# LEGISLATIVE COUNCIL

**Tuesday 9 November 1999**

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

## QUESTIONS ON NOTICE

**The PRESIDENT**: I direct that written answers to the following questions on notice be distributed and printed in *Hansard*: Nos 3, 25, 42, 44 and 46.

### YATALA LABOUR PRISON

3. **The Hon. T.G. CAMERON:**

1. Why have the 'hanging points' in cells at Yatala Prison not been removed or minimised as recommended by several previous State Coroner's inquests following the State Coroner's recent findings into the suicide of a prisoner in Yatala's B Division on 27 June 1998?

2. How many prisoner suicides have occurred by means of hanging or otherwise at Yatala during the last four years?

3. What actions have been put into place at Yatala Labour Prison to ensure further suicides are prevented, considering the government's duty of care responsibilities?

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

1. Why have the 'hanging points' in cells at Yatala Prison not been removed or minimised as recommended by several previous State Coroner's inquests following the State Coroner's recent findings into the suicide of a prisoner in Yatala's B Division on 27 June 1998?

In accordance with the Coroner's recommendation the 'hanging points', caused by the exposed air-conditioning ducts in the lower west unit of 'B' Division, totalling 27 cells, have been fully enclosed. A further 13 of 25 remaining cells in the eastern unit have also been attended to.

Work on the remaining cells within 'B' Division was suspended to accommodate prisoners who would otherwise have been held at either Adelaide Remand Centre or Mobilong Prison whilst major works were undertaken at both those facilities.

The remaining cell renovations will recommence in October 1999.

Prisoners assessed at risk of self harm but who are considered suitable for accommodation in 'B' Division, are placed in one of the cells which has been renovated.

2. How many prisoner suicides have occurred by means of hanging or otherwise at Yatala during the last four years?

There has been one suicide at Yatala Labour Prison in the four years commencing 1 January 1996.

3. What actions have been put into place at Yatala Labour Prison to ensure further suicides are prevented, considering the government's duty of care responsibilities?

The Department for Correctional Services is continually seeking to improve programs to prevent suicide within the State's prisons. Strategies undertaken at all prisons including Yatala include:

- screening processes, upon admission, for all prisoners to identify those 'at risk' and induction programs at each location;
- prisoners identified 'at risk' are seen by medical, psychological and social work staff trained in crisis management in relation to self-harm and minimisation factors. If necessary, the prisoner is transferred to medical facilities or to locations for safe observation via staff and cameras and for ongoing therapeutic intervention;
- peer support programs are available, providing ongoing support from other prisoners;
- where possible 'at risk' prisoners are accommodated in locations where they can receive ongoing support from trusted peers;
- the introduction of case management to provide ongoing support through the assignment of individual prisoner case officers. This process follows the prisoner when released to the community to provide continuity of service and support. Case management ensures that prisoners are regularly monitored and their progress is reviewed and assists in the early identification of 'at risk' prisoners. Greater emphasis is placed on family and visiting supports to ensure that the isolation of prison is minimised;
- management developed and implemented plans for 'at risk' prisoners in partnership with other agencies such as SA Forensic Health Services, James Nash House and the Aboriginal Advisory Committee;
- the provision of self-harm and suicide risk management training for all custodial officers in their initial induction phase. Other training is provided directly by the Director of James Nash House and by departmental officers in partnership with the Intellectual Disability Services Council; and
- the regular monitoring of all departmental strategies to minimise self-harm.

In 1996 E Division was established as the Reception, Induction and Assessment Unit where all prisoners are, upon admission, interviewed by trained staff who take into consideration such issues as the risk of suicide. Prisoners deemed to be at risk are examined by a medical officer and are placed on an appropriate management regime and accommodated accordingly.

In addition, all new admissions are monitored very closely by their case officer for unusual and/or depressive behaviours during the first 7 days of their sentence.

Yatala Labour Prison Local Operating Procedure No. 17, issued on 16 March 1998, deals specifically with 'Prisoners Displaying Physical or Mental Stress'. The document is currently under review.

### TRANSPORT SA BROCHURE

25. **The Hon. T.G. CAMERON:**

1. How much in total was spent to produce the Transport SA brochure entitled 'Country Driving Hints—Your Guide to Safe Travel'?

2. Who printed the brochure?

3. How many were printed?

4. Where are they available?

5. Will they be available at country petrol stations and rest stops?

**The Hon. DIANA LAIDLAW:** The honourable member may be aware that the response to this question which was asked last session was printed in *Hansard* on 8 December 1998.

### TRANSADELAIDE, BICYCLES

42. **The Hon. T.G. CAMERON:**

1. On what research/criteria were the figures based for the March 1999 edition of *TransAdelaide Express* (issue 14) which stated the trial move to free travel on train services for bikes has been a big hit with cyclists making more than 8 000 journeys in the first month alone?

2. If passengers with bikes no longer have to pay for the bicycles, how were the figures calculated?

3. Is TransAdelaide now considering installing extra bike lockers at railway stations to further increase the numbers using trains?

4. If so, how many and at what stations will they be installed?

**The Hon. DIANA LAIDLAW:** The answer to this question was provided to the honourable member by letter on 19 August 1999.

### TAXIS, SPEEDING OFFENCES

44. **The Hon. T.G. CAMERON:**

1. How many taxis were issued fines for speeding by means of speed cameras in South Australia during the years—
   (a) 1994-95;
   (b) 1995-96;
   (c) 1996-97; and
   (d) 1997-98?

2. How many taxis were issued fines for speeding by means of laser guns in South Australia during the years—
   (a) 1994-95;
   (b) 1995-96;
   (c) 1996-97; and
   (d) 1997-98?

3. How many taxis were issued fines for speeding by other means in South Australia during the years—
   (a) 1994-95;
   (b) 1995-96;
   (c) 1996-97; and
   (d) 1997-98?

**The Hon. DIANA LAIDLAW:** The Minister for Police, Correctional Services and Emergency Services has been advised by the Police of the following information:

Statistics regarding taxis are not able to be extracted from the SAPOL computer system.

## PASSENGER TRANSPORT INDUSTRY

46. **The Hon. T.G. CAMERON:**

1. With regard to the new regulations under the Passenger Transport Act taking effect in February 1998—
   (a) What groups and individuals did the Minister and the Passenger Transport Board consult with regard to—
      (i) the new categories of small passenger vehicles;
      (ii) wheel base guidelines;
      (iii) mileage restrictions; and
      (iv) the minimum fare charge?
   (b) How does the minister justify these regulation changes with regard to the objects of the Act, the Passenger Transport Board service charter and the general principles of competition policy?
2. (a) What will be the cost of replacing all of the limousine 'blue plates'; and
   (b) How will this process be funded?
3. With regard to the Government Transport Subsidy Scheme—
   (a) How many members (subscribers) does the scheme currently have;
   (b) How many trips were undertaken using the vouchers during the 1997-98 financial year; and
   (c) What was the average job value before subsidies, i.e. the gross average fare?
4. What was the average waiting time for an Access Cab compared to a standard taxi from time of booking during 1997-98?
5. How long will it be before all new entrants into the passenger transport industry will be required to attend an accreditation course?
6. What shape will this course take in comparison to the one already in place for taxi drivers?

**The Hon. DIANA LAIDLAW:** The answer to this question was provided to the honourable member by letter on 27 August 1999.

## PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General, for the Treasurer (Hon. R.I. Lucas)—

Reports, 1998-99—
- Capital City Committee Adelaide
- Department of the Premier and Cabinet
- South Australian Multicultural and Ethnic Affairs Commission.

Regulations under the following Acts—
- Public Corporations Act 1993—
  - Health Development
  - SA Co-ordinated Care Revocation.
- Senior Secondary Assessment Board of South Australia Act 1983—Subject Variations
- Progress of State Agencies in the Detection, Prevention and Remedy of Problems relating to Year 2000 Processing—Second Quarterly Report

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

Reports, 1998-99—
- Legal Practitioners Conduct Board
- Listening Devices Act 1972

Regulations under the following Acts—
- Livestock Act 1997—Exemptions
- Primary Industry Funding Schemes Act 1998—Sheep Industry
- Veterinary Surgeons Act 1985—Practice Fees
- Summary Offences Act 1953—Section 74b—Road Block Establishment Authorisations—South Australian Police Report, 1998-99—Statistical Review Erratum
- Summary Offences Act 1953—Section 83b—Dangerous Area Declarations

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

Regulation under the following Act—
- Plumbers, Gas Fitters and Electricians Act 1995—Exemptions

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

Reports, 1998-99—
- Charitable and Social Welfare Fund
- Local Government Finance Authority of South Australia
- Local Government Grants Commission South Australia
- Local Government Superannuation Board
- Martindale Hall Conservation Trust
- Northern Adelaide and Barossa Catchment Water Management Board
- Pastoral Board
- Patawalonga Catchment Water Management Board
- Torrens Catchment Water Management Board
- South East Catchment Water Management Board
- SA Ambulance Service
- State Aboriginal Heritage Committee
- Wilderness Protection Act South Australia

Regulations under the following Acts—
- Road Traffic Act 1961—Driving Hours
- Water Resources Act 1997—Clare Valley

Crown Development Report—Erection of Two Roof Top Mounted Evaporative Cooling Units at the Gilles Street Primary School

State Water Plan 1995, South Australia—Our Water, Our Future during 1998-99—Report on Progress on Implementing the Plan, 1998-99

By the Minister for the Arts (Hon. Diana Laidlaw)—

Reports, 1998-99—
- Adelaide Festival Centre Trust
- Art Gallery Board
- Carrick Hill Trust
- History Trust of South Australia
- Libraries Board of South Australia
- South Australian Film Corporation
- State Theatre Company
- The State Opera of South Australia.

## PARTNERS IN RAIL PROJECT

**The Hon. K.T. GRIFFIN (Attorney-General):** I lay on the table a ministerial statement on the Adelaide to Darwin partners in rail project made by the Premier this day.

Leave granted.

## TAXIS, NEW YEAR'S EVE SURCHARGE

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** I seek leave to make a ministerial statement relating to the new year's eve taxi surcharge.

Leave granted.

**The Hon. DIANA LAIDLAW:** I advise that this new year's eve a $2 surcharge will apply to all metered taxi fares charged between 6 p.m. on Friday 31 December 1999 and 6 a.m. on Saturday 1 January 2000. The $2 surcharge has been requested by the Taxi Industry Advisory Panel (TIAP), the representative forum for the whole of the taxi industry and consumers, and has been endorsed by the Passenger Transport Board (PTB). As all members would be aware, the Passenger Transport Act 1994 provides that the PTB is responsible for the setting of all passenger transport fares in South Australia, including taxi fares and access cab fares. All of the surcharge will be paid directly to the drivers. The metered fares, of course, are shared with the owner of the taxi.

On what is shaping up to be one of the busiest nights of the century, it is important that the maximum number of taxis be available to help people get home safely after celebrating the new year. TIAP and the PTB consider (and the government agrees) that the $2 surcharge is a sufficient incentive for taxi drivers to work. It also takes account of the public

interest, whereas an earlier application by the South Australian Taxi Association for a $10 surcharge per taxi trip would have meant a flag fall of $14 before the trip commenced. The level of surcharge is modelled on a $2 surcharge that has been in place for new year's eve in Western Australia for some years. At this stage no other state has agreed to any additional charge for a taxi trip this new year's eve.

It is not the government's intention to require all taxis to change their meters to accommodate the surcharge. Such a move would be time consuming and expensive, involving all taxi drivers attending an authorised meter technician twice, within a 24 hour period, with associated costs of $100 per meter change. Rather, the PTB will produce temporary signs for display inside cabs on new year's eve informing customers of the surcharge. Also a brochure detailing the new year's eve services and giving further details of the $2 taxi surcharge will be available in December as an insert in the *Sunday Mail*. Advertisements in the press will also let customers know about the surcharge.

## QUESTION TIME

### AUDITOR-GENERAL'S REPORT

**The Hon. CAROLYN PICKLES (Leader of the Opposition):** I seek leave to make a brief explanation before asking the Attorney-General a question about the Auditor-General's supplementary report.

Leave granted.

**The Hon. CAROLYN PICKLES:** On page 31 of his supplementary report, Civil Proceedings for Defamation Against Ministers of the Crown, the Auditor-General states:

> For the reasons discussed in this report, it is my opinion that the controls associated with the Cabinet Guidelines 'Representation for Ministers in Defamation Proceedings' are inadequate. It is not unreasonable for concern to be expressed regarding the payment of public moneys to settle (in full) an action for defamation, particularly in circumstances if there has been no prior attempt to seek a negotiated settlement for a lesser amount to that claimed in the statement of claim.

My questions are:

1. Will the Attorney outline the government's response to the concerns indicated by the Auditor-General in his report?

2. Does it include plans to rewrite the cabinet guidelines in accordance with the Auditor's recommendations?

3. Without referring to specific cases, what are the implications of the Auditor-General's Report on existing and future defamation proceedings against ministers?

**The Hon. K.T. GRIFFIN (Attorney-General):** Taking that last question first, there are no ramifications on current actions and indemnities. We are acting under guidelines that were promulgated by the Labor Government. They have been in place for 10 years, perhaps even more.

**The Hon. T.G. Cameron:** That might be even more reason to change.

**The Hon. K.T. GRIFFIN:** What's good for one is good for another.

*Members interjecting:*

**The Hon. K.T. GRIFFIN:** If some people could hold their mouths outside the parliament we would not need to worry about it, would we?

*Members interjecting:*

**The Hon. K.T. GRIFFIN:** Given the number of interjections from the other side obviously they do not have too many questions. I reiterate that we are acting under the guidelines promulgated by the Labor administration back in the 1980s. The advice of the Crown Solicitor is always taken. In relation to the issue on which the Auditor-General focused, advice was taken from the acting Crown Solicitor, I think, because the Crown Solicitor was away.

*Members interjecting:*

**The Hon. K.T. GRIFFIN:** I am just waiting: I have all day and all night. If you want to ask questions, you ask the questions; I am quite comfortable. So far as the Auditor-General's observations are concerned, I do not have a concluded view at this stage, and the government has not finalised a view on them, either. When that view is finalised, it will become obvious largely through a public announcement. My conscience is clear, as is the conscience of other members of the government, in relation to this. We acted in accordance with the guidelines. If there is an issue to be addressed, as the Auditor-General suggests, we will certainly look at it, but no decision has as yet been taken.

**The Hon. R.R. ROBERTS:** I seek leave to make an explanation prior to asking the Attorney-General in his capacity as Attorney-General and acting leader of the government a question about the Lucas defamation case.

Leave granted.

**The Hon. R.R. ROBERTS:** Again, I refer to the Auditor-General's supplementary report into the civil proceedings for defamation against ministers of the Crown and the payment in the Nick Xenophon case. On page 2 the Auditor-General makes particular reference to legal issues arising from the guidelines and payments under the guidelines. In paragraph 4 he refers specifically to the Lucas defamation case and says:

> In the present case, the subject matter of the executive power, namely, whether to grant an indemnity to ministers in respect of liability for defamation, is not, in my view—

this is the Auditor-General—

> so deeply rooted in public policy and political considerations that it would not be amenable to judicial review. Accordingly, any challenge to the exercise of executive power is, on the facts known to me, likely to be justiciable.

**The Hon. A.J. Redford:** What does that mean, Ron? You tell us what it means, Ron.

**The Hon. R.R. ROBERTS:** You should know what it means because you are having a little bit of it with Ralph Clarke: you should know. It is what has happened to you regarding the statements you have made: that is what it means. He continues:

> It means that the decision by the Attorney-General to grant an indemnity in the Xenophon matter could be subject to judicial review.

We have two other issues in respect to these matters, one being the extension of the Lucas defamation case and the other involving the Premier of this state in judicial statements that he made outside the House: as I understand it, he is now being granted legal indemnity by this government before those cases have been concluded. They are matters which quite clearly are of concern to members of the public who are, after all, funding the situation where ministers make these sorts of statements. Given the Auditor-General's normally conservative nature and his clear view on pages 2 and 20 of his report—

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

**The PRESIDENT:** Order!

**The Hon. R.R. ROBERTS:** —that the decision to grant indemnity could be the subject of a judicial review, will the

Attorney-General take steps to initiate such a review either in his own right or through the Cabinet process and, if not, why not?

**The Hon. K.T. GRIFFIN (Attorney-General):** I think the honourable member misunderstands the issue of judicial review. Being referred to here is a review in the court of the exercise of executive discretion. It is not about establishing a judicial review as in a royal commission.

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

**The Hon. K.T. GRIFFIN:** No—

**The Hon. R.R. Roberts:** Well, why don't we do it? Why don't we clear it up once and for all?

**The PRESIDENT:** Order!

*Members interjecting:*

**The Hon. K.T. GRIFFIN:** The Auditor-General, as I understand it, is saying that in his view it is possible that the exercise of the discretion to grant an indemnity, even though in accordance with the Cabinet guidelines, may be subject to judicial review. I will have that issue checked. Personally I do not agree that that is the case: I cannot see how the exercise of that discretion is reviewable in the courts. However, if it was, upon whose instigation would it be reviewed? Who would initiate it: a citizen or a member of the opposition? That is not at all clear. With respect to the Auditor-General, my personal view is that I disagree with him, but I am having the issue checked—it is as simple as that.

I come back to the earlier question about the guidelines. One very significant case comes to mind. It was much more difficult than any of those which have arisen in the past six years. I refer to Dr Cornwall. I remember in about—

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

**The Hon. K.T. GRIFFIN:** No. Dr Cornwall as a former minister of the crown defamed Dr Humble. Ultimately, the state had to pay it out. It was quite deliberate and blatant. I am sure that members opposite would not wish to be reminded of it. This involved an ordinary member of the public (not a member of parliament) being defamed, an ordinary citizen who happened to cross the Hon. Dr Cornwall's path and was abused by him. Dr Cornwall was granted indemnity.

I think it was that event which prompted the then government of the day—if it had not done so before—to put in place the current guidelines. If members want to go back through history, we will go digging and we will find plenty of examples. However, in terms of this particular matter, I can say with a clear conscience that we followed the guidelines of a former administration established by the cabinet of the day, and we acted on proper advice. Regarding the issue of judicial review, I would not be so stupid as to initiate a judicial review of my own decision.

**The Hon. R.R. ROBERTS:** I ask a supplementary question. Given that the key guidelines for indemnity against defamation as set out by the Auditor-General clearly refer only to indemnity for ministers, why was advice given by the Hon. Mr Lucas's lawyers that the $20 000 and the $1 476 in legal fees were in full settlement of Mr Xenophon's claims against him (Mr Lucas) and Mr Ingerson MP, who was not a minister?

**The Hon. K.T. GRIFFIN:** My understanding is that Mr Ingerson's costs have not been covered by the indemnity.

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

**The PRESIDENT:** Order!

## MOTOR VEHICLE INDUSTRY

**The Hon. T.G. ROBERTS:** I seek leave to make a brief explanation before asking the Minister for Administrative Services a question about the South Australian car industry.

Leave granted.

**The Hon. T.G. ROBERTS:** At the moment, the car industry is in a hiatus between the application of the GST and the current tax regime under which it operates. Experts in the industry say that the slowing down of the industry is due to the fact that people are waiting for the introduction of the GST which should take $3 000 off the retail price of a new family car. It is no secret that Mitsubishi's slow down is reducing the number of hours in pay packets of many South Australians in this industry. Interstate, the Ford Motor Company in Geelong has gone for shorter hours and encouraged its workers to take early annual leave.

