowers the Registrar to require evidence to prove that a person making an application under the Act as the agent of another person is authorised by that person to make the application on their behalf, and empowers the Registrar to refuse to deal with the application if evidence is not produced to the Registrar's satisfaction.

135C. Proof of identity

This section empowers the Registrar to require a person making an application or furnishing information under the Act to provide evidence to the Registrar's satisfaction of the person's identity.

Clause 80: Amendment of s. 136—Duty to notify change of name, address etc.

This clause amends section 136 to include requirements that changes of name and registered operator be notified to the Registrar.

Clause 81: Substitution of s. 138

137A. Obligation to provide evidence of design, etc., of motor vehicle

This section empowers the Registrar or an inspector to require the registered owner or registered operator of a motor vehicle to provide evidence of the design, construction, maintenance, safety or ownership of the vehicle, and fixes a maximum penalty of $250 for failure to comply with the requirements of the Registrar or inspector.

138. Obligation to provide information

This section empowers the Registrar to require registered owners and registered operators of motor vehicles, and holders of licences to provide evidence relevant to the issuing, variation or continuation of registration or a licence if the Registrar believes on reasonable grounds that any information contained in the register of motor vehicles or the register of licences is inaccurate, incomplete or misleading. The section makes it an offence for a person to fail to comply with a requirement of the Registrar under the section. The maximum penalty is a fine of $250.

Clause 82: Amendment of s. 138A—Commissioner of Police to give certain information to Registrar

Clause 83: Amendment of s. 139—Inspection of motor vehicles

Clause 84: Amendment of s. 139AA—Where vehicle suspected of being stolen

These clauses make consequential amendments.

Clause 85: Repeal of s. 139B

This clause repeals the section providing for the appointment of the consultative committee.

Clause 86: Amendment of s. 139C—Service of documents

This clause amends the service provision to provide that it is sufficient for the purposes of the Act for documents or notice required or authorised to be given to or served on a registered owner of a motor vehicle to be given to only one or some of the registered owners if there are more than one.

Clause 87: Amendment of s. 139E—Protection from liability

This clause amends section 139E to protect from any civil or criminal liability a person who in good faith furnishes the Registrar with information disclosing or suggesting that another person is or may be unfit to drive a motor vehicle.

Clause 88: Amendment of s. 139F—Offence to hinder, etc., inspector

This clause makes a consequential amendment.

Clause 89: Amendment of s. 140—Evidence of registers

This clause inserts a new subsection providing that neither the register of motor vehicles nor an extract from or copy of an entry in the register constitutes evidence of actual title to a motor vehicle.

Clause 90: Amendment of s. 141—Evidence by certificate, etc.

This clause provides for certificates from an authority under a corresponding law stating certain matters is, in all legal proceedings and arbitrations, proof of the matters so stated in the absence of contradictory evidence.

Clause 91: Amendment of s. 142—Facilitation of proof

This clause makes consequential amendments to remove provisions made obsolete by this measure.

Clause 92: Amendment of s. 145—Regulations

This clause widens the regulation-making powers of the Governor.

Clause 93: Substitution of s. 146

This section is made obsolete by new section 2 which provides that the Act binds the Crown.

146. Application orders and emergency orders

This section empowers the Minister to suspend or vary specified provisions of the Act, consistently with the provisions relating to application order and emergency orders in the agreements scheduled to the Commonwealth *National Road Transport Commission Act 1991*.

Clause 94: Repeal of Sched. 3

The repeal of Schedule 3 is consequential on the amendment which provides for demerit point offences to be prescribed by the regulations.

Clause 95: Amendment of Expiation of Offences Act 1996

This amendment is consequential on the introduction of probationary licences.

Clause 96: Amendment of Road Traffic Act 1961

This clause amendments that are consequential on the introduction of probationary licences. It also amends the defect notice provisions of the Road Traffic Act to empower members of the police force and inspectors to issue formal written warnings where a motor vehicle does not comply with the vehicle standards and has defects that do not constitute a safety risk but should be remedied. A safety risk is defined to mean a danger to persons, property or the environment. The clause also introduces two types of defect notices: a major vehicle defect notice which may be given where further use of the vehicle would give rise to an imminent and serious safety risk, and a minor vehicle defect notice which may be given where further use of the vehicle may give rise to a safety risk. If a member of the police force or inspector issues a major vehicle defect notice, they must also issue a defective vehicle label and affix it to the vehicle. The clause also introduces a requirement that the Registrar of Motor Vehicles record details of defect notices on the register of motor vehicles.

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

NURSES BILL

In Committee.

(Continued from 23 March. Page 960)

Clause 3.

The Hon. P. HOLLOWAY: I move:

Page 3, after line 9—Insert:

(3) For the purposes of this Act, nursing practice means nursing care provided to an individual or a defined group within the community in order to assist the person or group to reach or maintain a particular goal associated with their health or well being.

(4) A person may provide nursing care by observing, assisting, reporting, monitoring, diagnosing, planning, evaluating or intervening in relation to the health care of an individual or group and nursing care may include undertaking an associated responsibility for education, research or management.

(5) Subsections (3) and (4) operate subject to any determination of the Board as to the scope of nursing practice for the purposes of this Act.

The Opposition regards this as a very important amendment. The amendment seeks to insert in the Bill definitions of nursing practice and nursing care. I spoke to these matters on a previous amendment, so I will not go over the arguments in any great detail. I simply repeat the point that this is a nurses Bill: it is about nursing. The terms 'nursing practice' and 'nursing care' appear throughout this Bill. They are central to the Bill, and it is the Opposition's view that definitions of nursing practice and nursing care should be included within the Bill.

The other point that I would make is that defining these terms within the legislation would not limit in any way the Nurses Board's role in determining the scope of practice or designating special practice areas. For the Opposition, this is

an important point, and I seek the support of the Committee for these amendments.

The Hon. DIANA LAIDLAW: The Government opposes the amendment. We have already had this debate in terms of clause 3, page 2, after line 22, when the Labor Party sought to include the definition of special practice areas. You lost then and I think that you will lose now.

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

Page 3, after line 9—Insert:

(3) For the purposes of this Act, the following are special practice areas:

(a) midwifery;

(b) mental health nursing;

(c) any other area of nursing recognised by the board as being a special practice area (see section 16).

The Committee divided on the Hon. P. Holloway's amendment:

AYES (5)

Crothers, T.	Holloway, P. (teller)
Roberts, R. R.	Roberts, T. G.
Zollo, C.	

NOES (12)

Cameron, T. G.	Davis, L. H.
Gilfillan, I.	Griffin, K. T.
Kanck, S. M.	Laidlaw, D. V. (teller)
Lawson, R. D.	Lucas, R. I.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

PAIR(S)

Pickles, C. A.	Dawkins, J. S. L.
Weatherill, G.	Elliott, M. J.

Majority of 7 for the Noes.

Amendment thus negatived.

The Hon. DIANA LAIDLAW: I move:

Page 3, after line 9—Insert:

(3) For the purposes of this Act, the following are special practice areas:

(a) midwifery;

(b) mental health nursing;

(c) any other area of nursing recognised by the board as being a special practice area (see section 16).

This seeks to incorporate into the Bill various special practice areas, that of midwifery, mental health nursing and any other area of nursing recognised by the board as being a special practice area, and it refers the reader to section 16 in that regard. I notice that the Hon. Terry Cameron has a similar amendment and that the Democrats have indicated support for the Government's amendment, which is a slight variation of their own in relation to the same area of special practice.

The Hon. T.G. CAMERON: I do not wish to speak to my amendment.

The Hon. P. HOLLOWAY: This amendment is similar to subclause (6) of our amendment, so we support it.

The Hon. SANDRA KANCK: We are all agreed (and I am pleased about that) that there have to be special practice areas. We have all defined midwifery and mental health and we all recognise that there is an opportunity for other special practice areas to emerge in the future. I had an amendment on file which I decided not to move because it was fairly similar to that of the Hon. Diana Laidlaw and the Hon. Terry Cameron. The similarity was so close that it seemed to me that it was easier to put my weight behind them.

The Hon. Diana Laidlaw's amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5.

The Hon. P. HOLLOWAY: I move:

Page 4, line 17—Leave out 'person with nursing qualifications' and insert:

nurse registered or enrolled under this Act

This amendment concerns the proposed presiding member of the Nurses Board. The Opposition again believes that this is an important threshold issue. We want the presiding member of the Nurses Board to be a person who is currently practising nursing, in other words, a person who is registered or enrolled under the Act.

During a break in debate the other day I looked at the composition of a number of similar boards that we have under our State legislation. One of the reasons why we believe that the presiding member of the Nurses Board should be a currently enrolled or registered nurse is because it is necessary to have a majority of members on the board who are registered nurses. It is proposed that the Nurses Board should comprise 11 members five of whom would be elected (and I will deal with that clause a little later), and the sixth member, who would be necessary if nurses are to have a majority on the board, would be the presiding member. That is why we believe that the presiding member must be a nurse who is currently registered or enrolled under the Act.

If one compares the situation of the Nurses Board with that of a number of other boards one can see why that is necessary. It is worth putting this on the record and it would also be useful for some of the other arguments that we will have on this clause later. The Dentists Act provides that the Dentists Board has eight members, six of whom are currently practising dentists. The Medical Practitioners Act again provides for an eight member board, six of whom are currently practising medical practitioners.

The Chiropodists Board is a six member board and of those four are registered chiropodists. The Chiropractors Act provides for a board of seven members, four of whom have to be registered chiropractors. Occupational therapists have a board of seven and four are occupational therapists. One can see that there are a majority in every case. The Pharmacists Board again has eight members five of whom have to be registered pharmacists and one is appointed. So effectively six out of eight on that board would be registered pharmacists. Physiotherapists have a board of seven and a majority of four members have to be registered physiotherapists. Optometrists have a seven person board four of whom have to be optometrists. Finally, under the Psychological Practices Act there is a board of seven and at least four—in other words a majority—have to be psychologists.

The point that I make is that in every case on all the professional boards that are covered by legislation a majority of members are currently practising or registered members of that profession. Why should it be different for nurses? I think that the Minister, who is also the Minister for the Status of Women, might care to ponder the point why one profession, which is predominantly compromised of women, if the Government's amendment were carried, would not necessarily have a majority of currently practising nurses on the board. We think that that is unacceptable, and that is why the Opposition regards this amendment as most important.

I will have more to say later about the composition of the board because we will be debating other matters in relation to this clause. At this stage I think it is important that we establish that not only should there be a majority of members on the Nurses Board who are practising nurses—and my amendment would guarantee that—but also that the presiding member of that board should be a currently enrolled or

registered nurse. I ask the Committee to support the amendment.

The Hon. T. CROTHERS: I rise to support the Holloway amendment. I can see that my colleague has done quite a lot of research with respect to this matter. There are situations which, I suppose, are parallel with the analogies he made as to the reasons for advancing his amendment when he referred to the different medical boards—pharmacy, dental, the AMA and so on. The AMA is a most powerful union—the only one I know of in this country that sets its own wage rates. Nonetheless, we would always support on an advisory board of that nature that the majority of the people would come from the medical profession.

You do not put a seaman on a farmers board and expect to get the best possible advice. I would not like to think that this Government was following in the steps of the Reithian adventurers in the Federal Parliament, that is, that all matters with respect to advisory boards to Governments should be done on the basis of the exclusion of anyone who may belong to a union. After all, the legal profession and the doctors have their union and they are not excluded on any grounds of—

The Hon. Diana Laidlaw: This is not about unions.

The Hon. T. CROTHERS: I haven't said so. I have said, Minister, if only you would listen—

The Hon. Diana Laidlaw: I did.

The Hon. T. CROTHERS: Well, you didn't or you wouldn't have made that interjection. I have talked about wanting to get the best advice, and I have said that I hope this is not a piece of Reithian adventurism. That has never been the way in this State. In fact, your father the Hon. Don Laidlaw, a former member of this Council, was very liberal, as were a number of the captains of industry—Sir Arthur Barrett, Sir Roland Jacobs and the Cooper family—with respect to ensuring that workers had proper representation to advance any position that they might embrace. There is a reason for that which is valid, and that is that if you are dealing with a group of thousands of people you want to have one central organisation that can put a position, and if they agree to a position get their members to embrace it. That is what I said.

I understand the Minister has very good tendencies with respect to this. I saw the position that she took at some cost to herself down on the wharf, which was a correct position and did wonders for this State. So, I am afraid that you did not listen to what I was saying. I was saying that I hope, because it has not been this Government's record, we do not follow that Reithian path. If it wants proper advice, if you want that advice to stick once it is given and be accepted by the Parties, then this Government should ensure that the advice is coming from people who either have been or are practising members of the profession.

I support the amendment moved by the Hon. Mr Holloway. It represents commonsense, logical rationality and it is the way to go if one wants to extract the best class of advice from all areas of the industry and from the advisory boards set up to tender advice and do all other matters relative to the profession—and it is a profession today with which we are dealing. After all, your own Government is calling this the Nurses Bill. I rest my case.

The Hon. DIANA LAIDLAW: I will discuss some of the points the honourable member raised at another time rather than at this stage, and it is taking a great deal of discipline for me to say that. I oppose the amendment moved by the Labor Party. The Hon. Mr Holloway indicated a number of Acts where a proposition is made for the qualification of the chair.

I highlight to the honourable member that none of those Acts has been reviewed or is in the process of being reviewed in terms of national competition policy. The Nurses Bill is the first in that process, and it therefore sets a different standard, recognising the change in public-professional partnership, which will be the basis of all assessments of all Acts in the broad health portfolio. We will be progressively addressing such change over the next year or so.

So, to go backwards is not the way to address this Bill. This is at the leading edge of modern practice, and I would have thought this Parliament—and even the Labor Party—might have wanted to look as though it was moving forward in terms of public-professional relationship in this important area of nursing administration, particularly in terms of the board overseeing all important issues.

Also, the Labor Party amendment would actually rule out some extraordinarily well qualified women; there may be even men who could be so qualified, but I will just refer to four women who are all qualified nurses but who are no longer registered: Lowitja O'Donoghue; Kath Schofield, who is this State's Telstra Business Woman of the Year; and Judith Roberts, who has served for many years in all capacities, including Chair of boards, and who has membership in the health field at both national and State level. You would be disqualifying her if she wished to be considered. Also, Ms Carol Gaston would be ineligible to Chair this board. In my view it would be a great pity to rule out such qualified people to Chair such an important board.

I also highlight that in terms of models of nursing practice in health care, there is a much wider range of settings where people are practising, and they are not doing so just in hospitals today. If that is the case, I think this Bill and this Parliament should be reflecting current modern practice, not just a more prejudiced, comfortable or old-fashioned form of nursing practice by confining it to hospital environments which is, essentially, what the Opposition would be doing with this amendment.

The Hon. P. HOLLOWAY: I find it rather strange that the Minister suggests that we should not have an old-fashioned Bill but that we should have an old-fashioned nurse in charge of the board. That is what the Minister is arguing. I have no objection at all to the calibre of the people who have been mentioned. The point is that however eminent those people may be, they are not currently practising nurses. If one wants a modern up-to-date Act, is it not better to have a modern up-to-date nurse, someone who is actually practising as a nurse, as Chair of the board?

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: I am sure that out of 23 000 nurses you could find at least one who would make a good Presiding Member of the board. I want to say something else about the notion of going backwards. Perhaps the Minister can correct me, but I suggest she is saying that when we go through the review of all boards, such as the Medical Practitioners Board, we will no longer see a majority of medical practitioners on the Medical Practitioners Board. That is an interesting revelation. Similarly, on the Dentists Board, when we go through the Dentists Act, will there no longer be a majority of practising dentists on the board? If that is the way the competition policy is going, so be it, but I certainly await with some interest to see whether or not that actually eventuates in relation to those boards.

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: Of practising nurses—currently registered or practising nurses. It does not provide

that. It will not provide that. Unless my amendment is carried, that will not happen. It is a board comprising 11 members, five of whom must be nurses who are registered or enrolled under the Act.

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: Yes, but that might have been 50 or 60 years ago. The point I was making earlier, when I went through every one of those other boards, is that in every case a majority of members on those other medical boards are currently practising within their profession. I think that is an important point, but I would like the Minister to answer my question whether or not this review of Bills means that with all other boards we are, in fact, no longer going to have a majority of practitioners on the boards in those cases.

The Hon. DIANA LAIDLAW: I will not prejudge the outcome because the reviews are out for public comment. What you will see in all reviews is new forms of public and professional partnership. I think that is an important advance, but as to the actual composition of boards as an outcome of those reviews and debate in this place only time will tell.

I do not know why the Opposition is so hysterical about this. The composition of the board provides for the majority of people to be either practising nurses or to have nursing qualifications. There is no reason, in my view, why a person who may have retired, perhaps taken early retirement, who is not actually practising but who has nursing qualifications and wishes to contribute to the advancement of nursing in this State, should be disqualified. That is what you are saying. The Government would not wish to disqualify such a person or such circumstances in terms of service as Chair of this board.

The Hon. T.G. CAMERON: I will oppose the Labor Party's amendment. I am normally persuaded by the eloquence of the Hon. Trevor Crothers, but on this occasion I have been persuaded by the Minister.

The Hon. SANDRA KANCK: I move:

Page 4, line 17—After 'qualifications' insert:
who has some time during his or here career practised as a nurse in a hospital for at least three years.

I indicate that I will oppose the Opposition's amendment. I believe it is important that nurses have majority representation on the board. The question that we are debating at the moment is whether one of those nurses ought to have the qualifications to be practising at the time of the board's formation. My amendment provides that a person who holds the position of Chair must have practised for three years as a nurse in a hospital setting at some time in their career. Why three years? I taught for three years as a teacher, and that three years in the classroom has allowed me to have an understanding of how the system works, what it is like to be in that face to face relationship with students, to understand the problems of being a teacher and dealing with the administrators. On the basis of that experience, I consider that I would be quite capable of serving, for instance, on the Teacher Registration Board. If I had less experience than that, maybe not; if I had five years' experience, it would not have made me better qualified to make decisions about teachers.

The Hon. Diana Laidlaw: You're getting better all the time.

The Hon. SANDRA KANCK: Oh, I am. Thank you, Minister.

The Hon. T. Crothers interjecting:

The Hon. SANDRA KANCK: Although obviously the Hon. Trevor Crothers does not agree! On the basis of that experience as a teacher, I believe that three years is, generally, a good cut-off point to work out whether a nurse has had enough experience to be on the board in this capacity. The hospital setting is an important part of that as well because—just as I said as a teacher I had that face-to-face experience dealing with students and administration—someone who has worked in a hospital setting, which is where nurses do work and gain their experience, will have the necessary understanding to be a Chair. I do not think that the Labor Party's amendment is as needed as its members perceive it to be. It is important to have some experience under the belt.

I certainly take heed of the examples that the Minister gave. For instance, if we had an opportunity to put Lowitja O'Donoghue in as the Chair of the Nurses Board it would really place nurses in great esteem in the community and we would be very foolish to have cut out that opportunity by accepting the Opposition's amendments.

The Hon. DIANA LAIDLAW: The Government does not support the Australian Democrats' amendment. I appreciate the honourable member's arguments about the experience she gained in three years of teaching, but we think that it is a rather arbitrary period that the honourable member seeks to put into legislation. We would argue that it is the qualifications and not necessarily the years of service that are important in this reference to the Chair.

The Hon. P. HOLLOWAY: To help clarify this matter, I indicate that obviously the Opposition will support its amendment very strongly, because we believe it is important. However, should our amendment not be successful, we would prefer that clause 5(1)(a) remain as it is; in other words, we would not support the Hon. Sandra Kanck's amendment. I should briefly give the reasons for that.

The Hon. Sandra Kanck says that the Presiding Member of the board should be someone who at some time during their career has practised as a nurse in a hospital for at least three years. The Opposition does not believe that three years' experience is really much help in this, because it could have been many years ago. The real restraint on the Hon. Sandra Kanck's amendment is that the nurse must have worked in a hospital. Of course, there are many thousands of nurses in this State out of the 23 000 overall who do not work in a hospital; but there is no reason why they should be considered any less than other nurses.

If it comes to the crunch and we have to choose between the Government's original proposition and the Hon. Sandra Kanck's amendment, we would choose the Government's. Again, I make the point that we believe there are very sound reasons and precedents with a number of other committees for having a currently registered or enrolled nurse as the Chair of the board so that that person who is the Presiding Member of the board is familiar with the issues that are out there now in nursing.

All of us would appreciate just how rapidly society generally is evolving, but nursing is no different from that. I am sure that the issues faced by nurses in our hospitals are changing very rapidly. We believe that the person who is the Presiding Member of the board should be up to date with those issues that are happening out there. That is why we strongly believe that our amendment should be carried.

The Hon. T.G. CAMERON: SA First will not support the Democrats amendment for reasons very similar to those outlined by the Hon. Paul Holloway.

The CHAIRMAN: The question is that the words 'person with nursing qualifications' in line 17 stand as printed.

The Committee divided on the question:

AYES (12)

Cameron, T.G	Davis, L. H.
Elliott, M. J.	Gilfillan, I.
Griffin, K. T.	Kanck, S. M.
Laidlaw, D. V. (teller)	Lawson, R. D.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

NOES (5)

Crothers, T.	Holloway, P. (teller)
Roberts, R. R.	Weatherill, G.
Zollo, C.	

Majority of 7 for the Ayes.

Question thus carried.

The Hon. Sandra Kanck's amendment negatived.

The Hon. P. HOLLOWAY: I move:

Page 4, line 19—After 'this Act' insert:

chosen at an election conducted in accordance with the regulations

I notice the Government has a similar amendment. It simply provides that the five positions for registered and enrolled nurses on the Nurses Board will be chosen at an election conducted in accordance with the regulations. In this way, the nurses will have the opportunity to select their representatives.

The Hon. DIANA LAIDLAW: The Government also has the same amendment, so we support the Labor Party's amendment.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, line 20—Leave out paragraph (c).

By deleting paragraph (c), we will be leaving out the provision that there must be a medical practitioner on the Nurses Board. When I spoke to an earlier clause, I listed a number of other boards in the medical field and, on all those boards, it is rare indeed that the membership includes someone from another profession. Of course there is one exception, that is, legal practitioners, who are on a number of boards for fairly obvious reasons.

In relation to the nursing profession, the Opposition does not believe that there is any reason why we should have a medical practitioner on the board simply for no reason other than that they are a medical practitioner. I point out to members of the Chamber who might be considering this matter that, under the composition of the board, five members must be nurses who are elected, the Chair is appointed—someone we have now decided must have nursing qualifications—one member must be a legal practitioner, and the remaining members are nominated by the Minister.

Therefore, if the Minister believes that a person who is a medical practitioner has some contribution to make to the Nurses Board, the Minister may make that appointment. The issue is: why should there have to be a person on the Nurses Board for no reason other than that they are a medical practitioner? We believe that this is a rather paternalistic and outdated attitude, to use the words of the Minister earlier. The Minister says that we should be moving on and that we should have a modern board. Why is it that, as we are about to start the third millennium, we should still have this notion of having medical practitioners on the Nurses Board, as I say, for no reason other than that they are medical practitioners?

The Opposition believes that this is an important point. It sends a message to the community about how we view nurses within our community and it is most important that we delete this provision. Again it is a threshold issue as far as the Opposition is concerned. We strongly support the amendment and we hope that the Chamber will also support us.

The Hon. DIANA LAIDLAW: As a Government we are seeking to moderate something that the then Labor Government introduced in 1984. It required that two members of the board Nurses Board must be medical practitioners. As I say, we have modified that by proposing that it be confined to only one medical practitioner, and we believe that it is important because of the strong inter-dependence between the professions. Also when this matter was raised in the other place the Minister gave an undertaking that, in terms of the medical board, he would give consideration to the appointment of a nurse, who, I would suggest in such instance, would be qualified, enrolled and registered.

The Hon. SANDRA KANCK: The Democrats will be opposing this amendment—or I think we will be opposing it: it is subject to an undertaking from the Government. When I addressed this issue in my second reading contribution I made it clear that, because of the close professional partnership that exists between doctors and nurses, I believe it is appropriate that there be a doctor on the Nurses Board but also that there be a nurse on the Medical Board. In other words, there has to be a *quid pro quo*. If we do not have a *quid pro quo*, as far as I am concerned it then becomes paternalistic to put a doctor on the Nurses Board. So, if I can obtain an undertaking from the Government at this point that, when we deal with amendments to the Medical Practitioners Act (which I believe will be later this year), it will agree to a nurse representative on the Medical Board, I indicate that I will oppose the Opposition's amendment.

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: I point out to the Hon. Mr Roberts that that is why he is in Opposition. I will give such an undertaking from the Minister to the statement that the—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Yes. In the other place the Minister did say, as I have indicated already, that he would consider the appointment of an enrolled and registered nurse. In the circumstances, it is only reasonable, on the basis of the argument for interdependence—or I think the word 'partnership' that was used by the Hon. Sandra Kanck is better—that what is good for one is good for the other.

The Hon. T.G. CAMERON: I have been attracted to the Hon. Sandra Kanck's argument, following the Minister's undertaking. I will support the Government's position. It is my view that both the Nurses Board and the Medical Board would be improved by having a medical practitioner and a nurse on those respective boards.

The Hon. P. HOLLOWAY: The Opposition does not really see this as a matter of tit for tat—you put one on our board and we will put one on yours. It is a question of—

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: This is a peer group. We are talking about a board or a profession—the board to govern the profession, to set the rules and the operation of that profession and, really, people should be on that board only if they have something to contribute; if there is some reason for those people being on there.

The Hon. L.H. Davis: So, that is why you want unionists on every board—is that the argument?

The Hon. P. HOLLOWAY: Yes, actually. Yes, unions do have a—

Members interjecting:

The CHAIRMAN: Order, the Hon. Mr Davis! The Committee structure enables every member to have tit for tat when they are standing on their feet—not when they are interjecting.

The Hon. P. HOLLOWAY: For the Hon. Legh Davis's benefit, the Opposition is very happy on many occasions to have members of unions on boards, because that allows you to have someone who represents the views of workers on boards. But let us not be diverted—

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: The issue here, for the Hon. Legh Davis's benefit (because he has just come in late), is whether there should be a medical practitioner on the Nurses Board. Where do you draw the line?

The Hon. Diana Laidlaw interjecting:

The Hon. P. HOLLOWAY: Yes, but the Minister has told us that we are now modernising and that times have changed. Nurses in 1999 are a far more professional group than I think was the case back in 1984—and that is something we should all be very pleased about. What we need now is legislation that reflects that fact.

The Hon. T.G. CAMERON: Do nurses and doctors not work very closely together, and are they not interdependent upon each other? That has always been my experience.

The Hon. DIANA LAIDLAW: Yes, and that is the basis of the professional partnership that we are seeking to be reflected in this Bill in terms of the composition of the board and in terms of the Medical Board. It is not a matter of tit for tat; it is professional practice.

Members interjecting:

The CHAIRMAN: Order!

The Committee divided on the amendment:

AYES (6)

Crothers, T.	Holloway, P. (teller)
Pickles, C. A.	Roberts, T. G.
Weatherill, G.	Xenophon, N.

NOES (11)

Cameron, T. G.	Davis, L. H.
Elliott, M. J.	Gilfillan, I.
Griffin, K. T.	Kanck, S. M.
Laidlaw, D. V.(teller)	Lawson, R. D.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

PAIR(S)

Zollo, C.	Lucas, R. I.
Roberts, R. R.	Dawkins, J. S. L.

Majority of 5 for the Noes.

Amendment thus negatived.

The Hon. SANDRA KANCK: I move:

Page 4, lines 22 and 23—Leave out paragraph (e) and insert:

(e) three must be persons, nominated by the Minister, who do not hold nursing, midwifery, medical or legal qualifications and who are considered by the Minister to be appropriate persons to represent the interests of consumers.

I have more specifically worded this amendment so that it picks up the consumer role on the board. I know that everyone has agreed and recognised that, implicitly, that is included, but I want to make certain that it is much more clearly spelt out. I have done this because I consider the consumer role to be absolutely vital. I refer to an article about the number of people who either suffer injuries or die in hospital each year. I know there has been something more recent, but I was not able to lay my hands on it. This study was referred to in an article in the *Australian* of June 1995. The study drew on the investigation of medical records at 28 public and private hospitals in New South Wales and South Australia during 1992, the results of which were extrapolated across the country. It was called the Australian Hospital Care Study. It suggested that Australia-wide nearly a quarter of a million patients suffered some form of preventable adverse event defined as an unintended injury while they were under hospital care. The study was conducted under the auspices of the Federal Department of Health.

The figures show that between 10 000 and 14 000 patients died in hospitals in 1992 throughout Australia as a result of unintended injury and that a further 25 000 to 30 000 suffered some degree of permanent disability. Of the 230 000 people who suffered preventable injuries in both public and private hospitals, the resulting disability lasted less than one month in more half the cases and less than 12 months in another 30 per cent of cases. The article also mentioned the cost to the hospital system, stating that these injuries resulted in additional bed days to the hospital system at a total cost of $650 million. I have raised this point so the Committee understands how important it is when mistakes occur that we have very strong consumer representation on the board. Because my amendment specifically provides that these people are on the board to represent the interests of consumers, I consider it to be better than the current wording.

The Hon. DIANA LAIDLAW: The Government does not support this amendment. There is copious research in this country and internationally which indicates that the notion of people representing consumer interests, which inherently implies a constituency or, in this instance, a disease group, is not the best model to proceed with in terms of board membership and the public, professional duty issues of a board. I remind members that the measure that is presented in the Bill arose from the national competition policy and a wide review of the practice and oversight of nursing, and we should encourage the broad public interest in terms of the additional members on the board. In addition to the registered and enrolled nurses, the medical practitioner and the legal practitioner, we believe strongly that a representative of the broad public interest and not of a particular constituency interest would produce the best in terms of the considerations of the board in the interests of nursing and public health.

The Hon. P. HOLLOWAY: In relation to this matter, when this Bill was before the House of Assembly, the Opposition moved an amendment that referred to appropriate persons who represent the interests of consumers. However, after discussions with the Minister, we were persuaded that, rather than getting into a discussion as to how they might represent consumers, it was better to have people of distinction who could add value in their own right. The Opposition does not support the amendment.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 4, after line 23—Insert:

(1a) At least one member of the board must be a registered nurse and at least one member of the board must be an enrolled nurse.

I have separated my amendment into two parts. This subclause seeks to ensure that, in that group of nurses that will make up the majority of board, at least one of them should be a registered nurse and at least one of them should be an enrolled nurse. It is important that, given the number of enrolled nurses in the system, there should be at least one guaranteed position for an enrolled nurse and, similarly, that there should be one guaranteed position for a registered nurse.

Of importance to me is that the board will make decisions about applications for enrolled nurses to work unsupervised. Because of that, it would be inappropriate to have the nurse representation solely made up of registered nurses when the board deals with that issue. Given that we are talking about the election of nurses to these positions, it would be highly unlikely, given the number of registered nurses in the system, that they would not win one position. If any group is the loser in the election, it would be the enrolled nurses.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: Yes, but that is another issue. I also note that the Hon. Terry Cameron has an amendment on file about the election being held on the basis of proportional representation. He made an observation privately to me a short time ago that my amendment would make proportional representation difficult. I do not believe it would. If members take into consideration the honourable member's amendment when they look at this one, I suggest that a talk with the Electoral Reform Society could sort that out, but it could be done with a voting ticket which contains a list of registered nurses and a list of enrolled nurses and which states that at least one number must be placed next to an enrolled nurse and one must be placed next to a registered nurse. That is really in the fine detail. I do not see the passage of my amendment as precluding proportional representation or vice versa.

The Hon. T.G. CAMERON: I conferred with the honourable member in relation to this amendment two or three minutes ago, but I was referring to the entire amendment. Now that it has been separated into two parts, that puts it into a different context. I do not see subclause (1a) as being inconsistent with a proportional representation ballot but, if subclauses (1a) and (1b) are inserted into the legislation, we might end up with a position in which five people are elected, and one has to be a registered nurse, one has to be an enrolled nurse and two members of the board must be registered in a special practice area, and at least one of those people must be a midwife.

Under a PR ballot for five positions you would have four of the positions being mandated, so arguably you could have no-one who is a registered nurse, an enrolled nurse, working in a special practice area or working as a midwife. Hypothetically could you have five people elected under a PR ballot none of whom were those four people. You would have to be quite imaginative to imagine that position arising. On the laws of probability it would be almost impossible but technically, hypothetically, it is possible.

Even if four positions were mandated it should be remembered that the clauses are only referring to members of the board so that you could well have an enrolled nurse, registered nurse, midwife or someone working in special practice being appointed by the Minister quite separate from the five nurses who are elected to go on the board.

Let us assume that the Government does not appoint a registered nurse, an enrolled nurse, a special practice nurse or a midwife to the board and you go forward with a PR ballot with four positions being mandated. I do not believe that if you mandated all those four positions it would assist the democratic process. I would estimate the probability at being less than 0.1 of a per cent of either a registered nurse or an enrolled nurse not getting up in a PR ballot. I cannot imagine that it would not happen.

It seems to me that by insisting that one of them be a registered nurse and one be an enrolled nurse that we are insisting on something that will happen anyway. The reverse of that argument is that if it is going to happen any way and you are going to end up with an enrolled nurse and a registered nurse on the board through a PR ballot then they will get up anyway. So, to support clause (1a) in my opinion would not make any difference whatsoever. I would appreciate some comment from the Minister about this.

Under a PR ballot, in the unlikely event that a registered nurse or an enrolled nurse was not elected in the first five positions, in my opinion it would be a simple matter under the regulations to have a situation where you count three. That is not dissimilar to an affirmative action rule which applies in the Australian Labor Party, which conducts all is multiple member ballots by PR. If you are having an election for five vacancies and five men get elected then you keep counting through until two of the five people elected are women. Unless the Minister can convince me that clause (1a) would not work then I would be inclined to support it.

The Hon. P. Holloway interjecting:

The Hon. T.G. CAMERON: Well, we have PR ballots. I am surprised you have not already read the rules, Paul. I will send you a copy.

The Hon. T.G. Roberts: I didn't know they had been written.

The Hon. T.G. CAMERON: Yes, they have been written and registered, and I am pleased to advise the Committee that the Electoral Commissioner notified us in writing last night that we are now a registered political Party. Thank you for giving me the opportunity to place that on the record. I thank the Hon. Ron Roberts for his timely interjection.

Members interjecting:

The CHAIRMAN: Order!

The Hon. T.G. CAMERON: Before the Chairman pulls me up I will get back on the subject. In my opinion we could incorporate—

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: No, that's the Mike Rann position. In my opinion we could incorporate the Democrats' amendment of clause (1a), but I would have a problem—

The Hon. A.J. Redford: Do you have any nurses in your Party yet?

The Hon. T.G. CAMERON: Yes, we do. We have got a nurse.

The Hon. A.J. Redford: What faction did they support while they were still in the Labor Party?

The Hon. T.G. CAMERON: I will not respond to that interjection. The honourable member is being mischievous and I am surprised that the Chair has not pulled him up; he would have pulled me or the Hon. Ron Roberts up by now. I am inclined, subject to what I hear from the Minister, to support clause (1a) because, as I see it, even though that clause would be inserted I do not believe that it would have any real effect. You could argue then why put it in there, but I think it does offer at least that minimal guarantee. However, I cannot see how it would not happen, that there must be a registered nurse and there must be an enrolled nurse on the board. But I will wait until I hear what the Minister has to say.

The Hon. DIANA LAIDLAW: This amendment moved by the Hon. Sandra Kanck was filed for our information some weeks ago, well before the Hon. Terry Cameron came forth with his proportional representation amendment. The Government essentially agrees with the analysis of the Hon. Terry Cameron that while the Democrats' amendment has merit—we understand the sentiment—such an amendment

would complicate the counting and procedures in terms of a PR election.

However, we believe that the outcome, because of the wisdom of the nurses and the way they will vote, will reflect what is in the amendment and what the Hon. Sandra Kanck is seeking to achieve. We would argue in foreshadowing our support for amendments to be moved by the Hon. Terry Cameron in the form of a PR election system that we will not be supporting the amendment moved by the Hon. Sandra Kanck although we support the sentiment behind it. I hope the outcome of the ballot is reflected in the manner that the Hon. Sandra Kanck has indicated in her amendment.

The Hon. P. HOLLOWAY: The Opposition believes this amendment is unnecessary and will oppose it.

The Hon. T.G. CAMERON: I understand that the numbers are there for a proportional representation ballot to succeed. So, I guess a final decision needs to be made in that context, that we are going to end up with a PR ballot. The person who probably has the most expertise in this place about PR ballots is the Hon. Trevor Crothers. You will see me sitting down if he starts pulling me up.

It is my understanding that a PR ballot for five positions would mean that you would get a member elected to the board with 16.67 per cent of the vote. I just cannot imagine, Sandra, under that circumstance that a registered nurse or an enrolled nurse would not get up. However, the view has been put to my office by an enrolled nurse that even under a PR ballot an enrolled nurse might not get up, and I think a midwife put a similar view. It is quite clear to me that any ballot that took place where a registered nurse and an enrolled nurse did not win would be a ballot that would need to be questioned.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 4, after line 23—Insert:

(1b) At least two members of the Board must be registered in a special practice area and of these at least one must be a midwife.

The Hon. SANDRA KANCK: All Parties have agreed that there ought to be special practice areas. This amendment will ensure that there are specialists as well as generalists on the board. The Minister put on record when we were dealing with clause 3 that there were close to 5 000 registered midwives in this State. These are women who are working in an area that has, I think, a greater risk of legal action than many others in 'nursing' (and I use that word in inverted commas, as members would understand).

When babies are born with any sort of deformity or abnormality, there is often a tendency for parents to want to blame someone, and courts often do not seem to have the expertise to be able to look at the differences between medical and genetic issues. You can understand, of course, that when parents have a child who has these problems the parents are looking at long-term medical costs and trying to find a way to cover them. So, going through the courts under these circumstances is an attractive way to go.

Midwives are in an area that is, probably more than most other areas of nursing, prone to legal action. They therefore have a more onerous and more responsible task from that point of view. Because of that and the very unique nature of their occupation, I believe it is important that they are specifically represented on the board.

The Hon. T.G. CAMERON: I ask the Hon. Sandra Kanck whether she could tell me how many nurses work in the special practice area. I think she mentioned 2 500 midwives.

The Hon. SANDRA KANCK: No, it is close to 5 000: 4 700 midwives.

The Hon. T.G. CAMERON: How many are registered in the special practice area? Perhaps I could ask the Minister whether she could enlighten me.

The Hon. DIANA LAIDLAW: There is no special practice register at the moment, so we are unsure.

The Hon. T.G. CAMERON: I understand that the number of nurses in the State is in the vicinity of 24 000 or 25 000.

The Hon. DIANA LAIDLAW: A total of 23 000.

The Hon. P. HOLLOWAY: I indicate that the Opposition does not support this amendment. We believe that, as with the previous amendment, given the numbers that exist within the nursing profession, the system of voting should ensure that sectors are adequately represented and we should leave it up to the good sense of nurses to choose their representatives.

The Hon. T.G. CAMERON: Considering that there are 4 500 midwives, I believe the composition of the board and the work of the board would be improved if there was a midwife on it, but I feel confident that the nurses in this State will quickly appreciate the benefits of a proportional representation ballot. It is a method of voting which protects minorities within an organisation, and I feel quite confident that the 4 500 or 4 700 midwives in the State will quickly realise that, if they want to get a midwife elected to the board, all they have to do is vote for a midwife at No.1. If they can get 16.7 per cent of the votes cast (which should not be all that difficult considering that they compromise about 20 per cent of the membership), I feel confident they will wake up quickly how a PR ballot works and that we will see a midwife elected to the board—I certainly hope so.

The Hon. T. CROTHERS: I oppose the amendment moved by the Hon. Sandra Kanck. I cannot support the PR concept that is floating around by way of amendment. I understand the principle that is trying to be embraced, but the reality is, particularly if one looks at Governments worldwide which have a form of PR in respect of electoral reform—Germany is one—one can see on many occasions that the PR system renders the German Parliament inoperable when no-one eventually emerges in respect of being able to exercise some authority as to direction.

Again, if one looks across the Tasman to New Zealand which has, at least, in part, its elections determined by a PR ballot, one can see the absolute dire consequences that has as well. Whilst I understand the sentiments, the reaching out of the Hon. Miss Kanck's amendment, I am more than a little concerned that that would render the board inoperable as in fact it has done—

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: Well, in New Zealand—

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: I understand that. I am about to deal with you on that one. In New Zealand there is a form of PR for only some of the college of MPs in the New Zealand Parliament in Wellington. If one looks at the behaviour of the New Zealand Parliament with the New Zealand First Party, for instance, welshing and ratting all over the place—

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: I do not know whether your registered Party is affiliated—we have seen how the New

Zealand Parliament has been rendered inoperable in taking decisions in respect of the New Zealand Reserve Bank and its mistaken economy policy which has brought the New Zealand economy into tatters.

The Hon. T.G. Cameron: A bit like this place has become.

The Hon. T. CROTHERS: Yes, in recent times almost inoperable. We have so many rats leaving the ship. I understand the sentiments. I am not having a real go, but the reality—

The Hon. T.G. Roberts interjecting:

The Hon. T. CROTHERS: If you keep interjecting you might live to see the day. The reality is that, whilst I understand the sentiments, I have no doubt there is some form of electoral college that could embrace what the honourable member is aiming for—which has merit—but certainly it is not the PR ballot. Just a glance across the Tasman will show the organised mayhem that has ensued since they introduced PR, in part, to elect their collegiate of MPs in Wellington. I am surprised that the Minister has said that she—

The Hon. P. Holloway interjecting:

The Hon. T. CROTHERS: I am just simply a surprised onlooker in the place. I apologise to the Minister for wrongfully mentioning her in that respect. I am mistaken according to my colleague, the wise and gentle Paul Holloway. I simply will put that position on record in respect of supporting my colleague relative to his position on this amendment.

The Hon. T.G. Cameron: I agree with half your statement about Paul.

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order! The Hon. Trevor Crothers has had his go.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 4, line 24—Leave out subclause (2) and insert:

(2) At least six members of the Board must be women and at least one member of the Board must be a man.

I want to ensure that the majority of members of the board are women. I think it is important that the Nurses Board should be representative of its constituency. As it is currently worded, we could have a board that is made up of 10 men and one woman. I think, just as we have ensured that the Nurses Board should have a majority on it who are nurses, we should also ensure that a majority are women. I know that some men are nurses, but the amendment does envisage guaranteed representation for one of them and, might I suggest, one out of 11 is probably over-representing them within the profession. Nevertheless, I do consider it to be very important. Nurses themselves have expressed to me the concern that women should have majority representation; otherwise the board does not represent them.

The Hon. DIANA LAIDLAW: I want to speak, if I may, as the Minister for the Status of Women without consultation with the Minister for Human Services. So, I put my comments in that context. I am in somewhat of a dilemma here. I would not wish to be seen individually as a Minister or part of the Government reinforcing in professions that are traditionally male or female a majority of members, male or female, in those professions for the future. I understand the Hon. Sandra Kanck's sentiment that, traditionally, this has been a female profession, and, therefore, as the majority of enrolled and registered nurses are women, the majority of the board should be women. But I would hate to see that same argument repeated in a whole range of other boards across South Australia, because in most of them—and I can tell you about the transport portfolio—it would be hard to find a woman.

We have just looked at the State crewing committee where various individuals have been nominated by profession, and there is not a woman in South Australia in those professions. The ribbing I got this week when this all-male board came to Cabinet was something that I knew I would have to endure, because I am always lecturing my colleagues about how valuable increasing the number of women on boards would be.

The Hon. T.G. Cameron: You didn't appoint them on merit, did you, Minister?

The Hon. DIANA LAIDLAW: No, because the Parliament in a bad time earlier on—it must have been in a Labor time—put all these qualified positions that you need. The waterside workers will not nominate women, either. Generally, I get on with the waterside workers, but they are not good at promoting women. Anyway, I still have this all-male board. So, I actually have that difficulty. At the same time, I am really keen to help the Minister for Human Services in his job by promoting as many women as possible to help reach the Government's target overall of 50 per cent women. Despite my misgivings, I will support this amendment—and the Minister can deal with me later!

The Hon. T.G. CAMERON: I appreciate the sentiments put to the Committee by both the Hon. Sandra Kanck and the Minister. However, any realistic analysis of the composition of the board and the election of five members of the board must lead one to the inevitable conclusion that a majority of people on this board will be women. I commend the Minister for standing shoulder to shoulder with the sisterhood. I honestly cannot believe that the Minister does not believe that a majority of people on this board will end up being women. At the end of the day, five of them will be elected by the nurses themselves. I will be very surprised if at least four (if not the whole five) of them are not women.

When one considers the other members of the board—and you take into account some of the strictures being placed on you, for example, the 'Chairperson'—inevitably this board will end up with a woman. However, I suspect that it is possible that it will not. I will tell you what I will do for the Hon. Sandra Kanck, because even if I lose the bet I will not have to pay up: if a majority of this board ends up being men, I will take the honourable member to Ayers House for lunch. The majority of members of the board—

The Hon. Diana Laidlaw: Why can't you take me, too?

The Hon. T.G. CAMERON: You can come, too, and I'll pay. She can let me know later if she wants a bet. However, if the majority of members of the board end up being women, you can buy me lunch here in Parliament House—and I am sure the honourable member will appreciate the difference in cost that we both might incur whether we win or lose.

The Hon. CAROLYN PICKLES: This is an interesting precedent that we are setting here—

The Hon. Diana Laidlaw: It is not one that the Government may agree with ultimately.

The Hon. CAROLYN PICKLES: No. On that basis we might be prepared to support it in this Chamber, and if it causes some difficulties we can amend it in another Chamber. It does set a precedent, and we have to be very wary of this. As the shadow Minister for the Status of Women (let us be discriminatory about this), we would not want the position reversed on some other Bill where it is deemed that at least six members shall be men.

The Hon. Diana Laidlaw: I am sure you and I can find the logic.

The Hon. CAROLYN PICKLES: I am sure we can, but it is tricky and it does set a precedent. Perhaps we should allow it to pass this Chamber and see how the Minister in another place reacts. I am sure the Minister in another place and the Minister handling the Bill in this place will have words during the passage of this Bill from one House to the other. Let us see who is the winner.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, after line 24—Insert:

(2a) Every person registered or enrolled under this Act will be entitled to vote at an election under subsection (1)(b).

This amendment simply provides that nurses appointed to the five positions that are reserved for registered or enrolled nurses should be chosen at an election conducted in accordance with the regulations.

The Hon. DIANA LAIDLAW: It is true that we have the same amendment on file as the Labor Party, but we have subsequently seen an amendment placed on file by the Hon. Terry Cameron which I mentioned earlier in this debate that we would be supporting, that is, for proportional representation. In those circumstances, I will not move my amendment.

The Hon. P. HOLLOWAY: It appears as though my amendment will be a test clause for proportional representation later. From discussions with the Minister, I understand that the Minister will support proportional representation. If that is the case, I will not proceed with my amendment. It was the view of the Opposition when we originally put these amendments on file that the appropriate way of conducting an election for nurses to the Nurses Board would be worked out in the regulations, and we did not seek to prescribe any particular system. I will have more to say about that when we come to the Hon. Terry Cameron's amendment on proportional representation. However, if the Government wishes to be more prescriptive in the legislation and to bring the notion or the principle of proportional representation into the Act, we will not oppose that. I will not proceed with my amendment on that basis, and I will have more to say about the election methods when we come to the next clause.

Amendment withdrawn.

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

Page 4, after line 24—Insert:

(2a) An election under subsection (1)(b) must be conducted in accordance with principles of proportional representation.

(2b) Every person registered or enrolled under this Act will be entitled to vote at an election under subsection (1)(b).

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 4, after line 25—After 'a member of the board' insert: under subsection (1)(b)

I understand that clause 5(3) requires the deputy presiding member to be a registered or enrolled nurse. I will not speak at great length, because it is fairly explanatory.

The Hon. DIANA LAIDLAW: I oppose the amendment.

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: The amendment requires that the deputy presiding member of the Nurses Board be a registered or enrolled nurse.

The Hon. DIANA LAIDLAW: I oppose the amendment for the same reasons I explained in relation to the position of the Chair.

The Hon. SANDRA KANCK: Does that mean that the deputy presiding member would be one of the five elected nurses to the board?

The Hon. P. HOLLOWAY: Yes.

The Hon. SANDRA KANCK: Having considered that, it seems to me to be acceptable because the other people who will be on the board and who are not the elected members are probably either the consumer representatives, the legal person or the doctor. I am reasonably comfortable with the deputy being a nurse as well.

The Hon. T.G. CAMERON: The Chairperson has nursing qualifications and we are electing five nurses, making a total of six. This will now make the Deputy Chairperson a nurse as well, is that correct?

The Hon. DIANA LAIDLAW: Yes, with nursing qualifications.

The Hon. T.G. CAMERON: It is what the Hon. Sandra Kanck has said that has confused me.

The Hon. SANDRA KANCK: He or she will have to be one of the five elected nurses, as there are no other nurses.

The Hon. DIANA LAIDLAW: If the honourable member wants to put it through, we can talk about it between the two Houses.

The Hon. T.G. CAMERON: The trouble is that, if it goes to a deadlock conference, we never get put on one—we are frozen out.

The Hon. DIANA LAIDLAW: We oppose the amendment.

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

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

NATIVE TITLE

Petitions signed by 1 813 residents of South Australia concerning native title rights for indigenous South Australians, and praying that the Council does not proceed with legislation that, first, undermines or impairs the native title rights of Indigenous South Australians and, secondly, makes changes to native title unless there has been a genuine consultation process with all stakeholders, especially South Australia's indigenous communities, were presented by the Hons J.S.L. Dawkins, I. Gilfillan and S.M. Kanck.

Petitions received.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Regulation under the following Act—
Education Act 1972—Materials and Services Charges

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

Reports, 1997-1998—
Chiropody Board of South Australia
Food Act
National Rail Agreement—Third Amending Agreement.

PELICAN POINT POWER STATION

The Hon. R.I. LUCAS (Treasurer): I seek leave to make a ministerial statement on the subject of National Power Pelican Point Power Station summary of project agreements.

Leave granted.

The Hon. R.I. LUCAS: On 5 February I announced that National Power would build a 500 megawatt $400 million gas fired power station at Pelican Point in Adelaide. As part of that announcement I indicated that, in the interests of accountability and transparency, a summary of agreements between National Power and the Government would be tabled in Parliament. I now table an initial Summary of Project Agreements in relation to the Pelican Point Power Station. The summary has been drawn up by officers of the Department of Treasury and Finance and reviewed by the Chief Commercial Counsel of the Crown Law Department, who has confirmed that the document accurately describes the contractual provisions to which it refers. The summary outlines the principal provisions of the Implementation Agreement, the Delivered Gas Agreement, the Retail Agreement and the Foreshore Lease.

In brief, the Implementation Agreement is the umbrella agreement for the project and contains the main obligations on the part of National Power to provide the capacity required by the State. In addition, it outlines the obligations and responsibility of the State. Under this agreement, National Power is contracted to pay the purchase price for the development opportunity and land of $30 million, and to provide to the State a number of State development initiatives valued at at least $2.7 million, which include:

- the secondment of staff from Synergen;
- education initiatives;
- the introduction of sponsorship of an annual gas turbine conference;
- the establishment of regional offices in Adelaide; and
- community improvement programs in the Port Adelaide area.

The Delivered Gas Agreement provides for the gas supply requirements of National Power on a 'take or pay' basis, which is essentially on the same commercial terms as the contracts between Terra Gas Trader and the existing State owned generators.

Under the Retail Agreement, ETSA Power purchases electricity from National Power on the basis of a cap and floor price arrangement. Members would appreciate that these are agreements containing market sensitive information which impacts on the commercial interests of National Power. As is customary, this information is not being released. However, the agreements have been made available to the Auditor-General, who has indicated that he will review them in the normal course of his audit responsibilities.

Under section 41A of the Public Finance and Audit Act, as Minister responsible, I have the discretion to request the Auditor-General to examine a summary of the contents of a confidential contract and to provide a report as to whether, in his opinion, the document is an adequate summary of that contract. It is my intention to submit a final summary of the contract to the Auditor-General. This summary will be based on the document I have tabled and will be prepared by Crown Law and officers of the Department of Treasury and Finance. It may or may not include further information on key provisions than that provided in this document. This final summary will then be tabled in Parliament. However, in the interests of ensuring that the main provisions of the agreements are outlined as soon as possible, the Government has decided to make available this initial summary document.

ONKAPARINGA CRIME PREVENTION COMMITTEE

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of the Onkaparinga Crime Prevention Committee.

Leave granted.

The Hon. K.T. GRIFFIN: On 3 March 1999 the member for Reynell in the other place spoke about the local crime prevention program funded through the Crime Prevention Unit, Attorney-General's Department and the Onkaparinga Crime Prevention Committee. On 18 May 1998 I released the evaluation of the local crime prevention program and announced the continuation of the program. Total funding of over $3 million over three years was made available for the program and local councils were invited to tender for funding.

On 12 August 1998, following the tender and evaluation process, I announced funding for committees in a number of areas across the State. Onkaparinga was a successful tenderer. The member for Reynell stated that the Onkaparinga committee felt like a junior partner in its dealings with the Crime Prevention Unit (which I describe as the 'unit') and asked that I review this matter to ensure that community crime prevention committees and the unit can be genuine partners. I have requested a report from the Director of the unit on the relationship with the Onkaparinga committee.

As I have said, Onkaparinga Council made a submission for funding for the current triennium, and it was recommended for funding. The documentation prepared by the unit upon which a submission by a council was to be made set out the key requirements for the whole program for the period 1998-2001. These reflected the findings of the evaluation report for the program for the previous period. Councils were requested to commit to a number of requirements in their submission. The intention of this process was to ensure councils were committed to the program for the three year period, and to ensure that achievable crime prevention outcomes were gained across the program. In other words, the unit was keen to raise the standard of the program across all councils for the period 1998-2001.

Following approval of the 13 councils that were successful in the submission process, the Crime Prevention Unit entered into discussions on a memorandum of agreement. Most councils were keen to sign the agreement and so commence their programs, and hence the negotiation period was relatively short. As with all other councils, the agreement was sent to Onkaparinga on 7 August 1998. It is the case that negotiations with Onkaparinga Council on both the agreement and their work plan have been protracted. However, I am informed that the Crime Prevention Unit has been consistent in its negotiations across all council areas on these matters, with satisfactory and speedy conclusions being reached in all other areas, and with the good relationship between the council and the unit remaining intact.

I am informed that the Onkaparinga Council forwarded its draft work plan for the unit's consideration on 4 September 1998 and, on 19 September 1998, the unit provided comments on the work plan. Comments particularly related to the need to develop the work plan within the policy direction of problem solving; to be a one year work plan (rather than a three year work plan as presented); and to have achievable outcomes for the year. This was consistent with advice to all councils and reflected the importance placed across all the programs of gaining crime prevention outcomes and value for the taxpayers' money which was being spent.

I am informed that a further meeting took place in late December 1998 and, after further negotiations, outstanding matters were resolved following a letter of 29 January 1999 from the council and a revised work plan being received. As can be seen from what I have said, there has been extensive discussion between Onkaparinga Council and the unit.

It is important to note at this point that the work plan is a central document across the program, as it identifies the outcomes which councils are striving to achieve each year. Furthermore, under the memorandum of agreement, it is identified that, out of the total funding provided to a council, project funding, that is, $20 000 per annum, is available for projects outlined in the work plan. The unit is keen to ensure that there are clear and achievable crime prevention outcomes in the work plan, though it is recognised that there is a balance to be achieved in some programs where 'intermediate' crime prevention outcomes can be the outcome where work undertaken is 'developmental'.

The unit has made a considerable effort to work with Onkaparinga Council in the development of its work plan, with a view to ensuring it has achievable crime prevention outcomes, and is within the policy direction of problem solving. Further, the unit has been consistent in advising all councils that changes to work plans can be made during the course of the year, though it is requested that changes should be in accordance with the policy directions, and advised to the unit.

I am also informed that the unit and the council have been involved in extensive negotiation on the memorandum of agreement, and those negotiations included the Local Government Association. I am pleased to advise that a cheque for $70 000 for the 1998-99 year will be presented to the committee in the near future. The committee's work plan focuses on reducing the incidence of offences against the person in public sites, and reducing the incidence of offences against property in the community. Particular areas of work include working with young people around issues such as harassment, bullying and relationship violence, and developing approaches to reducing break and enter and vandalism. Existing programs such as the successful Canines Prevent Crime, developed by the committee in the past, in which local dog owners are encouraged to exercise their powers of observation to help prevent crime at the same time that they exercise their dogs, will continue.

It is regrettable that the relationship between Onkaparinga Council and the Crime Prevention Unit struggled during the negotiation period with the work plan and the memorandum of agreement. I am advised that the unit will make every endeavour to revitalise the relationship, though I am of the view that this should not be done at the expense of compromising the standards required for the overall program. I commend the Onkaparinga Committee for its crime prevention work and I sincerely hope that the committee will continue to focus on achieving its agreed crime prevention outcomes.

NATIONAL RAIL CORPORATION

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to make a ministerial statement on the subject of the National Rail Corporation.

Leave granted.

The Hon. DIANA LAIDLAW: Earlier today I tabled the third amending agreement for the National Rail Corporation. I advise that, as part of the microeconomic reform agenda, many Governments across Australia are selling their rail businesses. Australian National was the first in late 1997, the sale of VicRail Freight has just been concluded, there is an intention by WestRail to sell, and the National Rail Corporation is scheduled to be sold by late this year. The sale process for National Rail has been somewhat drawn out, with the intention to sell announced at the time Australian National was put on the market. However, the three NRC shareholders—the Commonwealth, New South Wales and Victoria—reached agreement earlier in the year and sought the assistance of all parties to the National Rail Shareholders Agreement to progress the sale by amending that agreement. In particular, it was necessary to amend the agreement to achieve the following:

1. The agreement of parties to the Shareholders Agreement that they will have no further rights or liabilities under the agreement from the date of sale.

2. The removal from NRC of a number of benefits and obligations that are not applicable to other corporations, including the right to nominate mainline interstate track for transfer.

3. The removal of the Commonwealth's right to obtain equity for expenditure under the One Nation program.

4. Provision of a further agreement or agreements to conclusively settle all obligations under the Shareholders Agreement.

5. Termination of the Shareholders Agreement on the sale date.

From a South Australian perspective, the two relevant changes are the removal of National Rail's right to nominate interstate track, and for South Australia to waiver rights under clause 6(10) of the agreement to be able to buy shares in NR on the same basis as shares offered for sale to third parties. With respect to the first of these two relevant changes, that is, NR's right to nominate track, that applied from the signing of the agreement and it will be of immense advantage to South Australia in so far as it will result in the denomination of the Tarcoola to Alice Springs line, which the South Australian and Northern Territory Governments have been seeking for some time.

I do not want to dwell on this, but I say as an aside that one of the real issues that we have been negotiating has been the fact that NR had nominated the line from Tarcoola to Alice Springs and it was that part of the line that the Federal Government proposed to give to the new owner-operator of the Adelaide to Alice Springs railway. The fact that the line has been denominated as part of the agreement is immensely important for the future of the Adelaide-Alice Springs-Darwin line.

All parties to the Shareholders Agreement have now signed the third amending agreement, the last being on 22 March. The agreement now needs to be tabled in both Houses of the Parliaments of the Commonwealth, New South Wales, Victoria, Queensland, Western Australia and South Australia by 6 April. If not disallowed by any of those Parliaments, it will take effect within 15 sitting days of being tabled.

HOUSING REFORMS

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement issued today by the Hon. Dean Brown, Minister for Human Services, regarding housing reforms.

Leave granted.

QUESTION TIME

FRINGE FESTIVAL

The Hon. CAROLYN PICKLES: My question is directed to the Minister for the Arts. Given recent announcements by the Director of the Adelaide Fringe that the festival is now ready to go annual, does the Minister support such a move and have any discussions been held between her representatives and the Fringe regarding its viability? If so, what has been the outcome of these discussions?

The Hon. DIANA LAIDLAW: I am not aware of any discussions between Arts SA and the Fringe but I will make inquiries. The Director has sought a meeting with me but it has not been possible to arrange a meeting yet. I am to meet with Miss Barbara Allen and representatives of the board in relation to her suggestion, which I read in the paper, that the Fringe wants to go annual. I have not had any formal submission from the Fringe board that that is so. It is an incorporated body. Neither the Government nor I has any directors on the board. Board members make their own decisions and, if it was an expanded program and they needed more money, they would have to go out and seek it. No formal or informal approach has been made with me or my office, other than seeking to arrange a meeting.

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: That is the only courtesy, if it is a courtesy, that has been paid to me—the fact that I read it in the paper.

ABORIGINES, DISABILITY AND AGEING SERVICES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for the Ageing and Minister for Disability Services a question on Aboriginal ageing and disability service care.

Leave granted.

The Hon. T.G. ROBERTS: I have received a memo and a letter from the Umoona Community Council Incorporated, which is an Aboriginal community in Coober Pedy. I have been aware for some time that the community has put forward a proposal to service the ageing Aboriginal population in that area. We tend not to think of Aboriginal people being able to reach old or mature age, given the circumstances that a lot of Aboriginal people find themselves in, but there is a large ageing community in the Coober Pedy area and they are having difficulty obtaining the services that are required for an ageing population in that isolated area.

The Umoona Community Council has put together a proposal, and has been doing so for some time now, for a community centre that will provide aged care services for ageing and disabled Aboriginal people in the area. It has forwarded a copy to me and seeks not only State but Commonwealth support. It appears that it has hit a brick wall in relation to its funding.

I know and understand that there are bureaucratic services and providers of Aboriginal health care that could be brought in to assist but it appears that the call for help is going out much wider. I understand that faxes have been sent to all Liberal Party (Government) Ministers and that the council is lobbying very heavily in Canberra. If you talk to Aboriginal people in relation to the design of facilities for themselves, instead of using our designs for their purposes, it appears to be a modest request. My questions are:

1. Would you, as delegated Minister for the Ageing and Disability Services, provide an organising service to the Aboriginal community in Coober Pedy so that the plan developed by the community can be implemented?

2. How much of the Human Services budget remains allocated for the 1998-99 period?

3. What percentage of the budget is allocated for Aboriginal people in this State as regards ageing and disability services?

The Hon. R.D. LAWSON: I am aware of the proposal of the Umoona Community Council to develop a community centre in the Coober Pedy region. As the honourable member says, such a development would be a combined Commonwealth-State project and would involve a number of agencies including the Aboriginal housing unit of the Department of Human Services, the Commonwealth departments, including the Department of Health and Family Services and ATSIC, as well as the Office for the Ageing in this State.

There is quite a good model for the development of such a facility. The Ceduna Koonibba Health Service has developed an Aboriginal aged care proposal for Thevenard and the Government has granted land for that purpose. I was recently in Thevenard to present the title deeds to the local community for the purpose of establishing that facility. Last year the Aboriginal Elders' Conference was held at Ceduna, I think in October. Unfortunately, I was unable to attend and I know that on that occasion there was a good deal of discussion with the Minister for Aboriginal Affairs, the Hon. Dorothy Kotz, concerning the proposal of the local community.

I want to assure the honourable member and the Council that we are aware of the needs of older Aboriginal people. We are aware of the necessity to devise residential aged care and community support systems which are specifically adapted to the needs and aspirations of Aboriginal people. The honourable member said that we tend not to think of older Aboriginal people. I do not know who he was speaking for because we in this Government certainly have regard to the needs of older Aboriginal people.

The proposal of the Umoona Community Council is supported by me, and I will be doing what I can to allocate appropriate funds and resources to the development of that proposal. The honourable member asked me questions about the Human Services budget, which, frankly, I do not carry around in my head. I will take those questions on notice and bring back a reply as soon as possible.

ELECTRICITY, PRIVATISATION

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Treasurer a question about the prudential management of ETSA and Optima assets.

Leave granted.

The Hon. R.R. ROBERTS: For almost 12 months since the question was first floated for the sale of ETSA and Optima assets there has been a very clear indication that that may not occur. The Government has repeatedly said that it needs to sell these assets to get the optimum price. One assumes that it believes that an overseas competitor would buy something over-priced when it could not get a return.

During this period, even if you accept the position of the Government that it wants to sell it, an interesting question comes up. How do we realise the highest price for those assets? If you take the point of view that I take, what do you

do to ensure that ETSA and Optima will be competitive in a deregulated market? My question is as follows: What steps and mechanisms such as staff recruitment, process analysis, staff training, strategy development or systems development has this Government taken to ensure ETSA's competitiveness in a deregulated industry, or is it true that the Government is doing nothing to fulfil its prophecy of doom at the expense of all South Australians?

The Hon. R.I. LUCAS: I thank the honourable member for his question. Let me respond to that briefly this afternoon. I am happy to provide further detail as I seek information from various agencies. Let me give one example of the challenges and the dilemmas for the Government and Government ownership. We had a situation where some middle managers in one of our companies were being paid of the order of $60 000 to $70 000.

These two officers were absolutely key to one of our businesses. I got an urgent question from the Chief Executive of that business, I think at the end of last year, to say that these two officers were being head-hunted by a private sector interstate power company and that the Chief Executive and the board were most concerned that these two key people might be head-hunted and taken away from South Australia leaving the South Australian company and South Australia at a great disadvantage. We had to make a pretty quick decision to offer a total employment package for these two people of either just under or over $100 000, an increase of some $30 000 or so, to try to hold on to them.

If the honourable member is genuine in his questions, and given the fact that the honourable member is a little bit on the outer within the Labor Caucus at the moment, he might be able to assist, because we will now have questions from his front bench—Kevin Folly and Mike Rann—which go along the lines that this Government is wasting money on fat cats within Government and semi Government agencies, and we will have a list of a higher number—

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: I will give the honourable member a copy of that press release. A press release was issued stating that the number of public servants employed by authorities such as ETSA and the generating companies had gone from some number to some other number. The headline was 'shock, horror, Government wasting money on fat cats within the broader public sector generally'. It listed the number of people who were now earning total employment packages of more than $100 000 and stated that this might be an issue that the Opposition, through Kevin Folly and Mike Rann, would have taken up by the all powerful Economic and Finance Committee in an investigation of waste within the public sector.

Members interjecting:

The Hon. R.I. LUCAS: If the Hon. Mr Ron Roberts is genuine in his question (and I will give him the credit until he disabuses me of that notion), I am happy to go back and provide some information to him. But, I do not think the Opposition through its spokespersons such as Kevin Foley and Mike Rann can have it both ways. They cannot stand up and say, 'What is the Government doing to try to ensure that our companies can compete with interstate businesses or competitors in the South Australian marketplace?' and, when we try, on advice, to pay some of our people competitive wage and salary rates so that they can compete in the important areas of trading and other areas, with the Labor Party saying that we should do these sorts of things, and then come in and go whack, whack, whack, saying, 'What an outrage! The Government is wasting money on fat cat public servants and others,' and then list the number of people now being paid more than $100 000 total employment costs in the broader public sector. I am happy to provide to the honourable member a copy of the press statement from either Kevin Foley or Mike Rann—I cannot remember which one; Tweedledee or Tweedledum. I am happy to get a copy of that, together with the information that the honourable member seeks, but there is a lot that the Government is trying to do in a broad endeavour to try to ensure that our businesses are as competitive as possible. We will have greater opportunity this afternoon in the debate to go into detail in relation to that, but I have listed one example. Certainly, there are many other examples.

In conclusion, I give credit to the Chief Executives, the boards, the staff and the hardworking employees of our electricity businesses. For over 12 months they have lived in never-never land of not knowing what was going to happen and, indeed, possibly after today, they will still be in that position. I have in the past week spoken to staff who do not know what they will do because they understand that the clause might be defeated today. But their view—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, the Hon. Paul Holloway says that it is our problem. Many of them, not all of them, believe that it is inevitable that the businesses will eventually be sold for one reason or another. We already have some senior people who are now contemplating their future as a result of the uncertainty which will prevail for however long this goes on, until eventually they are sold. People are contemplating their future, and that means looking to move out of the electricity businesses and into other companies.

I think it will be sad if over the coming months we see some of our senior people and managers moving to other positions and jobs. While they might not make any public comment, let me put the honourable member and the Opposition on notice that people are currently contemplating their position as a result of the huge uncertainty in relation to when, inevitably, the electricity businesses will be sold.

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Treasurer, as Leader of the Government in the Council, a question on ETSA privatisation.

Leave granted.

The Hon. L.H. DAVIS: On 25 June last year, the Hon. Sandra Kanck, as spokesperson for the Australian Democrats, delivered a six page analysis of why the Australian Democrats would oppose the privatisation of ETSA. On 1 July 1998 (the following week), I asked the Treasurer to comment on the statements made by the Australian Democrats and the reasons given for opposition. On 1 July last year, in his response to my question, the Treasurer said:

> I then went to the public record and, in an article produced and written by the Hon. Sandra Kanck just the previous month in the electric newspaper headed, 'Who Knew What, When? by Sandra Kanck, Australian Democrat, MLC.', dated in May of this year, it is stated, 'Disaggregation should be a priority of the Government. Not only would it guarantee competition payments but it will also result in greater efficiency within the industry.'
>
> There were a number of other statements that, for the benefit of competition payments, clearly disaggregation is required.

That was the quote from the Hon. Sandra Kanck which was quoted by the Treasurer. I can confirm that I read that article with my own eyes on the Internet because the Australian Democrats put their six page analysis on the Internet. That

came rushing back to me when I read the news release put out in a joint statement by the Hon. Mike Elliott, Sandra Kanck and Ian Gilfillan dated Monday 22 March 1999, when they reaffirmed their opposition to the ETSA sell-off—although as members know there was a posturing in the day or two beforehand that they might change their position. Nothing, of course, occurred in that direction.

But in this news release from the three Democrats, there is the particular sentence that I want to quote for the Treasurer's information and comment. This was put out with now the Hon. Mike Elliott as the spokesman on this matter, replacing the Hon. Sandra Kanck whose research had amounted to nought at that stage. The Hon. Michael Elliott on behalf of the three Democrats said:

> The risk of lower profit is offset by the real risk of higher costs of electricity in a market where prices are set by a near monopoly.

That is an interesting statement.

The Hon. Sandra Kanck interjecting:

The Hon. L.H. DAVIS: And it was consistent, as the Hon. Sandra Kanck said, with other statements which the Australian Democrats had made that disaggregation was bad.

The Hon. Sandra Kanck: No, a very bad form of disaggregation.

The Hon. L.H. DAVIS: A very bad form of disaggregation—

Members interjecting:

The Hon. L.H. DAVIS: I thought the Hon. Sandra Kanck's useful interjection should be put on the record. My question to the Treasurer is: can he reconcile the two statements, one made on behalf of the Australian Democrats on 25 June 1998 by the Hon. Sandra Kanck and the other made on Monday 22 March 1999 by the three Democrats through their spokesperson the Hon. Mike Elliott with respect to disaggregation? Is there a conflict?

The Hon. R.I. LUCAS: Certainly, the issue of disaggregation and, more importantly, leading on to the issue of the impact on costs of electricity in the South Australian marketplace are critical. The Democrats' view on disaggregation has been quixotic. It is a bit hard to go back through all the positions that the Democrats have adopted on disaggregation. The honourable member has referred to the electric newspaper article which indicates support for disaggregation.

There was also a reference in the *Advertiser* in an article by Phillip Coorey where the Deputy Leader of the Australian Democrats indicated that while she had some concerns about how Optima would be split she felt comfortable with seven Government owned corporations competing in the national electricity market. Of course, that was in conflict with the position which the Australian Democrats released in another document and which indicated that the Deputy Leader believed that Optima should be maintained as a whole. That position was to keep Optima as one company, but these other statements have broadly supported disaggregation.

I wanted to look at the Hon. Mr Elliott's statements in relation to his criticism of there being a near monopoly here in South Australia and the impact of that on higher costs of electricity. First, we have three competing Government-owned generators. We will soon have a major private sector competitor in National Power, with 500 megawatts of power. We already have one interconnector, with proposals for at least one other interconnector to New South Wales and perhaps an expanded interconnector to Victoria. There is the announced proposal of Boral's 80 megawatts of additional capacity in the South-East. Of course, Western Mining and BHP have indicated that they are seriously looking at building a major power plant in the Whyalla region. It seems extraordinary that anyone could describe that marketplace compared to what used to exist, namely, one monopoly Government-owned generator, originally ETSA, and then, laterally, Optima, in the South Australian marketplace.