I think there is something that governments can do in relation to their procurement policies that may be able to assist in the short term—certainly in terms of the number of vehicles used by local government and large industries in respect of their staff procurement policies—but they cannot legislate for that. I am sure that governments could encourage such companies to look at their procurement policies to see whether they can assist in the short term.

In *The Age* of Monday 8 November is an exclusive article. It must have been exclusive because the *Advertiser* did not get it until today. The article, headed 'Car maker is set to secure SA, Victoria jobs', goes on to outline Mitsubishi's car plan for at least the next five years. It appears that there will be security in the industry for at least that time, and predictions are that the decisions that will be made in that time frame will take the security of at least the Mitsubishi car industry up to the year 2015. So, it is the short term that the industry is concerned about, the time frame between now and the introduction of the GST, because people are reluctant to buy a motor car on the basis that they are considering some of the savings they may make. My questions are:

1. What is the state government's current vehicle procurement policy?

2. Is it possible for the state government to adjust its procurement policy to assist local manufacturers with the short-term difficulties that they face?

3. Is it possible to influence both local government and large procurers of fleet cars to make the same adjustments, if nothing can be done?

**The Hon. R.D. LAWSON (Minister for Administrative Services):** I did see the item in the *Age* earlier this week about the security of the South Australian car industry, although I must say that I did not believe that the article contained any new news. However, it was gratifying to see confirmation of what the Premier has announced, that the Mitsubishi operation in this State is secure and, as other reports have indicated, that General Motors-Holden's production is at satisfactory levels; and, indeed, its export production, especially for the Middle East, is extremely pleasing.

All members are aware of the phenomenon that the retail car market is currently undergoing as a result of the anticipated introduction of the GST. The South Australian government acquires about 7 000 vehicles each year for its various agencies. It is up to particular agencies to decide what number and type of vehicles it acquires. Fleet SA is the organisation within the Department for Administrative and

Information Services that administers the car plan. All cars are leased and, as with all fleet owners, Fleet SA has found that the declining resale value of cars is impacting upon the cost of leasing.

From 1 July this year there was introduced an increase in the lease costs paid by agencies to Fleet SA and comparably by Fleet SA to the Commonwealth Bank, which is the financier of Fleet SA. About 75 per cent of the vehicles are passenger vehicles, and all those vehicles are acquired from Australian manufacturers. General Motors-Holden's enjoys by far the largest share of our business, and Mitsubishi is second also by a substantial margin.

**The Hon. T.G. Roberts:** Which is the third one?

**The Hon. R.D. LAWSON:** The Ford Motor Company also receives some orders from agencies, although it is substantially less than Mitsubishi. Some 25 per cent of the fleet comprises non-passenger vehicles—four wheel drives and the like—which are not manufactured in Australia. So, the fleet purchasing policy, in so far as it relates to non-passenger vehicles, does not really affect our car industry. We do have a policy of changing over the vehicles as often as is economically practicable, and that depends upon factors such as resale values and the like.

Because of the increased cost of leasing vehicles, which has arisen because of the fall in resale values, no doubt agencies will be looking to not substantially increase in the immediate short term their vehicle requirements in order to keep within agency budgets. The procurement policy of the South Australian government has always been to cooperate fully with Australian manufacturers.

From advice that I have seen I do not believe that there is any adjustment that can be made in the short term to our procurement policies so as to, as it were, soak up some of the surplus production on the local market. However, I am certainly prepared to take further advice on that and bring back a further reply to the honourable member, if further reply is warranted.

The honourable member asks whether it is possible for the state government to seek to influence local government and companies in their fleet policies, and it would be nice to think that we did have that power. However, local government in this state is autonomous, as are private businesses. They will make their own decisions based upon their own perception of their best interests. I can assure the honourable member and the Council that this government will keep a close eye on the fate of the motor manufacturing industry and wherever possible or practical we will take steps to ensure that our policies enhance the prospects of that industry rather than detract from them.

## ROADS, NORTH-EASTERN ADELAIDE

**The Hon. J.S.L. DAWKINS:** I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about road transport links between the northern and north-eastern suburbs of Adelaide.

Leave granted.

**The Hon. J.S.L. DAWKINS:** Prior to the opening of two major roads, The Grove Way and McIntyre Road in the past decade or so, transport links between the plains of the northern suburbs and the north-eastern sector of Adelaide were restricted to narrow, winding and steep access routes, such as Golden Grove Road and Target Hill Road. The subsequent construction of The Grove Way, connecting Salisbury Plains with Golden Grove, and McIntyre Road, connecting Parafield with Modbury, by the previous Labor government resulted in a great improvement in the transport access between and interaction of these two important parts of the metropolitan area. However, part of the McIntyre Road link quickly deteriorated as significant undulations developed in the section between The Golden Way and Milne Road. The undulating surface, apparently due to the particular soil type of the area, has caused increasing frustration for drivers and passengers alike in recent years. I am well aware of the problem as I regularly used this section of road during the two years that I worked at Modbury North. Late last week I noted that roadworks had commenced on this section of McIntyre Road. Can the minister indicate the nature of the work being undertaken by Transport SA and can she also indicate whether it is anticipated that a long-term solution to the undulating surface will be achieved?

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** The honourable member is correct in saying that work commenced last week on rehabilitating the surface between The Golden Way and Milne Road in respect of McIntyre Road at Modbury Heights. This area has highly reactive soils that seem to stretch and shrink according to moisture content and it is very undulating. It is a problem that we are seeking to address by levelling the road, and I have been advised that in the next few weeks, at a cost of $225 000, some 394 metres on the south city-bound carriageway will be rehabilitated, and a further 500 metres on the north-bound carriageway.

As for a long-term solution, I have also been advised that the best way of approaching this task is to continue to monitor the road and, as sections become bad, to rehabilitate as we are doing in the section between the Golden Way and Milne Road. We have similar problems with Lonsdale Road in the southern suburbs. At times we have great difficulties with the nature of the soil in South Australia, particularly in the Adelaide area. It is not the best for laying road surfaces that remain smooth. When they buckle we have to repair them, as is the case in this instance. We will certainly not pull up the whole road, and continually, but we will do it as sections deteriorate.

## MEMBER FOR FLINDERS

**The Hon. SANDRA KANCK:** I seek leave to make an explanation before asking the Attorney-General, representing the Premier, a question regarding the rail reform transition program.

Leave granted.

**The Hon. SANDRA KANCK:** During 1997 the federal government, with the support of the South Australian government, privatised Australian National Railways. The privatisation of AN resulted in heavy job losses in South Australia and Tasmania. In an attempt to ameliorate the impact of those job losses, the federal government instituted the rail reform transition program. The program was designed to provide financial assistance for job creation in regions affected by the sale of AN. To that end, $20 million was placed in the program and committees were established to advise the federal government of potential recipients of the grants. The South Australian committee was chaired by the member for Bragg, the Hon. Graham Ingerson, and comprised the federal member for Adelaide, the Hon. Trish Worth; the federal member for Grey, the Hon. Barry Wakelin; Mr Grant Anderson of the Regional Development Branch, Department of Transport and Regional Services;

Mr Don Swincer, Executive Director of the Business Centre, Department of Industry and Trade; Ms Joy Baluch, Mayor of Port Augusta; Mr Nick Begakis of the South Australian Employers Chamber; and Mr Daryl Dixon of the United Trades and Labor Council.

Amongst other things, that committee recommended that the rail reform fund program grant funds to Eyre Enterprises Pty Ltd and Southern Australian Seafoods. In the register of members' interests for 1999, the member for Flinders, Liz Penfold, lists under 'investments' Eyre Enterprises Pty Ltd and Southern Australian Seafoods. The two companies, of which her husband is also listed as a director, received a total of $535 000 in grants from the rail reform transition program. My questions are:

1. Does the Premier require a member of his government who stands to benefit from taxpayers' moneys to make a full disclosure of all interests to the authorising body dispensing the moneys; and, if not, why not?

2. Was the South Australian advisory committee to the rail reform transition program informed of the member for Flinders' interests in Southern Australian Seafoods and Eyre Enterprises?

3. Does the Premier require that his office be informed of any potential conflict of interest involving members of his government; and, if not, why not?

**The Hon. K.T. GRIFFIN (Attorney-General):** I will take the question on notice and bring back a reply.

## PUBLIC SECTOR INTERNET USAGE

**The Hon. CARMEL ZOLLO:** I seek leave to make a brief explanation before asking the Minister for Information Services and for Administrative Services a question about public sector internet arrangements and risk management.

Leave granted.

**The Hon. CARMEL ZOLLO:** The Auditor-General's recent report outlines a number of risks associated with internet usage, including agency web sites and employee use. It highlights a number of risks, including copyright breaches, defamation, discrimination standards, protection of confidential information and the like. Whilst the audit found that agency web sites met the minimum requirements set by government protocols, it also found that some sites had not been updated for at least six months. The audit also found that, whilst all the agencies which it reviewed had internet and e-mail policies, some did not deal with issues such as breach of copyright, risks to intellectual property, record management, procedures and so on.

In conclusion, the audit reported that a diverse range of policies are in place in agencies of government using the internet but that a number of gaps are evident in the policies of both DAIS and individual agencies of government. It is now time, according to the report, for government (through its main line agencies and responsible bodies) to develop and promulgate more comprehensive policies for this increasingly important area of government operations. I ask the minister: what steps has DAIS taken, as suggested by the audit, to implement basic minimum standards and a standard internet use policy which may be applied on a government wide basis? When does the minister expect these policies and standards to be put in place in all government agencies?

**The Hon. R.D. LAWSON (Minister for Information Services):** I express gratitude to the Auditor-General for the comprehensive (if brief) report that he has prepared on the subject of the management of intellectual property within the public sector. The Auditor-General correctly identifies that we are dealing with emerging technologies and new developments, and it is inevitable that when new technologies and new developments are undertaken there will be a learning curve while agencies master some of the complexities of the new system. It is true that in previous reports the Auditor-General has raised a number of concerns associated with the development and management of government intellectual property assets. I think this is the first time on which he has had occasion to examine web sites and the like.

The honourable member will realise that a very large number of web sites have been established by various government agencies, and the degree of development of those web sites differs vastly. Some are highly professional in presentation and are updated very regularly, others are rather more static, and some have been established for some time and not much has happened on them. The Auditor-General's Report on this matter is being studied, like all of his other reports. We should be grateful for the fact that, in this state, our Auditor-General takes a very wide view of his mandate and he does not see it as his function merely to comment upon the financial accounts of agencies but also practices across government, especially practices in relation to new developments.

A number of standards have been adopted in relation to web sites by DAIS. I believe that the Information Economy Policy Office is also examining this issue. I can assure the honourable member and the Council that close attention will be paid to the Auditor-General's suggestions and that an overarching policy, if thought appropriate, for all agencies will be developed and promulgated. This will take time because we are dealing with emerging technologies and practices are constantly changing. Therefore, I am unable to give the honourable member a precise date in relation to her last question as to when that overarching policy will be promulgated, but I can assure her that it will be as soon as possible.

## MOUNT BARKER ROAD

**The Hon. CAROLINE SCHAEFER:** I direct my question to the Minister for Transport. What, if any, plans are there for the old Mount Barker Road after the new Crafers-Adelaide highway is opened; and will it still be accessible and open to the public?

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** I have had a number of inquiries about the future of the road as the new road comes closer to opening in February/March next year. Discussions have taken place between Transport SA and the three councils of Burnside, Mitcham and Unley, and there has been in-principle agreement for the old Mount Barker Road to return to being a local road. However, I am not surprised that the councils have given us no more than in-principle agreement, because they would want to know the ongoing costs.

At the moment Transport SA is doing some cost estimates for design and construction for a two-lane road only and a bicycle track with a landscaped median strip separating the cyclists from motorised traffic. The new Mount Barker Road includes a cycleway only up to the old Devil's Elbow, and then we would be expecting local traffic and cyclists to use the old Mount Barker Road. I anticipate that these cost estimates will be completed late this year and there will be further discussions with the three councils already named.

The road will be used for local purposes in the future, not closed, because of the number of residents along that road and also because of the petrol station up there and the Eagle on the Hill Hotel. People will still wish to use that road to access those facilities, but the state would not see it as its ongoing responsibility or see that road being designated as a state arterial road. We must have further discussions with the councils, once we have further work on pavements, design and costs.

## SAGRIC INTERNATIONAL PTY LTD

**The Hon. IAN GILFILLAN:** I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Government Enterprises, a question about SAGRIC.

Leave granted.

**The Hon. IAN GILFILLAN:** SAGRIC International Pty Limited is a fully owned government enterprise that has been in existence for 20 years. It employs approximately 200 people, about 50 of them in the South Australian head office. SAGRIC specialises in the transfer of technology and project management of international aid, with an annual turnover of over $30 million. It manages international projects worth more than $100 million, which include land management, health, environmental management, and education and training and, according to this year's Auditor-General's Report, SAGRIC International posted a $900 000 dividend to the South Australian government, the largest profit posted in the past six years.

It has made a loss in a couple of those years, but its profitability has increased markedly over the past four financial years. Seventeen per cent of SAGRIC's business involves projects in Indonesia. At a time when Australia's relations with Indonesia are critical SAGRIC, I am advised, has a higher reputation in Jakarta for assistance to business and commerce of Australian and South Australian origin than does Austrade.

SAGRIC is being sold by the government, the sale being managed by a business group of the Department of Administrative and Information Services—a public trade sale with competitive bids sought locally, nationally and from overseas. From the minister's press release of 1 April and another on 20 August I quote:

> SAGRIC International's professional board has done an excellent job over the years in promoting SA expertise and know-how to the world.

My questions are:

1. Given the positive image of South Australia that SAGRIC provides to the international community through its project management, its profitability to the state's economy and its value for SA in international credibility, why is it being sold off?

2. At what stage is the bidding process, considering that registrations of interest were asked for six months ago?

3. If the sale is to go ahead, what steps is the government taking to ensure that the head office, at least, will remain in South Australia to keep some employment and industry of an excellent South Australian enterprise based in South Australia?

**The Hon. K.T. GRIFFIN:** I will refer those questions to my colleague in another place and bring back replies.

## HANDBAG ROBBERIES

In reply to **Hon. CARMEL ZOLLO** (30 September).

**The Hon. K.T. GRIFFIN:** The Minister for Police, Correctional Services and Emergency Services has been advised by Police of the following response:

Operation Counteract II was established on 18 June 1998 to investigate serious robbery offences including those commonly referred to as 'Handbag Snatches' and which form a part of a series or a pattern of similar offences. Operation Counteract II has a current charter to coordinate and integrate the investigation of serious robbery offences by identifying and targeting prolific offenders and reducing their opportunities to commit crime.

SAPOL records all statistics relating to robbery offences as being either armed or unarmed offences. It does not record such offences as being handbag robberies and therefore is unable to provide a breakdown of robberies that relate to being handbag robberies.

SAPOL's contribution to safety awareness to the community is a continuous process and includes public awareness presentations and the distribution of brochures through Neighbourhood Watch. Both processes incorporate personal awareness in respect to handbag robberies.

## SUICIDES, PRISON

In reply to **Hon. IAN GILFILLAN:** (28 September).

**The Hon. K.T. GRIFFIN:** The Minister for Police, Correctional Services and Emergency Services has been advised by the Department for Correctional Services that addressing self-harming behaviour in prisons is a priority.

1. The Department for Correctional Services is always seeking to improve programs to reduce the incidence of self-harm and suicide within the prison population. Strategies currently undertaken include:

- screening processes, upon admission, for all prisoners to identify those 'at risk' and induction programs at each location;
- prisoners identified 'at risk' are seen by Medical, Psychological and Social Work staff trained in crisis management in relation to self-harm and minimisation factors. If necessary, the prisoner is transferred to medical facilities or to locations for safe observation via staff and cameras and for ongoing therapeutic intervention;
- peer support programs are available in all locations, providing ongoing support from other prisoners;
- where possible 'at risk' prisoners are accommodated in locations where they can receive ongoing support from trusted peers;
- the introduction of case management to provide ongoing support through the assignment of individual prisoner case officers. This process follows the prisoner when released to the community to provide continuity of service and support. Case management ensures that prisoners are regularly monitored and their progress is reviewed and assists in the early identification of 'at risk' prisoners. Greater emphasis is placed on family and visiting supports to ensure that the isolation of prison is minimised;
- management plans, developed and implemented for 'at risk' prisoners in partnership with other agencies such as SA Forensic Health Services, James Nash House and the Aboriginal Justice Advisory Committee;
- the provision of self-harm and suicide risk management training for all custodial officers in their initial induction phase. Other training is provided directly by the Director of James Nash House and by departmental officers in partnership with the Intellectual Disability Services Council;
- minimisation of potential hanging points in the State's prisons; and
- the regular monitoring of all departmental strategies to minimise self-harm.

2. All of the strategies identified in the AIC report have been implemented in South Australia and are ongoing.

3. None.

## EMERGENCY SERVICES LEVY

In reply to **Hon. J.F. STEFANI** (5 August).

**The Hon. K.T. GRIFFIN:** The Minister for Police, Correctional Services and Emergency Services has advised of the following information:

1. The total revenue expected to be collected from each of the groups named in the question is approximately $554 000 based on those with a land use other than Residential, Commercial, Industrial and Rural. This has been effectively reduced through the application of a specific remission of the variable levy to this class of land uses.

2. The amounts stated in the question for Mitsubishi and General Motors are confirmed as correct.

3. The number of charities and the scope of their land holdings and benefits, especially in relation to others in the community who contribute for the same protection, was considered by the May 1998 steering committee. It is difficult to ascertain the full range of properties under the direct ownership of these bodies as they are not specifically identified as a class of owners amongst the state's 640 000 private property owners.

The recently announced partial remission of the levy applicable to classes of land that are not residential, commercial, industrial or rural in nature means that the amount of levy payable by many charities on their non commercial properties is now effectively reduced.

In respect to specific examples requested the estimates provided by the honourable member are incorrect;

- The Australian Red Cross has a number of properties, the levy payable on the office complex in North Adelaide with a capital valuation of $2.9 million is estimated at $4907 for the 1999-2000 year.
- The Vietnamese Christian community has a property at Pooraka with a levy payable of approximately $706.

Each of these amounts would be off set against reductions in any insurance contributions made by these organisations.

4. The *Emergency Services Funding Act 1998* (section 20) provides that where a fixed property levy is unpaid for a period of two years or more, the minister may seek to sell the property and recover the levy as a first charge on the land. This is generally the same process as in place for councils whereby property may be sold to recover unpaid rates.

The Regulations prepared under the *Emergency Services Funding Act 1998* allow for the charging of interest on unpaid levy. According to the Regulations this rate will be set at 12.8%. This being made up of a market rate plus 8 per cent.

This interest is calculated daily and is only billed once the amount due reaches $20, thus reducing the administrative impact of short term late payment charges. In effect this means that for smaller levy amounts, late payments will be without initial penalty until some time has elapsed.

Interest is paid on the interest due, thus making the charge a compounding rate and promoting early payment.

5. The *Taxation Administration Act 1993* does not apply to the emergency services levy. The Regulations under the *Emergency Services Funding Act 1998* are independently established and yet set out a similar mechanism to that used by RevenueSA for charging interest on overdue accounts. This approach was taken simply for convenience and expediency, nothing more. It was pointless to "reinvent the wheel" given that RevenueSA is the nominated collection agency for the levy and is used to the operation of the *Taxation Administration Act 1993* and its approaches to late payments.

## STREET ABUSE

In reply to **Hon. G. WEATHERILL** (4 August).