Secondly, the honourable member made those statements in criticism of what he said was a near monopoly and then went on to talk about the potential of higher costs of electricity. In some other radio interviews the Hon. the Hon. Mr Elliott said:

> . . . once we privatise the generators which won't be regulated in price—

that is an extraordinary statement in itself—

> they can charge up to $5 000 a megawatt hour and there will be times when they will be able to ask quite exorbitant prices because the South Australia market won't be highly competitive. In fact, it is only the Government generators in the current structure which would have kept some lid on prices.

The clear inference from this statement and a number of others that the honourable member has made is that in some way these generators will, at their whim, be able to charge prices of $5 000 a megawatt hour. That displays a fundamental ignorance of how the new national electricity market will work. Since the start of the market, in three months we have had perhaps one or two (I can check the exact number) half-hour periods (perhaps less than that; it might have been 20 minutes) where the maximum price of $5 000 a megawatt hour has been charged. That occurs when there are significant outages in the system, when either the interconnector cannot operate at full capacity or when one of our generators has been unable to operate at full capacity at a time when we have a peek demand; that is traditionally on a very hot day, perhaps closer to 40 or so degrees.

It is wrong to infer that generators, Government or privately owned, at their whim can charge $5 000 a megawatt hour and in some way screw the marketplace with exorbitantly high prices under this market structure. It is wrong also to say that it is only Government generators in the current structure which would have kept some lid on prices. Again, it displays a fundamental ignorance of how our market and our vesting contract structures have been structured.

We have structured vesting contracts between the Government generators, the retailers and the other operators in the market to keep downward pressure on prices during this transition period to full competition. If we were to sell those vesting contracts through to 2000-2003, the end of the vesting contract period would apply to the private sector generators as it would apply currently to the Government generators. So, for anybody, but in particular the Leader of the Australian Democrats, to suggest that it is only the Government generators in the current structure which in some way have kept the lid on the prices is misleading in the extreme.

CHILD SEX OFFENDERS

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question about child sex offender treatment programs in South Australian prisons.

Leave granted.

The Hon. IAN GILFILLAN: On 20 August last year I asked a question in this Chamber about the lack of effective rehabilitative treatment in South Australian gaols for

convicted paedophile Lawrence O'Shea. Three successive judges indicated that he should receive treatment in gaol, yet this did not occur, in disregard not only of judicial instructions but also of the Liberal Party's 1993 election promises. In the more than seven months since I asked that question, I have received no response from the Minister at all. The Child Protection Research Group, led by Professor Freda Briggs at the University of South Australia, has taken up the same issue, albeit in a much broader context. This month the group has published a 118 page research paper titled, 'A Cost Benefit Analysis of Child Sex Offender Treatment Programs for Male Offenders in Correctional Services'.

This paper estimates dollar values on both the cost of child sex abuse and the cost of preventive treatment programs for offenders. The personal costs of child sex abuse vary enormously from one victim to another. Some of the personal costs to victims include depression, long-term psychological harm, lowered self esteem, learning difficulties, missed educational opportunities and reduced earning capacity later in life, and sometimes the victim goes on also to become a perpetrator, repeating the cycle.

The report separates the tangible costs of sex abuse, that is, the actual dollar expenditure of State and Federal Governments and individuals, from the intangibles I have just mentioned. In calculating the costs, the report uses a series of assumptions that are obviously and explicitly very conservative—assumptions that, in the context of the report, make very clear that its notional dollar cost of child sex abuse to each victim and to the community has been grossly underestimated. For instance, the cost to the State Government of investigating the crime and prosecuting the offender are not included in the tally. The cost to the Federal Government of any health care to the victim and his or her family are assumed to be zero. The costs to non-government charity organisations are, likewise, assumed to be zero.

The report makes further assumptions that conservatively overestimate the cost of treatment programs for offenders in gaols and conservatively assumes that these programs are less effective than they have proven to be. Another very conservative assumption is that a perpetrator who is released from gaol without being treated will be arrested and gaoled again before he can assault any more than one additional victim.

Even making all these assumptions, the report concludes that the cost of treatment programs in prison can save money for society if such programs prevent even 6 per cent to 8 per cent of reoffences which would otherwise occur. This holds true even if non-tangible costs such as pain and suffering are allocated no dollar value at all.

On the other side of the ledger, the potential benefits to society for effective treatment programs could be in the millions of dollars, to say nothing of the lower risks to children and the brighter future of every child who does not become a victim. A paragraph from Professor Freda Briggs' preface states:

> The report concludes that on any reasonable interpretation child sex offender treatment programs do pass a cost benefit analysis. Policy makers should heed this result. When the comparatively modest cost of treatment programs are compared against the tangible expenditures incurred by the community and the full cost of the pain and suffering to victims, the value of such programs in economic terms is overwhelming.

In view of this research, why is there, as the report states, no intensive in-prison sex offender treatment program in South Australia? When will the Government finally act to protect South Australian children by treating sex offenders in prison before they are released?

The Hon. K.T. GRIFFIN: I will take the question on notice and bring back a reply. In relation to the earlier question to which the honourable member referred, I thought the question had been answered, but I will make some inquiries as to where that might be.

NUNDROO HOTEL MOTOR INN

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Attorney-General a question about the Nundroo Hotel Motor Inn.

Leave granted.

The Hon. NICK XENOPHON: The Nundroo Hotel, located in the Far West of South Australia, has previously applied for a gaming machines licence. On 21 August 1998 the Liquor and Gaming Commissioner rejected the application on the basis that it could impact on the local Aboriginal community and he was concerned that 'gaming machines would result in an increase in violence in and around Nundroo'. An appeal to the Licensing Court to His Honour Judge Kelly resulted in the appeal being dismissed on 30 October 1998.

I understand that there is currently a fresh application for gaming machines at the Nundroo Hotel, with the proposal that the Aboriginal community as a whole be excluded from the proposed poker machine area. Will the Attorney's department investigate or consider whether any proposal to segregate the local Aboriginal community with respect to the current proposal contravenes any relevant State racial discrimination legislation?

The Hon. K.T. GRIFFIN: The answer is, 'Not at the moment.' The honourable member is a lawyer, so he ought to know: he has had enough experience, I think, in relation to these sorts of applications. Application is made either to the Liquor Licensing Commissioner, in the first instance, or subsequently to the Licensing Court. While the matter is being considered in that context, it is not for me or anyone else to seek to interfere with the decision making process or to presume to make any observation on a matter in respect of which a decision has not yet been made. The issue to which the honourable member refers is important, but I will reserve my views on it until any application has been dispensed with in accordance with the provisions of the Liquor Licensing Act.

SMOKE ALARMS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Disability Services a question about the installation of smoke alarms.

Leave granted.

The Hon. J.S.L. DAWKINS: Regulations under the Development Act require that smoke alarms be installed in all domestic dwellings from 1 January 2000. However, I believe that some alarms are not effective for people who have profound hearing loss. Will the Minister indicate whether the Government is proposing to provide assistance for people with severe hearing impairment in the installation of smoke alarms in their homes?

The Hon. R.D. LAWSON: It is true that the new regulations under the Development Act require home owners to have smoke detectors and alarms installed in all domestic dwellings. The smoke detectors and alarms are effective for

most members of the community. However, those who have some hearing loss may require a device which has a louder alarm, and a series of those alarms are available commercially for about $30. However, there are some people for whom even those alarms are ineffective. These are people with profound hearing loss which, I understand, is over 65 decibels. For such members of the community it is necessary to have a more elaborate, hard wired device which often consists of a vibrating pad and which is fitted beneath the pillow of the person, making the alarm more effective.

A number of community programs already exist to assist people with the installation of standard smoke detectors and alarms and also to fit those of the $30 variety which I mentioned. Service clubs, the Housing Trust and other organisations, including the Metropolitan Fire Service, have been very active in installing those devices for people. I have recently appointed an inter agency reference group to examine means by which these more elaborate devices for those with profound hearing loss can be put into the community. The inter agency group includes representatives from the Guide Dogs Association, the Disability Services Office, the Independent Living Centre and the Metropolitan Fire Service. I expect to hear back from the inter agency group by the end of next month to ensure that appropriate eligibility criteria are developed. Funds from the Home and Community Care program are being devoted to this project.

POLITICAL EDUCATION FUND

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Treasurer, representing the Premier, a question about a political education fund.

Leave granted.

The Hon. G. WEATHERILL: Does the Government look favourably upon the concept of incorporating within relevant South Australian statutes, in New South Wales style, a political education fund?

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

AUSTRALIAN NATIONAL LAND

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about railway land.

Leave granted.

The Hon. A.J. REDFORD: We all know that Australian National Rail is undergoing great change in terms of its ownership structure and the way in which it operates. We also know that Australian National owns extensive land in metropolitan, rural and regional South Australia. Indeed, the issue of what is to be done with land close to rail tracks currently owned by Australian National has been a topic of some discussion in the Mount Gambier community. In the light of some of the discussions that have taken place in the media, I would be grateful if the Minister could provide this place with some details on what is likely to happen to Australian National railway's land adjacent to main line rail tracks.

The Hon. DIANA LAIDLAW: I thank the honourable member for raising this matter with me because it would appear from representations that he has had and from articles that I have read in the Mount Gambier *Border Watch* that some council members find the process for the transfer of Australian National land to be confusing, complex and lengthy. I would certainly highlight that it is complex, but Transport SA is working through it in consultation with local councils, and it is going out to meet councils to explain the process, which I think will help greatly.

I would highlight briefly that since the sale of AN some 36 per cent of the land has already been transferred back to the State. The remaining land (64 per cent) is with the interstate main line tracks, which are still owned by the Commonwealth and are operated under the new organisation, the Australian Rail Track Corporation. Ultimately, the Australian Rail Track Corporation is obliged to transfer surplus land. One of the issues has been that the land has never been titled. When South Australia sold its railway land to the Commonwealth in 1975, we handed it straight over to the Commonwealth: it was not titled then and it has not been titled since.

Now that Australian Rail Track Corporation has to work out what exactly it wishes to keep for its interstate main line track system and what it does not need, we have to go through that identification survey process and land titling exercise. It is complex, when you are dealing with land that has been used for railway purposes for well over a century, going back through the records. This is not easy—

An honourable member: What have you been doing for the past five years?

The Hon. DIANA LAIDLAW: AN was sold only some 18 months ago, so we have been working very diligently on this. We have also now been awarded a contract from the Australian Rail Track Corporation to undertake this survey and title work for the Federal organisation. What we have is a situation where the tracks and the associated land structures that are needed for interstate passenger and freight trains are being identified by the Australian Rail Track Corporation for its purposes. They will be then surveyed and titled for the benefit of this new Federal organisation. The ASR, which runs the grain tracks, also has identified that it would like some freight yards, and so we are working with it to see that the land that it would wish to use in future for the benefit of grain movements in particular is not the land that Australian Rail Track Corporation wants for its freight and passenger purposes.

In the meantime, local councils are becoming quite anxious, because often the land is in the middle of their towns and they wonder how they can use it best for community and economic development purposes. So, one of the tasks that a new rail regional development group that has been established in Transport SA is undertaking is to work with councils; and, while this survey and land titling work is being undertaken, we are offering councils the opportunity to use this land for community services, planting and landscaping, or to use old railway buildings for community halls so that they can be an asset to the community and not a visual blight because they are not being maintained, as they are not being used for railway purposes at the moment. So, in this hiatus between surveying and titling land and sorting out which organisations want which land, I think the councils are generally supportive of Transport SA's position, encouraged by the Government, to use the land for community benefit in the short term.

In the long term, we are asking the councils also to consider, in the event that Australian Rail Track Corporation or ASR do not want this land, whether the local councils could use the land for any other useful purpose. So, we are involving them not only in the short-term upgrading of buildings and vacant lots but also for longer term potential

use, which I think will be important for regional development in many of these towns, because it is such prime land in the centre of the towns. I thank the honourable member for working through these issues with respect to the Mount Gambier area, in particular, but certainly the issues apply across the State, from Peterborough—

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: It is a bit complex, I think.

The Hon. T.G. Roberts: He wants to cut it all up so there will never be a railway station again. Rory wants rail gone forever—he wants it finished.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I do not think I should comment on that. It is a vast issue. We are working across the whole of the State, from Murray Bridge, Wattle Range Council, Grant, Mount Gambier City Council, Naracoorte and Lucindale, Tatiara, Port Pirie, Peterborough, northern area councils and the Coorong District Council.

Members interjecting:

The Hon. DIANA LAIDLAW: I did not ask for the Hon. Ron Roberts' help in relation to this when I was last in Port Pirie. However, he was at the art exhibition that I opened, and he enjoyed—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: Anyway, we discussed a lot of work and we came to different views on different matters. It was very good to see him supporting the local community.

PROSTITUTION

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General a question about the progress of the ministerial working party on prostitution.

Leave granted.

The Hon. SANDRA KANCK: In August last year I applauded the State Government in its moves to review the laws governing prostitution in South Australia. Indeed, the appointment of a ministerial working party comprising the Minister for Human Services, the Minister for the Status of Women, the Minister for Local Government, the Attorney-General and the Police Minister indicated a genuine attempt to confront the many problems with existing legislation.

There is no doubt that the need for a review is overdue. The current laws are outdated and achieve very little, at considerable cost to the community and our police force. The former Police Minister (Hon. Iain Evans), who announced the establishment of the working party, said that the law remains, as it has for decades, ineffectual and unworkable. It appeared to be a positive and challenging step forward, and I had looked forward to the working party's recommendations appearing by this time. My questions to the Attorney-General are:

1. How often has the ministerial working party met to review the current laws on prostitution?

2. When was the last time the committee met?

3. What progress has been achieved to date?

4. When will the Parliament have the opportunity to consider the committee's recommendations?

The Hon. K.T. GRIFFIN: It is a difficult task, because there are several Bills being drafted. The whole object of the working group was to provide legislation that was coherent and that provided options for the Parliament. The working party has met on a number of occasions—I cannot recall how many times. I know that it has taken an inordinate amount of officers' time as well as Ministers' time. Whilst we were particularly ambitious to believe that we would have it finished by early this year, within the next few months I would hope that we will see draft Bills that members can consider.

The Hon. T.G. CAMERON: I have a supplementary question. Would the Attorney-General care to comment on the fact that the Police Minister (Hon. Robert Brokenshire) told me two to three weeks ago that the report would be released in two weeks?

The PRESIDENT: Will the Hon. Terry Cameron please rephrase his question and not just ask for a comment. He has to ask a direct question.

The Hon. T.G. CAMERON: Would he reply?

The Hon. K.T. GRIFFIN: I have no knowledge of any conversation to which the honourable member is referring.

The Hon. T.G. Cameron: Someone is not telling the truth.

POLICE STAFFING

The Hon. T. CROTHERS: I always tell the truth.

The PRESIDENT: Order! That was not called for.

The Hon. T. CROTHERS: I seek leave to make a precied statement before asking the Attorney-General, representing the Minister for Police, a question about South Australia Police numbers.

Leave granted.

The Hon. T. CROTHERS: I refer to an article published in the *Advertiser* of Friday 19 March this year that was headed 'Short arm of the law.' According to the article, the police union has revealed that police patrols are not attending serious incidents for up to 30 minutes. Calls to police stations are going unanswered, and major investigations are suffering because of a serious shortage of officers. The Police Association released a comparison of police staffing levels which show that the number of uniformed officers has shrunk by 171 since 1992. In that same period, recruitment levels have been less than attrition levels in every year except 1997.

The President of the Police Association said that police at two stations had this year filed hazard reports over dangerously low staffing. The article mentioned one incident where children in an after school care centre were assaulted by youths. No patrol cars were available from the Malvern Police Station but a solo traffic patrol from the western suburbs attended some 30 minutes after the incident. My questions are:

1. Does the Minister admit that there is an acute shortage of police officers in South Australia?

2. The Government has announced that it proposes to increase the number of police officers: if so, by what number and in what time frame?

3. Is there any information as to any impact that the shortfall of police is having on their capacity to more effectively deal with ram-raiders and home invaders?

4. Would the Minister care to comment on the statements made by the State and Federal President of the Police Association, Sergeant Peter Alexander?

The Hon. K.T. GRIFFIN: I will have to take the question on notice and have it referred to my colleague in another place. However, I might say that an inordinate amount of

attention is focused on numbers without, as the Commissioner of Police said recently, focusing on the quality of the outputs and the changes in policing which are occurring, particularly with the restructuring to establish local service areas. I understand the question that the honourable member has raised, but I want to ensure that there is not that undue emphasis upon numbers without having regard to the quality of the police work and changed work practices, because all of this provides a better service to the community.

SEXUAL HARASSMENT

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Treasurer questions concerning levels of sexual harassment in small business.

Leave granted.

The Hon. T.G. CAMERON: A recent report prepared by the Sex Discrimination Commissioner, Ms Susan Halliday, revealed that a high level of harassment complaints are coming from small business. The study found that small business owners are the most likely to sexually harass staff. The worst offenders are those in the retail, hotel, real estate and transport industries. Of 145 complaints before the commission, 87 were from small business, 36 were from Federal departments and agencies and 22 were from large businesses employing more than 100 people. More than 85 per cent of complaints are lodged by women.

Ms Halliday states that large organisations understand the ethics of a comfortable working environment and recognise the importance of a good image. They therefore recognise inappropriate behaviour and manage problems quickly. Ms Halliday believes that too many small business owners plead ignorance to sexual harassment laws and they need to become better educated about sexual harassment. Similar sentiments have been expressed by the Small Retailers Association Director, Mr John Brownsea, who has said that the Government is not interested in training small business owners in this matter. My question is: following the Sex Discrimination Commissioner's disturbing report, what training is currently available for small businesses to address this issue, and will the Government move quickly to ensure that small business operators are fully educated on all issues surrounding sexual harassment in the workplace?

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

ELECTRICITY TARIFFS

In reply to **Hon. T.G. ROBERTS** (4 March).

The Hon. R.I. LUCAS: I have been advised that the Government commissioned no polling on the evening of 3 March and taxpayers therefore have not paid for any such polling.

COMMUNITY GRANTS SCHEME

In reply to **Hon. CARMEL ZOLLO** (27 November).

The Hon. R.I. LUCAS: The Premier and Minister for Multicultural Affairs has provided the following information:

In my *Ministerial Direction* of 21 October 1998 to the South Australian Multicultural and Ethnic Affairs Commission (SAMEAC) I indicated that the commission would be involved in the SA Multicultural Grants Scheme process, and as a consequence a Grants Committee has been established that includes representation from SAMEAC. The committee will review the grants criteria and assess applications.

ECONOMIC DEVELOPMENT BOARDS

In reply to **Hon. T.G. ROBERTS** (9 December 1998).

The Hon. R.I. LUCAS: The Minister for Industry and Trade has provided the following information:

1. It is not appropriate that Regional Development Board CEOs or staff have a register of interest similar to that of members of Parliament or local government. The Regional Development Boards are autonomous bodies independent of Government, with no powers to direct government agencies, companies, organisations or individuals in a way which could result in board members or staff deriving financial benefit.

2. The South East Economic Development Board's CEO, Mr Grant King, played no role in the sale of the buildings, other than to forward to the Asset Management Task Force a proposal from a consultant for an alternative use of the site. Mr King's interest in the company Van Schaik's Bio-Gro Pty Ltd was declared to the Board and the then Economic Development Authority prior to the sale of the scrimber site in Mount Gambier.

3. The South East Economic Development Board does table annual reports.

4. It is inappropriate for Economic Development Board members or staff to use board funds or confidential information for their own direct personal financial gain. As members of their respective region's business communities, they have the same access to Government funded business development programs as any other taxpayer (since the approval of assistance under these programs rests with government agencies, not the boards). Based on a written complaint the Government would investigate any such allegation.

5. It is not appropriate for South East Economic Development Board members or staff to disclose their private business interests, other than where potential for conflict of interest exists.

As Treasurer, I provide the following response to the honourable member's remaining question.

6. The Asset Management Task Force was responsible for the sale of the Scrimber property. The tender process utilised as sale agents Herbert Real Estate Pty Ltd, trading as The Professionals, Mt. Gambier office and Richard Ellis International Property Consultants, Adelaide. The notification of the tender first appeared in the press on 18 December 1996 and during the course of the advertising campaign appeared in the Adelaide *Advertiser*, The *Border Watch* and The Australian *Financial Review.*

The original tender was for the sale of land and buildings and closed on 31 January 1997. The Asset Management Task Force received four tenders, two of which included offers for the remaining Scrimber plant which was not sold at a previous auction held on 26 and 27 November 1996. This remaining plant consisted of the main scrimber line, which was unable to be removed without causing damage to (and reduction in value of) the building.

As the tenders received were not expected to include offers for the existing plant, a further tender was offered to the existing bidders so not to disadvantage any particular group. This second tender included the plant and was issued on 11 February 1997, and closed at the end of business on 14 February 1997.

ELECTRONIC COMMERCE AND PRIVACY LEGISLATION

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister representing the Minister for Information Economy a question on electronic commerce and privacy legislation.

Leave granted.

The Hon. CARMEL ZOLLO: In view of the obvious, that is, with everyone wanting to harness the benefits of the information age, information-based industries will dominate the economies of the new millennium, it is of concern to many in South Australia that the State of Victoria has established a place for itself amongst a small number of places around the world that are leading in the application of twenty-first century communication technology, particularly the Internet. I am sure that the Minister is aware that the State of Victoria has introduced legislation in relation to electronic commerce and data protection. That legislation will complement any proposed Federal legislation. Can the Minister

advise whether this Government has any plans to introduce both electronic commerce and data protection or privacy legislation for this State and, if so, what time frame is involved?

The Hon. R.D. LAWSON: I thank the honourable member for her question, and I am aware of her interest in these matters. The South Australian Government is committed to improving the climate in this State for electronic commerce and my colleague the Minister for Information Economy (Hon. Michael Armitage) has been most assiduous in developing opportunities for South Australian business to participate in the developments in electronic commerce. A number of initiatives have been developed through the Information Economy Policy Office, which has recently been established.

The Government has been supporting electronic commerce development through a number of private sector organisations. As anyone who has followed developments in this area will realise, the development of electronic commerce is a worldwide challenge, and every civilised part of the globe is busily engaged in activities to try to position themselves to take advantage of the new developments.

The honourable member referred to the position in Victoria and suggested that the Victorian Government is far ahead of the rest of the country in introducing electronic commerce. It is true that the Victorian Government has released for public consultation two draft Bills, one dealing with electronic commerce and the other dealing with privacy protection, both in the public and private sectors. So far as I am aware at the last call, those Bills had not yet been brought into force. At the time the Victorian Government took that step, comments were made by the Victorian Premier about the attitude adopted by the Commonwealth Government in relation to the introduction of privacy legislation.

Members may recall that, in March 1997, the Federal Government discontinued moves that were then afoot to extend the provisions of the Commonwealth Privacy Act to the private sector. The Victorian Government moved in consequence of that decision by the Commonwealth. I understand that there was some revisiting of the principles by the Commonwealth authorities, although the Commonwealth Government recently announced that it will not alter its policy in relation to that matter.

The Victorian Government saw opportunities in electronic commerce for its own State in relation to some rules that have been developed by the European Union, which published a directive prohibiting the transfer of personal information to a third country unless the third country had in place adequate privacy legislation. There are a few places in the world—I think Hong Kong, Taiwan and New Zealand—where such legislation has been passed in response to that, but Victoria is the only Australian State yet to have taken up that course. Whether or not that will be effective from the Victorian Government's point of view remains to be seen because the European Union directive may well apply to Australia as a whole rather than to the segmented States of Australia.

In Queensland, members might be interested to know that the Legal and Constitutional Review Committee completed an inquiry into privacy, and there was a recommendation that privacy legislation be introduced for its public sector. Similarly for New South Wales; however, there has been no decision to extend that to private privacy legislation. As to the balance of the honourable member's question, I will bring back a reply.

WORKPLACE SAFETY

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement made by the Minister for Government Enterprises in another place this day on the subject of linking safety, productivity and competitiveness.

Leave granted.

INTOXICATION AND THE CRIMINAL LAW

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to make a ministerial statement on the subject of intoxication and the criminal law.

Leave granted.

The Hon. K.T. GRIFFIN: I noticed the statements made by Mr Atkinson, member for Spence, in the House of Assembly yesterday when debating the Criminal Law Consolidation (Intoxication) Amendment Bill. There is much in his speech that is just plain wrong. On his past performance, I suppose that no amount of information I provide will ensure that he deals in facts and enlightenment rather than confusion, but for the sake of the record I need to say several things to ensure that the readers of *Hansard* are not misled by Mr Atkinson's misrepresentations.

For those who wish to have the facts, I draw their attention particularly to an answer I gave to the Hon. Mr Holloway on 25 August 1998 (*Hansard* pages 1544 and 1545), to my ministerial statement on 28 October 1998 (*Hansard* pages 25 and 26), and to my second reading speech when introducing the Bill on 9 December 1998 (*Hansard* pages 445 to 447). Mr Atkinson accused the Director of Public Prosecutions and me of giving incorrect information to Parliament in relation to cases which he claimed involved the so-called drunks' defence but which upon proper analysis did not. The assertion by Mr Atkinson is rejected.

He also referred to the case of *R v Simpson* and asserted that I have been unable or unwilling to answer his question about it. He said:

> I suspect that he knows that answer but for Party political reasons he will not share it with Parliament while we are sitting.

I referred to that case in both the reply to the Hon. Mr Holloway and the ministerial statement which I have already mentioned. In relation to that case I said:

> The Court of Criminal Appeal held that, the evidence of intoxication having been raised in the evidence of the complainant, a direction to the jury on *O'Connor* ought to have been given and it was not. So there had to be a retrial. The retrial has not yet reached any conclusion. This is not a case of the 'drunk's defence'. The defendant wanted to stay well away from the issue of intoxication. He did not ask for a direction. He was not acquitted. All that will happen is that there will be a retrial.

As I have previously indicated, there is to be a retrial but because of that I have preferred not to say anything about the case for fear of prejudicing the retrial—a perfectly proper stance to take although the shadow Attorney-General does not seem to appreciate the propriety of that position. In any event, the position in this case is the very position that the Government's Bill is designed to address.

Notwithstanding the confusion that the member for Spence seeks to create on this important and complex issue I have no doubt sensible South Australians who seek to understand the law in the light of the Government's amendments will see it as an appropriate response.

I know that when I sought leave I entitled the subject 'Intoxication and the Criminal Law', but my attention has

been drawn to a debate in the House of Assembly this morning in relation to the Constitution (Citizenship) Amendment Bill, and because it contains some material which is perhaps on all fours in terms of the language used by Mr Atkinson as the language used in the debate yesterday in the House of Assembly, it is appropriate that I address some remarks to that issue.

The Constitution (Citizenship) Amendment Bill is a Bill that is before us. I do not want to deal with the substance of it but what I want to do is to deal with some aspects of the process. In the House of Assembly there has been a debate about whether or not the Bill should have passed with a constitutional majority. It passed without a constitutional majority. Advice was provided at the request of the Speaker by the Crown Solicitor through me.

That advice was referred to this morning by Mr Atkinson in quite derogatory terms because one part of the advice was in relation to the substance of the issue that might be appropriate upon which to base a requirement that an amendment should be passed with a constitutional majority in both Houses. Amongst other things, the advice says:

> It is also possible that a provision which very significantly changed the qualification for members may so materially affect the composition of a House that it could properly be regarded as affecting the Constitution of that House. An example of such a provision may be the reintroduction of a substantial property qualification. I do not regard the change to the qualification for members affected by the current Bill as remotely approaching a change of that significance.

Quite amazingly, having referred to that particular paragraph, the member for Spence then said:

> That is Mr Greg Parker's personal political opinion: it is not a legal opinion.

Later in his speech he again makes reference to the Crown Solicitor's advice and says:

> This House should not be acting on the political opinion of someone in the Crown Law Department—and it is no more than a political opinion.

He then makes a derogatory remark as follows:

> I bet that Mr Greg Parker does not live in the western suburbs or anywhere where there is a substantial number of ethnic people, because the Bill does affect the qualifications of tens of thousands of South Australians not just of non-English speaking background but of Irish origin or whose origins are from the United Kingdom.

To cap it all off the member for Spence makes a reference again to the Crown Solicitor's opinion and refers to the fact that the opinion did not refer to Willsmore's case in the High Court in 1981-82. He concludes:

> . . . but it just shows how partisan and how incompetent the Crown Law Department has become.

Members interjecting:

The PRESIDENT: Order, the Leader of the Opposition!

The Hon. K.T. GRIFFIN: As the interjections quite properly note, such a reference to a particular officer, whether in the Crown Solicitor's Office or elsewhere in the Public Service, is really untenable. It is contrary to convention and good parliamentary practice. The Crown Solicitor takes responsibility for the advice which is given.

Members interjecting:

The PRESIDENT: Order! The Attorney-General has the floor.

The Hon. K.T. GRIFFIN: The real concern is that the shadow Attorney-General aspires to be Attorney-General and he does not seem to know anything about proper practice or convention. In fact, it seems that everybody in the Crown Solicitor's Office and the Solicitor-General are in the sight of the member for Spence and other members of the Opposition. All that I can do is to defend each of them. They are good public servants who act objectively. They may give advice that people do not like and they may give me advice that I do not like on occasions, but the way in which the Crown Solicitor's Office traditionally has been established and provides advice is that it is given independently without any partisan position being demonstrated.

I suppose the only other point that I can make whilst expressing my disappointment that the Opposition should take this step of abusing what I think is an important principle of not naming public servants in the Parliament is to say that I suppose if you cannot win on the argument and on the substance of it then you shoot the messenger and you pull down by personal attack and personal abuse. I think that that in respect of the Crown Solicitor's Office or other public servants is to be deplored.

MURRAY RIVER

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement from the Hon. Dorothy Kotz, Minister for Environment and Heritage in the other place, about South Australia's commitment to the Murray River.

Leave granted.

ELECTRICITY CORPORATIONS (RESTRUCTURING AND DISPOSAL) BILL

In Committee.

(Continued from 10 December. Page 520.)

Clause 2.

The Hon. R.I. LUCAS: I seek leave to withdraw my amendment to clause 2.

Leave granted.

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

> That clauses 2 to 10 be postponed and taken into consideration after clause 11.

Motion carried.

Clause 11.

The Hon. R.I. LUCAS: At the outset, I will outline the proposed procedure for this afternoon which has been as a result of discussions I have had with the Hon. Mr Holloway, the Hon. Ms Kanck, the Hon. Mr Cameron and the Hon. Nick Xenophon in terms of trying to ensure that we can direct this vote and debate today. There has been a broad understanding that we would postpone clauses 2 to 10 to come to the essential clause in the Bill which is clause 11 and which is the sale, lease or float provision.

This afternoon, it is intended to have a vote on this key clause within the reform and restructure Bill. In so doing, I acknowledge (and these members will speak for themselves) that members such as the Hon. Mr Xenophon may adopt a position in relation to this clause, but that could be entirely consistent with what I understand is his still public position, that is, support for either sale or lease—I will leave that for him to define—subject to a number of requirements, the most important of which is a referendum.

This Bill includes many other provisions, some of which were in the original Bill and some of which have been added. The issue of Kirton Point has been added by the Labor Party; and there are issues in relation to superannuation; local government provisions have now been added; there are important provisions in relation to referendum proposals—and the list goes on. It is the Government's intention, as I understand it, as a result of discussions last evening and this morning, that we will have the vote on the key clause today, but that does not indicate the final position of some members.

As I said, the Hon. Mr Xenophon will outline his position in greater detail. We will report progress at that stage and we will have to return in the continuation of this session at the end of May when a number of provisions in the Bill, given the anticipated result of this test vote, will need to be amended—perhaps significantly—to suit themselves to the potential new range of circumstances which might have to be accommodated for a period until, from the Government's viewpoint, anyway, there is the inevitable decision for a sale or a lease.

I wanted to explain in some detail the process that the Legislative Council is endeavouring to adopt this afternoon. It will therefore be a key vote on the key clause which is the sale, lease or float provision, bearing in mind that individual members will identify their own positions in relation to referendum and other provisions.

At the outset, I summarise, relatively briefly, the Government's position in relation to the sale of our electricity assets. This key clause (clause 11) allows the Government to sell, to lease, or to float all our electricity assets here in South Australia. The Government's preferred position has always been for a trade sale of those assets in terms of maximising the proceeds returned to the Government, to the taxpayers of South Australia, and to maximise the benefit to our budget. It has also been the Government's preferred position for virtually all those proceeds to be used for debt reduction in terms of the great debt debate that we have had here in South Australia.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: As I said, the Government's preferred position has always been a trade sale with the proceeds being directed towards debt reduction. Through the period of the past four or five months, through staged long-term leases and discussions (which I will not go over today, members will be pleased to know), and a variety of other options, the Government has endeavoured to move from a position where we have 10 votes to support the sale of the electricity businesses to try to find a position where 11 people in the Legislative Council might be prepared to support it.

Without wishing to pre-exempt the vote, it does not surprise anyone to know that the Government, at least at this stage, is not in a position to be successful with a vote of 11-10 in the Legislative Council for either its preferred position (which is what we will vote on) or, indeed, a range of other options which have been canvassed, discussed and negotiated with a number of members of Parliament and other interested groups and observers during past months.

This is the key provision. It is the Government's preferred position. The Government has amendments on file in relation to clause 11. We do not intend to move those amendments. This will be a straight vote on clause 11.

The key reasons for the sale from the Government's viewpoint can be summarised under four broad headings: risk, debt, budget impact, and a competitive market with the impact on jobs in South Australia. Again, for the sake of not wishing to repeat all the debate of the past 12 months, I will not go into great detail in relation to summarising the Government's position.

Briefly, the Government's position in relation to risk is that we acknowledge, or argue passionately, that there is significant risk in operating taxpayer-funded, Government run and operated electricity businesses in a cutthroat national electricity market. We believe that the sad experience of the 1980s, when Governments were warned of the risks involved in competing in a cutthroat national financial market, were ignored to the ultimate cost of the taxpayers of South Australia. We believe that, similarly, we have had warnings in relation to the risks involved in competing in the cutthroat national electricity market and that, if those warnings are ignored, it will be the taxpayers of South Australia again who will suffer.

I will return to some other aspects of the risk later, but I highlight in summary form the significant impact on the dividend flow to our budget as another palpable example of the risks involved to the taxpayers of South Australia in competing in a national electricity market.

The second broad reason is, of course, in relation to debt. Again, I will not go through all the detail, but I think starkly the figures that the Hon. Legh Davis quoted in a recent question, highlighting the work that Access Economics had done, indicates that in just three years South Australia, with under 8 per cent of the national population, will have 22 per cent of all the States' and Territories' debt in Australia.

An honourable member: It's 43 per cent.

The Hon. R.I. LUCAS: No, it is 22 per cent at the moment without the sale of the New South Wales assets. If after 27 March the electricity assets in New South Wales are sold—and there are some in this Chamber who have a view that irrespective of the result—

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: No, I am saying that, irrespective of the result on Saturday, I believe there will be electricity asset privatisations and sales in New South Wales after 27 March. There is no doubt that after Saturday, if the Coalition wins, there will be significant privatisation; if the Labor Government is returned, already the dogs are barking that the triumvirate of Carr, Egan and Della Bosca (who will take over from Bob Debus as Energy Minister) will be responsible for hammering the heads of the union, in particular the left wing unions of New South Wales, for, at the very least, the sale of the generation assets in New South Wales at some time during the next four years.

We can only make predictions at the moment, but we will watch with some interest what occurs in New South Wales. But, if New South Wales sells its electricity assets, then by 2003 the Access Economics predictions will have South Australia with some 43 per cent of all the debt of State and Territory Governments throughout Australia. That is just a horrifying statistic. It is one that has been used recently by prominent business people and a former Premier, Steele Hall, in some advertising in our daily newspaper; but it is a figure which is starting to run rampant through the community: that we will have somewhere between 22 and 43 per cent of the total debt of State and Territory Governments in Australia.

We also have very significant interest rate risk. We are indeed fortunate, with the Coalition Government of the last three or four years, that we have had a very significant improvement in the national economic performance. We have seen a significant improvement in terms of the interest rate

environment, with some credit, in relation to building on some of the work which the previous Labor Government did and which I acknowledge.