**The Hon. K.T. GRIFFIN:** The Minister for Police, Correctional Services and Emergency Services has been advised by Police of the following response—

- The incidence of people soliciting money from passers by on the street is presently on the increase and while spasmodic is of some concern to police.
- The activity is not confined to Aborigines but reflects a broader social group.
- While there is specific legislation covering the behaviour there has been a reluctance to use that legislation which is described as 'Begging Alms' in consideration of its antiquity and application to a modern society. The opportunity to discourage begging is limited by reason of the penalty that can be applied. Clearly it is not appropriate for courts to imprison people for being poor and a financial penalty has no application.
- The incidence of robbery from the person and the act of begging for money are on occasion linked with the approach for money followed by a robbery after a wallet or purse is taken out.
- The consumption of alcohol by groups in the area of the Railway Station and Festival Centre usually occurs where groups relocate from other locations (Victoria Square) to be close to the Railway Station on their homeward journey.
- Policing for the area is divided between Transit Division and beat police from Hindley Street Police Station who exercise a policing presence in the area. This is supplemented as required from other resources of the Adelaide Local Service Area.
- Police seek to create a safer environment by increasing the presence of further patrols where possible. A specific police operation involving uniform and plain clothes officers is currently in place targeting behaviour and street crime in the central business district of Adelaide.
- Police and welfare providers are in partnership with the Adelaide City Council to provide appropriate support and intervention mechanisms. Current alliances are being strengthened to build on the benefits already gained concerning crime prevention and community policing.
- The Government and City of Adelaide are working together to create a safer environment through two working groups:

1. Working Group on City Safety
   - examine evidence that there are 'hot spots' in the City which are particularly unsafe at certain times and report on the risks associated with those areas;
   - examine and report on the likely causes or reasons which appear to underlie the safety risks associated with those areas;
   - consider strategies that have been effective in other comparable cities, nationally or internationally, to deal with similar problems;
   - consider any previous reports prepared on these issues for the City of Adelaide and establish the status of the recommendations;
   - propose any appropriate actions that may reduce the safety risks associated with the areas that are unsafe and propose any next steps as appropriated for the State Government, the Adelaide City Council or the Capital City Committee.
2. City Safety and Drugs Advisory Group

   The advisory group comprises stakeholders, with a wide range of interests and responsibility. Established to assist the Council in its determined effort to improve the safety of residents and visitors to the City of Adelaide.

## EMERGENCY SERVICES LEVY

In reply to **Hon. J.F. STEFANI** (3 August).

**The Hon. K.T. GRIFFIN:** The Minister for Police, Correctional Services and Emergency Services has been advised of the following information:

| PCC | Class Description | No. | Levy $ | Total $ |
|---|---|---|---|---|
| 1 | Metro—Cars | 648 241 | 32.00 | 20 743 712 |
| 51 | Country—Cars | 191 174 | 32.00 | 6 117 568 |
| 11 | Metro—Trailers (includes caravans and excludes boat trailers) | 122 026 | 8.00 | 976 208 |
| 61 | Country—Trailers (includes caravans and excludes boat trailers) | 92 479 | 8.00 | 739 832 |
| 14 | Metro—Motor Cycle up to 50cc | 604 | 12.00 | 7 248 |
| 15 | Metro—Motor Cycle 51—250cc | 5 535 | 32.00 | 177 120 |
| 16 | Metro—Motor Cycle 251-600cc | 1 964 | 32.00 | 62 848 |
| 64 | Country—Motor Cycle up to 50cc | 630 | 12.00 | 7 560 |
| 65 | Country—Motor Cycle 51—250cc | 5 233 | 12.00 | 62 796 |
| 66 | Country—Motor Cycle 251-600cc | 1 869 | 32.00 | 59 808 |

| PCC | Class Description | No. | Levy $ | Total $ |
|---|---|---|---|---|
| 3 | Metro—Medium Goods Carrier | 8 925 | 32.00 | 285 600 |
| 21 | Metro—Heavy Goods Carrier | 2 857 | 32.00 | 91 424 |
| 53 | Country—Medium Goods Carrier | 4 237 | 32.00 | 135 584 |
| 71 | Country—Heavy Goods Carrier | 3 382 | 32.00 | 108 224 |
| Vessels | (Includes boats, jet skis and houseboats) | 44 000 | 12.00 | 528 000 |

2. Stamp duty is not collected on registrations of marine craft, caravans or trailers.

There are two components of stamp duty payable in respect of the registration of a motor vehicle:

1. Stamp duty on an application to register or an application to transfer the registration of a motor vehicle; and
2. Stamp duty in respect of a certificate of compulsory third party insurance.

Stamp duty collected in 1998-99 in respect of applications to register and applications to transfer the registration of motor vehicles amounted to $102.9 million.

Stamp duty collected in 1998-99 in respect of compulsory third party certificates was $46.1 million.

3. Stamp duty collections for 1999-2000 in respect of applications to register and applications to transfer the registration of motor vehicles is estimated to be in the order of $105.6 million., an increase of $2.7 million.

Stamp duty collections for 1999-2000 in respect of compulsory third party certificates is estimated to be approximately $54.6 million, an increase of $8.5 million.

In reply to **Hon. J.F. STEFANI** (28 July).

**The Hon. K.T. GRIFFIN:** The Minister for Police, Correctional Services and Emergency Services has been advised of the following response:

A $40 remission will be offered on the principal place of residence, with joint owners receiving a proportion of the levy remission commensurate with their ownership status (maximum one property per person), with the exception of married/de facto couples who will be treated as one for the purposes of issuing a remission, to the following groups:

- Pensioner Concession Card holders
  - aged pension;
  - disability allowance;
  - carers allowance;
  - sole parent allowance;
  - widows allowance; and
  - mature age allowance;
- State Concession Card holders.
- Veterans Gold Repatriation (TPI) Card holders
- Beneficiaries of the following Federal Government allowances
  - newstart allowance;
  - sickness allowance;
  - widows allowance;
  - NIES allowance;
  - youth allowance;
  - partners allowance;
  - parenting payment partnered allowance (additional allowance category only); and
  - Commonwealth Development Employment Program (CDEP).
- NZ and British War Widows
- Australian War Widows
- Self Funded Retirees who hold State Seniors Cards

## YOUTH AFFAIRS COUNCIL OF SOUTH AUSTRALIA

**The Hon. NICK XENOPHON:** I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question in relation to the Youth Affairs Council of South Australia, known as YACSA.

Leave granted.

**The Hon. NICK XENOPHON:** Since attending the 1998 annual general meeting of YACSA I have taken a close interest in the role and welfare of the State's peak youth affairs organisation. I note the ongoing dispute between Minister Brindal and the council on the matter of triennial funding and the outcomes of the review of YACSA instigated by the minister. The total amount in terms of YACSA's funding is, I understand, $134 330 per annum. Given on the question of funding the Minister for Youth's statement to the House of Assembly on 20 October that 'It is difficult without the Treasurer's agreement to ongoing commitment from my perspective', my questions are as follows:

1. Has the Treasurer been approached by the minister for triennial funding of YACSA?

2. What objection, if any, does the Treasurer have to the Department of Education, Training and Employment committing itself to three year funding for YACSA as recommended by the review of YACSA?

3. Will the Treasurer confirm that there are existing triennial funding contracts for the youth sector and provide details of those contracts, including the costs involved?

**The Hon. K.T. GRIFFIN (Attorney-General):** I did not think there was an on-going dispute between the minister and YACSA. It was an interesting explanatory statement. I will refer the matter to the Treasurer and, on his return, I am sure he will reply.

## HINDMARSH SOCCER STADIUM

**The Hon. J.F. STEFANI:** I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about the Hindmarsh stadium.

Leave granted.

**The Hon. J.F. STEFANI:** I refer to the funding deed signed by the South Australian government and the South Australian Soccer Federation on 14 October 1996, and in particular clause 5 entitled 'Guaranteed fee', which stipulates that the federation shall pay to the Treasurer, in consideration of the Treasurer's provision of the guarantee to the bank and in respect of each financial year and part financial year of the term, a non-refundable guaranteed fee of an amount equal to .75 per cent per annum of the maximum amount of the guaranteed moneys during the relevant financial year.

Clause 5.2 stipulates that the federation shall pay the said guaranteed fee to the Treasurer on or before 31 October of each financial year or part financial year to which the payment relates. My question is:

1. Will the Treasurer advise what amounts have been received by the government from the South Australian Soccer Federation and the dates that those amounts of the guaranteed fee were received?

**The Hon. K.T. GRIFFIN (Attorney-General):** I will refer the questions to the Treasurer and I am sure that, when he returns, he will be able to answer them.

## TRAFFIC HAZARDS

**The Hon. G. WEATHERILL:** I seek leave to make a brief explanation before asking the Minister for Transport a question about traffic hazards.

Leave granted.

**The Hon. G. WEATHERILL:** I refer to a matter which has been brought to my attention and which I have witnessed on quite a few occasions. I refer, for instance, to Henley Beach Road where there are cut-in lanes for traffic turning right. Cut-in lanes are excellent because they allow the free flow of traffic behind the motorist who wishes to turn.

*An honourable member interjecting:*

**The Hon. G. WEATHERILL:** Actually, in some cases. Cut-in lanes are a great idea—they stop traffic from being impeded. It has been brought to my attention on several occasions that, even though cut-in lanes are a good idea, in Victoria, especially when traffic is busy, if a motorist wants to turn right in these cut-in lanes he has to cut across about two lanes of traffic. Traffic is usually travelling slowly because of traffic lights or the amount of traffic on the road, and the traffic stops, preventing the motorist from cutting across.

*Members interjecting:*

**The Hon. G. WEATHERILL:** I am trying to explain this. It is a bit difficult, but I have drawn a plan.

*The Hon. Diana Laidlaw interjecting:*

**The Hon. G. WEATHERILL:** Yes. Some drivers allow you to cut across, but then you have to run the gauntlet with the inside lane of traffic. I note that, in Victoria, the road is marked with two lines, making it very clear that you must not stop in that area but keep it clear. This actually works, and it helps both directions of traffic. My question is: will the minister instruct her department to look into this matter?

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** We have a number of keep clear initiatives, as the honourable member has mentioned. For instance, there is a keep clear initiative situated close to Parliament House on North Terrace for turning right into the convention centre and the Hyatt hotel. Oncoming traffic is asked to stop rather than bunch up to the traffic lights, because that would prevent motorists from turning right. So, such an initiative is in place in the city—it is the responsibility of the Adelaide City Council—and there may well be other examples. I will have the matter followed up for the honourable member.

## ABORIGINES, YOUTH

In reply to **Hon. T.G. ROBERTS** (28 September).

**The Hon. DIANA LAIDLAW:** The Minister for Aboriginal Affairs has provided the following information:

The issues around funding to youth programs are many and varied, and the Minister for Aboriginal Affairs does not wish to cast doubt on the Commonwealth's ability to make appropriate decisions in this area. However, there seems to be a need to provide funding for youth programs that fall outside of the core areas of service provision in order to provide preventative solutions to youth problems. These preventative solutions cover areas such as boredom, disillusionment, and family breakdown, and are often tackled by the provision of youth workers to affected communities.

A joint Department of Human Services and Division of State Aboriginal Affairs effort will examine the potential for further funding to be found and applied to this area. Discussions will be held in the near future between the Women's, Families, and Youth Officer of DOSAA, and the Senior Project Officer (Youth Services) of the DHS to determine how to best address these issues.

## ADOPTION

In reply to **Hon. SANDRA KANCK** (21 October).

**The Hon. DIANA LAIDLAW:** The Minister for Human Services has provided the following information:

1. When the information is ready to be released, a letter is sent asking the applicant how they would like to receive their information and offering advice and support if they wish it. They may choose to come to Adoption and Family Information Service and collect it, or have it posted. They may choose to discuss the information with a Social Worker at the time of receiving it, or afterwards.

Where the information in the adoption file is particularly sensitive, people are always invited to attend an interview, or discuss the information over the phone if distance prohibits face to face contact. At this time they can receive the information in an environment which can help explain the content, and support can be offered in a counselling situation with a Social Worker. Examples of this are where the file contains information that another party has died, or there are health, social or emotional issues that may be difficult for the person receiving the information.

In all cases, applicants receive written information highlighting the sensitivity of the information, and strongly advising them to approach any other family member with care and respect. This written information includes the advice never to arrive unannounced at a person's home.

Information is provided about how to best approach another birth family member, with a strong suggestion that approaching by letter or through a mediator is by far the best option.

When people receive their information they are provided with a range of service options including Jigsaw. It is the choice of the client as to who they seek for support. Some people choose to manage their information and contact without external support while others choose to seek the support and assistance of family or friends, or other counselling services.

3. FAYS provides essential information and advice when the information is ready for release. In some cases, FAYS will assist clients through difficult search and contact situations if appropriate and if requested, otherwise an appropriate referral is made.

4. Adoption is a delicate and sensitive balance of the rights of people for information and their rights to privacy.

The veto (or restriction) system is available for those who do not wish for their identifying information to be available to any party. Where no veto exists and information is provided to another party to the adoption, people have a right to search for and make contact with their birth relatives if they wish to do so.

As stated, information and advice is provided to assist people manage this process sensitively, for all parties, bearing in mind they often feel desperate to locate their birth relative as soon as they receive their information.

A person who is searching may experience rejection from their birth relative and this can be devastating.

Information is withheld from release if it is assessed by the Manager or Senior Social Worker that releasing it to another party would be an unjustifiable intrusion into the privacy of the person to whom the information relates. This is provided for in Section 27 (5) of the Adoption Act 1988.

## NURSING HOMES

**The Hon. T.G. CAMERON:** I seek leave to make a brief explanation before asking the Minister for the Ageing a question about commonwealth funding for nursing homes.

Leave granted.

**The Hon. T.G. CAMERON:** Last Thursday, nursing home staff, residents and their families took out their frustration over the level of commonwealth funding for South Australian nursing homes by staging a silent protest to the city with a cavalcade of buses and cars. They were angry at the failure of the federal government to act on the report of the Productivity Commission Inquiry into Nursing Homes. The report, which was released almost a year ago, stated that South Australia and Queensland were in urgent need of funds because of the different levels of funding accorded to each state. South Australia and Queensland currently receive the lowest funding whilst Tasmania receives the highest.

The Executive Director of Aged and Community Services, Ms Ros Herring, has stated that the extra funds would allow urgently needed staff increases equivalent to 700 full-time

care positions or 140 000 staff hours. Considering that South Australia has, per capita, the oldest population of any of the nation's states, current levels of commonwealth funding for our nursing homes is woefully inadequate and needs to be addressed.

My question is: is the minister satisfied with the current levels of federal funding for South Australian nursing homes; if not, why not; and what action has she taken or is she taking to pressure the federal government to act on the Productivity Commission's recommendation that South Australian nursing homes receive extra funding?

**The Hon. R.D. LAWSON (Minister for the Ageing):** I am aware of the protest that occurred last week, and I have been aware of this issue, as has the government, for some considerable time. The South Australian government has been urging the commonwealth government to adopt and implement the recommendations of the Productivity Commission as soon as possible. The honourable member said that the Productivity Commission released its report almost a year ago; in fact, it was not until March this year that that report came down.

The report indicated that there is no rational basis for differentiating between states and territories in the provision of nursing home subsidies, in other words, that the costs across Australia are largely uniform. I think the commission found that there was a variation of plus or minus 3 per cent, and accordingly the Productivity Commission confirmed that it was inappropriate for the policy, which had prevailed since 1987, to continue.

I should remind the honourable member that this regime was introduced in 1987 by the federal Labor government, and it did not favour South Australia or Queensland but certainly did favour Tasmania, Victoria and New South Wales. It was the federal Liberal government that decided upon a policy of coalescence, namely, to bring the subsidies to uniformity over a period of seven years. The government then referred the matter to the Productivity Commission, which confirmed that that was the appropriate policy, but the Productivity Commission also urged that there really was no basis for continuing this distinction for seven years but that, rather, it should be wiped out relatively quickly, and the Productivity Commission did provide a means of doing it.

I accept, as the honourable member says, that lower nursing home subsidies means that operators in this state are remunerated at a lower level than elsewhere. It means that, whilst they are facing the strictures of certification and accreditation and the other measures introduced by the commonwealth government in its Aged Care Act, this places a particular strain on any operator who, by reason of a lower subsidy, has to have lower staffing regimes. This point was made clear to me in Mount Gambier where an operator pointed out that if this facility, which is called Boandik Lodge—a new facility and a very good one—were located over the border at Casterton, where there is a similar facility, the Victorian facility would have $158 000 a year in additional fees paid to it. That is clearly an unsatisfactory situation because the cost structures are the same.

**The Hon. T.G. Roberts:** There are Mount Gambier people going across to Casterton.

**The Hon. R.D. LAWSON:** Indeed, the issue of nursing home places has been ongoing, and the Hon. Angus Redford has raised the matter in this chamber in a question to me. So, we have been pressing the commonwealth government to immediately rectify this situation. There was a report in today's *Financial Review* that the matter is being actively looked at. I have had correspondence and discussions with the federal Minister for Aged Care, the Hon. Bronwyn Bishop, and I have pointed out to her the South Australian case and have supported the information supplied by local operators. I have had a very sympathetic response, certainly from a number of coalition members of the federal parliament, in relation to this issue, and I am hopeful of a satisfactory outcome.

The honourable member's question might suggest that there is some dissatisfaction with the level of care being offered in South Australian facilities as a consequence of this funding difficulty. I do not think that that is the case. I believe that South Australian operators are still operating nursing homes and hostels—aged care facilities as we now call them—to the highest standards, and we have met those standards in the accreditation and certification process that is ongoing.

## BURRA BYPASS

**The Hon. R.R. ROBERTS:** I seek leave to make an explanation before asking the Minister for Transport and Urban Planning a question about the Burra bypass.

Leave granted.

**The Hon. R.R. ROBERTS:** I received correspondence last Thursday from the regional council of Goyder in respect of some concerns that it had with the bypass around Burra. The reason this bypass was put through was that Transport SA, as I understand it, recognised that coming down the hill into Burra was a steep descent and there were a lot of heritage buildings in that area. They were concerned that (a) the road was being cut up through the town and (b) it had potential to cause damage to the heritage buildings. As I understand it, the bypass was created by Transport SA using existing roads, which, as has been explained to me, is like a billy goat track. It has had the effect of reducing the damage in Burra but it has left the council with an ongoing maintenance problem in that some of the road is sealed and some of it is not sealed. The problems of the ongoing maintenance of that are putting financial pressure on the council and, indeed, on the ratepayers of the Goyder region.

I have a report here that was given to me, which I am prepared to share with the minister at some time, and I have given an undertaking that I will work in with the local member for the area, Mr Graham Gunn, to try to assist the council, through the good offices of the minister. What has occurred is that the Barrier Highway is being used to a greater extent these days, for probably two reasons: one is the completion of the sealed section between Spalding and Burra, which was done under the guidance of the present Minister for Transport, and we congratulate her for that, and the other is that there was damage to the railway line there some three seasons ago. A long heavy vehicle went across the railway line and damaged one length of line, which was subsequently removed and the rail area covered up. So, for the past three seasons no grain has been shipped by train to Port Adelaide, or anywhere else for that matter, from the Burra terminus. This has left my constituents with two problems: increasing traffic flows of heavy vehicles and the ongoing maintenance. I will not read the background but I will put this series of questions to the minister, some of which I hope she can answer today and the others I hope she will take on notice.

1. Will the minister reclassify the bypass as an arterial road like the rest of the Barrier Highway and treat it like other

bypass roads, for example the one at Gawler which is part of the highway and under the care of the highways department?

2. Alternatively, can the minister use her best endeavours to provide financial assistance to the council to maintain what is by any fair measure her road?