There are very few people in this Chamber who would be able to guarantee for the next 10 or 20 years that interest rates will stay at the 5 per cent or 6 per cent average levels that they enjoy at the moment. Indeed, if anyone sought to guarantee that they would indeed be exceedingly foolish. With a debt of $7.4 billion, one only has to do the 'back of the envelope' calculations to see that, if interest rates increase by 1 per cent, 2 per cent or 3 per cent on average over the next 10 years, we, the taxpayers of South Australia, will be significantly exposed to serious interest rate risk on our State debt.

The third reason for the sale is, of course, the impact on our State budget. Our budget last year indicated that the premium, the simple difference between the interest savings from the repayment of the debt and the dividends that we currently receive from our electricity businesses, will be of the order of $100 million in years three and four of this four year financial plan. As my budget speech indicated, if we were to receive at the very top end of the market the proceeds for the sale of our electricity businesses, that $100 million premium may well be up to $150 million a year if combined with what we believe is likely to happen to dividend flows from businesses operating in a national electricity market under Government ownership.

So, there is a very significant, ongoing, year to year financial benefit to the budget—not a one-off benefit—which will be used by Governments of this persuasion and others (if elected) to employ teachers, nurses and police and to undertake spending on job creation and infrastructure programs. It is essential revenue for expenditure that the taxpayers and the citizens of South Australia will have factored into their budgets that have been outlined by the Government of the day.

In relation to budget impact, we have very significant capital works expenditure costs for our existing businesses. There is no doubt that, in some respects whilst essential expenditure has continued, we have been awaiting the sale of our electricity businesses. We have been hoping that it will not be the taxpayers of South Australia who will have to put their hands in their pockets to pay for the upgrades, the essential maintenance and the essential improvements for our electricity businesses, but, rather, private investors who will have to pay for that essential capital works expenditure.

If we have to manage these businesses as Government-owned businesses for the next one, two or three years, very significant tens of millions of dollars will have to be found directly or indirectly by the taxpayers of South Australia for essential maintenance and improvements and any renovations or repowering programs that might ultimately be agreed—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: Well, it's a very modest estimate to say 'tens of millions', because some have indicated that it might be hundreds of millions. When one looks at the proposal from the old Optima, and the new Optima for that matter, Torrens Island, one sees that the repowering proposal was of the order of some $100 million to $150 million.

The Hon. Paul Holloway, in his contribution in the *Advertiser* this week, was critical of the Government for not having found the money for that $100 million repowering program at Torrens Island. The challenge that went to the Hon. Mr Holloway was, 'From where do we get the money for the essential repowering programs?' The Hon. Mr Holloway says, 'Get it from the budget.' The only way you can get it from the budget is to tax more or to cut in other areas. There is no magic pudding.

The fourth reason for the sale of our electricity businesses is the establishment of a competitive market and a market in South Australia that is conducive to the creation of jobs here. Let us look at this, because I addressed it briefly this afternoon in response to a question. We are moving from a situation where we had a monopoly Government-owned generator in South Australia to one where we will have three competing generators which are currently Government-owned but which we hope soon to be privately owned.

At the end of the next year National Power and its 500 megawatts of capacity will be competing in our marketplace. Some 35 per cent to 40 per cent of our electricity comes from across the border: from the cheaper power in the Eastern States via the Victorian interconnector. We will have 80 megawatts of privately-owned capacity through Boral in the South-East of South Australia.

Western Mining and BHP have publicly announced their serious intent to build a power station in Whyalla to compete in our market. We have the current proposals for an interconnector with New South Wales, and there are speculated proposals for an upgrade of the interconnector with Victoria.

We are moving from a position of one monopoly Government-owned generator to a situation where there are a large number of competing generation options, in particular, transmission options, via either the Victorian interconnector, an upgraded interconnector or perhaps an interconnector with New South Wales as well. The Government has therefore made a conscious effort to create the environment for a competitive market.

We have had criticism from the Mark Duffys and the Transgrids of this world that all the Government has been interested in during this reform process is trying to maximise the sale value of our assets. Of course, there was direct criticism that our consultants were only interested in that because it maximised the extent of their consultancy payments. I know that to be wrong. It would probably be actionable if it was said in the public marketplace.

Let us look at the Government's position in relation to national power. If this Government wanted to maximise the sale value of its existing assets, it would not have fast-tracked the development of a massive 500 megawatt, up to $400 million, generator at Pelican Point to compete with our existing assets.

We cannot stop new generation options, anyway, but certainly any generator that has to go through the planning, the development, the land acquisition processes and the range of other processes involved can be mightily delayed in terms of the establishment of competitive generation options. If the Government was solely driven as the Mark Duffys, the Transgrids and the New South Wales Governments of this world allege, we would not have fast tracked the establishment of such a significant competitor for our existing businesses here in South Australia. The sole reason for doing that was to create extra capacity in South Australia that we need by the end of next year and to help create a competitive environment for the electricity industry in South Australia. We hope that will lead eventually to lower prices for industry and business, with the eventual benefit of the creation of jobs in South Australia. At least some members in this Chamber are concerned about jobs being created by a healthy and competitive business and industry environment in South Australia.

They are the driving influences behind the Government's reform and sales program. So, for people to suggest that, in some way, this structure has been created, first, to either deliberately fail or, secondly, to deliberately jack up asset sale prices, is wrong and is just a fundamental misunderstanding of how our market operates and the impact of such a significant competitor on our doorstep, perhaps to be closely followed by other transmission options and other generation options in South Australia.

The second element of creating a competitive market relates to the impact on both debt and budget. The Premier has outlined on a number of occasions the situation where we in South Australia are trying to compete with States such as Queensland, New South Wales and Victoria for the establishment of new businesses or for the expansion of existing businesses. Where would you invest your money if you were on a major board considering where you should invest and you looked at a State such as South Australia with a debt burden of $7 billion, with almost $2 million a day being paid in interest on paying off that debt and with payroll tax and the tax rates at the levels at which we have to hold them to help fund the budget we have, and then you looked at other States such as New South Wales or Victoria which will be debt free, or Queensland which will have a big benefit from the GST in four or five years when that flows through to that State?

If you were a director on the board of a national business and you looked at the States of Queensland, New South Wales or Victoria, which have a lower interest payroll tax and a lower tax structure, and you then looked at South Australia, which has a high debt and a high State tax structure, where would you decide to invest? Where would such a business decide to expand? It would not be in South Australia but in the other States.

That is why this Government is interested in job creation and job development. We are interested in the restructure and the reform of our electricity industry and businesses. We are interested in the impact of that reform and restructure on our debt and our budget so that we can create jobs. It is not a question of trying to protect our existing businesses in the face of a cutthroat market. We will have to do that to the best of our ability, but we have to create a competitive market so that all our businesses and industries can compete so that they can employ our sons and daughters and our grandsons and grand daughters in the future as we move into the next millennium.

Having outlined the Government's position, I now want to respond to some of the claims that have been made by a number of the participants and commentators in this debate. In relation to risk, we have had the position from the Leader of the Opposition (Mr Rann) and Mr Foley which, in essence, is summarised as 'What risk?' That is essentially the position of the Labor Opposition. It has essentially put a position which relies on existing dividends continuing to go into the budget—and again, in the past 24 hours, Mike Rann has quoted the figure of $1.3 billion in the past four years and has said that we will continue to get that sort of dividend. The Opposition continues to claim that in an average year we will continue to get $300 million.

The Opposition's position is that of course the Government can handle this, that it is just a question of management of the businesses and, if the businesses cannot manage it properly, get some people who can manage the businesses to compete so that they can generate the profits to put into the budget. That is in conflict with the claims of the Hon. Mr Holloway, for example, which are to spend the $100 million on repowering or spend the money on essential maintenance and capital works upgrades because that money comes back from the businesses and goes into the budget. You cannot spend it twice. The Hon. Mr Holloway might think you can, but you cannot spend it on capital works and then give it to the budget so that we can spend it within the budget. You have a choice, but you cannot do both.

That is the position that people such as Mr Foley, Mr Rann and the Hon. Mr Holloway are adopting in relation to risk: ignore it; good management will look after it; and do not worry about it because in the past we have been earning $300 million. However, we had a monopoly situation and we were purchasing cheap power—35 to 40 per cent across the interconnector—and we were selling at higher monopoly prices in the South Australian marketplace. We were getting the profits and we were churning them back into the businesses and into the budget. That is the old situation pre December last year. After December, that has all gone. We can no longer dictate the prices and we cannot stop the competition because it is no longer a monopoly situation. There are competitive retailers and there will be competitive generators, and there may well be competitive transmission lines. That is the real world, yet Mr Foley, Mr Rann and the Hon. Mr Holloway are saying, 'Ignore those risks; they are not real; we will continue to get the $300 million a year—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Cameron makes an important point about technology. Sadly, we have also had that view being shared by people with whom, as I said previously, on most occasions I agree. For instance, economic commentators such as Dick Blandy in the *Financial Review*, for whatever reason, continue to put forward comments which support the Labor view—that this $300 million that we currently receive will continue to flow into our budgets *ad infinitum*. There is no guarantee. We cannot guarantee payment and, even if Dick Blandy, Mike Rann and the Hon. Paul Holloway claim that we can, the sad reality under Government ownership is that we will have to look back in two or three years and say, 'We told you so'. It gives us no comfort to look at that future prospect, but that is what we face in South Australia.

In relation to debt, we continue to have claims from Mr Rann and Mr Foley which again, in essence, can be summarised as: what debt? We get figures about the percentage of GSP and a whole variety of other comparisons, but never do they respond to the fact that each and every day we have to find almost $2 million to pay off this debt that the previous Labor Government left us when we were elected in 1993. When pressed as to what their policy is, in essence, the answer is that they have no policy other than to say, 'Look at our last election policy document. We mapped out a program.' I have looked at that document and there is no program for getting rid of the $7.b million debt, contrary to the assertions of the Hon. Mr Holloway, Mr Rann and Mr Foley. There is no plan for debt reduction. I can only believe that the Labor plan for debt reduction is similar to the Democrat plan, which is to rub it all with vanishing cream.

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: We heard the extraordinary claim from the Hon. Mr Elliott that my colleague has just referred to, as follows:

> They (the Government) are capable of borrowing long at low interest rates, and you'll see in the next decade the debt will be gone.

The vanishing cream debt policy of the Democrats is to borrow long at low interest rates and within 10 years this debt will magically disappear.

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: Perhaps they are borrowing from Pauline Hanson's bank—the '2 per cent, let us generate the money' bank. Even with 2 per cent Pauline Hanson loans, you still cannot get rid of the debt in 10 years. As I said earlier this week, the only way within 10 years you can get rid of the debt is to generate surpluses of some $600 million to $700 million a year on your recurrent budget. That is the equivalent of sacking 12 000 to 14 000 full-time teachers in South Australia. For those who are not versed in the education system, that is almost the entire number of teachers in every school (600 plus schools) in South Australia. That is the absurdity of the Democrat debt position, which obviously is the position that the Hon. Mr Holloway, Mr Foley and Mr Rann are adopting—close your eyes, shut your ears, keep your mouth closed, hold your breath and hope the debt will go away. Do not do anything, but just hope that it will go away.

There is nothing in the Labor Party's last election policy which indicates how it will get rid of the debt. During the past 18 months of the debate they have not put an alternative option regarding how they will get rid of the debt in South Australia. There are also the extraordinary claims—which, again, I will not go over in detail—from the Hon. Mr Elliott, that we did not have to worry about our debt because our debt in South Australia was declining at the same rate as Victoria. As the Hon. Mr Davis demonstrated earlier, in 1993 the Victorian debt was $32 billion: 10 years later—by 2003—Access Economics is predicting that it will be $3 billion. We suspect that it will be less because of the higher proceeds from gas sales and electricity asset sales. That is a decline from $32 billion to $3 billion, and the Hon. Mr Elliott has the hide to keep a straight face, to stand up in front of the media and say that South Australia's debt is declining at the same relative rate as Victoria's. Only the Hon. Mr Elliott would have the hide—and perhaps the Hon. Mr Rann; I put them both in the same category—to stand up and say that a debt that has gone from $32 billion to $3 billion is declining at the same relative rate as South Australia.

In relation to the budget, again, some extraordinary claims have been made about the budget savings. Again, they have come from Mr Rann, Mr Foley and from Dick Blandy, claiming that, in some way, we will continue to get this $300 million from the electricity businesses by dividends and that the interest savings will only just offset that—in some cases some of these people have been arguing that we will actually lose on it, and I have seen claims that we are currently getting $500 million or $600 million a year. We will get $300 million in benefit, so we are losing $200 million or $300 million a year.

Without detailing all those extraordinary claims, there is a consistent theme about them, originally initiated by the Hon. Mr Rann, Mr Foley and others from the Labor Party that in some way there is no benefit to the budget from the sale of our electricity assets. Mr Foley first started off by claiming that there was no black hole in the budget. He would walk around to every media interview with a copy of the budget papers. He would wave them to the media and say, 'There is no reference to a black hole in these budget papers. It does not exist. It is a figment of the Government's imagination.' When it was demonstrated exactly what page it was listed on, Mr Foley then moved to the next argument, which was, 'Yes, there is a black hole, now we have found it. But it is a black hole that has been created by the Government.' He then indicated that we had not budgeted for things such as the Hindmarsh Soccer Stadium. He made extraordinary claims in the House of Assembly in March this year that in the middle of a budget cycle the Government could find $30 million at the drop of a hat, when it was at some meeting in Sydney, for the redevelopment of the Hindmarsh Soccer Stadium.

That, and a number of other claims by Mr Foley, are figments of his imagination. The budget figurings for the Hindmarsh Soccer Stadium were in last year's budget papers and were included in the forward estimates that were listed. They were not introduced in the middle of a budget cycle and they were not introduced at the drop of a hat, as if there is a spare $30 million lying around for things such as soccer stadiums to be built.

So, then we move onto stage 3 for the Labor Party, through the shadow Treasurer. I want to read again onto the public record Mr Foley's embarrassed response when asked whether he would get rid of the Rann power bill increase on the first day after the next election should a Labor Government be elected. He was saying, of course—let us paint the picture—'There is no black hole.' Of course, if there is no black hole, you do not need the $100 million from the Rann power bill increase, so it should be relatively simple for Mr Foley to say, 'There is no black hole. I will manage the budget tightly. I do not need the $100 million from the Rann power bill increase: I will get rid of it on day one.' Mr Foley was interviewed by Leigh McClusky, as follows:

> Leigh McClusky: Kevin Foley, if the Opposition was to get into Government, would you make the promise that the Opposition, who have so vehemently fought against this, would rescind that tax? Would you do that?
>
> Kevin Foley: Well, what I want to say, Leigh, is that this tax—
>
> Leigh McClusky: But yes or no?
>
> Kevin Foley: No. [Much laughter]. This is a very vicious tax and I will repeal that tax at the earliest opportunity that I have.
>
> Leigh McClusky: So that's a 'yes'?
>
> Kevin Foley: No. This tax—Leigh, this tax is designed—it runs out in the first year of the next Government.
>
> Leigh McClusky: Let me be clear on this. Are you saying yes or no?
>
> Kevin Foley: What I'm—
>
> Leigh McClusky: If you get into power, the day you get into power you say right, the tax is gone?
>
> Kevin Foley: No, it won't go in the first day I get into power. What I will do is look at the mess that is left by the Olsen Government and I will review that tax. And I will—
>
> Leigh McClusky: Mr Foley, with due respect, at the earliest opportunity as people are sitting here going 'Oh yeah, when it suits him.'

If it is as simple as Mr Foley has indicated—that there is no black hole and that it is a simple matter of tightening up the budget—it is a simple matter for him to promise on day one to get rid of the Rann power bill increase. His statements and the statements made by Mr Rann make it quite clear that they know that this money will be used to employ teachers, police and nurses. And they know that on day one of a Labor Government, if they get rid of the Rann power bill increase, they will have to sack or get rid of $100 million of teachers, nurses, police and other public services in South Australia. The Labor Party will have to make that choice. That is the reason why Kevin Foley will not answer this question as to why he will not get rid of the Rann power bill increase.

I think one of the interesting questions as yet unasked by the media of Mr Rann and Mr Foley is pretty simple: would they resign if a Labor Government was elected and it

privatised any part of the electricity industry when in Government? I think that is an interesting question for both Mr Rann and Mr Foley, but at this stage it has not been asked by the media. The question is: would they resign if at any stage under a Labor Government any aspect of the electricity industry was privatised in South Australia?

The Hon. L.H. Davis: You can handle that in your response, Paul. You can give us the answer.

The Hon. R.I. LUCAS: This afternoon, as the shadow Minister for Finance, the Hon. Mr Holloway may well indicate that he will personally resign if at any stage under a Labor Government any aspect of the electricity industry is privatised. I wait with bated breath and much interest for the answers from Mr Holloway, Mr Foley and Mr Rann.

The last point that I want to address is the vexed issue of what is known as Riverlink, or SANI. First, I want to place on the record that, when the Government was contemplating the extra capacity that we need in the marketplace by the end of next year, we considered both generation and transmission options. In the end, to cut a long story short, we believe that the only guarantee for extra capacity by the end of next year could come from a fast track Pelican Point Power Station.

There are still continuing discussions and proposals in relation to the New South Wales interconnector. When we met with some of the proponents of the New South Wales interconnector I was told, at the end of last year and the start of this year, that the New South Wales interconnector could be built within 12 months from that date. Without going through all the detail again, I indicate that I am now told that just the first stage, which is the consideration of the final report and determination by NEMMCO, which is the body which decides whether or not it will be a regulated asset, will not be available until the end of July. That will be the earliest, we are told, under the existing processes.

It has nothing to do with the South Australian Government, let me hasten to say: it is a completely independent national regulatory framework under NEMMCO. The final decision will now not be available at least until the end of July. It may well be further delayed as it already has been so far. So, before this proposal can get approval in the first instance for regulated asset status, we will have to wait at least until the end of July, and perhaps later.

Without going through all the other things that will then have to be done, the Riverlink proponents have still not decided on a route and they still do not have permission to go through the State of Victoria, if that is where they want to go. They still do not have permission to go through the fragile Bookmark Biosphere in the Riverland, if that is the route they want to take, and they have not decided which route to take from among 14 choices, according to the last information we were given some two or three months ago. They have got acquisition policy problems, there will be native title issues, and there are a variety of other issues that they will have to negotiate to try to get the Riverlink interconnector up. It was for those reasons that I did not accept the assurances that the Riverlink interconnector or SANI could be constructed within 12 months and, again, the longer we go in this debate the more we will see the accuracy of those concerns.

In relation to SANI, some extraordinary claims are continuing to be made by the proponents, and in particular I refer to London Economics, the New South Wales Government and those who have supported the views put by those groups. London Economics has continued to refuse to provide me with a copy of what was meant to have been a report that supposedly validated the claimed benefits of $1.4 billion to consumers in South Australia over the next 20 years. The New South Wales' proponents claimed these $1.4 billion in benefits and, even after some six months of trying, they still have not provided a copy of this supposed report from London Economics, which we first read about in the *Australian*.

This claim is important because a number of other participants in the debate, the Hon. Mr Xenophon in particular, have continued to support the claims made by London Economics about the benefits to South Australia. I will quote from one of a number of radio interviews conducted with the Hon. Mr Xenophon. This one was on 5AN in March this year, and Mr Xenophon said:

> All the studies that have been carried out indicate that Riverlink would save South Australian consumers, save South Australian businesses, $100 million per year with cheaper prices. Then I think it is particularly galling for the South Australian Government to be hitting us with a $100 million tax on our electricity bills.

It is important because participants in this debate have accepted as fact the claims made by London Economics, which they still refuse to provide to anybody, and I say that because I know a number of people other than in the Government who have asked for copies of this supposed report. Yet London Economics still refuses to provide a copy of the report that claims this $1.4 billion in benefits as a result of the SANI interconnector.

I have seen some other interviews with the Hon. Mr Xenophon, I think on ABC TV, where he claimed that the benefit was $100 million to $150 million a year, but which the Government has in some way prevented because of its attitude and approach to SANI. Equally, some prominent business people have made the claim that there are benefits to the South Australian community from SANI. It is just impossible to conceive that this level of benefit is achievable in the South Australian marketplace from the SANI interconnector. Again, time does not permit this afternoon to go through the detailed rebuttal, and that will have to be left for another day. It is inconceivable.

The basic assumption that has to be made to get this $1.4 billion is that, in some way, the Riverlink proposal by itself will lead to a permanent 20 or 30 year price reduction in South Australia of some $15 per megawatt hour differential for the whole period of that 20 years or so. When one also looks at the fact that London Economics, in a letter to Mr Xenophon, predicted that the long-term pool price in New South Wales would be some $30 to $32 per megawatt hour, it must be predicting an ongoing 20 year differential between $32 in New South Wales and $47 for ever in South Australia. There are very few people other than those at London Economics who are prepared to put their name to a report which indicates that that would be the long-term, ongoing price differential in a national market between South Australia and New South Wales.

It is only through that sort of assumption that you can get the figure that the Hon. Mr Xenophon is quoting, that we are giving up savings of $100 million to $150 million a year, each and every year, because of the decision on SANI. What the London Economics analysis does not look at is the massive changes that the Government has already put into the market to institute a competitive marketplace. I talked about it earlier: national power with 500 megawatts; other generators coming into the marketplace; perhaps another expanded interconnector from Victoria. All of those competitive elements will provide downward pressure on prices in the South Australian marketplace.

To say that Riverlink by itself can still generate $1.4 billion in benefits, or $100 million to $150 million in savings on an annual basis, is fanciful. There is no-one, other than those at London Economics, who would be prepared to put their name to that sort of analysis. As Treasurer, I have to employ a large number of economic consultants, so I have to say that it does nothing for the reputation of the principals of London Economics when they continue to put their name to claims like that but refuse to provide the supposed reports which validate the $1.4 billion in savings over the 20 years that they claim.

I have seen a recent note from London Economics which says that I have been given a report which validates the first part of the claim, that is, the $950 million in savings over the next 10 years. That is not true. That has not been provided directly or indirectly by London Economics to me or to any of the Government advisers. I have also seen a report from London Economics which makes an extraordinary claim that the results of the first two months of the national market in terms of the pool price difference of $15 per megawatt hour between South Australia and New South Wales proves the accuracy of its 20 year forecast of a $15 differential between the two States. That is at a time when we have introduced a competitive market into South Australia for the first time, when the national electricity market has just started, and when the peak period in the electricity market for demand is January and February.

Those people were prepared to put their name to that document and circulate it amongst members of Parliament. They are claiming that the results in terms of the price differential of the first two months at the peak period of the national market in South Australia proves the accuracy of their 20 year forecasts in terms of pool price differences. My 12 year old daughter would not be foolish enough to make that claim and I do not think that she claims to be any great expert in terms of the national electricity market. I am just amazed that the principals of a company of consultants such as London Economics would put their name to such a document—although I admit that there is no name at the bottom of the document, but it was produced by London Economics and distributed to members of Parliament. As I said, I am just amazed that they would produce a document like this, provide it to members and seek justification of this claim of the $1.4 billion in benefits. I will be understated about this, because I am cautious about what I say these days, but it says nothing about the professionalism of the firm London Economics.

The final point in relation to Riverlink or SANI is that the Government has adopted a position that, after generation—and Pelican Point will go ahead and the contracts have been signed—it is prepared to support the construction of SANI as an unregulated interconnector. The Government is prepared to look at the proposition of the expansion or extension of Victorian interconnectors in terms of further connection to the national market.

We have indicated to the principals of the SANI interconnect that if they proceed as an unregulated interconnector or eventually if they get authority as a regulated interconnector the Government will do what we reasonably can do to assist in the construction in terms of development approvals and those sorts of things. That is not a carte blanche to traipse through the Bookmark Biosphere and ignore the environmental concerns that environmentalists might have about that, but the Government is prepared to work with reasonable concerns and reasonable issues in terms of trying to support it.

When the Government adopted the position a lot of people said that they were prepared to support an unregulated interconnector but that this was some sort of fanciful notion, that no-one would support or build unregulated interconnectors. I point out to members of the Committee that the New South Wales Labor Government is at the moment supporting the construction of an unregulated interconnector between New South Wales and Queensland, not a regulated but an unregulated interconnector, I think of some capacity—about 175 megawatts—which is just a bit smaller than the New South Wales to South Australian link.

If it is good enough for the New South Wales Government to support it into the Queensland market why is it not good enough to support it into the South Australian market? The Government's position is that if you want to compete in this market put up your money and take your risks. National Power is putting up $400 million and it will have to take the risks as to whether it can compete and compete successfully. If the New South Wales Labor Government wants to take a punt on the interconnector and all these benefits that London Economics believe will exist a huge amount of money can be made by that Government. It can build the interconnector with or without private sector assistance if it wants and take the risk of building it, just as National Power has had to do.

What it should not do is seek a permanent 20, 30 or 40 years subsidy from South Australian consumers at some $15 million plus a year in extra transmission charges and costs which South Australian consumers would have to pay even if we do not use the interconnector at all. It is a guaranteed subsidy from South Australian consumers to the New South Wales Government. So, if we do not use the interconnector at all because the predictions are not right about price differentials then South Australian consumers still have to pay a $15 million plus subsidy to the New South Wales Government even if we do not use the line each and every year.

That is the proposition that Transgrid, the New South Wales Government, London Economics and the others are supporting, that they must support it as a regulated asset. What we are saying is that all the debate and argument is now moving to support unregulated interconnectors. There is a draft report from NECA, which is one of the national regulatory bodies uncontrolled by the State Government or any Government, a national regulatory authority. The draft report from NECA states:

> The crucial different between regulated and non-regulated interconnectors is that, whilst regulated interconnectors are isolated from the market, non-regulated interconnectors will rely on the market to provide their revenue. The introduction of non-regulated interconnectors into the national market should be welcomed and encouraged. There is an argument that, for the future, all new interconnectors should be promoted on a non-regulated basis.

I repeat:

> . . . all new interconnectors should be promoted on a non-regulated basis.

That is exactly the position the State Liberal Government has been putting on Riverlink for the past six months—a recommendation in the NECA draft report on transmission and distribution pricing. I am sure that that has not been shown to members who have been asked to support the New South Wales Government and taxpayer view in relation to SANI. It is an independent authority, unrelated to the State Liberal Government, putting down a position which states:

. . . all new interconnectors should be promoted on a non-regulated basis.

That is the State Government's position and the Government is happy to see SANI constructed and delivered here in South Australia with its power as a non-regulated interconnector so that New South Wales can take the risk and spend the money, and if it believes the London Economics stuff good luck to it. It can make a huge amount of money if it is true and South Australian consumers will benefit as well. However, if it is wrong a New South Wales Labor Government will have to cough up as a result of the costs not South Australian consumers for the next 40 years paying $15 million plus a year in extra transmission costs.

That is the Government's position. I have endeavoured in the time available to rebut some of the major errors and inaccuracies in relation to the debate. The Government's preferred position is to see this clause supported. We nevertheless acknowledge the reality, after all these months of trying, that that is unlikely to occur if one believes the discussions one has around Parliament House.

I indicate to members, however, as the Premier has indicated, that this issue will not go away as a result of today's vote. The Government will come back to the Parliament again and again in relation to what we believe is a coherent, long-term plan and strategy for the future of South Australia's electricity industry, budget, State and children.

The Hon. P. HOLLOWAY: The Opposition will oppose clause 11 of the Bill which enables the Treasurer or the Minister responsible for electricity assets to dispose of them. We are totally opposed to that. We were opposed to it at the last election in October 1997 and we remain opposed to it. We will honour our commitment, unlike the Government.

It has been agreed that debate on clause 11 will be the test for this legislation in this session of Parliament. I hope that once this clause is rejected, as I hope it will be, that the Government will go away and rethink its position on ETSA. We hope that the Government will shift its focus from trying to sell ETSA to managing it. One thing we have seen throughout this whole episode is that the Government over the past 12 months has been so preoccupied with the ETSA sale that it has taken its eye off the ball so far as the management of the State is concerned. There is no doubt that the Government has been so obsessed with the ETSA sale that it has ignored many of the other important issues affecting our lives, and it is high time that the Parliament and the State got on to other business.

I do not intend to speak at anywhere near the length the Treasurer did. We have spoken on the electricity issue so many times in the past nearly 12 months. I think it was July last year when the ETSA disposal legislation was first introduced into the House of Assembly, so we have had this debate now for nine or 10 months. All of us in this Chamber have spoken on this issue a number of times. I have forgotten how many times I have spoken about ETSA. One thing we can be sure of is that not one point will be made during this entire debate that has not been made many times before. That was true of the Treasurer's contribution a few moments ago: we have heard it all before.

I wish to address a number of the issues that have been raised. I will try to do it as briefly as possible to allow other members to have their say so that we can get this vote over with, once and for all. The essential reason why we are debating this electricity Bill and why it has taken so long, why it has been a nine month saga, is the question of morality. There is a moral dimension to this debate.

At the last election the Olsen Government went to the people of this State and, when challenged during the course of the election campaign, they categorically denied that they were going to sell ETSA. I have on a number of occasions put those comments from the Premier and some of his senior Ministers on the record. I will repeat the most important of those undertakings given by the Premier. This was what he said just a few days before the election:

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

That was on 16 September 1997, less a month before the election took place. That act of treachery and dishonesty is essentially why this debate has taken so long. This Government has a problem—a problem of its own making. It went out there before the last election and it quite deliberately misled the people of this State. If this Government wishes to change its position, it has no option than to go to a referendum of the people of this State and to clear it with the people. The moral dimension of this debate should not be underestimated. It is the fundamental barrier on which this Government has fallen.

I turn now to some of the other issues which have been raised during the debate. It has been said by a number of people in the media in recent times, and I note the Hon. Terry Cameron this morning was also claiming, that there has been a shift in public opinion on the sale of ETSA. Well, if that is the case, let us test it out. If the people of this State have changed their mind, why does the Government not test it out? Why does it not call a referendum on this matter?

Of course, we are debating clause 11 rather than the earlier clause because the Government wants to avoid this question of a referendum. It wants to avoid what it promised the people of this State at the last election. It has to hide from that because this Government was so treacherous on that occasion.

The Hon. L.H. Davis: Are you going to tell us about the debt, Paul?

The Hon. P. HOLLOWAY: Yes, I will in a moment, if you care to wait and be patient. The Hon. Terry Cameron and members of the Government have been claiming that there is a shift, so let us see it.

I want now to turn to the question of the disaggregation of Optima Energy. This was a matter that the Treasurer raised in his debate earlier today. The Premier, in a recent address to the gas and power conference, made the following statement in relation to the break-up of Optima Energy. First, he talked about the difficulties of having power assets in public ownership. He said, 'It hadn't been considered by us. It had not been obvious.' This is the same Premier who, of course, we know from other documents has been secretly trying to dispose of this asset for some years now. Then the Premier made the following quite extraordinary comment:

Yes, we can disaggregate our power companies from one into two and then into seven in South Australia. We have done so. Seven small companies in this small State. That was the least number that was acceptable to meet the demands of competition policy of the ACCC and the NCC.

That was the Premier just a few days ago saying, in effect, that he was forced by these national bodies as a result of the competition policy to break up Optima ETSA and generation assets into seven pieces.

I asked a question of the Treasurer some time ago, and he supplied some information in relation to the discussions that

this State Government had with the NCC and the ACCC, and it is clear from that information that the proposals for the break-up of Optima Energy were put by this Government to those Federal bureaucracies. The proposals were put by this Government: it was not the other way around.

Contrary to what the Treasurer and the Premier would have us believe, these Federal bodies and competition policy were not dictating the shape of our electricity industry in this State: it was the other way around. The State went to those Federal bodies and sought permission. If we have too many companies in our electricity industry today, I suggest that it is this Government's responsibility and not that of anyone else.

The Opposition has conceded on a number of occasions that the national electricity market does involve some risk and that those risks are greater for our electricity generators than for the so-called poles and wires business. The reason for that is quite simple: our generators will compete with other generators here and interstate, but the poles and wires are, essentially, a natural monopoly. No-one else will duplicate our electricity and transmission system.

So, the risks can be managed—and they do need to be actively managed. Risk management is part of sensible management, whether you are in the public sector or the private sector. The problem is that this Olsen Government has been so focused on selling the system that it has not been looking at these essential issues, and that is something that needs to be recognised in this debate.

In this debate we need to go through the steps that the Government has taken in reaching its conclusion, because the road it has taken has more twists and turns than Gorge Road. First, the Premier said before the election that he would not sell ETSA. I have already quoted one of the many statements that Ministers in the Olsen Government made before the 1997 election to the effect that they would not sell ETSA. Okay, we then had the election. We were told, first, that we had to sell to reduce the risk. Of course, this Government would not produce any of the documents such as the Shroders report or a number of other documents that it claimed had exposed this risk. We were told that we had to sell it because of the risk, but the Government would not show us the documents in which the risk was supposed to be spelt out.

Of course, we were also told that we needed to sell before New South Wales sold its assets. On Saturday night, it will be interesting to see the outcome of that issue. However, that was one of the arguments. The Premier then said that we had to sell ETSA because we had to pay off the State debt. So, all the money had to go on debt, but, of course, that changed: we no longer had to worry about debt, because then there was a $1 billion slush fund. We did not therefore need to sell ETSA to pay off the debt: we could have $1 billion to spend on all the other things. In another twist and turn, the Premier said that if he could not sell ETSA he would introduce a new ETSA tax, the Olsen ETSA tax, the $186 (on average) household tax that he said would go to repairing our power stations. What a con job that was!

The Treasurer made a number of comments today in relation to the budget black hole, about which I would like to make several points. The best person to believe in terms of whether or not there is a budget black hole is the Auditor-General. He looked at the figures and said, 'I cannot verify the Government figures, but, even if we assume them, the maximum possible debt was only a fraction of what this Government claimed it was.'

I would like to make another point in relation to this so-called budget black hole. If you take the Government's own figures, in the next financial year, that is, the 1999-2000 financial year, there is a $20 million black hole. That is how much the Government claimed it would get next year if it was able to sell the ETSA assets. But how much are we raising? On 1 July this year and for the next financial year this Government is raising $100 million. It has $80 million to spare. So much for this black hole argument! It is just a complete fiction by this Government to try to justify some revenue raising to pay for a number of projects such as the blow-out in the Motorola contract. We know what has happened there: the Government has admitted it. There will be at least a $100 million blow-out in the cost of that contract.

Of course, this Government is using the ETSA sale process because it knows that it has some tough revenue decisions to make and because of problems with its own budget due to various decisions that it has made. One could name a number of these: payouts to people such as Lawrie Hammond; massive contract payments to Sam Ciccarello; and $30 million spent on the soccer stadium. We got 2 000 spectators to that venue a few weeks ago but are spending $30 million on it. We cannot get a score board or an increase in funding for Football Park, even though it is regularly filled with spectators, but we have spent $30 million at Hindmarsh Stadium. This Government has a lot to answer for. The Olsen ETSA tax needs to be seen in that perspective; it just does not stack up.

That was just one of the many twists and turns in the Government's long path where it has been trying to justify the sale of ETSA. It is quite clear that the real reason this Government wants to sell ETSA is that it is ideologically driven. It has now become a test of machismo for the Premier. The Premier is so desperate that he needs a victory on something. The Premier so desperately needs to sell ETSA because he has staked his whole political career on it. That is why he has changed tack so many times. It has become so important to his survival that this Government will do anything to achieve that objective.

Many other issues were raised during the debate. I shall briefly refer to debt, because that was an issue that the Treasurer highlighted at length. On a number of occasions I have used the analogy—I will not go into detail on it—that most families have debts, mortgages on homes or loans on their motor vehicles, and they pay off those loans over a period of time. Of course, those people could easily eliminate their debt if they were to sell their assets. If they sold their houses or motor vehicles and paid off their mortgages, they would be debt free. The question is whether someone living at Springfield who has a $2 million house with a $1 million loan is better off than the person who is unemployed at Hindmarsh Square, who has no assets but who does not owe anything? Of course they are much better off.

This is the whole issue that the Treasurer cannot come face to face with. The fact is that the question of debt reduction needs to be considered in its proper economic context. In relation to that, earlier today the Treasurer asked how we can guarantee the income stream. There is no better person to ask about the likely profitability of the ETSA assets than Mr Clive Armour, former General Manager of the Electricity Trust. Last month he said that the monopoly arms (and, after all, this is 70 per cent or 80 per cent of the value of our assets—the poles and wires) would continue to be highly profitable. Later, he said that the monopoly sections would continue unaffected. So, the whole argument of this

Government needs to be put to rest. In fact, these assets, the poles and wires, are monopoly assets; no-one else will duplicate them. As the former Managing Director of the organisation has said, they will continue to be highly profitable.