3. Will she instruct Transport SA to replace the missing rail so that wheat and other grains can be transported by rail from that site, to decrease the damage not only to the bypass but to other roads in that area?

It has been asserted to me that what has happened here is that, in fact, we have created a road and then fostered out the responsibility. So if the minister can address those matters my constituents will be very pleased.

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** I am very familiar with the bypass road in question. I have cousins who live in the area. I use it myself. It is principally used for heavy vehicles and by locals with the knowledge to use that road.

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

**The Hon. DIANA LAIDLAW:** That was the Burra-Morgan road. The road that I think you were referring to is the bypass road which goes past the mine site and over the railway lines. Ivan Venning and I rode on the old Burra-Morgan road before it was sealed, and I had to ride my bike only once to make sure it was sealed pretty promptly.

For a number of years a committee approach has been taken for the reclassification of local roads, which are the responsibility of local council, to state arterial roads, which are the state government's responsibility. I am not sure whether this road has ever been assessed through that process, but I will seek advice on that. As for the funding of local roads, I inform the honourable member that a special local roads committee uses 70 per cent federal funds and 30 per cent local funds for the sealing of those roads, and councils in a regional area work out their priorities. I am not sure whether this road has been through that system. The missing rail would be owned by ASR, and I will inquire what it plans to do to fill in that missing piece of rail. Just as we have completed the missing link from Alice Springs to Darwin, we will look at this little missing link at Burra.

## STATE RECORDS

**The Hon. R.D. LAWSON (Minister for Disability Services):** I seek leave to make a ministerial statement on the subject of regulations under the State Records Act.

Leave granted.

**The Hon. R.D. LAWSON:** On 25 March 1999, regulations were made under the State Records Act excluding the official records of the Operations Intelligence Division of the South Australia Police from the operation of that act. The Operations Intelligence Division was established in 1984 when the former Special Branch was discontinued. Its functions and activities are governed by formal ministerial directions, most recently given on 1 July 1999, to the Commissioner of Police by the Minister for Justice, pursuant to section 6 of the Police Act. For present purposes it is unnecessary to refer to the background of the OID, except to say that its function is limited to the recording and dissemination of intelligence with respect to:

(a) acts or threats of violence directed towards the overthrow, destruction or weakening of the constitutional governments of the states, the commonwealth or a territory;

(b) acts or threats of violence of national concern calculated to evoke extreme fear for the purpose of achieving a political objective in Australia or in a foreign country;

(c) acts or threats of violence against the safety or security of any dignitary; or

(d) violent behaviour within or between community groups.

The directions draw a distinction between 'intelligence' on the one hand and 'information' on the other. 'Information' is simply defined as information of any kind and from any source whatsoever. 'Intelligence' is defined as information which is actually certified as relating to any person about whom there is a reasonable suspicion that the person's activities may involve the commission of the sort of acts of violence referred to above.

The directions provide for the appointment of an auditor, who has defined responsibilities in relation to the Operations Intelligence Division. Clause 5 of the directions provides that, after the expiration of 12 months (or such further period as the auditor allows), information shall be culled and destroyed if it has not been assessed or certified by the officer in charge of the OID as relating to any person to whom or property to which the provisions of clause 4 apply. It is recognised that the provisions about the destruction of records may not conform to the general regime of the State Records Act, which provides that all records having enduring evidential and informational value and which are brought into existence by agencies of the state government should be preserved for future reference. The regulations exclude the records of the OID from the State Records Act. They were made on 25 March and laid on the table of this Council on 25 May. Pursuant to a resolution of the Legislative Review Committee, the Hon. Angus Redford moved that the relations be disallowed.

The motion was debated on 4 and 5 August (the final days of the last session). On the last-mentioned date I gave the following undertaking:

> In light of the concerns expressed by the Legislative Review Committee, I undertake to develop and publish a mechanism for ensuring that the management of records of the [police] Operations Intelligence Division is performed in a manner which is consistent with the public interest. (Such mechanisms may be by way of regulation, legislation, ministerial direction, protocol, determination of the State Records or any combination thereof.)
>
> I further undertake that the regulations will be revoked within three months of the date hereof and, if required, [they will] be re-enacted in the same or some amended form and tabled so as to enable the Legislative Review Committee to again consider the new regulations during the next session.

Since that time, discussions have taken place between me, the auditor, the Operations Intelligence Division, the Manager of State Records and departmental officers concerning the form of a regulation which will, I trust, meet the concerns which were expressed by the Legislative Review Committee. The process is taking longer than I envisaged. This arose partly due to the fact that one of the principal players has been overseas since the matter first arose. As a result, the new regulation has not been brought in within three months of 5 August. However, I can inform the Council that a new regulation is being drafted and will be promulgated so as to provide the Legislative Review Committee and the parliament with the opportunity to examine the issue again.

## OFFSHORE MINERALS BILL

Second reading.

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

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

In view of the fact that it was on the *Notice Paper* during the last session, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill seeks to establish a legislative regime to govern mineral exploration and mining in south Australia's coastal waters and mirror Commonwealth legislation applying in adjacent Commonwealth waters.

Under the Offshore Constitutional Settlement of 1979, the Commonwealth and States agreed that as far as practicable, a common offshore mining regime should apply in Commonwealth and State waters. It was agreed that State coastal waters should extend three nautical miles from Australia's territorial sea baseline and Commonwealth waters should lie beyond the three nautical mile limit. Commonwealth waters are administered under its *Offshore Minerals Act 1994*. South Australia's coastal waters will be administered under this proposed new legislation.

The administration of the minerals regime applying in Commonwealth waters adjacent to South Australia is shared between the Commonwealth and South Australian Governments. This joint administration operates through two institutions, the Joint Authority and Designated Authority.

The Joint Authority consists of the Commonwealth Minister for resources and energy and the corresponding State minister, and administers all offshore minerals activity in Commonwealth waters adjacent to South Australia. The Joint Authority is responsible for major decisions relating to titles, such as grants, refusals and the like, and in the event of a disagreement, the views of the Commonwealth Minister prevail.

The State minister is the Designated Authority, and is also responsible for the normal day-to-day administration of the Commonwealth legislation.

Under the auspices of the Australian and New Zealand minerals energy council, ANZMEC, a 'model' bill to apply in State coastal waters was developed by the Western Australian Government in consultation with Parliamentary Counsels in other States, including South Australia. The "model" bill has provided the basis for the development of South Australia's *Offshore Minerals Bill 1999*.

In accordance with the Offshore Constitutional Settlement, the Bill closely mirrors the Commonwealth's *Offshore Minerals Act 1994*. This will ensure that exploration and mining proposals in Commonwealth and State waters receive consistent treatment, which is particularly important if projects straddle both jurisdictions.

The Bill applies to South Australia's coastal waters which are defined to be those waters extending three nautical miles seaward from the baseline determined under the *Seas and Submerged Lands Act 1973* of the Commonwealth. The baseline encloses Spencer Gulf, Gulf St. Vincent, Investigator Strait and Backstairs Passage by a line from the mainland to the western end of Kangaroo Island, along the south coast of Kangaroo Island and then from the Eastern end of the island to the mainland. Mining in the gulfs and in Investigator Strait and Backstairs passage will be regulated under the *Mining Act 1971*.

The Bill provides a legislative framework for the administration of various types of mining licences in South Australian coastal waters and has regulation-making power to detail relevant royalty, and environmental management regimes. In the interim, the respective onshore regulatory regimes will continue to apply in State coastal waters. It is expected that the environmental management regimes to apply in State coastal waters will be consistent with the arrangements applying onshore.

The Bill also details State functions in Commonwealth waters under Part 5.1 of the Commonwealth's *Offshore Minerals Act 1994.* In effect, relevant South Australian laws can be applied to Commonwealth waters when a corresponding Commonwealth law does not exist. For example, South Australia's environmental management and safety and health regimes can be applied to Commonwealth waters in the absence of corresponding Commonwealth regimes.

The impending environmental protection review of South Australia's '*Mining Act 1971'* will reshape the environmental management regime for onshore mining activities and also provide the basis for the establishment of a complementary environmental management regime in South Australian coastal and adjacent Commonwealth waters.

This greater consistency of legislation between jurisdictions will create a more efficient and effective regime for the administration of exploration and mining in South Australia's off shore waters.

While there has been some interest in offshore minerals occurrence in South Australian waters in recent years, there are no applications or permits currently in force.

This Bill complements South Australia's offshore petroleum legislative regime which was established 16 years ago. Since the establishment of this complementary Commonwealth – State petroleum regime, there has been significant petroleum exploration activity in South Australia's offshore waters which has proven to be a good test for the legislation.

Passage of this bill will fulfil South Australia's obligations under the Offshore Constitutional Settlement of 1979.

Explanation of Clauses

Clause 1

Clause 2

These clauses are formal.

Clause 3—Outlines the main principles of the Offshore Constitutional Settlement by which the States share in the administration of the Commonwealth Act and under which a common mining code will be maintained in the offshore area. The clause also details those Acts which either gave rise to, or flow from the Offshore Constitutional Settlement.

Some sections of the Commonwealth Act contain provisions which are not relevant to this Bill. Throughout the Bill some clause numbers are not used to maintain uniformity with the Commonwealth Act.

Clause 4—Many provisions of this Bill are accompanied by explanatory notes. These notes may explain further the purpose of the particular provision or they may draw attention to another provision which may be relevant to the substance of the original provision. This clause provides that the notes which may be included in a clause may assist the understanding but do not form part of that clause.

Clause 5—provides the meaning of terms used in the Bill.

Clause 6—The intention here is to identify the shareholders in a licence and their percentage holding. It ensures that where a licence has a number of holders it does not automatically mean that all have equal shares, but rather only those percentages that are specified in the Register.

Clause 7—This explains that a transfer of a licence or share in a licence has occurred when all or any of the percentages of the interest in a licence changes.

Clause 8—This provision makes it clear that if a holder of an exploration licence applies for and is granted a retention licence or a mining licence, these latter licences over the same area are defined as successor licences to the exploration licence. It also allows for a mining licence to succeed a retention licence which previously succeeded an exploration licence. The intention is that over the life of an offshore minerals project, the previous rights of the project owner are in certain circumstances continued in the successor licences.

Clause 9—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 10—From time to time it will be necessary to determine various positions upon the Continental Shelf, for example the position of a particular boundary of a title area. This clause explains how the position on the Earth's surface is calculated and ensures that all determinations of points will be made by reference to a single geodetic station, namely the Johnston Geodetic Station in the Northern Territory. This point was established through the co-operative effort of the survey authorities of the Commonwealth and the States.

Clause 11—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 12—This ensures that where an instrument issued under this Act is varied in any way, the variation is carried out according to the same procedures and under the same conditions by which the original instrument was issued. The intention is to ensure that there is consistency in the administration of this Act.

Clauses 13 to 15—(Numbers not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 16—"Coastal waters" of the State is defined as the first 3 nautical miles of the territorial sea from the baseline—this is the area subject to this Bill. The "baseline" is described as effectively being the lowest astronomical tide along the coast, but varies where

bays and other indentations occur. This clause explains the effect on a licence issued under this Bill where there is a change in the baseline. If the baseline moves landward and causes a licence to no longer be within coastal waters, the Bill will still apply to the licence as if it were still within coastal waters. If the baseline moves seaward and causes a licence issued under the Commonwealth Act to move within coastal waters (covered by this Bill), that licence is not affected by this Bill. Once a licence (or any successor licence by the same holder) affected by a change in the baseline is no longer in force, the new position of the baseline applies to subsequent licence applications.

Clause 17—This clause provides that for the purposes of this Bill the offshore area is divided into blocks bounded by one minute of latitude and one minute of longitude.

Clause 18—This provision allows the Minister to withdraw a block entirely from the operation of this Bill, provided the block is not the subject of an existing licence or an application for a licence. The intention is to allow blocks to be reserved for conservation purposes, environmental reasons or any other reason.

Clause 19—This clause defines a standard block as one that is not reserved and is available for any one to apply for either an exploration permit or mining lease.

Clause 20—This clause defines a tender block as a reserved block which is made available for an exploration licence or a mining licence by way of a public invitation to apply for the licence.

Clause 21—This clause defines a discrete area as a group of blocks where all the blocks join each other at least on one side.

Clause 22—This clause adopts an all embracing descriptive definition of minerals to include all naturally occurring substances or any mixture of them.

Clause 23—This clause adopts a broad definition of exploration to include any operation directly related to exploration. However, underground exploration from land in accordance with the *Mining Act 1971* is not included.

Clause 24—This clause adopts a broad definition of recovery.

Clause 25—This clause defines a licence holder as one whose name appears in the Register.

Clause 26—This clause defines "associates" in order to make a distinction between them and the licence holder. Associates may do all the work necessary for the exploration and mining of minerals under agreements with licence holders or other associates. Associates may be contractors, sub-contractors, agents or employees.

Clause 27—This clause ensures that any information provided to the Minister by the licence holder remains confidential so long as it relates to only those blocks covered by the licence and for so long as that licence or a successor licence remains in force.

Clause 28—This ensures that any material recovered as a sample which is provided by the licence holder to the Minister remains confidential so long as it relates to only those blocks covered by the licence and for so long as that licence or a successor licence remains in force.

Clause 29—Where "Commonwealth-State offshore area" is referred to in this Part, it has the same meaning as in the Commonwealth Act. The Commonwealth-State offshore area is the offshore area seaward of the 3 nautical mile limit.

Clause 30—This clause provides for the Minister to perform duties as a member of the Joint Authority, or as the Designated Authority in Commonwealth waters under the Commonwealth Act.

Clause 31—Similarly, this clause provides for a public sector employee with delegated authority under the Commonwealth Act to perform those duties under that Act

Clauses 32 to 34—(Numbers not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 35—This clause provides that the Bill does not apply to petroleum.

Clause 36—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 37—This clause makes this Bill applicable to all natural persons whether or not they are Australian citizens or residents of South Australia, and to all corporations whether or not they are incorporated or carrying out business in South Australia.

Clause 38—This clause provides for the basic control over offshore minerals activities. It provides that all offshore mineral activity is prohibited unless authorised according to the provisions of this Bill.

Clause 39—This outlines the five licences and consents which may be granted, their respective purposes and the sequence in which they may be used.

Clause 40—This outlines the steps that must be taken before a licence becomes fully effective.

Clause 41—This clause allows the Minister to determine the form and manner in which an application for a licence or the renewal of a licence is to be made.

Clause 42—This is one of the fundamental clauses in the legislation. It provides that minerals authorised by and recovered under a licence (but not a works licence) are the property of the licence holder.

Clause 43—The clause makes it clear that while a licence or consent does not extinguish any native title, the native title rights in the area will be subject to the rights conferred on the holder of a licence or consent. Subject to clause 44, the subordination of native title rights during the life of a licence is consistent with the subordination of any other rights other interested parties may have in the licence area. In other words, native title rights are subordinate to the licence rights of the licence holder while the licence exists. Also, liability to pay compensation in relation to native title, lies with the licence applicant and not the Government.

Clause 44—The licence holder must respect and not interfere with the rights of other persons who may be lawfully in the area including any native title rights and interests.

Clause 45—This provides that an exploration licence may be granted for blocks that are open for exploration or blocks that have been previously reserved and which have been released for tender.

Clause 46—This outlines in clear terms what a licence holder can or cannot do under a licence. The licence authorises its holder (subject to compliance conditions and all other legal requirements) to explore the licence area for all minerals except those specifically excluded or for minerals specified in the licence. It also allows the licence holder to recover samples and carry out associated activities.

Clause 47—A licence can be cancelled for failing to comply with the conditions of the licence and for breaching a provision of this Act or Regulations or a condition attached to the transfer of a licence. No compensation is payable to the licence holder in this situation.

Clause 48—This provides that any rights conferred by an exploration licence may be suspended in the public interest. For example, an investigation may need to be conducted to establish whether or not exploration activity in the area is having an adverse impact on a newly discovered and unique ecological occurrence. It also provides the procedures the Minister must follow if the Minister decides to suspend the licence. They may be later restored and the licence holder must be informed of both events in writing.

Clause 49—This provides that compensation must be paid to a licence holder if property is acquired as a result of suspension of exploration rights.

Clause 50—This provides that a person may apply for an exploration licence to cover one or more vacant blocks providing they form one discrete area up to a maximum size of 500 blocks.

Clause 51—This provision outlines the various circumstances under which a block can be excluded from being available for an application for an exploration licence. The intention is to allow the Minister the opportunity to reserve a newly vacant block, for whatever reason. It is also designed to prevent previous licence holders of, or applicants for those blocks from immediately re-applying for them again so as to give other interested parties the opportunity to apply for them.

Clause 52—This allows a person to apply to the Minister for a determination to enable him or her to apply for an exploration licence over an area covered by an excluded block.

Clause 53—This provision allows a person to apply for and the Minister to consider an exploration licence application covering more than one discrete area. It is possible that some applications lodged around the same period may be for over-lapping areas. This provision gives the Minister the discretion to grant an exploration licence to cover up to three discrete areas, if the severance of the area is caused by a grant of a prior application.

Clause 54—This provision outlines to whom and the manner in which an application for an exploration licence is to be made, as well as the details to be included in the application.

Clause 55—This provides that an application for an exploration licence is not invalid if it includes a block which is not available. This provision allows the application to be considered in relation to those remaining blocks that are available.

Clause 56—The licence application fee is prescribed by regulations and is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of the fee is to recover the administrative costs of processing applications wherever possible.

Clause 57—Applicants must advertise the details of their application for an exploration licence in the print media and invite comments on the application which should be lodged with the Minister within 30 days.

Clause 58—The purpose of this clause is to ensure that as a general rule, all exploration licence applications will be considered on a "first come, first considered" basis. The exception to this rule will be where applications for substantially the same area have been received close together in time. On such occasions, ballots will be used to determine the priority as to which application will be considered first. The conduct of such ballots and the rules for determining what constitutes close together in time will be specified in regulations.

Clause 59—This provision allows the Minister to discuss the shape of the total area comprising a number of blocks sought by an applicant for an exploration licence. Following the discussion, the Minister, with agreement of the applicant, may change the shape of the area in the application. The purpose is to prevent an applicant from encircling or closing off small pockets so as to make it difficult or uneconomic for another applicant to explore such areas.

Clause 60—Its purpose and contents are similar to clause 57. Applicants must advertise the details of their revised application.

Clause 61—This clause empowers the Minister to request any further information about the licence application. The information in the application may be deficient in some aspects or may require further elaboration.

Clause 62—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 63—This clause enables the Minister to grant a provisional exploration licence which becomes final upon the applicant paying the prescribed rental fee and accepting other certain conditions.

Clause 64—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 65—This requires that the licence must specify the area, the terms and conditions of the licence.

Clause 66—This provision requires the successful applicant to be given the licence which contains the terms and conditions of the provisional grant and a notice of any security deposit and any fees due. The provisional licence will lapse if the applicant does not confirm that it wishes the provisional grant to be made final and if it does not pay the security and all fees associated with the licence.

Clause 67—This allows the provisional licence holder to request, within 30 days of receiving a written notice of a provisional grant of an exploration licence, an amendment to a condition of the provisional licence and the Minister may amend that condition or any other condition of the licence.

Clause 68—This allows the provisional licence holder to request within 30 days of receiving a written notice of a provisional grant of an exploration licence, an amendment of the security requirement and the Minister may amend the security requirement.

Clause 69—This provides for the payment of fees and the confirmation of grant to be deferred to allow time for any conditions or the level of security to be amended, if thought necessary.