We have the issue of the national electricity market. I would like to address the argument that some how or other our entry into the national electricity market was responsible for forcing privatisation. Last week, for the first time, the Premier launched an attack on the national electricity market and competition policy—rather belatedly, I would have thought—when he said that they were forcing the States to privatise their power assets. One thing I want to put on the record, because I do not think it has been said often enough, is that when the national competition policy agreements relating to electricity were signed off—the first was in February 1994 and the second was in October 1995—they were both signed off by the then Liberal Premier Dean Brown. This idea that somehow or other national competition policy snuck up on this Government is a complete and utter furphy. I understand that other members wish to speak in this debate. As I said earlier, there is so much that one could say in this debate, and there is so much that has been said over and over again—

Members interjecting:

The Hon. P. HOLLOWAY: Even the interjections are the same. We are going over this again and again, as we have on so many other occasions. We even get the same interjections from the Hon. Legh Davis. At this stage, I will let others have the opportunity to speak. I again wish to reiterate the position of the Opposition: we will be consistent with the commitment we gave to the people at the last election. We will continue to oppose the sale of the electricity assets, and we oppose this clause.

The Hon. T. CROTHERS: I also support my colleague in respect of expressing my opposition. I will be fleetingly brief, because I understand there are other speakers. The Treasurer in his address to the Chamber earlier said that his Government was on the horns of a dilemma. I recognise that, but I point out that it placed itself in that position. It was not put into that position by us or by any other member in this Chamber. It was put into that position by dint of the policy promise it made to the people of this State who, after all, when it is all boiled down, are the owners of ETSA. At the last State election, Government members said that they would not sell ETSA and that they would retain control over that instrumentality.

Some two weeks after the election there was, I suppose, a remarkable revelation on the road to Damascus when the Government said, 'No, we will now sell ETSA.' Of course, the difference between all the interjectory remarks that have been made about South Australia's gas assets and other assets that my Party privatised—and I have been opposed, tooth and nail, to all activities relating to privatisation—is that we never promised the people that we would not sell off SA Gas, that we would hand over control of the SA gas assets, in spite of savage raids being made by the Hon. Mr Bond, who is currently a resident of Fremantle Gaol. That is the position. The Government put itself in this position.

I make some reference to one of the giants of this parliamentary arena some 50 years ago. I refer to the Hon. Sir Tom Playford. He decided to take over the electricity generating capacity of this State which was then in private hands. One of the pieces of rationale that underpinned that was that, because he had experience with private ownership, he understood why the Government had to do this. Even though it was a different era, he was aware that a monopoly can impose charges which do not amount to a fair return on their investment but which are based on what the market will bear.

That was not the only reason why the then Premier decided to take over the privately owned generating electricity plants of this State, but that certainly figured in his calculations. I understand that in the past half century or more times have changed. For example, compared with Sir Thomas's ship of State, today's ship of State now has seven or eight extra debts, and so I understand that there are differences. Nonetheless, in respect of committing himself to the control of ETSA and retaining that control, Sir Thomas fought a very hard and difficult battle in both Houses of this Parliament, but eventually he won out. If members want to see just what can happen when private investment gets total control of Government instrumentalities, they need look no further than the EWS, the water supplies and the costs that have escalated since they were privatised—

The Hon. G. Weatherill interjecting:

The Hon. T. CROTHERS: I guessed it to be 40 per cent. In that condensed period I think that is a far steeper increase in respect of our water supplies than has ever occurred in this State's history. I will not go into the Bolivar problems or anything of that nature. There is an example to which this State could look when Governments—State or national—lose control of electricity generation. I refer to a recent occurrence in Buenos Aires, the capital city of the Argentine. The Argentine Government totally permitted the then State controlled electricity generating operation to be taken over by private industry. Many have been the complaints in respect of safety, run down and maintenance, and the private entrepreneur who owns it 100 per cent lock, stock and barrel. Many have been the complaints relative to the lack of health and safety, care and due maintenance since that instrumentality took over the formerly Argentine owned State electricity generating plant.

At the height of summer in Buenos Aires very recently the electricity generation capacity broke down, and that affected all sorts of people, along with hospitals, drug supplies and refrigeration. There was a total breakdown, but the Government sat on its hands because it had been well warned that this would happen once it surrendered control of its assets. This situation lasted for 11 days, until such time as the Argentine people started to mass and mobilise relative to the inactivity of the Government, to such an extent that the Government had to intervene and has now invoked clauses against the privatised company with a view to booting it out and finding some other form of capital investment in that nation's power generation plant.

I believe that it is essential for this State to retain control of its assets with respect to the State's electrical industry. Because of the nature of the clause of the Bill that we are debating, which will allow for the whole of ETSA to be sold off, like my colleagues, I oppose this measure.

The Hon. SANDRA KANCK: In its futile attempts to privatise the power utilities, this Government has soiled the public record with a litany of lies, distortions and half-truths. Let us begin with the Premier's shock announcement of 17 February last year. To justify breaking his Government's election promise, made a mere five months earlier, the Premier worked himself into a lather about a threat of State Bank proportions should our power utilities not be sold. Let us analyse precisely what the Premier said that day. He

claimed that competition payments were at risk if we did not privatise. Let us be very clear, then, what the original COAG agreement says—this agreement is neutral with respect to the nature and form of ownership of business enterprises: it is not intended to promote public or private ownership. Wrong, Mr Premier.

That alarmist rhetoric, that if we retain ownership of our electricity utilities it will lead to a disaster of State Bank proportions, has caused, and continues to cause, the Government considerable grief. Indeed, just the other day South Australian taxpayers kicked in $20 000 for the privilege of having the Government mislead and deceive them on this very point. Of course, very few people have been taken in by this nonsense and the Government has very severely damaged its credibility with a substantial proportion of the electorate.

Members should consider one simple fact: 85 per cent of our electricity industry is the so-called poles and wires. The poles and wires are a regulated monopoly with no trading risk. Nowhere has the Premier mentioned this salient fact when he has talked of market risks. Getting any member of this Government to acknowledge this fundamental point is like pulling teeth. Their logic is as obvious as it is odious: never let the facts get in the way of a good scare campaign.

The Government has also spun a line claiming that a massive improvement in the State's finances would result from the sale. The Sheridan report was supposed to have proved that fact but, incredibly, it failed to include retained earnings in its analysis. Members should not forget that this seriously flawed report was commissioned, issued and authorised by the Treasurer.

Let us turn to interest payments on our State debt. The figure of $2 million a day is the mantra that the State Government intones whenever it mentions this issue. On my reckoning, that is $730 million a year. As we have a debt of $7.4 billion, we must be paying around 10 per cent interest on that debt. So, we must be the only mugs in Australia paying an interest rate of 10 per cent. It begs the question as to whether the Government is actively managing State debt. For the record, fresh debt will cost the Government 6 per cent on current rates. Therefore, in the next couple of years the State is poised to benefit from substantial interest rate relief. But the Treasurer ignores this. Why would he publicly acknowledge it? After all, he is the one who has managed to create a black hole in his budget, just as the State should be able to save substantial amounts of money on its interest bill.

That brings me to my final point. ETSA and Optima earned $300 million last year. If sold at an optimistic price of $6 billion this would, after costs, leave $5 billion for debt retirement—and $5 billion at the current interest rate of 6 per cent equals $300 million; hence, we achieve no budgetary gain and lose the asset in the process. Swapping debt for revenue earning assets in a low interest rate environment is foolish, and so is this Government's dishonesty. I indicate that the Democrats will strenuously oppose this clause.

The Hon. NICK XENOPHON: Given the Treasurer's comment that this matter will come back on again and again and again, many in the community would see today's debate as a case of welcome to Ground Hog Day. The key issues are the same, the numbers are the same, even the interjections are the same, and the result will be the same. And, like Bill Murray in Ground Hog Day, this Government is a very slow learner.

My position is also unchanged. This Government, given its explicit promise at the last election that ETSA would not be sold, should not be able to sell the community's largest remaining assets in the absence of the people of this State—the shareholders of ETSA—having a say in the sale of ETSA via a referendum. If the Government is so convinced of the benefit of the sale—that it is so unambiguously good for this State—why will it not give the people of this State a say, instead of spending upwards of, I understand, $30 million to date on consultants in respect of the sale? And, obviously, the Treasurer can correct me on that.

I urge the Government to have the political courage, the ticker shown by John Howard on the GST issue, and to argue its case forcefully and unambiguously before the electorate in the context of a referendum. A referendum is an essential condition—the fundamental pre-condition—for my support for this legislation. As the Government has not yet supported the call for a referendum, and as a referendum mechanism has not yet passed in the Committee stage, I have no choice but to vote against this clause.

I have just outlined my view as to the fundamental pre-condition before I can support this Bill. However, I also have a number of very fundamental concerns with respect to the structure of the competitive market for electricity in this State. It is my view that this Government has got it unambiguously wrong. I have already outlined my concerns that, in the absence of a link with New South Wales (the Riverlink interconnector), South Australians will miss out on significant competitive advantages. A transmission link such as Riverlink provides a source of low cost power supplies to South Australian customers and businesses.

What the Treasurer cannot dispute is that, when NEMMCO undertook a rigorous analysis of this whole issue, it still decided, despite a very adversarial process, that Riverlink was the best and the lowest cost option for South Australia: it was simply a matter of timing—because of the augmentation of Playford B, that it was simply a case of an extra year before Riverlink ought to be built. But the NEMMCO decision was very clear—and that was with a very narrow customer benefit test, a test that is currently being reviewed by the ACCC and a test that I believe will further enhance the principle that Riverlink is the best low cost option for consumers and for businesses in this State.

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: I am glad that the Treasurer has mentioned the unregulated interconnector, because the fact is that the rules with respect to an unregulated interconnector are not yet in place. They are currently being looked at. The very reason why, with a national market and with a national code, we have a regulated interconnector is that the code foresaw that transmission assets are very different from generation assets and that, in order for the market to work properly, for maximum benefits to be achieved for customers—for consumers—a regulated interconnector was the way to go, and Riverlink passed that test with flying colours through the NEMMCO process.

There are a number of other matters that ought to be looked at. Questions need to be raised as to the current vesting contract arrangements for the generators and the financial implications of those vesting contract arrangements. The existing power stations within the ETSA generation portfolio have been issued with a series of vesting contracts in preparation for privatisation. These vesting contracts are simply financial hedging instruments where the Government has dictated the contract terms and conditions. Given that the South Australian market is a constrained market, and prices are high by any measure, the only reason I can think of why

a Government owned generator would be losing money in the current market would be if the Government has negotiated a bad contracting deal for the generators. While it may be the case that such outcomes are unintended, I would not like the results of these so-called reforms to be presented as evidence that the national electricity market creates unmanageable risks and, on that basis, that the electricity assets should be sold simply on the basis of risk.

As far as Pelican Point is concerned, questions need to be asked in respect of whether the South Australian Government has put up an inducement package—significant inducements—to National Power in terms of significant public expenditure on infrastructure to safeguard the attractiveness of this project for private investors, such as augmentation of the gas pipeline. I do not know the answer to that. Maybe there is not one—but the Treasurer can obviously elaborate on that. The nature of these inducements has not been made public. The Government has today released a summary of the project arrangements for the Pelican Point contract, but it does not address adequately these concerns.

There are also matters involving the tendering process for Pelican Point that concern me. I previously asked the Treasurer a question (on 10 February) as to whether any of the bidders for the Pelican Point Power Station saw or received any information in relation to the vesting contracts. I have yet to receive a response from the Treasurer in relation to that question. I hope that they did not but, if they did, it raises some very important issues as to the very basis and the very integrity of the tendering process. I am sure that is something that the Treasurer will be seriously looking at, and if he can allay my concerns in relation to that I will be very grateful.

The Treasurer has launched what I consider to be an extraordinary attack on London Economics, which was the consultant for both the South Australian and the New South Wales Governments in relation to the Riverlink project, until the Government, effectively, withdrew its support as a regulated asset. I find it extraordinary that London Economics has been subjected to such an attack. This is a consultancy which has done work for Governments and major corporations in this country. I believe it has a reputation unequalled in terms of its economic analysis and that it has particular expertise in relation to electricity reform. This is a consultancy which, as I understand it, is all about competition and not against privatisation. I should put on the record that a number of documents were tabled as to the whole basis of the $950 million Riverlink benefits analysis, which has been the subject of—

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: A number of documents have been tabled in this—

The Hon. R.I. Lucas interjecting:

The Hon. NICK XENOPHON: I suggest that the Treasurer surf the net and look at the NEMMCO—

Members interjecting:

The Hon. NICK XENOPHON: The Hon. Mr Redford is confused. Let me assist the Hon. Angus Redford in relation to his confusion. This is about the three Cs: it is about competition, competence and credibility. I have some serious concerns as to the Government's—

The Hon. A.J. Redford: I thought that you were in favour of it.

The Hon. NICK XENOPHON: I am in favour of a sale subject to a referendum, if the Government gets the competitive framework right, and if consumers will benefit from a sale. In relation to the whole basis of the benefits of Riverlink—

The Hon. A.J. Redford interjecting:

The CHAIRMAN: Order, the Hon. Mr Redford!

The Hon. NICK XENOPHON: The Treasurer raised a number of matters in relation to London Economics. I understand that there has been further correspondence. I know that the Hon. Legh Davis was good enough to attend a briefing by London Economics and he may well refer to that. At the end of the day, I am convinced that, without a fully competitive market, without Riverlink and without a transparent process, consumers will not benefit, but that is not to say that I do not continue to encourage the Government to put together a package to go to the people on this issue. The Government must put together a package that will be of unambiguous benefit to the people of this State. In the circumstances, I have no choice but to vote against this clause.

The Hon. L.H. DAVIS: This debate has given the opponents of this sale an opportunity to state in clear, unambiguous terms why they oppose the sale. We have not heard any reasons and we have not heard any sound explanations. For example, only a few days ago the Leader of the Australian Democrats, in a news release and on television, claimed that the State budget of South Australia would be in balance within a decade, given a financial position which currently has a debt of $7.4 billion. There was an opportunity for the Hon. Michael Elliott to stand up in Parliament today and explain how the Australian Democrats could achieve a reduction of $700 million a year, or 14 per cent of the annual State budget. He has failed to do that and the question might be asked, 'Why?'

The Hon. Michael Elliott should have the grace to say that, if he takes on a briefing from the Treasury in the interregnum between now and when the Parliament resumes in late May, and if the Treasurer and his officials can prove that that claim of his, given so confidently just a few days ago, was wrong, the Democrats may revisit this matter. There has been no attempt by the Australian Democrats to justify their position: it is a very fundamental point.

The Hon. Paul Holloway used the excuse that other members wanted to speak today, so he could not carry on, and therefore that did not provide him with the opportunity of addressing the serious issues. We did not hear from the Hon. Paul Holloway the Labor attitude to debt. We did not hear the Labor Party's attitude to debt, which is currently $7.4 billion. The respected Access Economics predicts that the debt will shrink to only $7.25 billion within five years. If New South Wales sells off its electricity assets, as is widely expected, our debt will represent 43 per cent of the debt of all six States and two Territories in 2003. South Australia will have 43 per cent of the total debt of the nation—States and Territories—with less than 8 per cent of the population. That means that South Australia will pay 13¢ in every dollar that it raises in revenue through taxes and charges in interest payments when New South Wales, Queensland and Victoria are already debt free or will be debt free.

If we have to compete on those terms, it will be hard to see how South Australia can win. There has been no attempt by the Hon. Paul Holloway in this place or Mr Kevin Foley in another place and the Hon. Mike Rann, the Leader of the Opposition, to explain that fundamental point, that if New South Wales reduces payroll tax, if Queensland reduces its State taxes and charges, and if Victoria does the same thing, which it will, following the sale of its gas assets in recent

weeks, where does that leave South Australia in terms of competing for business? Where does that leave the South Australian Government, of whichever persuasion, in terms of providing services in health, community welfare and education? It leaves it trailing a long last behind New South Wales, Queensland and Victoria.

When the Labor Party is challenged about the surcharge, it does not have an answer. Kevin Foley was given the opportunity six times with Leigh McClusky and, like a startled gazelle, he ducked it each time. He did not have an answer as to whether the Labor Party would remove the surcharge, an average of $186 per household, which has recently been imposed by this Government as a result of the fact that the Parliament will not privatise electricity assets.

Then we had the Hon. Nick Xenophon making much of the Riverlink connection, SANI. There the Treasurer has explained the fact that the decision as to whether or not SANI is a regulated interconnect is not determined by the Government but by NEMMCO. The fact is that the national regulatory authority (NECA) has indicated very strongly that all new interconnectors, such as the SANI link, should be non-regulated interconnectors.

That is a fact of life. It is not for the South Australian Government to decide whether it is regulated or non-regulated. Of course, if you accept the proposition put by the Hon. Nick Xenophon—which I do not for one moment—that there is an annual benefit flowing into South Australia through the interconnector of some $100 million to $150 million because of the lower power costs from New South Wales, then why would you want to regulate an interconnector if it was that good? You would be building the thing now. If New South Wales can find it attractive enough to build an unregulated interconnector into Queensland, as it is currently doing, then the Hon. Nick Xenophon can apply his impeccable logic and say, 'If they can do that, why can't they do it into South Australia?'

The Government here has never opposed *per se* the interconnector: it is for NEMMCO to make the decision as to whether it is regulated. Quite frankly, I see the interconnector argument irrelevant as to whether or not South Australia privatises its electricity assets. Then we return to the greatest chestnut of them all, the point that members opposite can duck and weave on but cannot escape because the spotlight is always on them. I refer, of course, to the Labor Party's attitude towards privatisation.

The Hon. Paul Holloway at least had the grace not to even attempt to argue against it because there is no argument that, in this decade, we have seen the Labor Party lead the nation in privatisation. It introduced it and owned it. It could almost have patented privatisation. We had the Bob Hawke, Paul Keating axis privatising the Commonwealth Bank, the Commonwealth Serum Laboratory, Australian Airlines and Qantas—symbols of Australia: icons.

They attempted to privatise the Australian National Shipping Lines. They agreed in principle to privatise Telstra, which was subsequently privatised by the Howard Liberal Government. As I have said previously in this Parliament, if it is good enough to oppose privatisation on principle or ideology, as the Hon. Paul Holloway said, then it is good enough to oppose it all the way. But what do we have? Three of the four Leaders of the Labor Party in the South Australian Parliament own Telstra shares. What does that say about ideology?

The Hon. G. Weatherill interjecting:

The Hon. L.H. DAVIS: I don't own Telstra shares. I have never owned Telstra shares.

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: Not only was the Commonwealth Government, when it was led by Labor Prime Ministers such as Hawke and Keating, leading the way in privatisation but it had some fervent disciples in South Australia. Mike Rann, as a Minister in the Bannon Government between 1991 and 1993, agreed to privatise Sagasco. There is no difference in principle: it provides energy to South Australians. ETSA is energy. It owned 82 per cent of the South Australian Gas Company.

If they thought it was so good they could have gone all the way and bought the other 18 per cent for about $100 million at the time, but what did they do? They sold the 82 per cent to Boral in a deal which was a disgrace—much too cheaply, and that is on the record as being said at the time—for hundreds of millions of dollars. The Premier, John Bannon, supported by the then Treasurer, Frank Blevins, said, 'We are selling these assets because that money can be better used to reduce debt.' That could have been the Premier, John Olsen, speaking about the ETSA assets.

It was the same Mike Rann who in principle—the same principle—supported the sale of the State Bank. So we have the Hon. Paul Holloway, with the limpest of arguments, trying to pretend that suddenly the world has changed and that Labor does not embrace privatisation, that suddenly it is bad and evil. The only logical conclusion one can reach as to why it is bad and evil is because the Labor Party is no longer in power.

He did not take up the challenge of the Treasurer who asked, 'If you were returned to office after the next State election would you resign if you subsequently, in your term of office, decided to sell off ETSA and Optima assets?' Would the Hon. Mike Rann, Kevin Foley, the Hon. Paul Holloway, the Hon. Carolyn Pickles resign if they subsequently changed their mind? We did not get an answer about that.

We have endured this shameful head-hanging experience from the Hon. Paul Holloway, who has lost the toss and has had to carry the Labor Party through this agony of disagreeing with what it agreed with when it was in Government. All I can do is express my sympathy to him because his opposition will come back to haunt him one day. Sadly, it is affecting, most of all, the very people that he pretends to support.

The Committee divided on the clause:

AYES (10)

Cameron, T. G.	Davis, L. H.
Dawkins, J. S. L.	Griffin, K. T.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I. (teller)	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

NOES (11)

Crothers, T.	Elliott, M. J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S. M.	Pickles, C. A.
Roberts, R. R.	Roberts, T. G.
Weatherill, G.	Xenophon, N.
Zollo, C.	

Majority of 1 for the Noes.

Clause thus negatived.

Progress reported; Committee to sit again.

SOIL CONSERVATION AND LAND CARE (APPEAL TRIBUNAL) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 23 March. Page 979.)

The Hon. P. HOLLOWAY: The Opposition will support the passage of this Bill through the Council this evening so that it can come into effect as soon as possible. In other words, we have been very cooperative with the Government on this. It is a pity that sometimes that favour is not returned by the Government in matters such as its attitude towards Question Time, for example.

We support this Bill because it is important to correct an anomaly that has arisen within the Soil Conservation and Land Care Act. The principal Act was passed in 1989. Under that Act, the Soil Conservator or soil conservation boards (they are local boards) can issue orders for actions to be undertaken in relation to soil conservation and land care issues.

It is my understanding that only three or four orders have been given since this Act was assented to back in 1989, in other words, in the past 10 years. Some time back, the first appeal was made of one of those orders. Under the current composition of the tribunal, which is set out in section 47 of the existing Act, the tribunal that hears these appeals is constituted of a District Court judge nominated by the Senior Judge and two other members appointed by the Governor on the nomination of the Minister; one of these two members is a person who is an owner of land used for agricultural, pastoral, horticultural or other similar purposes, and the other is an employee of the Department of Agriculture.

When this tribunal was activated for the first time after 10 years of the Act's being in place, I understand that two main problems arose. First, in relation to the person who is an owner of land, if that person happens to be a grain producer, for example, and the tribunal wants to convene at the time of harvesting or sowing, obviously there are problems in getting that person to make themselves available for meetings. That is one of the problems that has arisen with only three members on the tribunal, one of whom is an owner of land: there are problems with the availability of that person.

The other issue relates to the person who is an employee in the Department of Agriculture. That can give rise to conflict of interest issues, where that person may have been involved in the administration of the parts of the Act which are under dispute. Clearly, that is an unsatisfactory situation. The solution which is being proposed by the Government (and I understand that this was on the recommendation of the judge of the tribunal), has been put into this Bill, namely, that there should be two pools of persons who can comprise the tribunal. So, the tribunal would still be a three person tribunal; one member would be a judge, another would come from a group of persons with qualifications in relevant fields, and the other would be a person with practical experience in the operation of land. Clearly, that model should solve the problem that has arisen.

I note that during the debate in the House of Assembly the Hon. David Wotton referred in some detail to the particular case which had caused the problem, so I will not go over that again. In relation to this Bill, I understand that concerns have been expressed by stakeholders, such as the Farmers Federation and the Conservation Council, in relation to consultation as to who should comprise the members of these panels. The Opposition did raise this matter during the House of Assembly debate, and the Minister undertook to consult with those stakeholders before appointments were made to the board. That therefore addressed the main concern that the Opposition had. We recognise that it is important that this tribunal should be able get on and hear the case before it, and for that to happen it is necessary that we pass this Bill this session. The Opposition will support that process.

The Hon. T.G. CAMERON: This Bill seeks to vary the constitution of the Soil Conservation Appeal Tribunal, which currently reviews decisions that are the subject of an appeal against soil conservation orders issued by a soil conservation board. In the 10 years that the Act has been in operation, only four orders have been issued, one of which has been appealed and is currently before the tribunal. However, the current structure of the tribunal made up of three members, two of whom are appointed by the Governor and the other being a District Court judge, has been found to be inflexible, as no provisions are available under the Act to enable the tribunal to sit should one of the appointed members be unavailable.

The Bill will ensure that the appeals tribunal is able to effectively convene and will also minimise the risk of potential conflicts of interest. The Bill will provide for the judge to allow the tribunal to continue hearing an appeal even if one of the selected lay members becomes unavailable during the hearing. The judge may also determine certain procedural matters while sitting alone. Under the Bill two panels of lay members will be established and will comprise people with qualifications or experience equivalent to that of the individual members previously appointed by His Excellency the Governor.

One panel will be made up for persons with practical experience in land management and the other for persons with formal scientific training. The tribunal panel will be comprised of lay members available to attend hearings as determined by the judge. A transitional provision has been added which allows the current appeal before the tribunal to proceed once the Bill is assented to. As I understand it, this Bill is based on the recommendations of the Chief Justice to the Attorney-General on how to remedy the current problems which have been identified. SA First will support the legislation.

The Hon. J.S.L. DAWKINS: I welcome the support both of the Deputy Leader of the Opposition and of the Leader of SA First. Current provisions for the handling of appeals under the Soil Conservation and Land Care Act have not proven to be sufficiently flexible in the decade in which that Act has operated. This has been exacerbated in certain circumstances, particularly in the electorate of Heysen. The tribunal currently comprises three members, of whom two are appointed by the Governor and the other being a District Court judge. Should one of the appointed members not be available for service, the tribunal cannot convene.

A recent example in Heysen arose because a member of the tribunal who works in Primary Industries and Resources South Australia was disqualified for a perceived conflict of interest. Without this member, the tribunal could not convene and the appeal could not be heard. This Bill therefore proposes to establish two panels of lay members: one panel made up of persons with practical experience in land management and the other of persons with formal scientific training. Panel members who are available at the relevant time will be selected by the judge to sit on the tribunal for a particular appeal. To deal with deadlocks caused by the non-

availability of a lay member once a tribunal has commenced to hear an appeal, the Bill provides that the tribunal may continue with the judge and the remaining lay member, provided that the judge so allows.

It is also proposed that the Presiding Member, who is a judge, be able to determine some procedural matters whilst sitting alone. This is an important provision that is currently not provided for. In what has been Land Care Month, it is important that the provisions for handling appeals relating to soil conservation and land care be dealt with as quickly and as practically as possible. For that reason, I support this Bill very strongly.

The Hon. M.J. ELLIOTT: I rise briefly to speak to this Bill. This is one of a couple of Bills which are being processed very quickly; in fact, it has been in the Parliament for only a couple of weeks. The reasons for the legislation are perfectly understandable, but if there needs to be an amendment I do think there should have been adequate time for proper consultation with interested parties—and there simply has not been. On occasions, the Government brings on legislation, such as the Year 2K legislation, which has great urgency and with which Parliament bends over backwards to assist, but, frankly, I have not heard any real justification for why this Bill came screaming through in such a hurry, without our having any pre-warning or any real opportunity to discuss it with other parties. I really do think that is unacceptable.

Having said that, I do recognise that there is a problem that needs fixing, but I would have liked an opportunity to discuss the composition of the panels that are being formed and whether or not we have appropriate instructions in terms of the qualifications of those people. Some people with whom I have spoken, such as the Conservation Council, have made some suggestions, but we are told, 'No, it is going through today.' So, that opportunity has simply been denied. I have very clear recollections of the Liberal Party when in Opposition objecting to Bills being handled with this sort of haste except in exceptional circumstances—and there simply is not one in this case.

The Hon. P. Holloway interjecting:

The Hon. M.J. ELLIOTT: How long has it been there?

The Hon. P. Holloway: Just on 12 months.

The Hon. M.J. ELLIOTT: Exactly. My point is that they have been aware of this problem for some time and would have contemplated the legislation for some time before it entered Parliament. We should have been given as much notice as possible. Instead, we first became aware of it when it emerged in the Lower House two weeks ago. I will not protract the debate further. I just wanted to put those concerns on the record and to say that, given greater opportunity, I would have wanted to look at the questions of the qualifications of the people on those panels and to have debated that further.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for the Bill and for their preparedness to deal with it quickly. By way of interjection, someone has already indicated (and of course it is in the second reading explanation) the reason for trying to deal with this in this part of the session rather than—

The Hon. M.J. Elliott: It is a question of notice. I am sure the decision was made long before it emerged in the Parliament.

The Hon. K.T. GRIFFIN: Initially it came up through the Chief Judge of the District Court and through me. It was not all that long ago that it was drawn to my attention. It may have been about a month, although I may be mistaken. I took up the matter with the Minister for Primary Industries with a view to trying to get it resolved. I regarded it as unacceptable that a litigant was unable to get justice because there was a problem with the way in which the panel was constituted and the inability to get a panel because of the perceived conflict of interest on the one hand and a difficulty with the other member being prepared to sit.

In other areas where panels sit with a District Court judge either as assessors or as part of the tribunal, generally speaking we have a range of persons who might be on a list and who can be chosen by the Chief Judge to sit on that particular panel, and it works very well. In the ERD Court, for example, there are a number of part-time commissioners in the occupational licensing area. Assessors sit with the judge in the Administrative and Disciplinary Division of the District Court. So, it all works fairly well.

The solution which came to mind as the most appropriate was merely to have two groups of persons from two distinct areas of qualification from whom the Chief Judge could make a choice as to who was available or who did not have conflicts of interest so that we could get matters dealt with more efficiently. That is the rationale for it.

If the Hon. Mr Elliott has any criticism, it may well have been with me for not having pursued it more quickly. However, I do not particularly want to accept the responsibility, but I merely identify that it did come originally from the Chief Judge of the District Court. Notwithstanding that, I appreciate the fact that members have indicated their support for it and that they are prepared to facilitate consideration of the Bill through its remaining stages.

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

[Sitting suspended from 6.1 to 7.45 p.m.]

SUPPLY BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 977.)

The Hon. R.I. LUCAS (Treasurer): I thank honourable members for their comprehensive and far ranging contributions to the Supply Bill debate over the past week. Their contributions were so wide ranging that I would not do them justice by responding to them or indeed commenting on them, so I will thank members for their contributions and for the fact that, from wherever they came and whatever they spoke about, in the end, they said they supported the second reading of the Supply Bill.

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

YEAR 2000 INFORMATION DISCLOSURE BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 1053.)

The Hon. CARMEL ZOLLO: I welcome the Year 2000 Information Disclosure Bill 1999 and indicate my support for the intentions of the Bill; that is, to provide for voluntary sharing of information on the issue of the year 2000 date problem and remediation efforts. Members will be aware of

my continuing interest in this matter and will recognise the need to deal with this Bill in an expedient fashion. However, I must indicate my disappointment over the delay in presenting a Bill such as this to address the Y2K issue as late as this.

For the interest of members who may not know, the year 2000 problem has its genesis in the 1950s with the conservation of precious space on computer punch cards. This was a problem compounded by COBOL programming language (Common Business Oriented Language) and its use of two digit based years. It was then firmly entrenched by the then near monopoly of IBM's 'Big Blue', causing it to become an accepted industry standard—

The Hon. M.J. Elliott: Apple computer does not have this problem.

The Hon. CARMEL ZOLLO: No, it does not, so I suppose it is smarter. In 1967, the United States National Bureau of Standards cemented the two digit date standard and, despite attempts by the International Standards Organisation to introduce a four digit date standard in the 1970s, the two digit standard continued. Subsequent warnings of Y2K doom were largely ignored until the mid to late 1990s, which is why the issue has become so pressing.

Whilst an historical perspective may be useful, it does not help in addressing the rapidly approaching deadline. It also indicates that the Y2K problem has been known for some time. I stated in a matter of public interest debate recently that my interest in this issue is to increase awareness and, in particular, how it may affect South Australia. I reiterate that position today, and it is in that context that I welcome this Bill. I have closely followed the debate in the other place and I hope to add my own perspective to the matter.

The Bill addresses an issue that is seen as central to encouraging companies and small businesses to deal with the year 2000 date problem—that is, it aims to protect companies, and individuals who make statements on behalf of companies, against civil liability when making such statements truthfully, accurately and in good faith. This covers statements regarding the processing, detection, remediation, prevention, consequences to supply, contingency planning and risk management associated with the year 2000 date problem.

Original disclosure statements may be made in a variety of written forms, whether electronic or otherwise, and should provide protection when consistent with the measures in this Bill. A republished disclosure statement as defined in the Bill is more flexible, as it allows for reproduction, retransmission, recital reading aloud or electronic communication of speech. I am pleased that the opportunity for oral transmission of whole statements is provided for—an issue that I have heard raised in the media. The Y2K problem is one of the largest global peace time issues to have emerged. It equally affects governments, business and private citizens. It is because of the wide scope of this problem that government plays a crucial role in trying to avert potential disaster.

As I have previously stated, I do not subscribe to doomsday theories, but we must at least consider the possibilities. We have our own Reserve Bank printing more money in anticipation of increased demands for cash. Even the Institute of Chartered Accountants recently has been reported as asking business to consider stockpiling in order to avoid problems with their supply chain—let alone the concerns associated with basic utilities in a somewhat Orwellian way, such as predictions of nuclear weaponry going on the blink. I suggest a more measured approach and hope that a high level of awareness of the problem before 1 January will go a long way to steering away from disaster.

Whilst Australia is one of a handful of nations that is quite advanced in dealing with the Y2K problem, this is not to say that the problem will go away; otherwise, there would not be a need to discuss this Bill. Whilst many larger corporations will have dealt with the issues by 1 January, either through remedial action or various contingencies, it continues to remain a significant issue for small to medium sized businesses. These businesses make up a critical part of the supply chain to keep production lines in progress. The year 2000 issue is a problem because we are living in a world that is highly interlinked, electronically interwoven and, hence, economically interdependent. I am also concerned about what is being done to assist rural South Australia in dealing with the Y2K problem. Our regional areas are going through enough difficulties without the experience of the Y2K problem.

The Hon. Caroline Schaefer interjecting:

The Hon. CARMEL ZOLLO: Don't you think we should be concerned about rural—

The Hon. Caroline Schaefer: I am sure we should be concerned. In fact, we appointed four regional people to look at it—the only State in Australia that has.

The Hon. CARMEL ZOLLO: Okay, I will come to that. Much of our regional infrastructure is older, upgraded less frequently and, presumably, more susceptible to containing Y2K defective embedded chips, etc. In the United States a survey this month found that only half of primary producers using automated equipment have investigated whether it was Y2K compliant, and almost a third of those have discovered that they have problems with the equipment, including irrigation equipment, automatic feeding systems, grain storage and handling equipment and global positioning systems. The main problems were found in office inventory and accounting systems for desktop PCs.

In Australia, I am pleased to note that some peak farming bodies are preparing to send out some information on a national basis, and the issue recently featured on the ABC's *Landline*. This should raise awareness, but I think that some focus to assist rural and regional South Australia (as has been pointed out by the Hon. Caroline Schaefer), not only primary producers but also regional cities and townships that are often disadvantaged, is needed—or, at least, extra is needed.

I welcome the member for Hart's amendment made in the other place, which was accepted by the Minister and which mirrored Senator Kate Lundy's amendment made to the Federal legislation. I have previously called for the Government to be transparent and accountable over the remediation and contingency issue. Whilst I acknowledge that the Y2K problem is not of its making, it has a responsibility to remain accountable. The member for Mitchell also clarified several important legal queries. Some information has trickled through by way of Government websites and the like, but it is obvious, by the lack of responses to the many questions I have asked in this place, that the same openness that the Government is calling for from private business in this Bill has not been forthcoming from the Government itself.

I note that the Minister in the other place responded to some of the issues I have raised. The Minister has confirmed some of my investigations, in that he has confirmed that traffic management systems are not compliant, the train signalling system is not compliant and some critical life support systems at the RAH are not compliant. I hope that the

Minister will now address the remaining issues in the near future, to provide transparency from the Government.

The Government must lead by example with respect to this issue and publicise accurate and detailed year 2000 preparedness statements. I am pleased that this will now be done in Parliament on a quarterly basis. I am aware of the work of the Office for Year 2000 Compliance and thank the Minister for its briefing last year.

I am also concerned by reports that I have heard from some IT specialists, or professionals, that the current policy focus in many State agencies is contingency and disaster planning rather than remedial activity. I think that it is a little early to throw your hands in the air and await a probable crisis or system failure. I would have thought that repairing the problem wherever possible was a much better way of dealing with the issue, rather than waiting for the worst to happen and then going into damage control. Whilst disaster planning needs to play a role in Y2K processing I would hope that, at this stage, more attention is directed at problem solving.

In a question to the Minister this week I stressed that it appears that local companies and locally manufactured products will be overlooked in Y2K remediation plans. I understand that some very smart technology has been developed and produced in South Australia, and I would hope that this Government, which claims to be promoting IT in this State, would actively promote and support the development of commercially viable local products which employ South Australians. It would be seen as an opportunity to give South Australia a competitive advantage.

As my colleagues in the other place have pointed out, this is an unusual Bill, as far as it relies heavily on good faith—the so-called 'good Samaritan' effect—rather than the usual guiding philosophy of *caveat emptor*. It would be interesting to observe the effects of this Bill in the legal system. This Bill encourages business to make a disclosure.

I am also pleased that the Minister has indicated that the Bill also addresses the other Y2K problem dates, such as the 29 February 2000 leap year date. However, the same concern that was raised over the Federal Act must be reiterated in this debate—that is, we must remain flexible in our approach to this issue and, if the mechanisms of this Bill are abused or it is not achieving its desired outcome, we must be able to consider a different approach. To be balanced—since I have been somewhat critical of the delay in the presentation of this legislation and the hurried manner in which it has been dealt with—it does appear, according to the Australian Bureau of Statistics, that South Australia is in the middle range of States in terms of its Y2K preparedness program. This is good news, but much more must be done.

Just a few crucial system failures may be enough to cause some havoc. That is why remediation action must continue well past 1 January 2000. We must not neglect the so-called ripple effect—that is, the supply chain problem. I am not suggesting that the Y2K problem is one only for government. There needs to be a multiple pronged approach to the issue, including private enterprise generally, and action by the Stock Exchange, which deals with listed companies. Of course, we must recognise that many medium and small businesses are not listed on the exchange, so they may present the biggest challenge in the Y2K puzzle. The Government needs to demonstrate leadership and has the responsibility to our small business sector to raise awareness with respect to compliance.

We must also recognise that, even if Australia is ahead of the pack come 1 January 2000, we must be mindful of our overseas trading partners, overseas suppliers and our region in general, as Asia may be particularly vulnerable to the effects of the year 2000 problem. The Opposition supports the second reading of this Bill.

The Hon. M.J. ELLIOTT: I support the Bill. I note that this, in fact, is complementary legislation to the legislation that has already passed in the Federal Parliament. I had no awareness that there had been any legislation in the Federal Parliament until this Bill landed on my desk—and I am not sure whether it was last Thursday or Friday. The letter that came with it did not say explicitly that the legislation was wanted through this week. It had 'Confidential' marked all over it, so I asked one of my staff to ring and find out if the Government wanted it through this week, although I could not believe that it possibly could, and yes, the Government did. It is bizarre that we are working on such short time frames.

The only reason that I feel confident in handling the Bill now is that my Federal Party room has already been through the same debate with complementary legislation and has addressed the issues. If it had not been for that, I would have been screaming a good deal more about the expectation of putting through the legislation in the time frame that has been allowed.

There is no doubt that the year 2000 bug is causing a degree of concern and there is some debate about how much it is overstated. If one adopts the precautionary principle, we have to make sure that we do not suddenly find ourselves with some important parts of State infrastructure, for instance, going down and we must also try to minimise any harm that might be done in business, where something occurs that has not been the fault of the business itself. Effectively, that is what this legislation is seeking to tackle.

The Bill highlights the need for cooperation and openness as we prepare for the new millennium. It also provides an opportunity to think about the role that Government should play in the regulation of technology. This Bill gives Government departments and agencies an opportunity to be a leading example to the private sector in the year 2000 information disclosure, and that is one reason why the Democrats supported an ALP amendment to the Federal legislation. I already had similar amendments drafted, but they were passed in the House of Assembly on the way here, so that has become unnecessary.

Issues raised by the millennium bug are part of a broader range of problems created by the elevation of business and technology interests over those of consumers and society generally. Some concerns have been raised about the possibility of the abuse of the disclosure rules contained in the Bill. Disclosure legislation is only one component of the year 2000 issue that needs addressing. We must also look at what can and should be done in regard to community education to ensure a prepared and informed public. If we take steps to ensure that the community is kept informed now, we will avoid problems down the track. The Government appears to have been active in that area, as well.

South Australia will be the first State to pass legislation. New South Wales might have beaten us, but it looks like facing a delay of a month or two. Victoria is expected to pass its legislation when its Parliament resumes in April, with others to follow. It is true that there has been some division within the legal profession about some aspects of this legislation but, as I said, on balance, our Federal members supported the structure as proposed. Civil libertarians say that

the legislation denies people the right to take action if they have been wronged, and I note that the Bill has a cut-off date of 1 July 2001.

The creation of a ministry for the year 2000 has been an interesting and innovative approach to forward planning, but one question we beg at this stage is what happens after the year 2000? The Minister might have a bit of mopping up to do but he might be short of things to do beyond that.

The Hon. Carmel Zollo: Or he might not.

The Hon. M.J. ELLIOTT: No, he might not. With technology moving at such a rate, a whole range of issues need to be monitored constantly and they could engage the full-time efforts of a Minister. I was reading the *New Scientist* only a couple of weeks back, and it talked about the fact that we are due for the next solar maximum. We go through solar cycles and, by the number of sunspots at the moment, scientists believe this to be a particularly active cycle. The real danger is that these sunspots have the capacity to interfere with satellites. If members think about how dependent we are on satellites, they will see that it will need only one or two of them to become inoperable for there to be significant implications. It would be difficult to compare the impact with that of the year 2000.

That is not the only impact. During the last solar maximum, the Quebec electricity system went down. Apparently, a solar stream of charged particles induced a current that crashed the whole system. It took the authorities quite some time to get it up again, to the extent that Quebec spent a significant amount of money to make sure that its system would not suffer that fate again. Apparently it had to do with the length of wires, and we have got involved with some long electricity wires recently. I cannot pretend to understand the problem other than noting that it caused major problems in Quebec and it had something to do with the length of the wires. Since we are wired all the way to Victoria, I do not know whether or not we could suffer a similar fate.

I raise that as an example of the sort of things that might need to be addressed, as technology moves on, as our reliance upon satellites increases and as there is increasing interdependence with other States for electricity and other things. The ministry for the year 2000 could become a ministry for technology, which could be involved in forward planning in terms of the things that could potentially go wrong. There will be other things of a similar scale to the year 2000, and such a ministry could be important in terms of trying to ensure that, with respect to technology innovation in South Australia, we are staying well in front.

I know that I have strayed a little bit from the Bill, but its relevance is that this legislation anticipates potential problems and reacts to them sensibly. I think that other issues of a similar nature also deserve some attention.

The Hon. T.G. CAMERON: The Bill will provide limited protection from civil liability for any year 2000 disclosure statements and it is intended to provide protection for business, Government organisations and other organisations that may wish to exchange information advice about the year 2000 problem. It also seeks to complement the Commonwealth Government's information disclosure legislation passed in February 1999.

The Bill before the Parliament seeks to encourage open and frank disclosure of year 2000 preparedness, giving limited protection from civil liability for statements made in good faith to other organisations. This Bill will become a mechanism to encourage information exchange and the continuance of contingency planning processes. A disclosure statement is a statement that relates to all or one of the following: year 2000 processing; the detection of problems relating to year 2000 processing; prevention of problems relating to year 2000 processing; remediation of problems relating to year 2000 processing; consequences or implications for supply of goods and services of problems relating to year 2000 processing; and contingency planning and risk management for remediation efforts.

The Bill removes civil liability which might exist under clauses such as misleading statements, defamation, trade practices and fair trading legislation, precontractual arrangements, statements made to induce customers to acquire goods and services, and intellectual property rights. Some have suggested that the exchange of information may give rise to section 45 under the Competition Code, which prohibits certain anti-competitive contracts, arrangements or understandings. Clause 13 provides for exemption from section 45 of the Competition Code in relation to statements or disclosures for year 2000 problems.

ABS figures indicate that 20 per cent of small and medium enterprises have not yet started checking their computer systems or machinery with embedded chips, which equals about 12 000 businesses. I hope that the passage of this legislation before the Council, which SA First will be supporting, will act as a catalyst or reminder to those 12 000 businesses that there are very real problems ahead of us with the year 2000 problem. There are real problems for the these 12 000 businesses. It would appear that some 2 500 of them at this stage have not even started checking their computer systems.

I encourage the Government, through the Minister, to take every step possible to warn small business of the impending problems that they might face. I suggest that the Minister work through organisations such as the Small Business Association, the Small Retailers Association and so on. Literature should be prepared and sent to these organisations so that not only can they inform their members but perhaps the Government can examine the idea of sending out some kind of leaflet through Australia Post to all the small businesses in Adelaide.

If there are only 12 000 of them the Government would be able to send out a brochure to the small business community warning them of the impending problems, and the cost would be very minimal. It would probably only cost 7¢ or 8¢ per copy for distribution. It would be a very effective way of letting small business know what they are in for with this impending problem. SA First supports the Bill.

The Hon. A.J. REDFORD: I always have some misgivings when legislation is introduced and driven through Parliament at such a rapid rate. The first time I saw the legislation was on Tuesday morning, and I suspect that I had it fractionally earlier than either the Hon. Michael Elliott or the Hon. Carmel Zollo. I know that a similar piece of legislation has gone through the Commonwealth Parliament. Reading legislation that goes through the Commonwealth Parliament does not fill me with any confidence at all. At night I often wonder whether the Commonwealth draftsman speaks English, let alone a form of English that a normal human being would speak. No-one other than an honours degree lawyer could possibly understand it, and even then—

The Hon. T.G. Cameron: You're an honours degree lawyer?

The Hon. A.J. REDFORD: No, I'm not.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: I just scraped through. I had a good time at university. I am concerned—

The Hon. Carmel Zollo: We can tell.

The Hon. A.J. REDFORD: At least I got an education.

Members interjecting:

The Hon. A.J. REDFORD: You dish it out, you get it back. That's the way it operates. This is a difficult piece of legislation to interpret. I have some sympathy for the State parliamentary draftsman being presented with a piece of probably unintelligible Commonwealth legislation, given the very narrow parameter in which he can operate, and coming up with this Bill.

When I read the legislation it seems to me that clause 8 contains a very narrow protection in terms of what civil claims can be granted in relation to year 2000 disclosure statements because of the narrow definition of a year 2000 disclosure statement; and then some very broad exceptions are set out in clause 9. I am a bit concerned, especially when one looks at clause 9(3) which provides:

> The rules in section 8 do not apply to a civil action if—
> (a) all of the following conditions are satisfied—

and then there are some conditions, and—

> (b) all of the following conditions are satisfied—

and then there are some conditions. From a purely drafting point of view that seems to me to be repetitious and not an appropriate way of drafting. I have spoken to the Attorney-General and the parliamentary draftsman about the form of drafting and I have been advised that this reflects the practice of the Commonwealth draftsman when drafting Commonwealth legislation. I understand the circumstances and the haste in which we are dealing with this legislation and that perhaps on this occasion we are stuck with it.

The Hon. M.J. Elliott: I think we should do it next year.

The Hon. A.J. REDFORD: I am afraid that we cannot operate to Democrat timetables. The year 2000 is approaching rapidly.

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: If you had a modicum of discipline on your side, which is your responsibility, I would not have been subjected to these inane interjections and I would have probably sat down by now. It is indicative of the lack of discipline that your side of politics seems to be undergoing at the moment.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: We haven't lost any, have we? We're all still one team. It seems to me that it is a funny way to draft legislation. I hope that there are not any curly points in there that might lead to great difficulties. I know it would be unreasonable to hold up the Bill to await an answer, but I would be most interested to know whether the Australian Law Council has looked at the Bill and provided us with any comments. If so, I would ask that the Minister provide me with a copy of any statements made either by the Australian Law Council or the 20Law Society.

The Hon. M.J. Elliott interjecting:

The Hon. A.J. REDFORD: The honourable member interjects and says that he contacted the Law Society and it did not know about it. That would not surprise me. I understand that this was dealt with in early February in the Commonwealth Parliament. From my personal experience the Commonwealth never does anything quickly so I suspect that some constituent body had a chance to have a look at it—but perhaps I am being overly optimistic. If there is anything of that nature I would be most grateful to see a copy of it. I would also be grateful if the Minister could give an undertaking to the Parliament that if there are any basic drafting errors that we do not pick up because of the indecent haste in which this is being dealt with that it will be dealt with promptly and quickly.

I know the speed with which the year 2000 is approaching, but I do not like the Commonwealth draftsman picking up sections of the Trade Practices Act. I do not know whether any member in this place has had an opportunity to read the Trade Practices Act. As I said, you need to be an honours degree lawyer to understand it. I will give members an example. The definition of 'consumer' is mentioned quite often in clause 9(3)(a) and (b)—although it mentions 'person' on another couple of occasions and I am not sure what the difference is. The definition of 'consumer' takes three pages of small type in the annotated Trade Practices Act. I will read an example of what it contains, as follows:

> For the purposes of this Act, unless the contrary intention appears, a person shall be taken to have acquired particular goods as a consumer if and only if—
> (1) the price of goods did not exceed the prescribed amount.

Only a lawyer or someone who is used to interpreting legislation would be able to work this out. If you go all the way down you get to the point where the prescribed amount is $40 000. I can never understand why the Commonwealth Draftsman did not say, 'The price of goods did not exceed $40 000,' but they seem to find a way to use 20 words when one might do. If it arises in other legislation I will be perhaps a little firmer, but I hope that this does not become the trend and that no-one, including the parliamentary draftsman, the Attorney-General or anyone else in the Government, uses this piece of legislation as a precedent for that sort of drafting practice.

I look forward, I suspect, to enormous amounts of litigation arising from this piece of legislation. I have to say that, upon reading the legislation in the short time it has been made available to me, I do not believe it gives as much protection to people who seek to rely on these disclosure statements as one might think. I suggest that people be very careful before being too comforted by some of the protections that might be given under this Bill. I think in some respects they are illusory.

The Hon. R.I. LUCAS (Treasurer): I thank members for their contribution to the second reading debate. In response to the Hon. Mr Redford's question, I will certainly undertake on behalf of the Minister to see whether I can provide a reply to him about who, in either the drafting of this or the Commonwealth legislation, from the general background of either the Law Society or the Australian Law Council, might have been consulted or who commented in any way upon it.

In relation to the suggestions from the Hon. Mr Cameron, I undertake to raise those issues with the Minister and on his behalf to respond to the Hon. Mr Cameron in relation to his suggestions. I thank members for their indication of support for the legislation. If there had been any overriding and abiding concern from any Party in the Legislative Council, I had indicated to my ministerial colleague that we would not be pushing this to a vote. We understand this has been provided at short notice and it was only on the understanding that no-one had any major problem with it that, on behalf of the Government, I indicated a willingness to proceed. Nevertheless, I thank members for their willingness to do so.

Bill read a second time.

In Committee.

Clauses 1 to 7 passed.

Clause 8.

The Hon. CARMEL ZOLLO: Clause 8(2) provides that a disclosure statement is not admissible as evidence against a person in a civil action. Does this preclude misleading or false year 2000 disclosure statements?

The Hon. R.I. LUCAS: Parliamentary Counsel advises that under clause 9 it will if the person knew that the statement was false or misleading in a material particular.

Clause passed.

Clause 9 passed.

Clause 10.

The Hon. CARMEL ZOLLO: Where does the burden of proof lie in making statements? Does the party making a disclosure need to prove its claims? Does it lie with the first person or the second person?

The Hon. R.I. LUCAS: Parliamentary Counsel advises that when one looks at the totality of clauses 8, 9 and 10, as Parliamentary Counsel understands the question, the burden reverts to the first person. If the honourable member has detailed questions, I am happy to report progress on the Bill so that we can have a discussion with learned legal advice about burdens of proof, etc., rather than delay the Committee proceedings or, alternatively, I will undertake to correspond with the honourable member if there are further questions. I leave it to the honourable member if that is not sufficient in terms of Parliamentary Counsel's advice to me.

The Hon. CARMEL ZOLLO: That is sufficient.

Clause passed.

Clause 11.

The Hon. CARMEL ZOLLO: Can the Minister confirm that individuals or companies contracted to implement corrective year 2000 processes will be protected by making a year 2000 disclosure statement?

The Hon. R.I. LUCAS: Parliamentary Counsel advises that clause 9 provides that, if the statement was made in fulfilment of an obligation imposed under a contract, then there is no protection.

The Hon. A.J. REDFORD: What is the effect of clause 11(1)(d) in so far as an agent is concerned?

The Hon. R.I. LUCAS: I am advised by Parliamentary Counsel that clause 11(1)(d) relates back to 9(1) in that, if a statement was false or misleading and if it is a corporation, director or employee, it is sufficient to prove that they knew that the year 2000 disclosure statement was false and misleading in a material particular.

Clause passed.

Remaining clauses (12 to 15) and title passed.

Bill read a third time and passed.

TRANS-TASMAN MUTUAL RECOGNITION (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 23 March. Page 947.)

The Hon. R.I. LUCAS (Treasurer): I thank members for their contribution to the second reading of the Bill. I want to place on record some responses with which I have been provided in relation to questions raised by the Hon. Mr Elliott. The concerns are of two sorts: whether mutual recognition leads to a lessening of standards due to a 'lowest common denominator' approach; whether mutual recognition allows for regional or cultural differences. These concerns are valid and are why certain laws, including quarantine, are from the outset exempted from the operation of mutual recognition, a five-year review is built into the scheme, and mechanisms exist to enable concerns to be addressed as they emerge, namely, exclusion of certain laws, for example, taxation.

The categories of laws excluded can be amended only if all the participating parties agree; permanent exemptions for certain laws, for example, quarantine, indecent material—laws can only be added to the permanent exemptions if all the participating parties agree; special exemptions for laws where further examination is required before making a decision on whether mutual recognition should be allowed to apply. That decision will be guided by the findings of a 12 month cooperation program (six types of goods are currently the subject of cooperation programs between Australia and New Zealand). Temporary exemptions are invoked by an individual jurisdiction for up to 12 months for goods that may be a threat to health, safety or the environment and result in the matter being referred to a Ministerial Council for determination. In relation to referral of a good by a jurisdiction to the relevant Ministerial Council, when a Ministerial Council receives a referral it has 12 months to reach a determination but, in the meantime, mutual recognition continues to apply to that good (compare the temporary exemption).

The honourable member suggests that mutual recognition applies more readily within a single country, and is less applicable as it is extended to other nations. Given that mutual recognition assumes that standards are comparable between jurisdictions, it is true that there are some countries which Australia would not assume have similar standards to our own. The Trans-Tasman Mutual Recognition Arrangement, however, concerns New Zealand only, and builds on the Closer Economic Trade Relations Agreement between Australia and New Zealand which commenced on 1 January 1983. Australia and New Zealand are sufficiently similar to suggest that mutual recognition between the two countries will work as well as it has within Australia.

The honourable member highlights the concerns of the Apple and Pear Growers Association of SA (A&PG) that mutual recognition should not be allowed to lower the standards of products sold in SA. The A&PG Association's assumption seems to be that the South Australian standard is set at the 'correct' level. Mutual recognition within Australia was required because up to nine jurisdictions had slightly different standards. By definition, they were unlikely all to be 'correct'. Mutual recognition, by freeing up trade across State borders, allows consumers to make their own trade-offs between price and quality and other features of the goods on offer. If the South Australian standard is set above the standard that consumers prefer, consumer behaviour will provide a message to regulators that the local standard needs adjustment. This is useful feedback.

The A&PG Association also expresses concern that mutual recognition may be used by New Zealand to exert subtle pressure on Australia to lower other legitimate barriers. The example used is fire blight in New Zealand apples, but quarantine laws are permanently excluded from the Trans-Tasman Mutual Recognition Agreement (TTMRA). Australia intends to maintain standards where these are necessary for health, safety or environmental reasons. The A&PG Association seeks information on New Zealand country of origin labelling laws, and whether these are comparable to Australian laws. The Commonwealth advises that the Commerce (Trade Descriptions) Act 1905 is an exclusion under Schedule 1 of the TTMR Act. This means that this Act is excluded

from the operation of the TTMRA and that New Zealand goods must comply with Australia's country of origin labelling laws.

The A&PG Association also seeks information on whether New Zealand producers have to comply with SA packaging and measurement requirements under the Trade Measurement Act 1993. The Office of Consumer and Business Affairs advises that trade measurement officials from each Australian jurisdiction and New Zealand have met to discuss TTMRA issues. Their assessment is that the trade measurement regimes operating in each jurisdiction are similar, and they do not anticipate any problems arising from TTMRA. If problems or concerns do emerge, they would be addressed through one of the mechanisms referred to earlier.

The A&PG Association states that food safety is not a major part of the TTMR Bill. As discussed in section 3.4 of the Users' Guide to the TTMRA (published May 1998 by the Commonwealth), the Australia and New Zealand Food Authority is working to harmonise food standards. The TTMRA will underpin the harmonisation process to ensure that barriers to trade in food do not exist unnecessarily. Where differences in food standards between Australia and New Zealand raise concerns for health, safety or the environment, the exemption mechanisms outlined earlier will be used. The Farmers Federation seeks information on whether New Zealand producers are required to identify products grown or made in New Zealand. The point can be made in response that, in order to claim the benefit of mutual recognition, the goods would have to be labelled as coming from somewhere outside South Australia.

The Hon. Mr Elliott uses the ACT's unsuccessful attempt to ban the sale in the ACT of battery hen eggs produced outside the ACT as an example of mutual recognition decreasing a jurisdiction's control over its own affairs. This illustrates his concerns over whether mutual recognition allows for cultural or regional differences. Several such differences are already recognised in both the Australian and the Trans-Tasman schemes.

It needs to be said in response to the battery hen issue that in formulating its response the South Australian Government carefully considered an independent report commissioned from the Productivity Commission by the ACT Government. This showed that the cost to the community (at $940 000 per annum in perpetuity) outweighed the estimated benefits, unless a very high value is placed on hen welfare. The ACT also unsuccessfully sought to require egg cartons sold in the ACT to be labelled with the production system of the eggs. The option remains open to the ACT Government to educate consumers to realise that eggs sold in cartons which do not indicate the production system are usually battery hen eggs. To the extent that consumers could tend to switch from battery eggs to barn-lay eggs, if they knew what they were buying, this alternative measure would probably achieve the same result as adding labelling of egg cartons to the permanent exemptions.

The final point raised by the Hon. Mr Elliott concerns the apparent inconsistency of Australia's quarantine laws allowing imported pilchards to be dumped at sea while strictly controlling salmon imported for human consumption. The Director of Fisheries in PIRSA advises that the World Trade Organisation made a ruling about three weeks ago that Australia should achieve greater consistency in its import laws. This is a matter for the Federal Government to address. In conclusion, Australia's mutual recognition scheme has worked well, the extension to New Zealand has been considered in depth and certain items already excluded, and mechanisms exist to address concerns which emerge.

Bill read a second time.

In Committee

Clause 1 passed.

Clause 2.

The Hon. M.J. ELLIOTT: When we first debated mutual recognition in relation to the States, the Democrats expressed grave reservations, and I expressed some of those reservations again during the second reading debate. Having had a chance to look at the response of the Minister, my concerns remain as strong as ever. I do not have problems with the concept of mutual recognition, but I do have problems with the concept of mutual recognition applying to everything except for those things which are specifically exempted by this Bill; and it is virtually impossible to add anything else to the list later on. It is my view that progress on a number of issues has been made by one jurisdiction somewhere in Australia picking up an issue and, once the changes happen in that jurisdiction, it is progressively picked up in others.

One example I can remember during my time in Parliament was when Tasmania legislated in relation to ozone protection, then South Australia and the other States did it progressively over time. South Australia has beverage container legislation, and I know that serious analysis of it is being undertaken even today although, I suspect on my reading of this, no other State would be able to have beverage container legislation. I may be wrong but, as it is mentioned as a specific exemption for South Australia and not mentioned for the other States, I am not sure that they could follow suit. Logically one could think, 'What if some other State had done it first and we thought it was a good idea and we wanted to follow suit?' We simply could not do it. Waiting for the Federal Government to act on some issues could take forever.

Discussions have taken place from time to time about the Beverage Container Act being extended to cover other containers. The Minister probably will not answer this question now but, if we wish to extend the Beverage Container Act to pick up other containers which did not even exist at the time we first passed the legislation, are we now constrained? I suspect we are. I must say that, if I had any indication from other members of this place that we should not proceed with the Bill any further at this stage, I would welcome that. I do not want to defeat the Bill at this stage but, on the basis of what I have now seen, I am increasingly concerned. We really should have been chasing this system of mutual recognition by including particular matters rather than having a very short list of things which are not included.

It is probably not too much of a problem with occupations; it would relate more to goods and the like. As I said, if there was an indication of support from others, I would be seeking to not proceed further but, if the Labor Party in particular and either the Hon. Terry Cameron or the Hon. Nick Xenophon are happy to support the Bill as it is, I am not in a position to go down that path. I express that reservation. From what I have gathered from the discussion in relation to battery hens, that further confirms that the Parliament in the ACT made a decision and the decision was not made for trade reasons: it believed that its community wanted something. Under this sort of legislation, its community simply cannot do that. It cannot make a decision that it does not want eggs produced by caged hens, because that would destroy their egg industry as eggs from interstate poured in. Even though the ACT community believes that a certain decision should be made,

the ACT Parliament is precluded from doing it. It depends upon whether that issue grabs members, but I think the principle is at least demonstrated.

I wonder also about other problems. It talks about occupations, and there is the concept of deemed registration. For instance, I refer to teaching, an occupation with which I am familiar, because I was registered as a teacher. I would appreciate a response at some time concerning what the consequences are if there is another jurisdiction that does not have deemed registration. To take it a step further, a person applies for deemed registration under Part 3, Occupations, in clause 18(1). I wonder how many months a person might be teaching with deemed registration before it was found that the person was not qualified and was not registered. I cannot find any penalty for submitting a false declaration. I may have missed it, but I certainly cannot find it.

I can imagine that sort of thing happening. For example, a person could travel to South Australia, say that they are a registered teacher and fill in all the appropriate forms and whatever else is required, claiming that they are registered in New Zealand. I am sure the checks will not happen overnight. I suspect the checks will take weeks, if not months and, in the meantime, the person could be given full registration. In some occupations that could be of real concern. I know that the State is trying very hard to ensure that no-one who has had a record of paedophilia, for instance, finds their way into the Education Department, and the registration process is one way of achieving that. However, in South Australia, as I said, a person could come here from another jurisdiction, obtain deemed registration and be teaching until all the particulars in New Zealand had been checked. They are just a few things on the run that are causing me concern as I consider some of the responses I have received so far.

The Hon. R.I. LUCAS: I am happy to undertake on behalf of the Premier to correspond with the honourable member. If there are further questions, I am happy to provide those answers as well.

Clause passed.

Remaining clauses (3 to 6) and title passed.

Bill read a third time and passed.

NURSES BILL

In Committee (resumed on motion).

(Continued from Page 1084.)

Clauses 6 to 9 passed.

Clause 10.

The Hon. P. HOLLOWAY: I move:

Page 6, line 8—Leave out 'two' and insert:
three

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clauses 11 to 15 passed.

Clause 16.

The Hon. SANDRA KANCK: I move:

Page 9, line 13—Leave out 'and professional standards'

The Hon. DIANA LAIDLAW: The Government supports the amendment.

The Hon. T.G. CAMERON: I support the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 9, after line 13—Insert:
(fa) to endorse professional standards, including definitions and titles;

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 9, after line 15—Insert:

(ga) to determine and recognise special practice areas for the purposes of this Act;

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 9, line 25—Leave out '(f)'.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 10, after line 4—Insert:
(4) Special practice areas will be those fields of nursing (in addition to the fields of midwifery and mental health nursing) that, in the opinion of the board, require recognition under this Act as fields of nursing that require nurses who practise in those fields without supervision to have special qualifications, experience and authorisation.

This amendment captures the intentions of both the Labor Party and the Democrats. It adds references to experience and authorisation.

The Hon. P. HOLLOWAY: I support the amendment.

The Hon. T.G. CAMERON: I also support the amendment.

Amendment carried; clause as amended passed.

Clauses 17 to 21 passed.

Clause 22.

The Hon. SANDRA KANCK: I move:

Page 12, lines 8 to 18—Leave out subclause (2) and insert:
(2) The register will be a register of persons to whom the board has granted registration under this Act.
(2a) The register will be made up of the following parts:
(a) the general nurses register;
(b) the midwives register;
(c) the mental health nurses register;
(d) other parts (or 'registers') for other areas of nursing recognised by the board as being special practice areas (if any).
(2b) The register must include, in relation to each registered person—
(a) the person's full name, personal address and business address (if any); and
(b) the qualifications for registration held by the person; and
(c) details of any specialist qualifications held by the person and determined by the board to be appropriate for inclusion on the register; and
(d) details of any condition or limitation that applies to the person under this Act; and
(e) details concerning the outcome of any action taken against the person by the board under Part 5,
and may include other information as the board thinks fit.

I understand that, because of mutual recognition arrangements, we need to have one register, but this amendment allows for that one register with separate parts to it which will all be able to be printed as registers, so it satisfies the perceptions that are very strong in the nursing community of the need for that separateness to be published.

I do not want to cramp the Minister's style too much, because I know that specialties come and go, and we only have to think about the septic wards that existed earlier this century to realise that. Basically, this replicates what is in the Act while recognising that other areas of special practice might arise in the future. Indeed, there is nothing more certain than that special practice areas will arise as technology associated with health care increases. This amendment accommodates the need of nurses to be recognised for the degrees of special practice that they have but, at the same time, it provides the Government with flexibility.

The Hon. DIANA LAIDLAW: I will support the Australian Democrats' amendment on the basis that it has the numbers, not because I am really overjoyed by it.

The Hon. P. HOLLOWAY: We will support all the Democrats' amendments to this clause.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 12, line 23—Leave out 'nursing'

This removes the adjective 'nursing' in front of the noun 'qualifications'. I do not know how valuable this could be, but a nurse might have some qualifications which are not directly nursing qualifications but which might be useful. For instance, if a nurse had a law degree, I imagine that, on occasions, that would be a useful bit of information to have listed, but it is certainly not a nursing qualification. It gives a little bit more flexibility.

The Hon. T.G. CAMERON: I support that.

The Hon. DIANA LAIDLAW: The Government will also support the amendment.

The Hon. P. HOLLOWAY: The Opposition opposes the amendment because it is unnecessary.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 12, lines 25 and 26—Leave out paragraphs (d) and (e) and insert:

(d) details of any condition or limitation that applies to the person under this Act;

This is a consequential drafting issue.

The Hon. DIANA LAIDLAW: While the Democrats indicate it is consequential, we think it is inconsequential, but we will support it nevertheless.

The Hon. P. HOLLOWAY: We have no opposition to it.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 13, line 5—Leave out 'nurse or an enrolled nurse' and insert:

or enrolled person

This is consequential.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 13, line 12—Leave out '(2)(b) to (e) or (3)(b) to (e)' and insert:

(2a)(b), (c) or (d) or (3)(b), (c) or (d)

This is consequential.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clause 23.

The Hon. DIANA LAIDLAW: I move:

Page 13—

Line 22—After 'on' insert:

an appropriate part of

Lines 29 and 30—Leave out 'in the field of nursing' and insert:

as a nurse

After line 30—Insert:

(3) However, unless subsection (4) applies, only a nurse in a special practice area may practise in that area without supervision.

(4) The Board may, on conditions determined by the Board, authorise a registered nurse to practise without supervision in a special practice area in which the person is not registered.

(5) The Board may, as it thinks fit, by written notice to a nurse who holds an authorisation under subsection (4)—

(a) vary conditions that apply under that subsection;

(b) revoke an authorisation under that subsection.

The first amendment recognises earlier agreements reached in this place that there will be a number of registers. The second amendment is a drafting issue.

The Hon. SANDRA KANCK: I move:

Leave out this clause and insert:

Registration

23. (1) Subject to this Act, a person is eligible for registration on an appropriate part of the register under this Act if the person—

(a) has qualifications approved or recognised by the Board for the purposes of registration under this Act; and

(b) has met the requirements determined by the Board to be necessary for the purposes of registration under this Act; and

(c) is a fit and proper person to be registered under this Act.

(2) Subject to this Act, registration on the general nurses register authorises the person (a general nurse)—

(a) to practise in all fields of nursing, other than in a special practice area, without supervision; and

(b) to practise in a special practice area under the supervision of a nurse who is registered in the particular area.

(3) Subject to this Act, registration on the midwives register authorises the person (a midwife) to practise midwifery without supervision.

(4) Subject to this Act, registration on the mental health nurses register authorises the person (a mental health nurse) to practise in the field of mental health nursing without supervision.

(5) Subject to this Act, registration on another part of the register authorises the person to practice in the relevant special practice area without supervision.

(6) The Board may, on conditions determined by the Board—

(a) authorise a general nurse to practise in a special practice area without supervision;

(b) authorise a person who is registered in a special practice area to practise in another field of nursing.

(7) The Board may, as it thinks fit, by written notice to a person who holds an authorisation under subsection (6)—

(a) vary conditions that apply under that subsection;

(b) revoke an authorisation under that subsection.

This will be the compromise amendment. I think that the Government is not as enthusiastic about it as I would like it to be. Nevertheless, it does not go as far as the Opposition's amendments in terms of separateness.

The Hon. P. HOLLOWAY: We will support the Government's amendments to this clause now that the Minister has slightly amended them.

The Hon. Sandra Kanck's amendment negatived; the Hon. Diana Laidlaw's amendments carried; clause as amended passed.

Clause 24.

The Hon. P. HOLLOWAY: I move:

Page 14, lines 10 to 21—Leave out subclauses (2), (3), (4) and (5) and insert:

(2) Subject to this Act, enrolment authorises the person (an enrolled nurse) to practise in all fields of nursing under the supervision of a registered nurse who is authorised by this Act to practise in the relevant field without supervision.

(3) The Board may, in a special case, on application under this subsection, authorise an enrolled nurse to practise in a field of nursing on conditions determined by the Board without the supervision of a registered nurse.

(4) However—

(a) the Board must not give an authorisation under subsection (3) unless or until the Board has obtained the advice of a panel established under subsection (5); and

(b) the Board must not give an authorisation under subsection (3) unless it is satisfied that it is not reasonably practicable for the enrolled nurse to be supervised in the circumstances of the particular case; and

(c) the Board must not give an authorisation under subsection (3) so as to allow an enrolled nurse to practice nursing without the supervision of a registered nurse in—

(i) a hospital; or

(ii) a residential aged care facility that offers high-level care to residents; or

(iii) a residential aged care facility that offers low-level care to residents located on the same site as a hospital or a facility that offers high-level care.

(5) The Board must establish a panel constituted of the following persons to consider any application under subsection (3):

(a) two persons selected by the Board; and

(b) a person nominated by the Australian Nursing Federation (SA Branch); and

(c) a person nominated by the National Enrolled Nurses Association (SA Branch).

(6) The Board and the panel must, in considering an application under subsection (3), primarily take into account the following matters (and may take into account other matters):

(a) the grounds on which the application is made; and

(b) the public interest in ensuring the safe delivery of nursing care; and

(c) the qualifications, experience and competency of the particular applicant.

(7) An application under subsection (3) must—

(a) be supported by a report (in a form determined or approved by the Board) from a registered nurse who has been responsible for the supervision of the applicant at some time within the preceding period of 12 months (or such longer period as may be approved by the Board in a particular case);

(b) comply with any other requirement determined by the Board.

(8) If the Board determines that it is appropriate to grant an authorisation under subsection (3), the Board must specify the tasks that may be performed under the authorisation and attach conditions that specifically provide for—

(a) restrictions on the ability of the enrolled nurse to practise autonomously; and

(b) restrictions on the ability of the enrolled nurse to practise in special practice areas; and

(c) at least an annual review of the authorisation and the conditions attaching to the authorisation.

(9) The Board may—

(a) attach other conditions that will apply to an authorisation under subsection (3); and

(b) by written notice to an enrolled nurse, vary conditions that apply to an authorisation under subsection (3) (subject to the operation of subsection (8)).

(10) The Board may, by written notice to an enrolled nurse, revoke an authorisation under subsection (3).