Clause 70—This is the final formal step (subject to registration) in the grant of an exploration licence. The grant becomes final upon the applicant paying the required fees, lodging appropriate security and confirming in writing, acceptance of the grant. If the confirmation of the grant is made after any amendments to the conditions or security requirements during the payment extension period, the date of the confirmed grant remains the date of the original conditional grant. This means that when discussions are held on possible amendments to the conditions or security requirements, the "clock still ticks away" so as to provide an incentive to the provisional licence holder to conclude discussions as soon as possible.

Clause 71—This ensures that the conditions specified in the licence become legally binding on the licence holder.

Clause 72—A provisional grant of an exploration licence lapses if acceptance and payment of relevant fees and securities are not made within 30 days or, if an extension is granted, within this extended period.

Clause 73—It is intended to ensure that the potential applicants for licences over reserved blocks are made aware of the "ground rules" under which the tender process will be conducted. It requires the Minister to determine the amount of security that will be required to be lodged, the conditions of the licence and the procedures that it will adopt in allocating the licence. This provision will allow the Minister to determine whether the licence will be allocated on the basis of program bidding or cash bidding.

Clause 74—In Division 2, the initiative for making an application over a standard block lies with the applicant for a vacant area and at a time of the applicant's own choosing. Under this clause, the initiative lies with the Minister who invites applications to be lodged within a specified time frame for a reserved area which has been released for exploration by way of tender.

Clause 75—The Minister must publicly specify the criteria the applicants will need to meet and the procedures the Minister will use in selecting the successful applicant. It also limits the size of an exploration licence to 500 blocks. The intention is to ensure that the potential applicants are made aware of the conditions and procedures against which their applications will be assessed.

Clause 76—This provides that a person may apply for an exploration licence according to the public notice of invitation.

Clause 77—This is a procedural provision. It outlines to whom and the manner in which an application for an exploration licence is to be made, as well as the details to be included in the application.

Clause 78—This allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 79—This provision allows the Minister to request further information in relation to the application which may be thought necessary to assist in the consideration of the application.

Clause 80—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 81—The Minister may grant a provisional exploration licence subject to the procedures as advertised in the public tender notice being observed.

Clause 82—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 83—It requires the successful applicant to be advised in writing of the terms and conditions of the provisional grant of the exploration licence which will expire if they are not met.

Clause 84—This is the final formal step in the grant of an exploration licence. The grant becomes final (subject to registration) upon the applicant paying the required fees, lodging appropriate security and confirming in writing acceptance of the grant.

Clause 85—This ensures that the conditions specified in the licence become legally binding on the licence holder.

Clause 86—This provides that a provisional grant of an exploration licence lapses if it is not properly accepted.

Clause 87—If there is more than one application as a result of the tender process, this allows the Minister to provisionally grant an exploration licence to the next best applicant should the first chosen licence holder allow its provisional licence to lapse.

Clause 88—The term of an exploration licence is four years. The date of the provisional grant is when the licence commences and it is this date that determines the expiry date, however the licence does not come into effect until it is registered. The time difference in normal circumstances will be approximately one month, during which time the provisional licence holder can decide whether to accept the provisional grant and pay the required fees and level of security. The period could be longer if the provisional licence holder wishes to negotiate any changes to the conditions of the licence.

Clause 89—The term of a renewal is two years, and the maximum number of renewals is three. This clause, taken together with clause 88, ensures that the maximum period of an exploration licence is ten years.

Clause 90—This provision empowers the Minister to extend the term of an exploration licence by the same period as licence rights have been suspended. The intention is to ensure that the licence holder is not penalised by the suspension and is able to carry out the exploration program within the same period of time once the licence rights have been restored.

Clause 91—This provision allows an exploration licence to continue in force until the Minister either grants or refuses a renewal.

Clause 92—This provision allows an exploration licence to continue until the Minister grants or refuses a retention or mining licence applied for by way of conversion.

Clause 93—This allows an existing exploration licence to remain in force beyond its due expiry date so that any application for an extension can be considered by the Minister.

Clause 94—This covers the situation where an exploration licence holder has not been able to complete its exploration program during the maximum time allowed because of circumstances beyond the licence holder's control. In this situation, the licence holder can

ask for extra time to compensate for the time lost and thus complete the original exploration program.

Clause 95—This provision makes it mandatory for the Minister to extend the licence term if the Minister is satisfied that the unforeseen circumstances did affect the exploration program. The Minister may attach conditions to the extension and there are restrictions on the term of the extension.

Clause 96—This allows a licence holder to request an extension of the term of the licence than those outlined in clause 94, that is for circumstances other than those beyond its control such as suspension of licence or exemptions from licence conditions.

Clause 97—This empowers the Minister to grant a licence extension and to impose whatever conditions the Minister thinks appropriate. This is considered necessary as the circumstances may indicate that the licence holder may need to comply with additional conditions.

Clause 98—This clause provides that the applicant is to be advised in writing of the grant or refusal of extension, and of any conditions that may be attached to it.

Clause 99—This provision allows a licence holder to voluntarily surrender some of the area covered by a licence if the remaining portion forms a discrete area. Under this clause the notification constitutes surrender.

Clause 100—This clause requires the consent of the Minister before a licence holder can surrender blocks leaving two or three discrete areas. This allows the Minister the opportunity to examine the proposed surrender so as to avoid undue fragmentation of the remaining title area and prevent the licence holder from encircling or closing off small pockets so as to make it difficult or uneconomic for another applicant to explore such areas. If the Minister does not agree, then consultations can proceed to decide on the final shape of the areas to be surrendered. In the event of agreement, the applicant is advised in writing.

Clause 101—This allows for an exploration licence holder to lodge an application to renew the licence.

Clause 102—This specifies that an application to renew an exploration licence must be made at least 30 days before the licence expires. It also allows the Minister discretion to accept a later application if the circumstances warrant it.

Clause 103—This is a procedural provision which outlines the manner in which an application for an exploration licence is to be made, as well as the details to be included in the application.

Clause 104—This clause provides that the licence area must be reduced by 50% for each renewal. If a renewal is sought for more than one discrete area, then the application must not exceed 3 discrete areas. This is to avoid undue fragmentation of the licence area. The clause also gives the Minister the discretion to reduce the mandatory reduction in the licence area by less than 50% if he or she thinks that circumstances warrant it. The flexibility provided by this clause will allow the Minister to treat special cases on their merits.

Clause 105—This provision empowers the Minister to request any further information about the renewal application which may be thought necessary to assist in the consideration of the application.

Clause 106—This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 107—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 108—This provision sets out the circumstances under which the Minister must provisionally renew an exploration licence.

Clause 109—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 110—This provision sets out the details that the Minister must provide in the written notice of provisional renewal to the applicant.

Clause 111—This allows the licence holder to request an amendment of the conditions within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 112—This allows the licence holder to request an amendment of any security requirements within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the security requirements and confirm this to the licence holder in writing.

Clause 113—This clause provides for the payment of fees to be deferred to allow time for any conditions or security requirements to be amended if thought necessary.

Clause 114—This is the final formal step in the grant of a renewal of an exploration licence. The renewal becomes final (subject to registration) upon the applicant paying the required fees, lodging appropriate security and confirming in writing the acceptance of the grant.

Clause 115—This ensures that the conditions of the licence become legally binding on the licence holder.

Clause 116—A provisional grant of a renewal of an exploration licence lapses if it is not properly accepted.

Clause 117—This clause outlines the sources of the obligations associated with an exploration licence. In addition, the clause provides that where there is more than one shareholder in an exploration licence, each shareholder will be held 100% responsible for all obligations of the licence in the event of failure by any one of them to meet their obligations.

Clause 118—Under this clause an exploration licence may be granted subject to such conditions as the Minister thinks fit.

Clause 119—Apart from the payment of a penalty or lodgement of security, this clause prevents a condition requiring the payment of money to the State.

Clause 120—This clause enables the Minister to vary any of the conditions of a licence in any of the circumstances specified.

Clause 121—This clause enables the Minister to suspend or exempt any of the conditions of a licence in any of the circumstances specified.

Clause 122—If a licence is suspended, this clause frees the licence holder from complying with the conditions for the duration of the suspension.

Clause 123—The fundamental principle contained in this provision is that exploration operations are to be carried out at a standard accepted in the industry and other provisions elsewhere in this Bill ensure that these standards will be the subject of inspections. The clause also requires the operator to maintain in good condition and repair, all structures, equipment and other property in the licence area which are used in connection with the operations. All structures, plant and equipment that are not or no longer going to be used are to be removed from the operations area.

Clause 124—This empowers the Minister to require the licence holder to maintain, and provide when required, any records or samples resulting from exploration activities. This provision is also necessary so that the Minister has the information necessary for the proper and efficient administration of the legislation.

Clause 125—This requires the licence holder to allow inspectors access to its operations and records.

Clause 126—This clause outlines the circumstances when an exploration licence expires.

Clause 127—This provision allows a licence holder to surrender the licence.

Clause 128—This clause provides that an existing exploration licence covering the same area as a newly granted retention licence automatically expires to the extent of the overlapping blocks. This is to ensure that no area is covered by more than one licence.

Clause 129—This is similar in substance and intent as the previous provision, clause 128.

Clause 130—The clause outlines the circumstances under which an exploration licence may be cancelled and ensures that the licence holder receives natural justice prior to any moves to cancellation. It gives the licence holder the opportunity to make submissions within a specified time or to take remedial action. It outlines the conditions the Minister must meet before proceeding with the cancellation.

Clause 131—This clause provides that any outstanding obligations must be discharged by the licence holder after the termination of the licence no matter what the circumstances were which gave rise to the termination. It is intended, among other things to ensure that the licence holder's environmental obligations are met.

Clause 132—This clause provides for the grant of a retention licence and the accompanying notes outline the reasons for the licence.

Clause 133—This outlines what a licence holder can or cannot do under a retention licence. It also prohibits using the licence for recovery of minerals for commercial purposes. This is to ensure that the licence holder applies for a mining licence should the licence holder wish to commence commercial operations.

Clause 134—This provides that no compensation is payable on the cancellation or non-renewal of a retention licence.

Clause 135—This provides that any rights conferred by a retention licence may be suspended if the Minister is satisfied it is in the public interest to do so. It also provides the procedures the Minister must follow if the Minister decides to suspend the licence. It may be later restored and the licence holder must be informed in writing of both events as they occur.

Clause 136—This provides that compensation must be paid to a licence holder if property is acquired as a result of suspension of rights under a retention licence.

Clause 137—This provides that a holder of an existing exploration licence may apply for a retention licence covering a group of blocks in the exploration licence area and each must form a discrete area up to a maximum of 20 blocks.

Clause 138—This is a procedural provision. It outlines the manner in which an application for a retention licence is to be made, as well as the details to be included in the application.

Clause 139—This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this provision is to recover the administrative costs of processing applications wherever possible.

Clause 140—This provides that the applicant must advertise the details of the application for a retention licence in the print media and invite comments which should be lodged with the Minister within 30 days. The purpose of the provision is to improve the transparency and accountability of the administration of the Act.

Clause 141—This provision empowers the Minister to request any further information about the application. This requirement is necessary as the information in the application may be deficient in some aspects or may require further elaboration.

Clause 142—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 143—This clause gives the Minister a discretion to grant or refuse a retention licence.

Clause 144—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 145—This provision outlines the various grounds on which a retention licence may be granted.

Clause 146—This details what the licence must include and limits the term of the licence to 5 years. The licence may specify what activities are authorised by the licence.

Clause 147—This provision requires the successful applicant to be given the licence which contains the terms and conditions of the provisional grant and a notice of any security deposit and any fees due. The provisional licence will lapse if the applicant does not confirm that it wishes the provisional grant to be made final and if it does not pay the security and all fees associated with the licence.

Clause 148—This allows the provisional licence holder to request an amendment to a condition of the provisional licence within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 149—This allows the provisional licence holder to request an amendment of the security requirement within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 150—This clause provides for the payment of fees and the confirmation of the grant to be deferred to allow time for any conditions to be amended or for a new determination as to security requirements to be made.

Clause 151—This is the final formal step in the grant of a retention licence. The grant becomes final (subject to registration) upon the applicant paying the required fees, lodging appropriate security and confirming in writing the acceptance of the grant.

Clause 152—This ensures that the licence conditions become legally binding on the licence holder.

Clause 153—This provides that a provisional grant of a retention licence lapses if it is not properly accepted.

Clause 154—This provision outlines the date of commencement and the initial term of a retention licence.

Clause 155—This provision specifies the date when the renewal of a retention licence comes into force and refers the reader to clause 169 which provides that each renewal may not exceed 5 years.

Clause 156—This provides that where an application for renewal has been made, the initial retention licence continues in force even though it has expired. This will allow licence related activities to continue until an application for a renewal is approved or refused by the Minister or not accepted by the applicant.

Clause 157—This allows a retention licence to continue until the Minister grants or refuses a mining licence.

Clause 158—This allows the holder of a retention licence to voluntarily surrender some of the area covered by a licence if the remaining portion forms a discrete area.

Clause 159—This clause allows for an application to be made to renew a retention licence.

Clause 160—This specifies that an application to renew a retention licence must be made at least six months before the licence expires. It also allows the Minister discretion to accept a later application if the circumstances warrant it. The intention of the provision is to encourage the licence holder to make an application well before the expiry date of the initial licence and not wait until it is due to expire.

Clause 161—This is a procedural provision. It outlines the manner in which an application for a retention licence is to be made, as well as the details to be included in the application.

Clause 162—This clause empowers the Minister to request any further information about the renewal application.

Clause 163—The provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 164—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 165—This provision states that the Minister can provisionally renew or refuse to renew a retention licence.

Clause 166—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 167—Empowers the Minister to take into account the commercial viability of mining activities in the licence area and the applicant's past record in complying with the various legal, operational and administrative requirements of the offshore minerals mining legislation.

Clause 168—This specifies the procedures the Minister must follow if the Minister proposes to refuse an application for a renewal of a retention licence. The intention is to ensure that the applicant is not denied natural justice and is given the opportunity to restate the applicant's case for a renewal.

Clause 169—This sets out the details that the Minister must provide in the written notice of provisional renewal to the applicant and specifies that the term of a renewal is not to be more than 5 years.

Clause 170—This allows the provisional licence holder to request an amendment of the conditions within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 171—This allows the provisional licence holder to request an amendment of the security requirement within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 172—This provides for the payment of fees to be deferred to allow time for any conditions or security requirement to be amended, if thought necessary.

Clause 173—This is the final formal step in the grant of a renewal of a retention licence. The renewal becomes final (subject to registration) upon the applicant paying the required fees, lodging appropriate security and confirming in writing acceptance of the grant.

Clause 174—This ensures that the conditions of the licence are legally binding on the licence holder.

Clause 175—This provides that a provisional grant of a renewal of a retention licence lapses if the provisional renewal of the licence is not properly accepted under clause 173.

Clause 176—This clause outlines the sources of the obligations associated with a retention licence. In addition, this clause provides that where there is more than one shareholder in a licence, each shareholder will be held 100% responsible for all obligations of the licence in the event of failure by any one of them to meet its obligations.

Clause 177—Under this clause a retention licence may be granted subject to such conditions as the Minister thinks fit.

Clause 178—With the exception of payment of a penalty or lodgement of securities, this clause prevents the possibility that a tax may be imposed by way of a condition.

Clause 179—This clause enables the Minister to vary any of the conditions of the licence in any of the circumstances specified.

Clause 180—This enables the Minister to suspend or exempt any of the conditions of the licence in any of the circumstances specified.

Clause 181—If a licence is suspended, this clause frees the licence holder from complying with the licence conditions for the duration of the suspension.

Clause 182—This imposes an obligation on the licence holder to notify changes in the circumstances which significantly affect the long term viability of activities in the licence area.

Clause 183—The fundamental principle contained in this provision is that operations are to be carried out at an acceptable industry standard and provisions elsewhere in this Bill ensure that these standards will be the subject of inspections. The clause also requires the operator to maintain in good condition and repair, all structures, equipment and other property in the licence area which are used in connection with the operations. All structures, plant and equipment that are not, or no longer going to be used, are to be removed from the operations area.

Clause 184—This empowers the Minister to require the licence holder to maintain, and provide when required, any records or samples resulting from exploration or development activities. This provision is also necessary so that the Minister has the information necessary for the proper and efficient administration of the legislation.

Clause 185—This provides that the licence holder must provide inspectors with reasonable facilities and assistance for the purpose of carrying out inspections.

Clause 186—This clause outlines the circumstances in which a licence expires.

Clause 187—This provision allows a licence holder to surrender the licence.

Clause 188—This provides that a retention licence automatically expires when a mining licence over the area is granted and registered. This is to ensure that no area is covered by more than one licence.

Clause 189—The clause outlines the circumstances under which a retention licence may be cancelled and ensures that the holder receives natural justice prior to any moves to cancellation. It outlines the conditions the Minister must meet before proceeding with the cancellation.

Clause 190—This provision allows the Minister to request the licence holder to explain why the holder should not apply for a mining licence if the Minister thinks that mining is viable. It is intended to ensure that the licence holder does not just sit on the area under the licence without making attempts to develop the area to the point where commercial operations can commence at the appropriate time.

Clause 191—This provision provides that any outstanding obligations must be discharged by the licence holder after the termination of the licence no matter what the circumstances were which gave rise to the termination. It is intended, among other things, to ensure that the licence holder's environmental obligations are honoured.

Clause 192—This clause outlines the kind of blocks in coastal waters that may be covered by a mining licence. The licence authorises its holder (subject to compliance conditions and all other legal requirements) to exploit the licence area for all minerals except those specifically excluded, or for minerals specified in the licence.

Clause 193—This outlines what a licence holder can or cannot do under a mining licence.

Clause 194—This clause provides that no compensation is payable if the Minister cancels or refuses to renew a mining licence.

Clause 195—This provides that rights conferred by a mining licence must be suspended in the public interest if it is thought necessary by the Minister. The rights may be restored later and the licence holder must be informed of both events in writing.

Clause 196—This provides that compensation must be paid to a licence holder if property is acquired as a result of suspension of mining licence rights.

Clause 197—This provides that a person may apply for a mining licence to cover any area that is vacant and not covered by an existing licence. The maximum size of an area covered by a licence is 20 blocks which must form a discrete area.

Clause 198—This provides that only the holder of either an exploration licence or a retention licence may apply for a mining licence to cover an area which is the subject of the existing titles. Each licence to cover a maximum area of 20 blocks which must form a discrete area.

Clause 199—This provision outlines the manner in which an application for a mining licence is to be made, as well as the details to be included in the application. There is also a requirement that each application must be accompanied by maps which show the general location of the area sought.

Clause 200—An application for a mining licence is not invalid if it inadvertently includes a block which is not available. It is possible that an applicant may not be aware that a block is already under title or is a reserved block. In such circumstances, the application should not be considered invalid and this provision allows the application to be considered in relation to those remaining blocks that are available.

Clause 201—This provision is similar to those elsewhere in the Bill. It allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose is to recover the administrative costs of processing applications wherever possible.

Clause 202—The applicant must advertise the fact that the applicant has lodged an application for a mining licence and invite comments. The purpose is to improve the transparency and accountability of the administration of the Act.

Clause 203—The purpose of this provision is to ensure that as a general rule all mining licence applications will be considered on a "first come, first considered" basis. The exception to this rule will be where applications for substantially the same area have been received close together in time. On such occasions, ballots will be used to determine the priority as to which application will be considered first. The conduct of such ballots and the rules for determining what constitutes close together in time will be specified in regulations.

Clause 204—This clause empowers the Minister to request any further information about the licence application. The information may be deficient in some aspects or may require further elaboration.

Clause 205—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 206—This provision empowers the Minister to grant a provisional mining licence which becomes final upon the applicant paying the prescribed rental fee and accepting other certain conditions.

Clause 207—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 208—This specifies the procedures the Minister must follow if the Minister proposes to refuse an application for a mining licence. The intention is to ensure that the applicant is not denied natural justice and is given the opportunity to restate the applicant's case for a licence.

Clause 209—This specifies the items that are to be included in the licence. It also limits the term of the licence to 21 years.

Clause 210—This provision requires the successful applicant to be notified of the terms and conditions of the provisionally granted mining licence and a notice of any security deposit.

Clause 211—This allows the provisional licence holder to request an amendment to a condition of the provisional licence within 30 days.

Clause 212—This allows the provisional licence holder to request an amendment of the security requirement within 30 days.

Clause 213—This clause provides for the payment of fees to be deferred to allow time for any conditions or security levels to be amended, if thought necessary.

Clause 214—This is the final formal step in the grant of a mining licence. The grant becomes final (subject to registration) upon the applicant paying the required fees, lodgement of appropriate security and confirming in writing acceptance of the grant.

Clause 215—This ensures that the conditions of the licence become legally binding on the holder.

Clause 216—A provisional grant of a mining licence lapses if it is not properly accepted.

Clause 217—This provision ensures that potential applicants are made aware of the "ground rules" under which the tender process will be conducted. It requires the Minister to determine the amount of security that will be required to be lodged, the conditions of the licence and the procedures that the Minister will adopt in allocating the licence. This provision will allow the Minister to determine whether the licence will be allocated on the basis of program bidding or cash bidding.

Clause 218—Under this clause the Minister may invite applications to be lodged for a reserved area which has been released for mining.

Clause 219—The Minister must publicly specify the criteria applicants will need to meet and the procedures the Minister will use in selecting the successful applicant. It also sets the maximum size of the licence to 20 blocks. The intention is to ensure that the potential applicants are made aware of the conditions and the procedures under which their applications will be assessed.

Clause 220—This clause provides that a person may apply for a mining licence according to the public notice of invitation.

Clause 221—This is a procedural provision. It outlines the manner in which an application for a mining licence is to be made, as well as the details to be included in the application.

Clause 222—This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 223—This provision allows the Minister to request further information in relation to the application.

Clause 224—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 225—This provides that the Minister may grant a provisional mining licence in accordance with the procedures advertised in the public tender.

Clause 226—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 227—This requires the successful applicant to be advised in writing of the terms and conditions of the provisional grant of the mining licence.

Clause 228—This is the final formal step in the grant of a mining licence. The grant becomes final (subject to registration) upon the applicant paying the required fees, lodgement of appropriate security and confirming in writing acceptance of the grant.

Clause 229—This clause is similar to those covering exploration and retention licences. It is to ensure that the conditions of the licence become legally binding on the licence holder.

Clause 230—This clause provides that a provisional grant of a mining licence lapses if it is not properly accepted under clause 228.

Clause 231—If there is more than one application as a result of the tender process, this clause allows the Minister to provisionally grant the mining licence to the next best applicant should the first provisional licence holder allow its provisional licence to lapse.

Clause 232—This clause outlines the date of commencement of a mining licence as well as the expiry date.

Clause 233—This clause outlines the date of commencement of a renewal of a mining licence as well as the expiry date.

Clause 234—This clause allows the mining licence to continue in force until the Minister grants or refuses a renewal of the licence.

Clause 235—This clause allows a licence holder to voluntarily surrender some of the area covered by the licence if the remaining portion forms a discrete area.

Clause 236—This clause allows for an existing licence holder to apply for a renewal of the existing mining licence.

Clause 237—This clause specifies that an application to renew a mining licence must be made at least six months before the licence expires. It also allows the Minister the discretion to accept a later application. The intention of the provision is to encourage the licence holder to make an application as soon as possible and not wait until the licence is due to expire.

Clause 238—This provision outlines the manner in which an application to renew a mining licence is to be made, as well as the details to be included in the application.

Clause 239—This provision empowers the Minister to request any further information about the renewal application which may be thought necessary.

Clause 240—This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 241—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 242—This clause provides that the Minister can provisionally renew a mining licence or refuse to renew it.

Clause 243—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 244—This clause empowers the Minister to take into account the applicants past record in complying with the various legal, operational and administrative requirements of the offshore minerals mining legislation.

Clause 245—This clause specifies the procedures which the Minister must follow if the Minister proposes to refuse an application for a renewal of a mining licence. The intention is to ensure that the applicant is not denied natural justice and is given the opportunity to restate the applicant's case for a renewal.

Clause 246—This clause sets out the details that the Minister must provide in the written notice of provisional renewal to the applicant.

Clause 247- This allows the provisional licence holder to request an amendment of the conditions within 30 days of receiving a written notice of a renewal. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 248—This allows the provisional licence holder to request an amendment of the security requirement within 30 days of receiving a written notice of a renewal. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 249—This clause provides for the payment of fees to be deferred to allow time for any conditions or security requirements to be amended, if thought necessary.

Clause 250—This is the final formal step in the grant of a renewal of a mining licence. The renewal becomes final (subject to registration) upon the applicant paying the required fees, lodgement of appropriate security and confirming in writing acceptance of the grant.

Clause 251—This ensures that the conditions of the licence become legally binding on the licence holder.

Clause 252—This provides that a provisional grant of a renewal of a mining licence lapses if the renewal is not properly accepted.

Clause 253—This clause outlines the sources of the obligations associated with a mining licence. In addition, this clause also provides that where there is more than one shareholder in a mining licence, each shareholder will be held 100% responsible for all obligations of the licence in the event of failure by any one of them to meet licence holder obligations.

Clause 254—Under this clause, a mining licence may be granted subject to such conditions as the Minister thinks fit.

Clause 255—With the exception of the payment of penalties or lodgement of securities, this clause prevents the possibility that a tax may be imposed by way of a condition.

Clause 256—This clause enables the Minister to vary any of the conditions of a mining licence in the circumstances specified.

Clause 257—This clause enables the Minister to suspend or exempt any of the conditions of the licence in the circumstances specified.

Clause 258—This provides that if a licence is suspended, the licence holder is relieved from complying with the licence conditions for the duration of the suspension.

Clause 259—The fundamental principle contained in this provision is that operations are to be carried out at an acceptable industry standard and other provisions elsewhere in this Bill ensure that these standards will be the subject of inspections. The clause also requires the operator to maintain in good condition and repair, all structures, equipment and other property in the area which are used in connection with the operations. All structures, plant and equipment that are not, or are no longer going to be used, are to be removed from the operations area.

Clause 260—The licence holder must pay the royalty required by Part 4.4 Division 2.

Clause 261—This empowers the Minister to require the licence holder to maintain, and provide when required, any records or samples resulting from mining activities. This will ensure that the Minister has the information necessary for the proper and efficient administration of the legislation.

Clause 262—This provides that a licence holder must provide inspectors with facilities and assistance to enable them to carry out inspections.

Clause 263—This clause outlines the circumstances in which a licence expires.

Clause 264—This provision allows a licence holder to surrender the licence.

Clause 265—This clause outlines the circumstances in which a licence may be cancelled and ensures that the licence holder receives natural justice prior to any moves to cancellation. It outlines the conditions the Minister must meet before proceeding with the cancellation.

Clause 266—Under this provision, any outstanding obligations must be discharged by the licence holder after the expiry of the licence no matter what the circumstances were which gave rise to the

termination. It is intended, among other things, to ensure that the licence holder's environmental obligations are met.

Clause 267—This clause provides that a works licence may be granted to carry out licence related operations on blocks which are outside the area. Works licences may be granted even over areas that are subject to a licence held by some other person.

Clause 268—This clause outlines what a works licence holder can do.

Clause 269—This clause provides that no compensation is payable if the Minister cancels or does not renew a works licence.

Clause 270—This clause provides that a person may apply for a works licence over any block.

Clause 271—This clause is a procedural provision and outlines the manner in which an application for a works licence is to be made, as well as the details to be included in the application.

Clause 272—This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 273—This clause provides that the applicant must notify in writing any other holders of licences which may be affected by the application. The notification must invite any comments to the Minister within 30 days of the notice being given.

Clause 274—An applicant must advertise within 14 days of making the application, the details of its application in the print media, and any objections to the application should be lodged with the Minister within 30 days. The purpose of the provision is to improve the public accountability of the administration of the legislation.

Clause 275—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 276—The provision empowers the Minister to grant a provisional works licence which becomes final upon the applicant paying the prescribed rental fee.

Clause 277—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 278—Ensures that the licence contains all the required information necessary to ensure that the licence holder is aware of the terms, conditions and obligations pertaining to the licence. The maximum term of the licence is 5 years.

Clause 279—This provision requires the successful applicant to be given the works licence which contains the terms and conditions of the provisional grant and a notice of any security deposit. The provisional works licence will lapse if the applicant does not confirm that the applicant accepts the provisional grant and if the applicant does not pay the security and all fees associated with the licence.

Clause 280—This allows the provisional works licence holder to request an amendment to a condition of the provisional licence within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 281—This allows the provisional works licence holder to request an amendment of the security requirement within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 282—This clause provides for the payment of fees to be deferred to allow time for any conditions or security requirements to be amended, if thought necessary.

Clause 283—This is the final formal step (subject to registration) in the grant of a works licence. The grant becomes final upon the applicant paying the required fees, lodgement of appropriate security and confirming in writing acceptance of the grant.

Clause 284—Ensures that the conditions of the licence become legally binding on the licence holder.

Clause 285—This clause provides that a provisional grant of a works licence lapses if the grant is not properly accepted.

Clause 286—This clause outlines the date of commencement of a works licence as well as the expiry date.

Clause 287—This clause outlines the date of commencement of a renewal of a works licence as well as the expiry date.

Clause 288—This provision allows a works licence to continue until the Minister grants or refuses a works licence renewal.

Clause 289—This clause allows for an application be made to renew a works licence.

Clause 290—This specifies that an application to renew a works licence must be made at least 30 days before the works licence expires. It also allows the Minister discretion to accept a later application if the circumstances warrant it. The intention of the provision is to encourage the works licence holder to make an application as soon as possible and not wait until the works licence is due to expire.

Clause 291—This is a procedural provision and outlines the manner in which an application for the renewal of a works licence is to be made, as well as the details to be included in the application.

Clause 292—This provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 293—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 294—This provision empowers the Minister to provisionally renew a works licence.

Clause 295—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 296—This provision sets out the details that the Minister must provide in the written notice of provisional renewal to the applicant.

Clause 297—This clause allows the provisional licence holder to request an amendment of the conditions within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the conditions and confirm this to the licence holder in writing.

Clause 298—This clause allows the provisional licence holder to request an amendment of the security requirements within 30 days of receiving a written notice of a provisional grant. It also provides that the Minister may amend the security requirement and confirm this to the licence holder in writing.

Clause 299—This clause provides for the payment of fees to be deferred to allow time for any conditions or security requirements to be amended, if thought necessary.

Clause 300—This is the final formal step in the grant of a renewal of a works licence. The renewal becomes final (subject to registration) upon the applicant paying the required fees, lodgement of appropriate security and confirming in writing acceptance of the grant.

Clause 301—Ensures that the conditions of the licence become legally binding on the licence holder.

Clause 302—A provisional grant of a renewal of a works licence lapses if it is not properly accepted.

Clause 303—This clause outlines the sources of the obligations associated with a works licence. In addition, this clause also provides that where there is more than one shareholder in a works licence, each shareholder will be held 100% responsible for all obligations of the works licence in the event of failure by any one of them to meet their obligations.

Clause 304—Under this clause, a works licence may be granted or renewed subject to such conditions as the Minister thinks fit.

Clause 305—With the exception of the payment of penalties or lodgement of securities, this clause prevents the possibility that a tax may be imposed by way of a condition.

Clause 306—This clause enables the Minister to vary any of the conditions of the works licence in any of the circumstances specified.

Clause 307—This clause enables the Minister to suspend or exempt any of the conditions of the licence in the circumstances specified.

Clause 308—The fundamental principle contained in this provision is that operations are to be carried out at an acceptable industry standard and other provisions elsewhere in this Bill ensure that these standards will be the subject of inspections. The clause also requires the operator to maintain in good condition and repair, all structures, equipment and other property in the area of the works licence which are used in connection with the operations. All structures, plant and equipment that are not, or are no longer going to be used are to be removed from the operations area.

Clause 309—This clause empowers the Minister to require the works licence holder to maintain, and provide when required, any record as required by regulations or directions by the Minister.

Clause 310—This clause obliges the works licence holder to provide inspectors with facilities and assistance for the purpose of carrying out inspections.

Clause 311—This clause outlines the circumstances in which a works licence expires.

Clause 312—This clause allows the works licence holder to surrender the licence.

Clause 313—The clause outlines the circumstances under which a works licence may be cancelled and ensures that the works licence holder receives natural justice prior to any moves to cancellation. It outlines the conditions the Minister must meet before proceeding with the cancellation.

Clause 314—This clause provides that any outstanding obligations must be discharged by the works licence holder after the termination of the works licence no matter what the circumstances were which gave rise to the termination.

Clause 315—This clause provides for the grant of a special purpose consent for the purposes outlined. Unlike licences, the special purpose consent may be granted over areas which may be reserved or are the subject of an existing licence.

Clause 316—This outlines what a consent holder can or cannot do. This provision highlights the difference between a consent and the licences issued under this legislation. The consent is different in that it does not give the holder any exclusive rights over the area covered by the consent, nor does it give any preference when it comes to the grant of a licence for the same area.

Clause 317—This is a procedural provision and provides that any person can apply for a consent.

Clause 318—This is a procedural provision and outlines the manner in which an application for a consent is to be made, as well as the details to be included in the application.

Clause 319—The provision allows the fee to be prescribed by regulations and provides that the fee is generally not refundable except in special circumstances where it may be refunded in whole or in part. The purpose of this clause is to recover the administrative costs of processing applications wherever possible.

Clause 320—This provision obliges the applicant to obtain the agreement of licence holders to the application. It also provides that such agreement is not necessary for scientific investigation which may be covered by international agreements. As the special purpose consent does not confer exclusive rights to the consent holder, the restriction of only one title over an area does not apply.

Clause 321—This provision obliges the applicant to notify any interested works licence holders about the application and invite them to lodge any comments they may have with the Minister within 30 days.

Clause 322—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 323—This provision empowers the Minister to grant a special purpose consent.

Clause 324—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 325—This clause ensures that the special purpose consent contains all the required information that is necessary so that the consent holder will be aware of the terms, conditions and obligations pertaining to the consent.

Clause 326—When taken together with clause 325, this provision limits the period of consent to not more than 12 months.

Clause 327—Empowers the Minister to impose any conditions, including reporting and environmental conditions, on the special purpose consent if the Minister thinks it is appropriate.

Clause 328—The clause directs the Minister to set up a register of licences issued in respect of the offshore area.

Clause 329—The clause directs the Minister to create and maintain a document file.

Clause 330—This clause allows the Minister to maintain the register and document file in any form or manner the Minister decides. It allows the register to be kept in an electronic form.

Clause 331—This clause allows the Minister to correct any errors in the register. The Minister may act either on the Minister's own initiative or on an application by a person affected by the error. The clause also specifies the procedure the Minister must follow if any correction is planned or contemplated.

Clause 332—This clause is fundamental to the whole concept of registration of titles. It allows a person to inspect the register and document file on payment of the prescribed fee. It also obliges the Minister to make the register available for inspection at all convenient times.

Clause 333—This provision specifies the various particulars which are to be entered in the register.

Clause 334—This provision specifies the various particulars which are to be entered into the register when an application for a renewal is made, when provisional renewal of a licence has been accepted or when a renewal application has been refused.

Clause 335—This clause directs the Minister to register an application for an extension to an exploration licence or a refusal of an extension application.

Clause 336—This clause directs the Minister to register the fact that a licence has expired. It also places an obligation on the licence holder to give the licence to the Minister for endorsement that it has expired.

Clause 337—This specifies the various particulars which are to be entered in the register when a variation is made to a licence.

Clause 338—This clause provides for the registration of the transfer of a licence.

Clause 339—This clause provides for the registration of other dealings in a licence.

Clause 340—Under this clause, a person or persons upon whom the rights of the registered holder of a licence have devolved by operation of law, may have their name or names entered into the register in place of the original registered holder. This is dependent on the person making an application, accompanied by the prescribed fee, to the Minister.

Clause 341—This clause provides that while a caveat remains in force, the Minister shall not register a dealing in a licence unless otherwise exempted by the provisions of this clause.

Clause 342—This provides for the lodgement of a caveat by anybody claiming an interest in a licence.

Clause 343—This outlines the form of a caveat and the particulars to be specified in the caveat.

Clause 344—This clause requires the payment of a fee by a person lodging a caveat.

Clause 345—provides for registration of caveats.

Clause 346—This clause enables a caveat holder to withdraw the caveat.

Clause 347—provides for the form of withdrawal of a caveat.

Clause 348—provides for the time at which a caveat has effect and when it ceases to have effect.

Clause 349—This clause outlines the circumstances when the Minister must notify a caveat holder of dealings in the licence.

Clause 350—This clause provides that a caveat holder may consent to the registration of a dealing. The consent must be registered by the Minister.

Clause 351—This clause outlines the jurisdiction of the Supreme Court in relation to caveats. The provision includes a power for the court to deal with vexatious, successive caveats which seek to frustrate or delay actions to be undertaken by the Minister.

Clauses 352 and 352A—(Numbers not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 353—This provides that a Minister, a delegate of the Minister or a person acting under their direction, is not liable to actions or suits in respect of matters done or omitted to be done in good faith in the exercise of any powers or authority conferred by this Part.

Clause 354—This provides for an application to be made by a person to the Supreme Court if it is desired to have an omission or error in the register rectified. The Minister must rectify the register in accordance with any Court order.

Clause 355—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 356—(Number not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 357—Provides that the register, a computer record, a certified copy of, or an extract from the register are admissible as evidence in legal proceedings.

Clause 358—Provides that a certified copy of any document which is registered can be provided on the payment of a fee and it is admissible as evidence in any legal proceedings.

Clause 359—Provides that a certificate about any actions which may or may not have been done may be issued on the payment of a fee. Such a certificate will be admissible as evidence in any legal proceedings.

Clause 360—This clause provides that dealings in a licence require a written document.

Clause 361—Provides that any such dealing in a licence has no effect until the document is registered.

Clause 362—This clause provides that all transfers, or the transfer of part of a licence has no effect until approved by the Minister. This provision is required because the Minister in granting the original licence in effect approved the percentage holding in the original title. Therefore, any subsequent change in the percentage holding of the title will need approval before being registered. The intent is to prevent any person considered as being unacceptable by

the Minister from gaining a part of a licence through the "backdoor" by way of a transfer of a share in a licence.

Clause 363—This a procedural provision. It outlines the manner in which an application for a transfer is to be made and that it must be accompanied by the prescribed fee.

Clause 364—This provision empowers the Minister to request the production of documents in respect to an application for a transfer in a licence.

Clause 365—This provides the Minister with the discretion to approve or reject an application for a transfer. It also outlines the actions the Minister is to take in the event of the transfer being approved.

Clause 366—This clause provides that a Minister, a delegate or a person acting under their direction, is not liable to actions or suits in respect of matters done or omitted to be done in good faith in the exercise of any powers conferred by this Part.

Clause 367—This clause enables the Minister to require the production of information in connection with any activity authorised under this legislation and outlines the procedures to be followed in making such a request. These provisions would be used to obtain information which is believed to be necessary for the proper administration of the legislation. For example the Minister might wish to obtain data to assist in the determination of the quantity and value of minerals extracted for royalty purposes.