(11) The Board must not give an authorisation under subsection (3) until at least six months have elapsed from the commencement of that subsection.

(12) The Board must, during the period of six months from the commencement of subsection (3), consult with the Australian Nursing Federation (SA Branch) on the implementation and operation of that subsection.

This is one of the most important parts of the Bill. Clause 24, and the amendments we move in particular, relate to the circumstances in which an enrolled nurse may work without supervision. When this Bill was first introduced into the House of Assembly, the Opposition opposed outright the notion that an enrolled nurse should work without supervision—which was, of course, in keeping with the current provisions of the Nurses Act. Given that it was obvious that we were not able to have the numbers to preserve that position, we accepted that, if we were to have enrolled nurses work without supervision, we should at least put some restrictions on the circumstances in which that might happen. Essentially, my amendments achieve that objective.

Subclause (4)(c) provides the conditions in which an enrolled nurse may work without supervision. The amendments require that the board must not authorise an enrolled nurse to work without supervision unless or until the board has obtained the advice of a panel—which is established later. I think that is accepted by the Government and the Democrats. We also say that the board must not give an authorisation unless it is satisfied that it is not reasonably practicable for the enrolled nurse to be supervised in the circumstance of a particular case.

Then we put in a further restriction. Subclause (4)(c) provides that the board must not give an authorisation so as to allow an enrolled nurse to practise nursing without the supervision of a registered nurse in a hospital, a residential aged-care facility that offers high-level care to residents, or a residential aged-care facility that offers low-level care to residents. Clearly, those situations where we have said that an authorisation should not be given by the board for an enrolled nurse to work without supervision are situations where registered nurses should be available to provide that supervision. We would regard an exemption in any of those instances as unnecessary, and we would be rather concerned if such exemptions were given.

The Government in the lead-up to this Bill argued that it was necessary to have the possibility of the Nurses Board giving authorisation to an enrolled nurse to work without supervision in situations such as a doctor's surgery or in domiciliary care—in fact, where it may be obviously difficult to provide that supervision. As a result of the Opposition's amendment that will still happen, subject to the other conditions that we place on it. However, we do specifically preclude situations in hospitals or high-level care residential aged-care facilities, for example, where registered nurses should be working and, therefore, there should be no need to provide exemption for enrolment.

The Opposition strongly believes that this amendment should be carried. In the original Bill we would have preferred no exemptions at all but, given that there will be exemptions, let us at least place some reasonable restraints on the circumstances in which an exemption may be given.

The Hon. T.G. CAMERON: SA First will be opposing the Opposition's amendment and supporting the Democrats' proposal for the reasons I outlined in my second reading speech.

The Hon. SANDRA KANCK: The Democrats do not find these amendments acceptable. I have found the Opposition's attitude towards enrolled nurses throughout this process to be a little patronising. The Nurses Board figures show that, although enrolled nurses make up 30 per cent of the nursing work force, they make up less than 5 per cent of the complaints or reports to the board. It is implicit in what the Opposition is doing that they are suggesting that these particular women are a little stupid or something, but all nurses recognise the common law duty of care that they have and, if they do not exercise that, they are disciplined. They are sensible people who have appropriate training, and in many cases they have many years of practice and expertise. They do not need supervision in some cases. What the Opposition is doing is entirely restrictive, trying to make sure that any ENs who work in hospitals or aged-care facilities will not be able to work in this unsupervised way if they apply for it. I think it is probably in many ways against mutual recognition, if the truth be known.

The Hon. DIANA LAIDLAW: The Government totally endorses the positions taken by SA First and the Australian Democrats. We believe that the complexity of the criteria makes it—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Well, the Hon. Terry Cameron, if that makes you feel more comfortable. Sometimes I say the Labor Party or the Democrats. The Party was apparently—

The Hon. T.G. Cameron: You go ahead and say it.

The Hon. DIANA LAIDLAW: —registered today; is that so?

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Irrespective, I will refer to SA First, the Hon. Terry Cameron, the Australian Democrats and the Hon. Sandra Kanck, if that makes the Hon. Carolyn Pickles more comfortable. The argument remains the same: the Government believes that the complexity of the criteria proposed by the ALP or the Hon. Paul Holloway—you are going to make this extraordinarily confusing and long—means that it is almost impossible in our view for an enrolled nurse to make application.

We find that totally unacceptable. The sentiments expressed by the Hon. Sandra Kanck are ones that generally my colleagues would accept, too. We have a lot of respect for enrolled nurses, and they have been put under some pressure in more recent years in terms of the differences and distinctions that have been made between tertiary trained and enrolled nurses. We have to tread with some care, particularly in country areas, in this area.

The Hon. P. HOLLOWAY: First, let me dispel any notion whatsoever that the Opposition in any way is trying to denigrate enrolled nurses. Let us tease this issue out. If the Minister, the Democrats and everybody else find it so unacceptable, let me ask the question: does the Minister concede that there could be a situation where enrolled nurses would be given an exemption by the Nurses Board to work without supervision in a hospital?

The Hon. DIANA LAIDLAW: Supervision does involve many forms today. We are quite comfortable with current practices and do not believe in the complexities that the Labor Party seeks to introduce. I understand that the Labor Party means well but, as I outlined, we believe that the complexities are not necessary in these instances.

The Hon. P. HOLLOWAY: With due respect to the Minister, that does not answer my question. My question was: does the Minister see any situation where the Nurses Board would grant an exemption to an enrolled nurse to work without supervision in a hospital?

The Hon. DIANA LAIDLAW: I am told that it would depend on the service delivery patterns in hospitals, and that the board will be focusing on public access to care and safe practice generally. They will be assessing the circumstances as they arise. They have been diligent in doing such things in the past and will do so in the future.

The Hon. P. HOLLOWAY: Perhaps the Minister can correct me if I am wrong, but I understood that it was felt necessary to make this change to the Nurses Bill because there were situations in relation to some general practitioners' surgeries, domiciliary care and such areas where it might be necessary. I understood that they were the only areas where it was expected that such exemptions would be given. Am I incorrect in that understanding?

The Hon. DIANA LAIDLAW: Earlier in this Bill we discussed the changing role and practice environment of nursing. There will be examples in the future where hospitals may arrange care in homes. Such care may be by enrolled nurses and may not need to be supervised. The example cited by the honourable member was used during the consultation phase. My understanding is that the board would not at this time want to confine the circumstances where enrolled nurses may work unsupervised. With more community care, greater numbers of aged people and home care, we envisage that there will be a whole variety of circumstances about which we need not be prescriptive at this stage but which we would ask the board to take into account in terms of care generally.

The Hon. P. HOLLOWAY: I find it rather disconcerting that the Minister will not rule out that an exemption may be given for enrolled nurses to work without supervision in such situations as a hospital or a residential aged care facility that offers high level—

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: If the Hon. Terry Cameron is happy for the situation—

The ACTING CHAIRMAN (Hon. T. Crothers): Order!

The Hon. P. HOLLOWAY: The point is that the situations which we believe should be specifically exempted from the situation where the Nurses Board might grant an exemption prevail in a hospital, a residential care facility and a residential aged facility. It is my concern that if at some stage in the future it is possible that these exemptions are given at least parts of these major facilities—hospitals, residential care aged agencies that offer high level care, and so on—will not have registered nurses available at particular times. That would appear to be the logical conclusion of this, and that rather concerns me. If other members are happy with that, let them say so. I can see where the numbers are, and it is obvious that the Opposition will not gain support for this. I would at least like to record my concern about this situation.

While I am on my feet I refer to the difference between enrolled and registered nurses. This clause is very important, because this Bill sets a model for the rest of Australia. This will be the first time anywhere in Australia that a Nurses Board can grant exemption for enrolled nurses to work without supervision. So, we are setting the pace. It is the Opposition's view that we should go cautiously and not charge into it. That is why we have moved the amendments. That is an important point that needs to be borne in mind: this has not been done anywhere else. We are not talking about something that happens all over the place, so we should proceed with some caution.

It is important that members of this Parliament understand the different and complementary roles of registered and enrolled nurses. Registered nurses now undertake a three year university degree and are licensed to practise without supervision. An enrolled nurse undertakes a one or two year course through TAFE or private vocational education training providers and is licensed to nurse under the supervision of a registered nurse.

The Australian Nursing Council sets national competency standards both for registered and enrolled nurses, and these are the national standards that a nurse must meet in order to become licensed. These standards for the licensing of nurses are based on the requirement for ENs to be supervised by RNs. That is the condition as it now exists in Australia. It may change, but that is the situation now.

Judging by her comments, the Hon. Sandra Kanck has obviously met some enrolled nurses who have been around for many years, probably in the days before university training. Undoubtedly, there are some incredibly competent and experienced nurses, and no-one, least of all the Opposition, would want in any way to denigrate the abilities, capacities or capabilities of those nurses. However, we must look to the future and understand the way in which the profession has moved and the shape it will be in the years to come.

Given the current training requirements that I have just mentioned, that will be the shape of the nursing work force in the decades to come. It may well be quite different from the current situation, and our legislation should be designed to cope with those situations. I would have thought that there

is a clear difference between the qualifications and the nature of nursing undertaken by registered nurses as opposed to that undertaken by enrolled nurses. We have already discussed at some length the different definitions.

Given that we have these differences—that is, the differences in training and the nature of the work—we believe the Bill should reflect this. I think there is a real danger that, if we rush into this amendment as we seem to be doing, we could easily have a situation where eventually we will see enrolled nurses being employed increasingly in situations where they may not have the adequate training for that purpose. That is the real risk that may come out of this situation.

The arguments that I can hear behind me are to the effect that the board can deal with this, and so on. The real risk we have to deal with is that, the more exemptions we grant, the more enrolled nurses we have working without supervision and the greater the pressure will be to reduce the overall standards. I think that is inevitable if we go too far down this track, and I am very disappointed that the Government, SA First and the Democrats do not recognise that very real danger.

The Hon. T.G. CAMERON: As I understand it, the Nurses Board will have five nurses on it. The odds are that there will be a mixture of enrolled nurses, registered nurses and perhaps a midwife. The chair will be a nurse or someone who is qualified. It will have a medical practitioner on it. It is my understanding that applications will have to be made to the Nurses Board. I fail to understand why there is so much concern about what the board may or may not do. I would have thought that the nurses who elect the five nurses representatives will elect responsible, qualified and competent nurses who will protect their profession. I would have thought that a medical practitioner would do the same. The Chair of the committee of the Nurses Board will be a nurse, too. I fail to see why there is such a lack of confidence in the capabilities of the board to ensure that enrolled nurses are enrolled only when the board, which is comprised of a majority of nurses, is satisfied that they can work on their own.

The Hon. P. HOLLOWAY: I wish to point out to the Hon. Terry Cameron that, thanks to his and other members' amendments earlier, there is no longer a majority of currently practising nurses on the board. We have lost that. That is what the Opposition with its amendments wanted to achieve.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: Well, it is true.

The Hon. T.G. Cameron: It's five, plus the chairperson.

The Hon. P. HOLLOWAY: The Presiding Member is someone who was a nurse some time ago. The point is that there is no guarantee of a majority of currently practising nurses on the board.

The Hon. CARMEL ZOLLO: Is the board able to offer exemptions to workplaces or just to the nursing profession?

The Hon. DIANA LAIDLAW: Individuals.

The Hon. SANDRA KANCK: I simply would like to remind the Hon. Paul Holloway of clause 16(2), which we have already dealt with and which provides:

The board should exercise its functions under this Act with a view to—

(a) ensuring that the community is adequately provided with nursing care of the highest standard; and

(b) achieving and maintaining the highest professional standards in competence and conduct in nursing.

Is the honourable member suggesting that the board will not do this?

The Hon. P. HOLLOWAY: All I can say is that there are hundreds of workplaces and that there are 23 000 nurses. I just wish the Nurses Board luck that it can cover all the different work situations that might arise.

The Hon. DIANA LAIDLAW: I highlight that we are talking to an amendment moved by the ALP. There are other amendments on file.

The ACTING CHAIRMAN: The Chair will deal with those.

The Hon. DIANA LAIDLAW: Yes, I understand.

The ACTING CHAIRMAN: I want the honourable member to address the amendment standing in the name of the Hon. Mr Holloway.

The Hon. DIANA LAIDLAW: Yes, but in addressing that question, with respect, Mr Chairman, it is important to know that other amendments on file do acknowledge the ALP's wish to proceed with some caution. The Government's amendment provides for three very stringent criteria in respect of access to care. There is reference to safety, competence and experience. I think those measures take into account the concerns expressed by the honourable member and give more guidance and strength to the board in addressing this situation.

Amendment negatived.

The Hon. P. HOLLOWAY: I indicate that the Opposition will support the Government's amendment.

The Hon. DIANA LAIDLAW: I move:

Page 14, lines 10 to 21—Leave out subclauses (2), (3), (4) and (5) and insert:

(2) Subject to this Act, enrolment as a nurse authorises the enrolled nurse to practise in all fields of nursing under the supervision of a registered nurse who is authorised under this Act to practise in the relevant field without supervision.

(3) The board may, on conditions determined by the board, authorise an enrolled nurse to practise in a field or fields of nursing without the supervision of an appropriately qualified registered nurse (or without the supervision of a registered nurse at all).

(4) However—

(a) the board must not give an authorisation under subsection (3) unless or until the board has obtained the advice of a panel established by the board under subsection (5); and

(b) the board must, in determining whether to give an authorisation under subsection (3), consider—

(i) issues associated with public access to nursing care; and

(ii) the public interest in ensuring that appropriate standards of nursing care are maintained; and

(iii) the qualifications, experience and competency of the particular person.

(5) The board must establish an expert advisory panel to consider any application under subsection (3).

(6) The panel must include—

(a) at least one person nominated by the Australian Nursing Federation (SA Branch); and

(b) at least one person nominated by the Royal College of Nursing, Australia (SA Branch).

(7) The board may, as it thinks fit, by written notice to an enrolled nurse who holds an authorisation under subsection (3)—

(a) vary conditions that apply under that subsection;

(b) revoke an authorisation under that subsection.

(8) The board must not give an authorisation under subsection (3) until at least six months have elapsed from the commencement of that subsection.

(9) The board must, during the period of six months from the commencement of subsection (3), consult with the Australian Nursing Federation (SA Branch) and the Royal College of Nursing, Australia (SA Branch) on the implementation and operation of that subsection.

Amendment carried; clause as amended passed.

Clause 25 passed.

Clauses 26 to 32 passed.

Clause 33.

The Hon. SANDRA KANCK: I move:

Page 18 after line 18—

(2) A person can be registered on two or more parts of the register at the same time.

The CHAIRMAN: The Hon. Sandra Kanck should move her amendment in an amended form: instead of 'a person', it should be 'a nurse'.

The Hon. SANDRA KANCK: I seek leave to amend my amendment as follows:

Replace the word 'person' with the word 'nurse'.

Leave granted; amendment amended.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment as amended carried; clause as amended passed.

Clauses 34 to 38 passed.

Clause 39.

The Hon. DIANA LAIDLAW: I move:

Page 18, after line 27—Insert:

(3a) A person who is registered or enrolled under this Act must not perform a function in the provision of nursing care that the person is not authorised to perform under this Act.

(3b) A person must not require another to perform a function in provision of nursing care that the other person is not authorised to perform under this Act.

The Hon. P. HOLLOWAY: The Opposition supports the amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 18, lines 28 to 30—Leave out all words in these lines and insert:

A person who is not registered as a midwife under this Act must not—

The Hon. P. HOLLOWAY: The Opposition will support all the Government's amendments to this clause.

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

Page 18, lines 28 to 30—Leave out all words in these lines and insert:

A person who is not registered as a midwife under this Act must not—

The Hon. Diana Laidlaw's amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 18, lines 34 to 36—Leave out subclause (5) and insert:

(5) A person must not hold out another as a midwife unless the other person is registered as a midwife under this Act.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 19, lines 1 to 3—Leave out all words in these lines and insert:

A person who is not registered as a mental health nurse under this Act must not—

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 19, line 4—Leave out 'or psychiatric nurse'

This seeks to leave out the term 'psychiatric nurse', which I understand is an outdated term.

The Hon. DIANA LAIDLAW: The Government opposes this amendment. We believe it is an important transition title that is recognised by the public.

Amendment negatived.

The Hon. P. HOLLOWAY: I move:

Page 19, line 6—Leave out 'or psychiatric nurse'

I understand that the words 'mental health nurse' now form the title that is appropriate for such nurses.

The Hon. DIANA LAIDLAW: I oppose the amendment.

Amendment negatived.

The Hon. DIANA LAIDLAW: I move:

Page 19, lines 9 to 11—Leave out subclause (7) and insert:

(7) A person must not hold out another as a mental health nurse unless the person is registered as a mental health nurse under this Act.

(8) A person who is not registered in another special practice area under this Act must not—

(a) take or use a title calculated to induce the belief on the part of another that the person is a nurse who is entitled to practise in that area; or

(b) hold himself or herself out as being entitled to practise as a nurse in that area.

Amendment carried; clause as amended passed.

New clause 39A.

The Hon. P. HOLLOWAY: I move:

Page 19, after line 11—Insert

Approval of certain arrangements

39A.(1) The board may, on application under this section, in its absolute discretion, authorise a person to employ or engage a person or persons who are not registered or enrolled under this Act to provide nursing care.

(2) It will be a condition of an authorisation under subsection (1) that a person who provides nursing care under the authorisation will do so under the supervision of a registered nurse.

(3) The board may, in granting an authorisation under subsection (1)—

(a) grant any associated authorisation in connection with the operation of section 39;

(b) impose other conditions on which the authorisation is granted.

(4) The board may, as it thinks fit, by written notice to a person who holds an authorisation under this section—

(a) vary conditions that apply under this section;

(b) revoke an authorisation under this section.

(5) A person must not contravene or fail to comply with a condition imposed under this section.

This relates to aged care and unlicensed workers. There are no provisions in the Commonwealth Act, the Aged Care Act 1997, that serve to regulate the employment of personal care or nurse assistants. The accreditation standards that apply for personal care or nurse assistants do not contain any references to any particular kinds of workers in the standards under the Commonwealth Act. Standard 1.3 provides that staff should have appropriate knowledge and skills, but these are not defined further. Standard 1.2 requires that each organisation have in place systems to identify and ensure compliance with relevant legislation, regulatory requirements, professional standards and guidelines.

I believe that this shows that the Aged Care Act was never intended to cover all areas of regulation of the sector but, rather, to pick up areas of regulation such as the Nurses Act and require agencies to comply if they are to achieve accreditation. Standard 1.6 again does not specify the kind of staff. Standard 2.3 provides that staff should have appropriate knowledge and skills, but these are not defined further.

It was argued earlier by the Hon. Sandra Kanck that, when you have aged care and unlicensed workers who are not nurses, these unlicensed aged care workers will be adequately covered under the Commonwealth Act. I do not believe that that is the case, as the standards I have just read out indicate.

Consumers have access to a complaints process, but as can be seen from the complaints flow chart it is extremely cumbersome and does not provide a remedy to issues not relevant to the Act or principles. These are to be referred to an appropriate agency, which is why we argue that we need the Nurses Board to be given a mandate to regulate the area.

Essentially, proposed new clause 39A provides the capacity to regulate unlicensed workers providing nursing care. As I indicated during my second reading speech, the position that I put is supported by the Council on the Ageing, and I read its letter into *Hansard* in support of that. It is also supported by the aged care advocacy groups and various consumer peak bodies and organisations. We regard this as a very important change that should be added to the Nurses Bill to ensure that unlicensed workers and aged care workers are adequately covered under the Nurses Act so that the Nurses Board can provide some overview of that situation. I ask the Committee to support the proposed new clause.

The Hon. DIANA LAIDLAW: The Government opposes the proposed new clause. In the context of the Act unqualified persons provide personal not nursing care and therefore should not be regulated under the Nurses Act. There are provisions in clause 27(f) for the board to provide limited registration in order to act in the public interest. In granting an application under clause 27(f) the board may apply conditions to the limited registration.

The Minister for Human Services has received a letter from the Aged Care Organisations Association dated 27 January which advises that it does not support a broadening of the Nurses Act to specifically include the work of unqualified carers. It advises as follows:

> Our position is based on the extensive level of accountability existing in aged care through the Federal Aged Care Act. The level of accountability is beyond that offered by the Nurses Act and we do not wish to further complicate the care of the elderly by yet another level of State and Federal duplication.

I, as does the Government, totally support that sentiment.

The Hon. SANDRA KANCK: I have spoken to a number of people and organisations about this. The Royal College of Nursing opposes it. Its view is that as care workers do not hold nursing qualifications they should not be regulated by the Nurses Act. I also met with Richard Hearn of the Aged Care Organisations Association, and I would like to read into the record a couple of sentences of what he said in some written material he provided to me. It appears that the Opposition is assuming that the accreditation system that flows from the Federal legislation will not be rigorous, and that assumption is not proven. Richard Hearn stated:

> The Aged Care Act places an onerous and monitored responsibility on the provider to ensure specific standards of care are provided to clients. Where this relates to qualified nursing this is also specified and monitored. These Federal Government aged care systems offer very specific protections for clients that go well beyond those offered by the Nurses Act which only apply to the nursing component of our services. An employer is responsible to provide a minimum standard of care which is clearly specified in the Aged Care Act.

I then made contact with the Miscellaneous Workers Union which, I believe, is a union affiliated with the ALP, and it is opposed to the proposed new clause. It told me that the amendments that were passed to the Federal legislation last year will take one to two years before their full impact can be assessed and that it is inappropriate to bring in a State based regime when the settling down or the fallout (whichever term you prefer) of that Federal regime is still occurring.

The Hon. P. HOLLOWAY: It should come as no surprise that the Aged Care Organisations do not support the measure. Why would they? After all, they are the people who own these nursing homes. Why would you want any measure if you own them that might add additional costs to hire better qualified staff? If you can take a cheaper option I guess you will do it, and what you will want is the least possible restrictions upon you.

I am pleased that the Hon. Sandra Kanck has faith in the Commonwealth system to regulate it. I suspect that what we are talking about here is self-regulation. Unfortunately, I do not have a great deal of faith in it, certainly not as much faith as the Hon. Sandra Kanck. It is regrettable that we are not going to take action. The Hon. Sandra Kanck has indicated her opposition to it, and it appears that the numbers are not here to support the new clause. I believe that we should be supporting a system where the board can impose standards over the nursing care that is provided in aged care organisations.

What the Nurses Bill is supposed to be about is providing quality of care. If you come from the motivation that what we are trying to do is to achieve the best possible care in those organisations then I believe that you would have no option but to support a measure such as this proposed new clause. However, if you are driven by economic needs I guess it will be opposed.

The Hon. T.G. CAMERON: SA First will oppose the proposed new clause.

New clause negatived.

Clauses 40 to 45 passed.

Clause 46.

The Hon. P. HOLLOWAY: I move:

Page 21, line 27—Leave out '(a) or'.

The effect of this amendment is to provide that at least one of the members of the board is one of the nurses who is elected under the provisions of clause 5 of the Bill.

Amendment carried; clause as amended passed.

Clauses 47 to 62 passed.

Clause 63.

The Hon. SANDRA KANCK: I move:

Page 28, line 18—Leave out 'in' and insert:
to

This amendment involves a drafting technicality.

The Hon. DIANA LAIDLAW: The Government supports the amendment.

Amendment carried; clause as amended passed.

Clause 64.

The Hon. P. HOLLOWAY: I move:

Page 28, after line 23—Insert:

64. (1) The Board must, by 30 June 2002, complete a review on the operation of section 24(3) of this Act.

(2) The Board must, in conducting a review under subsection (1), consult—

(a) with appropriate organisations and associations that, in the opinion of the Board, represent the interests of nurses in the State; and

(b) with the public generally.

(3) The Board must prepare a report on the outcome of the review and provide a copy of the report to the Minister by the date referred to in subsection (1).

(4) The Minister must, within six sitting days after receiving a report under subsection (3), have copies of the report laid before both Houses of Parliament.

This amendment requires that the board complete a review into the operation of that section of the Act which permits the Nurses Board to exempt enrolled nurses from working without supervision. Given the comments that were made during the debate earlier today, I think this review is even more necessary than I thought it was when it was put on the Notice Paper.

The Hon. T.G. CAMERON: I support this amendment.

The Hon. SANDRA KANCK: I, too, support it.

The Hon. DIANA LAIDLAW: The Government opposes the amendment as being unnecessary.

Amendment carried; clause as amended passed.

Schedule.

The Hon. SANDRA KANCK: I move:

Page 29, lines 24 to 35, page 30, lines 1 to 14—Leave out subclauses (1) and (2) and insert:

(1) The following provisions apply with respect to registration under the repealed Act:

(a) a nurse registered under the repealed Act immediately before the commencement of this clause will, on that commencement, be taken to be registered on the appropriate register under this Act; and

(b) a specialist nursing qualification held by a nurse that is noted on a register under the repealed Act immediately before the commencement of this clause will, on that commencement, be taken to be noted on the appropriate register under this Act.

The Hon. DIANA LAIDLAW: These amendments are consequential, so the Government supports them.

Amendment carried; schedule as amended passed.

Title passed.

Bill recommitted.

Clause 3.

The Hon. DIANA LAIDLAW: I move:

Page 1, after line 24—Leave out definitions of 'general nurse' and 'general nurses register'.

These definitions are required for the purposes of clause 23 proposed by the Hon. Sandra Kanck. The Government's amendments to this clause were preferred by the Committee and, therefore, the definitions should be removed.

The Hon. P. HOLLOWAY: It is consequential to the changes that were made, so we will not oppose it.

Amendment carried; clause as amended passed.

Bill reported with amendments; Committee's report adopted.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): Mr President, I thank you, all the table staff, Parliamentary Counsel, the Hon. Paul Holloway, the Labor Party, the Hon. Sandra Kanck, the Hon. Terry Cameron and even the Hon. Nick Xenophon. This has been a massive exercise in terms of the number and complexity of amendments. On behalf of the Government, I thank them in the past couple of days of sittings for dealing with a very important Bill which became exceedingly complex with the amendments. I include also the Minister's staff and representatives of the Nurses Board in my thanks. The Government does appreciate it and the cooperation of the Legislative Council. The nursing profession will profit from the result of our deliberations.

Bill read a third time and passed.

CITIZENS' RIGHT OF REPLY

Adjourned debate on motion of Hon. K.T. Griffin:

That during the present Session the Council make available to any person who believes that he or she has been adversely referred to during proceedings of the Legislative Council the following procedure for seeking to have a response incorporated in to *Hansard*—

I. Any person who has been referred to in the Legislative Council by name, or in another way so as to be readily identified, may make a submission in writing to the President—

(a) claiming that he or she has been adversely affected in reputation or in respect of dealings or associations with others, or injured in profession, occupation or trade or in the holding of an office, or in respect of any financial credit or other status or that his or her privacy has been unreasonably invaded, and

(b) requesting that his or her response be incorporated into *Hansard*.

II. The President shall consider the submission as soon as practicable.

III. The President shall give notice of the submission to the Member who referred in the Council to the person who has made the submission.

IV. In considering the submission, the President—

(a) may confer with the person who made the submission,

(b) may confer with any Member, but

(c) may not take any evidence,

(d) may not judge the truth of any statement made in the Council or the submission.

V. If the President is of the opinion that—

(a) the submission is trivial, frivolous, vexatious or offensive in character, or

(b) the submission is not made in good faith, or

(c) there is some other good reason not to grant the request to incorporate a response into *Hansard*,

the President shall refuse the request and inform the person who made it of that decision. The President shall not be obliged to inform any person or the Council of the reasons for that decision.

VI. Unless the President refuses the request on one or more of the grounds set out in paragraph V of this resolution, the President shall report to the Council that in the opinion of the President the response in terms agreed between the President and the person making the request should be incorporated in to *Hansard* and the response shall thereupon be incorporated in to *Hansard*.

VII. A response—

(a) must be succinct and strictly relevant to the question in issue,

(b) must not contain anything offensive in character,

(c) must not contain any matter the publication of which would have the effect of—

(i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy in the manner referred to in paragraph I of this resolution, or

(ii) unreasonably aggravating any adverse effect, injury or invasion of privacy suffered by any person, or

(iii) unreasonably aggravating any situation or circumstance,

and

(d) must not contain any matter the publication of which might prejudice—

(i) the investigation of any alleged criminal offence,

(ii) the fair trial of any current or pending criminal proceedings, or

(iii) any civil proceedings in any court or tribunal.

VIII. In this resolution 'person' includes a corporation of any type and an unincorporated association.

(Continued from 23 March. Page 978.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The Opposition supports the motion. This is an important issue of principle, and as the Leader of the Opposition in another place has previously stated:

It is a recognition that this Parliament is not owned by the parliamentarians: this Parliament is ultimately subject to the will of the South Australian people, and so are we as members of Parliament.

I remind members that such a move to amend the Standing Orders in the House of Assembly to make such a provision was first initiated by the Opposition in November 1998. Not surprisingly, the issue was opposed by the Government, whose members at the time did not feel safe enough in entrusting members of the public with the same privilege given to politicians.

In considering the Government's change of heart in this place, I have wondered about the Government's motivations. Could it be in any way related to a recent situation where a Minister in another place took it upon herself to involve herself in a matter which previously had been before the courts? In fact, I find the Minister's motivation interesting in

that I understand that the Minister in question has never actually spoken to the woman whose representation she sought to uphold.

Leaving that aside, however, my attention was drawn this week to an article in the *Advertiser* on this very issue, namely, the citizens' right of reply in the Federal Parliament regarding statements made by the Hon. Chris Gallus, member for Hindmarsh. This is a classic example of the value of such a measure. Although not in a position to comment on the actions of either party, we have a situation where a member of Parliament can ostensibly impugn someone's reputation without thinking twice about it.

I hope this initiative may improve standards of parliamentary behaviour and make members think twice before defaming or impugning someone's reputation. Of course, I will always defend the use of parliamentary privilege, because in a democracy it is vital. However, where politicians can defend themselves against defamatory statements, members of the public cannot. Although this amendment to Sessional Orders gives members of the public such an opportunity, I would like to think as MPs we will use privilege wisely, responsibly and in the best interests of the community. I note that this is a Sessional Order and that, presumably, we will test it to see how it works and look at it from time to time. I support the motion.

The Hon. R.D. LAWSON (Minister for Disability Services): I, too, support this motion. It is important to note that what is proposed in this Sessional Order is not a so-called right of reply. It is my view that this is not a question of so-called rights. The Sessional Order makes provision for an opportunity to reply.

Too often when considering this matter people have talked of the abuse by members of Parliament of parliamentary privilege as though parliamentary privilege was some privilege which is enjoyed by members of Parliament. Parliamentary privilege is a privilege enjoyed by the community. It is a form of immunity which the community gives to its representatives in Parliament to express without fear or favour—and certainly without fear of legal retribution—matters which the representative in Parliament feels moved to raise.

That is not a privilege of an individual member of Parliament: it is actually a privilege that is enjoyed by our community by reason of its democratically elected institutions. Too often, people regard parliamentary privilege as something to be used and sometimes abused by individual members of Parliament.

This Sessional Order will, as I say, give an opportunity—not a right—to a person who believes that he or she has been adversely referred to in proceedings in this Council. The Sessional Order does, Mr President, place a heavy responsibility on you. In some other similar regimes, committees of the Parliament are established to adjudicate upon applications by members of the public for the publication of some correction of the record or some statement putting another point of view.

In the model which has been adopted and which I support, you, Mr President, will be the recipient of applications and the sole arbiter of whether or not an application (correctly called in the proposed sessional order 'a submission') will be given the opportunity for publication and, if so, the extent to which that correcting statement is identified. I think it is important to note that it is proposed that the response to be incorporated in *Hansard* is only in respect of statements that are made in this place which adversely affect the reputation of a person such that he or she is injured in profession, occupation or trade, or in the holding of office, or in respect of any financial credit or other status, or that his or her privacy has been unreasonably invaded.

Only time will tell how onerous the responsibility will be, Mr President, but we as a Chamber and as a Legislative Council do repose trust and confidence in your judgment to ensure that this opportunity to have a correction incorporated in *Hansard* is not abused. Just as parliamentary privilege can be abused, so can the opportunity to have a retraction or submission published in *Hansard*. It is not beyond the realms of possibility that someone who has been quite properly traduced in this place and exposed for some fraudulent behaviour, or some other conduct that is contrary to the interest of the community, might seek to have incorporated in *Hansard* a retraction or submission so as to enable newspapers to give widespread dissemination to a false denial of the allegations made.

The responsibility, I regret to say, Mr President, as cast upon you will be heavy, but it is one that only time will tell whether it leads to a plethora of requests for the publication of corrections. It is interesting to note from information that has been furnished to me from the Clerk of the Senate that, between the end of February 1988 and 30 June 1996, the Senate received 27 requests to have a reply incorporated in *Hansard*. Of those, 22 replies were incorporated; five did not proceed because the persons concerned chose not to pursue the matter further; and in no case did the Committee of Privileges, which in the Federal Senate is the committee charged with the responsibility of considering these matters, refuse the request.

It was noted by the Clerk of the Senate that some editing or amending of submissions is almost invariably involved. I would have thought that that will be the case in this State, and I must say that I would earnestly hope that the editor's pen, in many cases, is applied wisely and appropriately. I do not believe that this sessional order should be the occasion for the incorporation in *Hansard* of longwinded explanations or justifications of conduct. If the record is corrected, that is sufficient. It is interesting to note also that the House of Representatives has passed a resolution establishing a procedure for citizens' replies. That was done in August 1997. It is similar to the procedure in the Senate which had operated for about nine years before that.

In the House of Representatives, on information earlier this year, I have been advised that three requests have been made for a reply to be incorporated in *Hansard* which had been considered by the Committee of Privileges and that all three had been refused. I would have thought that it is as likely as not that you, Mr President, in the exercise of the discretion cast upon you under this sessional order, on occasion, will have reason to refuse these requests. I think all members of Parliament will have experienced receiving communications from disaffected persons, and many of the communications are transparently self-serving and would not, on any view of the matter, warrant wider dissemination.

I commend this motion and, as with the Leader of the Opposition, I look forward to seeing, in the fullness of time, how this experiment works. I think it is a sensible first step. It is flexible. We will be able to adjust the procedure as matters develop over the course of time. I think the method adopted by the Attorney in relation to this proposed sessional order is to be preferred to the statutory model which had been proposed originally by the Hon. Terry Cameron. Notwith-

standing that, I think the spirit of the Hon. Terry Cameron's legislation is embodied in this motion, which I support.

The Hon. T.G. CAMERON: I have much pleasure in supporting this sessional order which is before the Legislative Council. There is a little bit of history in relation to where we are at the moment. My recollection of some of the events is that the Liberal Party Caucus declined to support sessional orders in the House of Assembly and the Legislative Council. I think that surprised and shocked everyone, except those who were part of the Liberal Party Caucus. As a result of that, I then moved a Private Member's Bill to provide for a right of reply or, as the Hon. Robert Lawson I suspect correctly points out, the opportunity to have a right of reply.

I have subsequently withdrawn that Private Member's Bill on becoming aware that the Attorney-General was moving to have the Legislative Council adopt sessional orders. I think that the members of the Liberal Party who are Legislative Councillors ought to be congratulated for their progressive attitude on this issue. It is in sharp contrast to the reactionary attitude that is being displayed by their colleagues in another place.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: I think the interjection from the Hon. Angus Redford is pretty well to the point. One of the pleasing things about the way in which this sessional order is being dealt with is that it is in a spirit of cooperation between the respective Parties and the Independents. I do not think that anyone opposes the sessional order, and I think that we all ought to give ourselves a pat on the back. This is a progressive move forward. It is something that is overdue. There have been movements in other State jurisdictions and in the Federal Parliament. I think all Legislative Councillors ought to be congratulated, particularly Liberal Legislative Councillors who have struck out and decided that, if their colleagues in another place do not have the courage or the will to embrace this opportunity for a right of reply, then so be it.

I have no doubt that the House of Assembly, in the not too distant future, will come into line with the progressive move that has been made by the Legislative Council, and I think this is a salutary lesson to some of those people in the other place who call for the abolishment of this place. They always talk about this place being reactionary and backward and what have you, but I am pleased to be able to say on this occasion that the Legislative Council is leading the way.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for the motion. As the Hon. Terry Cameron has said, we are fortunate to be able to deal with this on a bipartisan basis in this Chamber, and I appreciate that. I think, though, that there are many issues upon which we do act in a bipartisan way. We certainly have our contentious issues which we fight fiercely, but there are many areas where we can agree, and that enables us to take some very positive steps forward on a variety of issues. And this is one of them.

I do not think it is all that fair to be critical of the way in which the Liberal House of Assembly members dealt with the Standing Order amendment proposed by, I think, Mr Atkinson. When the House of Assembly was reviewing and passing its Standing Orders in November, a six line Standing Order was proposed to give aggrieved persons an opportunity to present a response to something which they regarded as prejudicial having been said about them in the House of Assembly. It caught everyone by surprise—and it is interesting, looking at the debate, that there was no outright rejection of the principle. There was concern about the way in which it had been sprung upon the House of Assembly without notice, and members who did speak indicated that they wished to have more time to consider the principle that was being proposed.

As the Hon. Mr Lawson says, this is not a right of reply as such, although it has been given that description. It provides an opportunity for a response but, importantly, it still remains very much under the control of the presiding officer and, ultimately, the Council. And that is as it should be, remembering that parliamentary privilege is special and is not something which ought to be available to non-members to use in a way which prejudices other citizens.

In his contribution the Hon. Mr Elliott expressed some concern about the requirement that the President give notice of any request that a reply be incorporated into *Hansard* to the member who in the Council referred to the person who makes the request—and I suppose one could call that person the complainant. In all those Houses of Parliament throughout Australia which have a procedure for a citizen's reply, the member who made the statement about which the citizen complains is given notice of the request either by the relevant committee of Parliament or by the presiding officer. That is regarded as a matter of common courtesy to the member.

If it is accepted that it is fair and reasonable to allow a person who considers that he or she is being defamed by a statement made under the protection of the absolute privilege of Parliament to have a reasonable response incorporated into *Hansard*, it would be completely against the spirit of the resolution for a member to pressure the President to suppress a reply. Further, it is difficult to see why any fair-minded member of this Council would want to pressure the President to refuse a complainant's request. As the response would be subject to parliamentary privilege, it could not be used in any court proceedings against the member. The member would have nothing to fear on that score—although, obviously, it will presumably gain some currency and publicity as a result of being given the protection of parliamentary privilege.

The publication of a reply would not represent in any way a judgment of the truth of any statement the member made in the Council or of the member's motives for making the statement. The President is expressly forbidden to judge the truth of any statement made in the Council or in the response. The procedure merely allows a person to have his or her version of the facts recorded in *Hansard*. Further, the limitations on what may be incorporated in *Hansard*, and when, shall ensure that the member does not feel any need to attempt to unfairly influence the President, if ever that was possible.

The safeguards include the fact that the President is required to refuse a request if the President is of the opinion that it is trivial, vexatious or offensive, or is not made in good faith, or if there is some other good reason not to grant the request. The response may be published only if it meets certain requirements as to the nature of the content. These requirements include, amongst other things, that the response must not unreasonably adversely affect or injure any person; it must not unreasonably invade any person's privacy; and it must not unreasonably aggravate any adverse effect, injury, or invasion of privacy suffered by any person—including, of course, the member of the Council who made the original statement in the Parliament.

On the other hand, it may be quite appropriate for the member concerned to draw to the attention of the President some facts or circumstances that may be relevant to the President's decision in the same way as the complainant may do. It is really a matter of establishing a procedure that is fair to the complainant, the member and the Council, and ultimately recognising that the public interest is of paramount importance. I believe that the procedure which is laid down in the sessional order will achieve this.

I think it is also fair to say that the President is in, potentially, an invidious position. It is important for the President to have all proper input to the issue before making a decision as to whether or not a statement should be allowed to be included in *Hansard*, with the benefit of absolute privilege that that brings and, if so, what the form of that statement should be.

I again thank members for their indications of support. I hope that there are not many occasions when the sessional order has to be used, but when it is used it will give us an opportunity to assess its efficacy and then review it at the commencement of the next session with a view to determining whether or not we will maintain that procedure, if only as a sessional order for the ensuing session.

Motion carried.

SECOND-HAND VEHICLE DEALERS (COMPENSATION FUND) AMENDMENT BILL

Returned from the House of Assembly without amendment.

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

That, in view of the decision of the House of Assembly to treat the Council's suggested amendments in the Bill as substantive amendments, the Council confirms its suggested amendments as amendments.

It is fair to identify to members of the Council why I think the motion is necessary. This Bill started its life in the House of Assembly as a private member's Bill. The advice given to the Government was that it was a money Bill, that it should therefore have been introduced only by a Minister and should have been accompanied by a Governor's message. The House of Assembly chose not to regard it as a money Bill, which meant that in the view of the House of Assembly it was not necessary for the Bill to be introduced by a Minister and no Governor's message was required. Because of the advice which the Government received, a Government Bill was introduced in a form with which this Bill now conforms but, because of difficulties with numbers, that was unable to pass, but a Governor's message was provided to cover that Bill which also covered the Bill that is now before us.

When this Bill came to the Council, it was the subject of some substantial amendments. Because the Government believed it was a money Bill, the amendments were proposed as suggested amendments, which is the normal course when dealing with a money Bill. The House of Assembly has chosen to disagree with the Legislative Council in respect of those amendments and has chosen to deal with them as though they were amendments. The difficulty as I see it is that the Council has dealt with those amendments only as suggested amendments. The only way that we can effectively affirm our position to ensure that no-one challenges later the validity of the Bill, because of the amendments, is to pass this motion.

That may be seen as a backdown by the Council. On the other hand, if one looks at it objectively, one can see that it is actually the House of Assembly that is losing. We were deferring to the House of Assembly in respect of what we believed was a money Bill. That the House of Assembly has chosen not to regard it as a money Bill means that, at least in theory, if not in practice, it extends the power of the Legislative Council and, if a Bill such as this comes up again in the future, we will introduce it in the Legislative Council, it will not be a money Bill and we will be on our merry way. The House of Assembly might have shot itself in the foot.

The Hon. T.G. Roberts: Could we move amendments to reject it?

The Hon. K.T. GRIFFIN: That is an interesting possibility. Whatever the position might be, I thought it was important to explain to the Council how this came about. I think that the motion that I have moved will overcome it. It is a unique procedure, but I think that it will effectively resolve the issue so far as the Council is concerned. We will wait to see what the future holds for us in relation to these issues but it raises some important constitutional questions which, on this occasion, notwithstanding the disagreement of the House of Assembly with the way in which we have dealt with it, is a decision that favours the Legislative Council.

The Hon. CARMEL ZOLLO: I indicate that the Opposition agrees with the Attorney-General's motion.

Motion carried.

EVIDENCE (CONFIDENTIAL COMMUNICATIONS) AMENDMENT BILL

The House of Assembly agreed to the Bill without any amendment.

EVIDENCE (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the Bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1 Clause 5, page 2, lines 17 to 26—Leave out subsections (4) and (5) and insert:

(4) If unsworn evidence is given under this section in a trial by jury, the judge—

(a) must explain to the jury the reason the evidence is unsworn; and

(b) may, and if a party so requests must, warn the jury of the need for caution in determining whether to accept the evidence and the weight to be given to it.

No. 2 Clause 9, page 3, lines 13 to 16—Leave out subsection (1a) and insert:

(1a) A person may only act as an interpreter—

(a) if the person takes an oath or makes an affirmation to interpret accurately; and

(b) in a case where a party to the proceeding disputes the person's ability or impartiality as an interpreter, if the judge is satisfied as to the person's ability and impartiality.

Consideration in Committee.

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

That the amendments be agreed to.

These amendments were moved by the Minister representing me in the House of Assembly. The first amendment relates to the provisions of clause 5. As it presently stands, clause 5, subclauses (4) and (5), have the combined effect of preventing conviction upon the basis of unsworn evidence alone in the case where an accused gives evidence denying the offence. That is, the Bill provides that by definition there

must be a reasonable doubt about the reliability of such evidence.

However, on reflection, the Government is persuaded that it should be a matter for the jury to determine in a particular case whether a reasonable doubt exists. Rather than making it impossible to convict in such circumstances, the Bill should be amended to provide for a warning to the jury. The judge should explain to the jury why it is that the witness has given evidence without the formality of an oath or affirmation. This may involve reference to the witness limitations of understanding. Further, it is appropriate to provide that the judge may and if requested to do so by either party must warn the jury of the need for caution in determining whether to accept the evidence and the weight to be attached to it.

In many cases if there is no evidence, apart from the evidence of a witness who labours under a defect of understanding, the jury may not be persuaded beyond reasonable doubt of the defendant's guilt. However, in some cases it is possible that, despite the witness defect of understanding, his or her evidence may suffice to convince the jury to the necessary standard, and in those cases a conviction should be possible. This provision is not intended to codify the law in relation to the warning to be given or to prescribe its form. The scope and content of the warning will be in all cases a matter for the trial judge.

The common law clearly shows that the nature and strength of the warning required will depend on the circumstances of the case. In some matters, no more will be required than an appropriate comment from the judge to remind the jury of considerations which are relevant to the evaluation of the evidence. In others, a more detailed warning will be needed. The important thing is that matters requiring caution such as a limitation on the witness understanding be adequately brought to the attention of the jury in order that the risk of any miscarriage of justice is avoided. Of course, the common law dictates that a warning must always be balanced. This will remain the case regardless of which party requests the warning or whether the judge gives the warning without being requested to do so. If no party requests such a warning and the judge does not consider a warning necessary then no warning need be given.

One can anticipate that, in practice where crucial evidence has been led from a witness who lacked the capacity to give formal evidence and so gave evidence unsworn, a party may well request a warning. In that case it must be given. If no party requests it but the trial judge nevertheless considers a warning appropriate, the judge is of course still at liberty to warn the jury as he or she sees fit.

The purpose of the warning is to make sure that the jury is aware of the limited understanding of the particular witness and takes proper account of this in assessing the evidence. In this way any possible miscarriage of justice which might result from the jury not properly considering the witness defect of understanding will be avoided.

The second amendment concerns clause 9 which deals with interpreters. The amendment does not alter the basic effect of this clause which is to make clear that in the case of an interpreter the important thing is the person's ability to interpret accurately between the witness and the court in absence of any partiality which might affect the interpretation. It is to this that the court's attention is directed when swearing the interpreter rather than to his or her cultural and religious beliefs, as in the present Act.

The amendment however removes any suggestion which might have arisen from the Bill's present form of wording that the court must in every case examine the interpreter's skill and impartiality before permitting him or her to interpret. It makes clear that an interpreter will be treated as competent to interpret unless a party raises this issue. If a party does suspect that an interpreter lacks the necessary skill and knowledge to interpret or is biased that party may raise the issue whereupon the court must satisfy itself on these points. The amendment is a clarification. I commend it to members.

The Hon. CAROLYN PICKLES: The Opposition supports the motion.

The Hon. IAN GILFILLAN: I support the motion. Having had a moment or two to think about the explanation that the Attorney has given it appears to me that it may be better that the judge has an obligation to explain or to give a warning under all circumstances. It seems to me to be a very fine line to draw that the judge is obliged if either the defence or prosecution request it or on their own volition they decide to inform the jury. I will not seek to further amend the Bill at this stage but I fail to see why the extra dimension was not given to it because it seems to me to be a reasonable thing to impart to the jury.

As I understand it, where a person gives unsworn evidence under clause 9 the judge must explain the reason for this to the jury: that is an obligation. I do not understand why there should not be a similar obligation to give the warning and caution in the terms that the judge sees fit as a matter of due process where unsworn evidence is received by the court.

The Hon. K.T. GRIFFIN: There are two aspects to the motion. One is that if unsworn evidence is given then the judge must explain to the jury the reason why the evidence is unsworn. The warning is discretionary unless a party requests it, and then the judge may still warn the jury of the need for caution. I do not have all the answers on this right now. I am happy to pursue it further in correspondence, if necessary.

It was a late amendment only because it was raised by, I think, the DPP. However, there was consultation at least with the DPP and the judges and the form of words which is now in the amendment was acceptable to both. That is as far as I can really take it. I am happy to identify that for my officers and I will pursue it with a letter to the honourable member. If he wants to take it further we can do it even though the legislation will be in force.

The Hon. IAN GILFILLAN: I thank the Attorney for that undertaking. I re-emphasise that I believe that this amendment will expose the alleged offender to conviction on unsworn evidence alone which is, in my view, quite a substantial expansion of the importance and significance of unsworn evidence. The Attorney's offer to share with me and no doubt others who may be interested the background to the wording of this amendment is satisfactory and in particular the undertaking of the Attorney that, if need be, it can be proceeded with further down the track. Under those circumstances I indicate our support for the motion.

Motion carried.

CONSTITUTION (CITIZENSHIP) AMENDMENT BILL

Second reading.

The Hon. A.J. REDFORD: I move:

That this Bill be now read a second time.

The Hon. CAROLYN PICKLES: I rise on a point of order, Mr President. I understand that this Bill is such that it

comes within section 8 of the Constitution Act, which provides the following:

> (a) it shall not be lawful to present to the Governor, for His Majesty's assent, any Bill by which an alteration in the constitution of the Legislative Council or the House of Assembly is made, unless the second and third readings of that Bill have been passed with the concurrence of an absolute majority of the whole number of the members of the Legislative Council and of the House of Assembly respectively.

Secondly, Standing Order 279 of the Council provides:

> If any Bill received from the House of Assembly be a Bill by which an alteration in the constitution of the Council or House of Assembly is made, the Council will not proceed with such Bill unless the Clerk of the House of Assembly shall have certified upon the Bill that its second and third readings have been passed with the concurrence of an absolute majority of the whole number of the members of the House of Assembly.

Will you, Sir, please advise whether the Council can proceed with this Bill in view of section 8 of the Constitution Act and Standing Order 279 of this Council?

The PRESIDENT: On the point of order raised by the Leader of the Opposition, I make these points. This Bill does not bear the Clerk of the House of Assembly's certificate. The question is: does this Bill make an alteration in the constitution of the Legislative Council or House of Assembly? This Bill seeks to render a person incapable of being chosen or of sitting as a member of the Legislative Council or the House of Assembly if the person is a subject or citizen of a foreign State or power or is under acknowledgment of allegiance to a foreign State or power. The following precedents have been established in this Council:

(a) The Affirmations Bill in 1896 was ruled as one altering the constitution of Parliament in that the two Houses were in future to be constituted of members who have not sworn the Oath of Allegiance or who were not in 1856 permitted by law to affirm or have affirmed.

(b) The Constitutional Amendment Bill in 1894, which gave women the right to vote, was required to be passed by an absolute majority of the whole number of members of the Legislative Council and the House of Assembly respectively. (This Bill contained a clause which stated 'Women not to be entitled to sit in Parliament' which was defeated.)

(c) In 1959 an amendment was made to the Constitution Act requiring an absolute majority as it made express provisions that women were not disqualified by reason of sex or marriage from being elected to or sitting or voting as members of either House of the State Parliament.

The High Court of Australia had construed the expression 'constitution of a Legislature' as it appeared in the Colonial Laws Validity Act of 1865 as being synonymous with its 'composition, form or nature'.

In *Clydesdale v. Hughes* 1934, the validity of the Western Australian Constitution Acts Amendment Act 1933 was questioned. This legislation was enacted to resolve the situation where a member of the Western Australian Upper House had taken his seat in the House whilst a member of the Lotteries Commission. In the meantime, the Constitution Act Amendment Act 1933 was passed, enacting that no disability, disqualification or penalty should be incurred by a person then both a member of Parliament and a member of the Lotteries Commission by reason of having accepted or continuing to hold the office of a member of the commission.

The second and third readings of this Bill did have the required absolute majorities of the members of the respective Houses of Parliament. However, it was submitted that the Bill lost its identity because of amendments in the Legislative Council, and it therefore needed a new introduction into the Assembly and another passage at its second and third readings by an absolute majority.

The High Court held that the requirements of section 73 of the Constitution Act were complied with and the legislation did not effect a change in the constitution of the Legislative Council. In *WA v. Wilsmore* 1982, a person being detained in custody after a charge of murder alleged that section 7 of the new Electoral Act Amendment Act disqualified him from being enrolled as an elector or, if enrolled, from having a vote at any election whilst detained in custody.

Wilsmore alleged that section 7 of the amending Act is a provision that purports to effect a change in the constitution of the Legislative Council and of the Legislative Assembly within the meaning of section 73 of the Western Australian Constitution Act and that, since the third reading of the Bill was passed in the Legislative Assembly without the concurrence of an absolute majority of the whole members for the time being of the Legislative Assembly, it was not lawful for the Bill to be presented to the Governor for Her Majesty's assent. Wilson J said:

> . . . It is therefore unnecessary for me to deal with the second principal issue in the case, namely, the meaning of the phrase 'the constitution of the Legislative Council and the Legislative Assembly'. Nevertheless, I would say this. In my opinion, the judgment of this court in *Clydesdale v. Hughes* is clear authority, unless and until it is reversed or departed from by this court, for the proposition that a law which merely changes the qualifications of members of the Legislative Council does not effect a change in the constitution of that body within the meaning of section 73 of the 1889 Act. When such an authority has guided the law-making procedures of the Parliament for almost 50 years then any departure from it would require very serious consideration.

The Bill before us, in my opinion, if based on earlier rulings of the Legislative Council, would be considered to be a Bill which alters the constitution of the Houses of Parliament. However, because of the recent decision of the High Court in relation to these two cases, I would have to rule that this legislation involving disqualification of persons from being considered as members of Parliament is now no longer considered to be that which falls within the purview of section 8 of the Constitution Act. I therefore rule that this Bill does not require an absolute majority on the second or third reading.

The Hon. CAROLYN PICKLES: I thank you, Sir, for your ruling. I can only say that sometimes the High Court does not always rule correctly. If we had gone by all the previous four precedents, we would have been ruling this out of order.

The Hon. A.J. REDFORD: This is not a Bill which concerns the general public: it is a Bill which concerns only the 47 members of the House of Assembly and the 22 members of the Legislative Council of the State Parliament of South Australia. This Bill, if passed, will require members of the South Australian Parliament to have the same citizenship status as members of the Commonwealth Parliament. In simple terms, it requires South Australian members of Parliament to take reasonable steps to renounce any citizenship or allegiance to a foreign power if they wish to have the privilege of serving in this Parliament. It will apply if it is

enacted only to the 69 members of the State Parliament. It will not apply to the general public.

This Bill is not an attack on multiculturalism, as some critics have said: it is a measure to promote multiculturalism. There is a difference between multiculturalism, which all members support regardless of which Party they belong to, and the notion of multicitizenship. The aim of multiculturalism is to accept people, regardless of background, to share with each other different cultures in the context of and to promote one Australian community.

I have no problems with the average citizen who does not hold public office holding more than one citizenship. However, I believe that people who represent the public interest in Parliament should not have dual citizenship.

The Bill obviously will also apply to any candidate seeking to be a member of Parliament. The Bill does not prevent anyone from being a member of Parliament: it simply requires them to make a commitment to Australian citizenship first and foremost. It does not require them to renounce their nationality, their ethnicity or their beliefs or customs—not their allegiance to a foreign power. Indeed, a simple paragraph in the nomination form for Parliament can be inserted by the Electoral Commissioner which simply states that an individual seeking office renounces any other citizenship and that, further, will remind candidates of their obligations. The aim is to promote Australian citizenship.

I considered during the course of the Committee stage that I might introduce an amendment to the Bill as received from the House of Assembly so that it becomes consistent with the Bill as originally introduced by the member for Hartley, Joe Scalzi. During the course of the debate in the other place, the Bill was amended so that existing members of Parliament are to be exempt from this proposal. I must say it is my view that if the principle behind the Bill is important enough for future members of Parliament, we should not apply a double standard and exempt ourselves.

However, as a result of events which occurred this morning in the other place, I should consider the position and discuss the effect of any such amendment with the mover of the Bill before I commit myself to attempting to revert the Bill to the same form in which it was originally introduced, that is, to include the requirement that existing members of Parliament be obliged to comply with this proposal.

There are in Australia 750 000 permanent residents who are not Australian citizens. That is three-quarters of a million people out of a population of 18 million. Indeed, the slowest take-up of citizenship are New Zealanders, followed by British subjects. I believe that is a problem which needs addressing, and a good place to start is by all of us in this Parliament collectively setting an example.

We are all aware that if we were members of Parliament in Canberra many of us would have some difficulties. The Commonwealth Constitution does not allow Federal members to hold dual citizenship. Some members in this Parliament would be disqualified from holding Federal office. Members would all be aware of the Cleary case and the case of Heather Hill, who is now known as the Senator from Queensland who represents two nations.

It is quite clear from an article in the *Advertiser* of 21 November 1998 that One Nation admitted that Senator elect Heather Hill did not renounce her British citizenship, which made her ineligible to take a seat. We should not have those inconsistencies between Federal legislation and the State legislation. This Bill aims to clear that up and make clear the commitment of members of this State Parliament to Australian citizenship. We cannot have two laws—one in Canberra and one in South Australia—for members of Parliament. It is inconsistent and incongruent and must be dealt with, and this Bill does that.

There are members in both the House of Assembly and the Legislative Council who have dual citizenship, as I said earlier. Members on both sides of the House have held dual citizenship. For example, the former member for MacKillop (Hon. Dale Baker), who was also Leader of the Opposition at one stage, had dual citizenship. We are also aware that the present Leader of the Opposition, on 5 May 1994, interjected during the member for Spence's speech and said that he held three citizenships. Indeed, he said on 10 December 1998:

> I am not a dual citizen: I am a triple citizen.

As I said, I do not wish to judge any present member, but it is a problem when our law is inconsistent with Federal law and when we have a Leader of the Opposition who has more than one citizenship.

In the United States, you cannot have dual citizenship, let alone stand for Congress. If you were not born in the United States you cannot become President. That country is a great democracy, as is Australia. However, Australia does not put any obstacle in the way of any member or citizen. Regardless of where they were born, they can stand for the highest office. We should value our democracy and our citizenship.

I often hear the present Leader of the Opposition criticise this Government in respect of dealing with foreigners. An example is when he talked about United Water, which involved British and French interests. The Leader of the Opposition should not have a conflict of interest but, if he has dual citizenship, he gives the appearance of representing other places as well. Indeed, there is an appearance—

The Hon. Carolyn Pickles: That is the most pathetic line I have ever heard.

The Hon. A.J. REDFORD: The honourable member obviously has a problem with this Bill, given her interjection.

The Hon. Carolyn Pickles: It's racist.

The Hon. Carmel Zollo: We live in a multicultural society, in case you had not noticed.

The ACTING PRESIDENT (Hon. T. Crothers): Order! I ask the speaker to ignore the interjections and to address himself to the debate.

Members interjecting:

The ACTING PRESIDENT: Order! I ask the interjectors to cease.

The Hon. A.J. REDFORD: I would ask that the Leader of the Opposition withdraw that comment because, in referring to this Bill as being racist, she is claiming that the Federal Parliament and the Federal Constitution are racist.

The ACTING PRESIDENT: Who is being racist?

The Hon. A.J. REDFORD: The honourable member described this Bill as being racist, and I would suggest that that is a reflection upon our Federal Parliament.

The ACTING PRESIDENT: No, I do not uphold the point of order. The honourable member has not vilified any individual or indeed any collective group of individuals.

The Hon. A.J. REDFORD: As I said earlier, at present in Australia 750 000 permanent residents are not Australian citizens. In some cases it is not all their doing because prior to 1984 a British subject could get on the electoral roll after three months. They could vote at State and Federal elections. Prior to 1984 a lot of people were able to do that, but since then they have not been able to. We should make an effort to encourage people to become Australian citizens by setting an

example. At present we also have the farce that a person who is not an Australian citizen can vote in an election, be elected to council, or be elected as a mayor and officiate at an Australian citizenship ceremony.

As we move towards the year 2000 and the Centenary of Federation, we should make an effort—and this applies to all members on both sides of the Chamber—to promote Australian citizenship. I was pleased when the member for Lee supported Mr Scalzi's motion earlier this year, and I trust that members opposite will do likewise and support this Bill. As members of Parliament we can show leadership in valuing Australian citizenship. We cannot celebrate the Centenary of Federation without encouraging those people to become Australian citizens. As I said earlier, this Bill does not and will not disadvantage the general public. This Bill concerns only those members of Parliament who have a public duty to represent the people of South Australia. It does not affect the general public—

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: Well, the honourable member is not doing a bad job in undermining her, is she? As Australians and as members of Parliament, our commitment to an Australian—

The Hon. Carolyn Pickles: I would much rather swear allegiance to a president.

The Hon. A.J. REDFORD: That is the honourable member's choice, and as part of that she might also be willing unilaterally to hand in her British passport. I am sure that—

The Hon. Carolyn Pickles: I have never had a British passport in my life.

The ACTING PRESIDENT: Order! This is not in accordance with the substance of the Bill. I ask the Leader of the Opposition to cease.

The Hon. A.J. REDFORD: Thank you for your protection, Mr Acting President—

The ACTING PRESIDENT: For the interjectors as well, thank you, Mr Redford.

The Hon. A.J. REDFORD: One has to consider the conflicts which arise out of dual citizenship. More than ever, we as members of Parliament are asked to deal with situations arising from international forums affecting our State. I ask: how can we morally do this job properly if we hold allegiance to another country? The commitment should be to Australian citizenship, and that should be foremost. Often we talk about conflict of interest in respect of people holding shares, chairmanships and so on, but we as members of Parliament do not mention our allegiance to other countries. We have to put in a pecuniary interest return stating what we owe, what we own and to whom we belong.

As members of Parliament our commitment to Australian citizenship should be beyond question. Other countries do not allow dual citizenship and, as I said earlier, I have no problem with that. This is only for members of Parliament. This Bill is not a Party issue: it is about showing commitment to Australian citizenship. It is not a Party political matter—

The Hon. Carmel Zollo: We are Australian citizens.

The Hon. A.J. REDFORD: I would have to say to the Hon. Carmel Zollo that, if the Right in some fluke decided to get an extra position in Federal Parliament and preselected the honourable member, she quickly would be writing to the Italian consulate and renouncing any allegiance to her Italian birthright. I have no doubt that she would do so. I note that some of her colleagues are nodding vigorously. The honourable member ought to look around and see what some of her colleagues are doing in response to some of her interjections. This Bill is not a Party issue; it is about showing commitment to Australian citizenship. It is not a Party political matter—

The Hon. Carmel Zollo interjecting:

The ACTING PRESIDENT: I ask the Hon. Ms Zollo to come to order. If the honourable member has objections to the comments being made—

The Hon. Carmel Zollo interjecting:

The ACTING PRESIDENT: Listen to me, please, when I am talking. If the honourable member has objections that she wishes to raise with respect to the comments of the present speaker, she may use the Standing Orders and its provisions at the Committee stage of this Bill to make her point. I ask the honourable member to cease.

The Hon. A.J. REDFORD: Thank you for your protection, Mr Acting President. I would be very disappointed if members opposite are not able to exercise their conscience on this issue. Without commitment, especially by the nation's leaders and members of Parliament, we have no foundation for the future of Australia because we need a vision that promotes diversity, regardless of from where we come, and we must put it together in one community. I commend the Bill to the Council. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1: Short title

Clause 2: Commencement

The measure will come into operation 14 days after the day on which the House of Assembly is next dissolved, or next expires, after assent.

Clause 3: Vacation of seat in the Legislative Council. The clause amendments the principal Act so that a member of Parliament who is a subject or citizen of a foreign state or power, or has an allegiance to a foreign state or power is incapable of being chosen or of sitting as a member of the Legislative Council. This provision can be compared with section 44(I) of the Commonwealth Constitution Act.

Section 3 states that it does not apply to a person who has taken reasonable steps to renounce foreign citizenship or any allegiance to a foreign state or power.

Section 4 (2) does not apply to a person who has been a member of the Parliament of South Australia at any time before the commencement of the Constitution (Citizenship) Amendment Act 1998.

Section 5 The seat of a member of the Legislative Council who has been a member of the Parliament of South Australia at any time before the commencement of the Constitution (Citizenship) Amendment Act 1998 is not vacated because the member acquires or uses a foreign passport or travel document.

Clause 4: Vacation of a seat in the House of Assembly.

Sections 2, 3, 4 and 5 deal with the same in the House of Assembly.

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

MEMBER'S REMARKS

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a personal explanation.

Leave granted.

The Hon. CAROLYN PICKLES: The Hon. Mr Redford, during his contribution, said that maybe I would want to give up my British passport. I want to make it perfectly clear that I have only ever held an Australian passport.

WINGFIELD WASTE DEPOT CLOSURE BILL

Returned from the House of Assembly without amendment.

LISTENING DEVICES (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly with amendments.

COLLECTIONS FOR CHARITABLE PURPOSES (DEFINITION OF CHARITABLE PURPOSE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 March. Page 898.)

The Hon. R.I. LUCAS (Treasurer): On behalf of the Government, I indicate our support for the proposition. Based on advice from my department, I was in the process of having a Government Bill drafted to achieve broadly similar purposes when the member for Torrens introduced this Bill in another place. Being the ever generous Treasurer that I am, and certainly not wishing to have my place in the sun in relation to this issue, I am happy to see the matter achieved through a private member's Bill, and I indicate the Government's broad support for the proposition.

I believe that the Government's proposal was to be slightly broader, from my recollection. However, at this stage of the parliamentary session I will not delay the proceedings of the Chamber by seeking to move amendments and having the Bill shuffled backwards and forwards between the Houses. If at some later stage the Bill is further amended, the Government will look to incorporate the slightly broader amendment that it had contemplated.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: No, that is a separate issue. In relation to this specific amendment there was to be a slightly broader definition of 'charitable purpose'. We support the second reading.

The Hon. CARMEL ZOLLO: I support this Bill, which originated as a private member's Bill from the member for Torrens in the other place. Like all members on this side, I know of her strong interest in relation to the exploitation of young people that has occurred with collections for charities and the sale of goods and services door to door. The member for Torrens has spoken of her concern for many years and, I understand, at one stage had her own Bill prepared.

As a parent I have often been dismayed to find young children at my door (and previously in the workplace) with baskets of sweets, looking very anxious as they do their spiel, as it were. I have always been of the opinion that any adult who needs to earn their living in such a manner does not share my values. I understand that this amendment attempts to regulate those people who, on behalf of certain organisations, collect for animal welfare programs. I certainly see the need to ensure that, in all circumstances, collection agencies are responsible to the organisation that is sponsoring them and for donors to be reassured that the money they donate will go to the organisation that has been registered and is shown on the licence number, or the name of the individual who is collecting.

Since being in this place, several constituents have raised with me the problem of young children supposedly collecting both door to door and in shopping centres for a particular animal welfare program, and then the donors find that this was not the case. I am pleased that this amendment Bill, which now includes animal welfare, will provide for the security that the public should deservedly ask for when donating their money. I support this legislation.

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

NURSES BILL

The House of Assembly agreed to amendments Nos 1 to 8 and 10 to 36 made by the Council without any amendment and disagreed to amendment No. 9 as indicated in the following schedule:

No. 9 Page 4, line 24 (clause 5)—Leave out subclauses (2) and insert new subclause as follows:

(2) At least six members of the board must be women and at least one member of the board must be a man.

Consideration in Committee.

The Hon. DIANA LAIDLAW: I move:

That the Legislative Council do not insist on its amendment.

When accepting this amendment earlier, I indicated that I had some misgivings because I was concerned that, in traditional areas of employment where there is a majority of men, I was loath to see this Parliament forced into a position where it would have to say that the majority of members of that committee or board had to be men because of tradition, precedent or practice. I have moved this motion on the understanding that the Minister will be exemplary at Cabinet and all other levels in promoting women to boards and committees.

The Hon. P. HOLLOWAY: I believe that the House of Assembly has acted with great wisdom in rejecting this provision. The Minister said that she had misgivings about it, yet she voted for it. I think that needs to go on the record. The less said about the history of this amendment, the better. Let us just be thankful that the House of Assembly has acted with wisdom—

The Hon. R.R. Roberts: On this rare occasion.

The Hon. P. HOLLOWAY: Yes, on this rare occasion. The Opposition supports the motion.

Motion carried.

ADJOURNMENT

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

That the Council at its rising adjourn until Tuesday 25 May 1999.

Whilst we await the speedy passage of the message from the Legislative Council to the House of Assembly on the Nurses Bill I will speak briefly to the adjournment motion. Mr President, thank you for your patience with all members in the Chamber. I also thank Jan, Trevor and the table staff, *Hansard* and other parliamentary staff, the attendants and the rest of those who help to make our task so much easier in the Parliament during what can be busy periods.

I invested a little bit of my hard-earned money with my colleague, the Government Whip, on the chance that we would have a relatively early evening. Sadly, I missed out by 37 or 38 minutes and will have to pay up over the break.

Members interjecting:

The Hon. R.I. LUCAS: The back bench prevails. I suspect that there might have been some skulduggery and that some people might have been on commission on the Nurses Bill, which did seem to go around 40 minutes longer than it might otherwise have gone. It will cost me a little bit of money but nevertheless it is not a bad hour to be finishing this parliamentary session.

As well as the staff I thank all members and the three Whips, in particular George and Caroline, who carry the great weight of trying to organise the proceedings of the Council. It has become more complicated with not now three Parties but five individual groups in the Chamber, and it was more difficult to organise the whipping and the order of business in the Legislative Council, but generally it worked very well. I thank the Whips for their contribution. I thank the Leader of the Opposition, Mike Elliott and the two Independents—the Hon. Nick Xenophon and the Hon. Terry Cameron—for their willingness to cooperate and work together in managing both Government and private business as expeditiously as possible.

During the coming break I understand that the Standing Orders Committee will have an opportunity to put its stamp on the revised Standing Orders. A lot of work has been done by the parliamentary staff on this issue and we hope to be able to resolve it during the coming parliamentary break. I also indicate that it might be useful before we head into the next session to discuss how members in the Chamber might suggest improvements to the handling of Government and private members' business now that we are—

The Hon. T. Crothers interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Crothers has a novel suggestion: I am not sure whether I should agree with it. It depends on who the remaining one happens to be, Mr Crothers. Now that there are five groups it makes the handling of the proceedings more difficult. If there are suggestions as to how we can improve cooperation to manage the program of the Council the Government will be happy to enter into those discussions. I wish members well in the work that they will undertake of a different nature between now and when we meet again at the end of May.

The Hon. P. HOLLOWAY: On behalf of the Opposition I concur with the remarks of the Treasurer. I would like to thank you, Mr President, and all the members of the Council for their cooperation over the past few weeks. I particularly thank the Whips for organising the business of the Council and the table staff, attendants, *Hansard*, catering staff, building attendants and everyone in the building who assists us and makes this place operate so successfully. It has been a fairly short few weeks but it has been particularly busy. I hope that all members will have an enjoyable and perhaps a little less hectic period before we resume for the budget in May.

The Hon. M.J. ELLIOTT: On behalf of the Democrats I want to thank you, Sir, for the role that you play in this place. I thank *Hansard*, the table staff and the messengers and wish them well over the next two months when we are away from this Chamber.

The PRESIDENT: I thank the Treasurer, the Hon. Paul Holloway and the Hon. Mike Elliott for their kind words to me and Jan, Trevor, Chris, Noelene, Margaret, Graham, Todd and Ron. On their behalf I also thank you for your kind words about the table staff and what they do for us.

I also thank the Whips, Caroline Schaefer and George Weatherill, and my informal deputies, John Dawkins and Trevor Crothers, for filling in at very vital times and doing such a good job. I apologise for my being cross last Thursday. When I entered the Chamber, I did not acknowledge the members and rushed into prayers. However, it raised a good point that procedural matters which need the attention of our Clerk, Jan, perhaps ought to be dealt with prior to the last minute when we are trying to gather in the Chamber when the bells are ringing.

Quite often the bells ring for a lot longer than five minutes, and perhaps sometimes those in the other House might listen, time it and think, 'They get a long time with their bells.' I had a bright thought a minute ago that, emanating from some of today's activities and what normally happens in the last week of a session, perhaps following prayers we ought to take five minutes of networking so that everyone can talk to each other and work out what will happen for at least some of the day on that last Thursday when we do not have any Party meetings or gatherings together.

The great public out there think that we are now on holidays until the end of May. However, we know that that is not the case, but I do hope that wherever the next couple of months might take members it is productive and that you all charge the batteries ready to come back and do battle again.

Motion carried.

At 12.45 a.m. the Council adjourned until Tuesday 25 May at 2.15 p.m.