Clause 368—This provision is similar to clause 367. It empowers the Minister to request a person to appear personally to provide information.

Clause 369—This clause gives the Minister or an inspector the power to administer an oath or affirmation, and to examine on oath, a person attending before them.

Clause 370—This clause enables the Minister to request the production of documents in connection with any activity authorised under this legislation and outlines the procedures to be followed in making such a request. These provisions would be used to obtain documents which are believed to be necessary for the proper administration of the legislation.

Clause 371—This clause enables the Minister to request the production of samples in connection with any activity authorised under this legislation and outlines the procedures to be followed in making such a request.

Clause 372—The clause requires a person to provide information or to answer a question, notwithstanding that the information or answer may tend to incriminate him or her. This clause also creates an offence for any person to give false or misleading information to the Minister.

Clause 373—This provides protection to the supplier of information which has been requested and given to the Minister. The information or answer does not become admissible evidence against the person in proceedings other than proceedings concerned with the giving of false or misleading information. The aim of this clause is to use the power for the purposes of the administration of the legislation and not for the purposes of obtaining evidence for prosecution.

Clause 374—This clause establishes as a general rule that the Minister cannot release or publish confidential information or samples.

Clause 375—This outlines the circumstances in which confidential information or samples may be released. If the licence holder releases or gives consent to the release, then the Minister may do so.

Clause 376—Under this provision, the Minister must make available reports over areas that are no longer the subject of a licence.

Clause 377—This defines what is meant by a compliance inspection.

Clause 378—This outlines what an inspector appointed under this legislation can do when carrying out a compliance inspection.

Clause 379—This empowers an inspector to inspect licence related premises without a warrant provided the inspector is able to produce an identity card on request by the licence holder.

Clause 380—This allows an inspector to carry out a compliance inspection of any premises provided the owner has given consent.

Clause 381—This empowers an inspector to carry out a compliance inspection with a warrant.

Clause 382—This is a procedural provision. It outlines the steps that an inspector must take to obtain a warrant. It also specifies what the warrant must contain.

Clause 383—This allows the inspector to use such assistance and force as is thought reasonable and necessary to carry out a compliance inspection.

Clause 384—This requires occupiers of premises to provide all reasonable facilities and assistance to enable the inspector to carry out a compliance inspection effectively.

Clause 385—This places an obligation on a person to comply with a direction given by the Minister.

Clause 386—This provision empowers the Minister to give a direction on any matters on which regulations may be made. In particular, it highlights the fact that they can cover environmental protection and site rehabilitation.

Clause 387—This provision allows the Minister to issue a direction to the licence holder. It outlines the procedures which must be followed by the Minister in giving directions. The intent is that directions are to be title specific and generally be in response to an emergency or unforeseen event that needs to be implemented quickly.

Clause 388—This allows directions to incorporate material in other documents. For example, a direction may require a diver to follow the safety rules as set out in a particular manual produced by a recognised professional diving association.

Clause 389—Empowers the Minister to issue a direction which prohibits an action being taken or allows it only with the consent of the person affected.

Clause 390—This provides that a direction given to a licence holder or a special purpose consent holder may extend to include associates if they are specified.

Clause 391—This clause obliges the licence holder or a special purpose consent holder to ensure the direction is brought to the notice of associates if it extends to them.

Clause 392—Provides that a person can be given a direction in respect of an outstanding obligation. This is to ensure, among other things, that a licence holder can be given a direction in respect of rectification of site damage and environmental rehabilitation after operations have ceased.

Clause 393—This clause provides that a direction can over-ride earlier directions, regulations, or conditions relating to safety or the environment. This is necessary so as to give the Minister the flexibility to respond quickly to any emergency.

Clause 394—Empowers the Minister to impose a deadline for compliance with a direction.

Clause 395—This empowers the Minister to do anything required by the direction if the person has not complied with the direction within a specified time.

Clause 396—This allows the Minister to recover any costs associated with the action taken under clause 395 from the title holder or associate.

Clause 397—This outlines the defence that a title holder or associate can mount if faced with a claim from the Minister for the recovery for debts due to the State.

Clause 398—This clause specifies that a security may be required to be lodged and places restrictions on how it is to be used.

Clause 399—This outlines the occasions when the Minister may determine the amount of security as well as the time it is to be lodged.

Clause 400—This outlines how the security may be used by the Minister.

Clause 401—This clause provides that regulations may be made which specify the manner of removal of any property etc. that was brought into the area in connection with offshore minerals activity, but which is no longer used in accordance with the conditions of the licence.

Clause 402—This provides that regulations may specify the manner in which any damage to the environment of the title area may be rectified.

Clause 403—Under this provision the Minister is empowered to set up specified areas called "safety zones" for the purpose of protecting a structure or equipment in coastal waters.

Clause 404—This provides that once a safety zone has been notified in the Gazette, all shipping to which the notice applies is prohibited from entering or remaining in the zone without the Minister's consent and then only subject to any conditions attached to such a consent. Defence mechanisms against prosecution are also included.

Clauses 405 to 420—(Numbers not used to maintain uniformity with corresponding sections in the Commonwealth Act).

Clause 421—This empowers the Minister to appoint inspectors to enforce the provisions of this legislation, regulations, conditions of licences and consents as well as directions.

Clause 422—This provides that inspectors must be issued with a photographic identity card as proof of his or her authority to inspect any aspect of the operations being carried out under the legislation.

Clause 423—This places an obligation on a person to return the identity card to the Minister as soon as possible after the termination of the appointment as an inspector under this Act. The intention is to ensure that the integrity of the identity card system is maintained.

Clause 424—This clause defines "year" for the purpose of fee calculation.

Clause 425—This clause provides that a licence holder must pay annual fees as prescribed.

Clause 426—Notwithstanding any prescribed fee, this clause puts a limit on the annual amount payable in respect to each licence.

Clause 427—This provides that fees are due within one month of each anniversary year.

Clause 428—This clause defines "royalty period" in terms of six month segments.

Clause 429—This clause provides that the holder of a mining licence must pay a royalty for all minerals recovered.

Clause 430—This clause enables the Minister to set royalty rates by an instrument in writing, and the rate set will apply to the mineral or minerals specified in the instrument while the instrument remains effective.

Clause 431—This clause enables the Minister to set a lower rate of royalty for individual mining licences where it is determined that mineral recovery in specific cases would be uneconomic at the general rate set.

Clause 432—This clause provides for the value of a mineral extracted to be agreed between the Minister and the holder of a mining licence, or set by the Minister.

Clause 433—This clause provides that, for the purpose of royalty calculation, mineral quantity can be agreed between the mining licence holder and the Minister or, where there is no agreement, the quantity will be determined by the Minister.

Clause 434—Provides that royalty is payable within one month of the end of a royalty period.

Clause 435—This clause continues the existing arrangement whereby the royalty breakup is the same as under the Commonwealth Offshore Minerals Act 1994.

Clause 436—This clause provides that the licence holder is liable to pay a penalty if royalty payments or fees are not paid by the due date.

Clause 437—This clause provides that any payment outstanding is a debt to the State.

Clause 438—This clause empowers State courts and authorities to operate under the Commonwealth Act.

Clause 439—This clause enables the Minister to delegate any of the Minister's functions by instrument signed under the Minister's hand and gazetted.

Clause 440—makes it an offence to give false statements or information under the Act.

Clause 441—This provides for the method of service of documents on a licence holder.

Clause 442—Provides that the Governor may make regulations from time to time to assist the proper administration of this Bill.

Schedule 1—This schedule describes the coastal waters to which the Bill applies.

Schedule 2—makes consequential amendments to other Acts.

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

That the standing orders be so far suspended as to enable the bill to pass through the remaining stages without delay.

Motion carried.

**The Hon. SANDRA KANCK:** This bill is largely about a theoretical situation, that is, mining under the sea. Supposedly, as we can see things here in 1999, this is something that members might believe is unlikely to happen. In the minister's second reading explanation he states:

While there has been some interest in offshore minerals occurrence in South Australian waters in recent years, there are no applications or permits currently in force.

It is interesting to observe that there has been that interest. So, I caution members who think that it will not happen and who consider that passing this bill in its current form is an okay thing to do, because so much is around us now that was technologically impossible 10 or 20 years ago. In dealing with a bill such as this, it is not much comfort to me to be told that it is all theory. Because it is theoretical at the moment, we are guessing about what is appropriate and, when technology advances so that mining can occur, this bill is what will exist as the guiding light, showing the way to do it. The fact is that undersea mining is not improbable. Apparently, a mining company is exploring for diamonds off the Western Australian coast at the present time, so technology for mining under the sea must be close to development if the exploration is occurring.

Legislation was passed by the federal government in 1994, and the states have therefore agreed that the first 422 clauses of this bill cannot be amended. I wonder sometimes why we are even here in parliament. I know that, when the bill was passed at the federal level, the Democrats attempted to amend the legislation without success. I have to admit that parts of the legislation I would not attempt to amend, because of the sheer technicalities involved in doing so.

Under those circumstances, I have to trust that the people who put this bill together have got that right. As an example of that and for the benefit of *Hansard* readers, I refer to clause 10 so that they can appreciate the degree of technicality that is involved in this bill. Clause 10 provides:

(1) This is how the position of a point, line or area on the earth's surface is to be worked out for the purposes of this act and subordinate instruments—

(a) the position is to be worked out by reference to a spheroid that—

(i) has a major (equatorial) radius of 6 378 160 metres; and

(ii) has a flattening of 100/29 825; and

(b) the Johnston Geodetic Station in the Northern Territory is taken to be located 571.2 metres above the point on the surface of the spheroid that is at—

(i) 133°12'30.0771'' east longitude; and

(ii) 25°56'54.5515'' south latitude.

As I say, with that sort of technicality, I am in no position to query whether or not it is correct.

I recognise that there is some sense in saying that the legislation as passed at the federal level in 1994 should not be amended. However, while there are aspects to the bill such as that one that I have no interest in amending, I find it quite objectionable that for the remainder of the bill, at least the other 421 clauses to which I am referring, as a representative in a representative democracy I am being denied that opportunity. A draft bill arrived on my desk in November 1997 and the small print at the top indicates that it was finalised by parliamentary counsel on 23 June of that year. I have received a copy of a submission from the Environmental Defenders Office to the government dated September 1997. It is now November 1999, and not one of the comments has been acted upon. The more I look at this bill, the more concern I have about its environmental implications.

At my departmental briefing I was told that this act would be subject to the Environment Protection Act. I would like the minister to confirm that fact when he concludes the second reading because, as I read it, this will not be the case for exploration licences. This bill does not have environmental protections written into it and, if it is dependent on the Environment Protection Act, the minister should place on the record just how this protection comes about. I understand that because this legislation does not say it is not covered by the Environment Protection Act, then it is, which seems a very quaint way to provide protection to the marine environment.

I had thought that the principle of interpreting legislation was that a later act prevails if there is an inconsistency with an earlier act. I would certainly like some input from the Attorney-General as to whether my understanding is correct on that point. I would like to know what guarantees we will have that some way down the track regulations will not be promulgated specifically exempting coverage of this act from parts of the Environment Protection Act.

The Democrats, as many members would know and as the public certainly is aware, do not have much faith in the Environment Protection Act because it has been watered down in the past and it may continue to be watered down. We would have preferred that there were environmental protections included in the bill we are debating. Protection under the Environment Protection Act still leaves a lot of unanswered questions. Under the Environment Protection Act whether or not an EIS is required is up to the discretion of the minister. So, we have no guarantees that under this particular act EISs would be conducted. When the seabed is disturbed with resultant turbidity, what damage does the minister think this will cause to marine plant and animal life? I would like the minister to explain the sort of circumstances under which an EIS would be required, the clauses in this bill which would apply and those circumstances under which an EIS would not be required.

Under the legislation a mining lease can be up to 56 square kilometres in size—and I would invite members to think about that. The whole line of load in Broken Hill would not have been more than 30 square kilometres at the time I was growing up there, and that area accommodated four major mining leases. Just think about the environmental damage that can be done with an under sea lease of 56 square kilometres with technology about which we do not yet know. We are being placed in the position of having to trust the government to get the decision right about an EIS. Although I know that by an agreement of a small group of ministers (who, it seems, have the power to stymie a whole state parliament) we will not be permitted to amend this part of the legislation that is in the first 422 clauses, I want it placed on the record that the Democrats have a lot of concern about that.

The most recent Port Stanvac oil spill shows the attitude that commercial operators have towards the under sea environment. We were told, for instance, that damage would occur only in the first two metres of the water column. Presumably damage to the first two metres in the water column is okay—and I would say, 'Well, tell that to the phytoplankton and the zooplankton which are at the base of the animal food chain in the marine environment; tell it to the fish that swim in the first two metres of water; and tell it to the whales that rely totally on krill for their survival.'

As further evidence of this lack of understanding of the importance of the marine environment by both the private operators and the bureaucrats, it was not until the oil moved toward shore and the visible evidence was unavoidable that the matter became of major concern for some in government. But, if it had not reached the shore, most probably there would have been a collective sigh of relief and most people would have said that everything was okay. I wonder if the gathering of mining ministers who came up with the concept of this legislation had any understanding at all of marine ecology and some of the delicate balances that exist in the environment. Where are the protections for marine parks and reserves and whale sanctuaries?

I was told at my briefing that such areas will be protected and that this will be spelt out in the regulations, which—surprise, surprise—have not been prepared. We do not know at this stage—and it is extremely difficult to know—what sort of mining equipment, chemicals and methods are likely to be used nor the risks involved, yet we are prevented from amending it to put in the safeguards.

In this place previously I have quoted from a document from the oil industry about seismic surveys and I expect that, certainly with any under sea exploration, we will see seismic surveys done. By the way, this document dated August 1993 titled 'Environmental implications of offshore oil and gas development in Australia: an overview' was prepared by an independent scientific review committee on behalf of the Australian Petroleum Exploration Association. I refer to it to give members an idea of the sort of disturbance that occurs in the lead up to the mining—and this is even before the mining is started. In part, the document states:

> Seismic surveys rely on data from the reflection of refraction of low frequency but high intensity sound energy from rock formations under the seabed. These sound pulses are created artificially by using a variety of techniques which produce bursts of high energy sound directed towards the seabed. Characteristics of the echoes returning to the survey vessel provide information about the structure of deeply buried geological formations.

It further states:

> At various times, suggestions have been made that high energy sound waves could possibly cause mortality or sub-lethal injury to nearby marine organisms, or might modify the feeding, mating, or breeding activities of marine mammals, fish or crustacea in such a way as to affect the viability or abundance of their populations.

That is about the seismic activities. If we go to drilling activities, which is more of what we could expect once mining occurs, the document states:

> The major waste discharges during this operation [drilling] are drilling fluids and drill cuttings. . . Water-based drilling fluids on final discharge may contain elevated levels of several metals, including in particular barium, chromium, cadmium, mercury, lead and zinc. . . Upon discharge to the ocean, the rock cuttings and any residual water-based drilling fluid form a turbid plume, which disperses rapidly in the water column. . . Drill cuttings and any adhering drilling mud discharged to sea may have either acute or chronic toxic effects on marine biota; in addition, some natural systems will be inherently more sensitive to these effects than others.
>
> Drill cuttings, if not rapidly dispersed, may also have a physical smothering effect on benthic fauna and flora in the immediate vicinity of the discharge. . . Adverse effects on communities of marine plants and animals living on or in the bottom sediments are usually restricted to the immediate vicinity (100 to 1 000m) of the discharge where drilling fluids and cutting solids accumulate.

I find information such as this extremely worrying, and the Democrats' concerns are fuelled by the fact that, more than 18 months after the bill was first circulated, the regulations have not even been drafted. In my briefing I was informed that the regulations will, at least in part, be dependent upon the Oceans Policy, which governments are currently formulating. Hopefully, that policy being put together now in 1999 will be a little better informed than the federal legislation of 1994 and some environmental consciousness will be informing the drafters of the regulations. That being so, the government probably should have waited until the Oceans Policy was in place, a point made by the Environmental Defender's Office to the government almost two years ago.

The Democrats have concerns that arise in part because we are setting up legislation in a theoretical framework without any knowledge of what technology will be developed and applied to offshore mining. Given that some interest has been expressed in this, I would be interested to know what

sort of seismic testing, if any, has been done in South Australian waters. I believe it is important that the parliament should be able to review the operation of the act, so I ask the minister whether he has considered the possibility of a sunset clause on the legislation so that parliament would be forced to review it. When we are passing legislation about a theory, it seems to me very important that, when something happens in practice, we need to check it against the reality.

We have a Mining Rehabilitation Fund in existence in this state. Will offshore miners be required to contribute to that fund or will everything be covered from the licence holder's security? The bill is silent on this matter but, if contribution to the rehabilitation fund is envisaged, why is it not in the bill? I have many questions about individual clauses, and I will go through those. Hopefully, the Attorney will be able to obtain answers and respond when he sums up.

In relation to clause 22, is there anything that would not be mined? I would also like to know what an evaporite is, as it is not defined in clause 5. I do not know whether it is defined elsewhere in this bill and I have missed it, or perhaps it is somewhere else in the Mining Act. I would be pleased if the minister could let me know what that means. In clause 40, what is meant by the term 'fully effective licence'? I cannot see any sign of public consultation in the regime that is set up here (and this regime has a heading Regulation of Offshore Exploration and Mining). Why is the applicant not required to provide any information about the anticipated impacts of the exploration activities?

In relation to clause 43, 'Effect of grant of licence or special purpose consent on native title,' I express concern about the subordination of any native title rights. The Wik decision was that, where there is a conflict between a lease and native title, the lease will prevail, but we are talking here about a lease that has not even come into existence, something that is very much a future act. I was told in my briefing that there are no native title considerations but, even if that is absolutely definitive, I object to the concept. I consider the inclusion of this clause to be immoral.

Clause 44 is headed 'Licence etc., does not authorise unnecessary interference with other activities in the licence area.' The clause provides:

> A person who carries out activities in coastal waters under a licence or special purpose consent granted under this Act must not do so in a way that interferes with
>
> (a) navigation; or
>
> (b) the exercise of native title rights and interests; or
>
> (c) fishing; or
>
> (d) the conservation of the resources of the sea or the seabed; or
>
> (e) any activities that someone else is lawfully carrying out, to a greater extent than is necessary for—
>
> (f) the reasonable exercise of the person's rights under the licence or consent; or
>
> (g) the performance of the person's duties under the licence or consent.

I am perturbed by the words 'to a greater extent than is necessary'. It is quite clearly saying that mining takes priority over everything else. If the Attorney believes that it is saying something other than that, I would be very interested to hear his interpretation but, as I read the English language, that is saying fairly clearly that that is the case. Would seismic testing constitute necessary or unnecessary interference with fishing resources? In that regard, I would like to know whether the fishing industry was provided with copies of the draft bill and, if so, what did it have to say in regard to that clause?

Turning to part 2.2, beginning at clause 45, part 2.2 and clause 45 are both headed 'Exploration licences.' This part deals with the suspension, non-renewal or cancellation of exploration licences. Will the minister please explain the difference between cancellation and non-renewal, as in clause 47, and suspension, as in clause 48? Does the term 'suspension' envisage restoration of the licence at a later stage? In clause 49, 'Compensation for acquisition of property due to suspension of rights,' how is it that suspension of a licence could result in the minister's acquiring property? Perhaps I might be right in assuming that the word 'acquire' is a polite way of saying 'seize'.Again, I would like some elaboration of that.

What sort of property, and whose, is envisaged in this clause? Is such acquisition of property assumed to be a permanent acquisition or is it a temporary impounding only? According to this clause the state, having acquired this property, would be required to pay the licence holder compensation if that has been agreed to by the parties. Why would the government acquire such property in the first place, knowing that it would have to pay compensation for the privilege of so doing? If the licence could be restored—and I have already asked whether the suspension of a licence envisages restoration—would there still be a need for compensation? The whole concept of compensation seems most peculiar.

Clauses 48 and 136 envisage that an exploration or retention licence can be suspended in the public interest, and I would be most interested to hear some examples from the minister as to what things might be in the public interest. If, for example, the government decides that the area concerned should be turned into a marine park—I would say an unlikely event, given that at this point in the process an exploration licence, at least, has already been granted—I could see that compensation could be argued, but why would the government need to seize the property of the company?

If a company is creating enormous environmental damage, suspending the licence would definitely be in the public interest, but under those circumstances why would the government suspend rather than cancel the licence? I am having difficulty coming to terms with the combined actions of suspension of a licence and the government euphemistically acquiring profit property. What are the circumstances, the when and how, under which an agreement for compensation would be negotiated? Is that agreement negotiated before or after the suspension of a licence? Surely it would be better to have something in a standard form associated with the issue of a licence rather than negotiate according to circumstances. But the legislation does not appear to envisage that.

I note that if an agreement is not reached an action can be launched in the Supreme Court. I invite the minister to consider that, when acquiring native title, the state government wants to restrict compensation to the freehold value of the land, yet no attempt is made to restrict the compensation payable here. At best one might describe this as inconsistent; some might describe it as hypocrisy; and some might describe it as racist. Does the minister envisage that the regulations might be able to deal with this and as part of that set a maximum pay-out? I suggest that if we do not do this we are opening up a Pandora's box.

In relation to clauses 57 and 60, the newspaper advertisement has to invite public comment on the application for an exploration licence, but there appears to be nothing further stated about how long members of the public have to provide that comment nor what status any input might have. What is

the government's intention in this regard? Clause 63 allows the minister to grant a provisional licence. I would like to know how long into the process of the grant a full licence will occur.

Clause 66 requires that the minister has to advise the applicant in writing of the decision to grant a provisional licence, but will the advice on which this decision has been made be available to anyone else? Would it be publicly available? Would members of the public who had been involved in the process up to that point be specifically advised as well? Given that the Environment Protection Act applies to this legislation, is there a requirement that the minister for the environment would also be advised? Similarly in clause 67, if the minister provisionally grants an exploration licence and the licence holder seeks an amendment to those conditions, how would any members of the public find out what was happening?

I refer to division 3, headed 'Application for and grant of an exploration licence over tender block' and to clause 73, headed 'Matters to be determined before applications for exploration licence over tender blocks invited'. As to clause 73, why would certain blocks be reserved by the minister? Is there an expectation that more money could be raised by tendering out the reserved blocks?

In clause 74, headed 'Minister may invite applications for exploration licence over tender blocks', this process does not appear to allow for public comment as in clauses 57 and 60. In that case, why not? According to the collective wisdom of our mining ministers, I am prevented from amending it, but I believe that this clause should be brought into line with clauses 57 and 60. The difference with this clause appears to be that in one case the applicant initiates the process while in the other the minister initiates the process. Why should there not be an opportunity for consultation when the minister initiates the process? It sounds as though the procedure could vary from one occasion to the next, given that it provides that the minister will decide the procedures and criteria to be used before inviting applications. Why not at least put it into regulations so that it is predictable?

I turn now to division 4, headed 'Duration of an exploration licence', to clause 88, headed, 'Initial term of exploration licence' and to clause 89, headed 'Term of renewal of the exploration licence'. With an initial exploration licence lasting for four years and the option for up to three renewals of two years an exploration licence could last for 10 years. Am I right that this is longer than in regard to onshore mining? If so, why is there this difference? Read in conjunction with clause 104, it appears that each successive renewal will result in the area for exploration being halved. Could the Attorney-General confirm that my interpretation is correct in that instance?

I now turn to clause 94, headed 'Extension of licence—activities disrupted', and to clause 95, headed 'Grant of licence extension—activities disrupted'. Clause 94 provides:

> (1) If—
>
> (a) an exploration licence authorises the licence holder to carry out an activity; and
>
> (b) circumstances beyond the control of the holder prevent the holder from carrying out the activity,
>
> the holder may apply to the minister for an extension of the term of the licence.
>
> (2) The application must be made—
>
> (a) within 30 days after the day on which the holder first became aware of the circumstances; and
>
> (b) before the licence expires.

Clause 95 provides:

> (1) Subject to subsection (2), if an exploration licence holder applies for an extension under section 94, the minister—
>
> (a) must grant an extension of the term of the licence if the minister is satisfied that—
>
> (i) the holder is or has been unable to carry out the activities authorised by the licence; and
>
> (ii) the holder is or has been unable to do so because of circumstances beyond the holder's control; and
>
> (iii) no excluded time is included in the period of inability for which an extension is sought; and
>
> (b) must refuse the application for extension if the minister is not satisfied of the matters referred to in paragraph (a).

I am querying the word 'circumstances': it is so broad. All it has to be is 'circumstances beyond the control of the holder'. I would like to have an example from the Attorney-General of what is being talked about here. It seems to be so broad—any circumstance at all.

In the case of the voluntary surrender of part of an exploration licence under clause 99 or mandatory surrender of the licence as under clause 104, would this have any impact on the annual licence fee? I note that under division 6 of part 2.2, beginning at clause 101, where a renewal of an exploration licence is sought no advertising of the request for renewal is required under this act, and so any opportunity for public comment is denied. Is that the intention of the government?

I refer to clause 137 and those following. If a company has a retention licence with particular minerals discovered, does the retention licence give a right to explore for other minerals in the same area? I seek more detail also on the special purpose consents in part 2.6, clauses 315 to 327. The explanation of the clauses provided at the same time as the Attorney's second reading explanation does not help me. It simply says, 'This clause provides for the grant of a special purpose consent for the purposes outlined.' The three purposes outlined are: a scientific investigation; a reconnaissance survey (which is effectively defined as the exploring you do when you are not exploring); or the collection of small amounts of minerals (in other words, the mining you do when you are not mining). What exactly are these activities?

I understand what is a scientific investigation and I assume it would relate to research that does not have the potential for a direct commercial pay off, but I would like the minister to provide some examples in case the Government's version is different from what I think it is. Why not a proper exploration licence instead of the special purpose consent to undertake a reconnaissance survey? Why not a mining licence instead of a special purpose consent to collect small amounts of minerals? For that matter, what does the minister regard as a small amount of minerals?

This whole arrangement seems most peculiar given that it can be in part or all of the same area of a licence or another special purpose consent. The clause defines a reconnaissance survey as 'the exploration of an area to work out whether the area is sufficiently promising to justify more detailed exploration under an exploration licence'. On my reading of that, a company can conduct a survey in an area that is already covered by an exploration licence.

If the survey shows that it would be worth while going for a full-scale exploration licence, how does this fit with the existing licensee's rights and is there a comparable arrangement for onshore mining? I can see nothing about any need for restitution of any damage to the site. There is no mention of the need to lodge a security, and nothing is said about contribution to the rehabilitation fund which exists for onshore mining.

Clause 332 relates to the inspection of register and documents. Why is a fee necessary for someone merely to inspect the register? If someone were getting a formalised extract from it, surely there would be cause for a fee, but not merely for looking. Why is there no provision for a public register? The Environment Protection Act has such a requirement. If the Environment Protection Act is to apply, does it mean therefore that a public register will be available?

The Democrats are concerned about matters relating to the lodging of securities and their use for site rehabilitation. Clauses 398 to 402 deal with these matters, but I am afraid they do not give me much comfort. Clause 402 refers to the licence holder's security from which costs of rehabilitation can be deducted. Will the minister provide a ballpark figure of the amount of security which will be required so that this parliament has an indication of whether that security is likely to cover the cost of rehabilitation?

As well as allowing the minister to determine 'the amount of the security required', clause 399 also allows the minister to determine 'the manner and form in which the security is to be lodged'. Are we talking about money, which I think is implicit in the word 'amount'? If so, what is the significance of the word 'kind'? Will the money be required up-front or will the licensee be able to pay it off with periodic payments? Allowing the minister to decide the manner of payment could even allow for a delayed payment. What is the government's intention in this regard?

I am most concerned that, unless there is an up-front payment or at the very least regular payments as it goes, we could see a company pay nothing, go in and create havoc, declare itself bankrupt, and walk away. I think that concern is justifiable given that the next part of this clause elaborates further by saying that one of the forms of a security lodgment that could be acceptable is a guarantee. Given the potential for environmental harm, I find this totally unacceptable. Why is the government willing to take this chance? Who would be considered suitable to provide such a guarantee, and what legal ramifications would this have for the guarantor? The bill is silent on this.

In division 4, which relates to the restoration of the environment, clause 401 deals with the removal of property from coastal waters. Am I correct that this clause allows the minister to remove abandoned mining equipment? The clause envisages that the minister can recover costs as a consequence of having to do this. How will those costs be recovered? I ask this question because, whereas clause 402 specifically states that cost recovery for rehabilitation of damaged areas can come from the licensed holder's security, clause 401 does not provide that same clear statement.

The Democrats are not particularly supportive of this legislation, not least because of the government's agreement to keep parliament at arm's length. We believe that environmental safeguards are lacking, yet we are prevented from attempting to improve the legislation. Under that process, democracy is subverted.

I have asked many questions to this point to allow the minister time to obtain some of the answers, because he may not have been able to answer some of the questions in committee with an adviser nearby. It is important for me that a lot of these questions are answered before we reach the committee stage. I hope that by asking them I have alerted the Attorney-General to the fact that the bill, in its current form, is likely to produce a very flawed act.

Despite the fact that by the agreement of this very select group of mining ministers we are prevented from amending the bill, I will file amendments, because I believe that it is the right of MPs—not only a right but a duty—in a representative democracy to do so. The Democrats will move amendments. No doubt the government will argue that that little group of seven, eight or nine mining ministers has the right to subvert the democratic processes in this parliament. It will be up to the government to argue that at the time. Of course, the conservation movement will be very interested.

The Democrats will support the second reading. Whether we support the Bill at the third reading will depend on the answers to the questions I have asked and any consequent undertakings given by the government and placed on the record.

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

## MINING (PRIVATE MINES) AMENDMENT BILL

Second reading.

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

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

In view of the fact that this bill was received from the House of Assembly during the last session, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill seeks to include in the *Mining Act 1971* new provisions dealing with private mines in substitution for section 19 of that Act.

The Bill establishes a new legislative regime in the *Mining Act 1971* for the proper management and control of mining operations at private mines.

This objective is consistent with the fundamental purpose of the *Mining Act 1971*, which is '*to regulate and control mining operations*'. In establishing this new legislative regime, the Bill will introduce wider environmental controls than those afforded by the *Environment Protection Act 1993* but will not limit or derogate from the powers of that Act.

When the *Mining Act 1971* came into operation on 3 July 1972, it resumed to the Crown ownership in all minerals. As an alternative to have to pay compensation to private landowners that lost ownership of the minerals in their land, the Government, at that time, introduced the concept of a Private Mine into section 19 of the Act.

A significant feature of section 19 is that it excludes, except if expressly provided for by another section in the Act, operations at Private Mines from the operation of other provisions of the Act. The only section in the Act which expressly relates to Private Mines other than section 19, is section 76(3a) which deals with the requirement for the operator of a Private Mine to submit production returns to the Director of Mines every six months and pay royalties.

Administrative difficulties arise as operations at Private Mines are not regulated or controlled by other provisions in the Mining Act and there are no requirements in section 19 for the proper control of operations at a Private Mine.

These amendments rectify this by requiring that any operation at a Private Mine must operate according to Mine Operations Plan. Such a plan will include a requirement for rehabilitating the site after completion of mining.

In conjunction with the introduction of Mine Operations Plans, these amendments will place an obligation on the operator to exercise a duty of care to avoid undue damage to the environment. This general duty is then linked to the mine operations plan.

Another issue that is to be addressed relates to the fact that currently Inspectors of Mines and officers authorised under the *Mining Act 1971* cannot legally enter upon a Private Mine for the purpose of undertaking investigations or surveys. These amendments ensure that Inspectors of Mines and authorised officers can legally enter upon a Private Mine for appropriate purposes.

As there are many Private Mines that are not being operated and cannot be operated in the future because they either do not contain minerals of value, or because environmental or planning constraints prevent them from being mined, this Bill provides for an efficient process for the revocation of these Private Mines.

To provide the community with a level of assurance that operations at Private Mines will meet appropriate community expectations, these amendments provide for community participation in the development of the objectives and criteria of new mine operations plans. Further, they provide for compliance orders, rectification orders and rectification authorisations.

The transitional provisions allow for developmental plans authorised under the *Mines and Works Inspection Act 1920* to be deemed mine operations plans over a phasing-in period. This ensures that existing operations at Private Mines will be required to operate under the new system but are not disadvantaged by it.

The passage of this Bill will fulfil the Government's desire to assure the community that mining operations at Private Mines will be undertaken in a manner that is consistent with best environmental practice. It will also fulfil the Government's desire to assure industry that the regulation and control of mining operations at Private Mines will be addressed through a comprehensive legislative approach while delivering environmental outcomes consistent with the Government's environmental objectives.

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: Amendment of s.6—Interpretation*

This amendment recasts the definition of "proprietor" of a private mine to reflect the fact that the relevant divesting of property occurred on the commencement of the principal Act.

*Clause 4: Amendment of s. 17—Royalty*

The amendments effected by this clause will allow an assessment of the value of minerals recovered from a private mine that are subject to the payment of royalty to be served on the person carrying out mining operations at the mine, rather than the proprietor, if a notice has been given to the Minister under proposed new section 73E(3) of the Act.

*Clause 5: Repeal of s. 19*

Section 19 of the principal Act is to be repealed and replaced with a new Part relating to private mines.

*Clause 6: Insertion of Part 11B*

It is intended to enact a new Part relating to private mines. New section 73C provides various definitions for the purposes of the new Part. It will also be made clear that all related and ancillary operations carried out within the boundaries of a private mine will be taken to be within the concept of "mining operations" for the purposes of this Part. New section 73D continues the position under the *Mining Act 1971* that the other parts of the Act will not apply to private mines unless explicit provision is made to that effect. Section 73E will relate to royalty. As is presently the case, royalty will only be payable on extractive minerals recovered from a private mine. It will now be possible for the proprietor of a private mine to nominate another person (being a person carrying out mining operations at the private mine) as the person who will be primarily liable for the payment of royalty. The Minister will be able to make an order suspending mining operations at a private mine if royalty has remained unpaid for more than three months after the day on which it fell due. A monetary penalty will also apply in such a case (although the Minister will have the ability to remit any penalty amount). Section 73F is similar to current section 19(12), (13) and (14) (except that the relevant jurisdiction is now to be vested in the Warden's Court, which has greater experience in dealing with private mines under the Act). Section 73G relates to the requirement to have in place a mine operations plan that relates to mining operations at a private mine. A mine operations plan will have a set of objectives and a set of criteria for measuring those objectives. The objectives must include specific objectives to achieve compliance with the general duty under proposed new section 73H. Section 73H will require a person, in carrying out mining operations at a private mine, to take all reasonable and practicable measures to avoid undue damage to the environment (as defined under new section 73C(1)). A person will comply with the duty if the person is meeting the objectives contained in a mine operations plan (when measured against the approved criteria). Sections 73I, 73J, 73K and 73L establish a scheme for compliance with the requirement to have a mine operations plan, to meet the relevant objectives and to comply with the general duty. Sections 73M and 73N provide a scheme for the variation or revocation of a declaration of an area as a private mine. Section 73O sets out the powers of an inspector or other authorised person to inspect a private mine and to carry out investigations in connection with the administration or operation of the new Part. Section 73P relates to the service of documents. Section 73Q will require registration of a mine operations plan. Section 73R will empower the Governor to correct any error that may have occurred in the declaration of an area as a private mine.

*Clause 7: Revision of penalties*

The penalties under the *Mining Act 1971* have been reviewed and new amounts proposed.

*Clause 8: Amendment of Development Act 1993*

This is a consequential amendment of the *Development Act 1993* on the basis that mining operations at private mines will now be controlled through the mechanism of mine operations plans.

SCHEDULE 1

*Revision of Penalties*

The penalties under the *Mining Act 1971* are to be revised.

SCHEDULE 2

*Transitional Provisions*

This schedule enacts various transitional provisions associated with the measures contained in this Bill. The requirement to have a mine operations plan will arise six months after the commencement of the new scheme. A development program under the *Mines and Works Inspection Act 1920* will be taken to be a mine operations plan for the purposes of the new Part enacted by this Act.

**The Hon. SANDRA KANCK:** The Democrats welcome this legislation. We consider it to be a positive move. I understand that the concept of private mines was created at the same time as the passage of the Mining Act 1971 and that it was necessary because some land grants had been given with mining rights. At that time, there were about 350 such land grants. In the past 20 years, about 70 of these have been revoked, and quite a number of the remainder are not even being mined.

I am particularly pleased that this bill requires some form of duty of care to the environment, because until this time that duty of care has not been required. Whilst receiving a briefing on this bill from PIRSA officers, I discovered that section 63 of the Mining Act 1971 requires the minister to establish a fund called the Extractive Areas Rehabilitation Fund. I am told that 50 per cent of the moneys received in royalties from extrusive minerals operations is paid into the fund. Apparently, the minister is authorised to spend any portion of the fund for the rehabilitation of land disturbed by mining operations. The minister may also use money from the fund to implement measures designed to prevent or limit environmental damage caused by extractive mining operations. A committee oversees the administration of the fund.

Furthermore, section 62 of the Mining Act authorises the minister to require the holder of a mining tenement to enter into a bond with the appropriate security for the rehabilitation of mine sites not covered by the Extractive Areas Rehabilitation Fund. I am delighted to hear that this fund and the bonds exist. What I am not clear about is whether this will apply to the private mines that are being dealt with in this current legislation. In terms of this legislation, I would like to know the requirements for rehabilitation: there does not appear to be anything in the bill.

I refer to a copy of a letter from the Environmental Defenders Office sent to PIRSA and dated 15 October last year. It asks questions and makes suggestions about the need for third party rights, and in particular it suggests that third parties should be empowered to make application to the Wardens Court for clean-up orders and/or clean-up authorisations which exist under the Environment Protection Act.

At my briefing I was told that such third party enforcement rights are not required because the Environment Protection Act covers it, and again I would like a reassurance from the minister that the Environment Protection Act will prevail because it does concern me that this bill does not say anything about that. Also, the letter from the Environmental

Defenders Office suggests that the bill should establish a public register of mine operations plans to which the community has a right of access and a right to obtain copies. It continues:

> A public register is essential in providing information to the community about activities which directly impact upon the environment.

Therefore, I wonder whether the Attorney-General can tell us why this recommendation of the Environmental Defenders Office has been rejected. As I say, I think the bill is a step forward. I would have liked it to go further but, given that it is bringing in some environmental duties for groups that previously had none at all, it is a step forward. We support the second reading.

**The Hon. J.S.L. DAWKINS:** I note the support that has been indicated for the bill. It seeks to incorporate in the Mining Act 1971 new provisions dealing with private mines in substitution for section 19 of that act. When the Mining Act 1971 came into operation on 3 July 1972 it placed all minerals in Crown ownership. As an alternative to paying compensation to private landowners who lost ownership of minerals in their land, the government of the day introduced the concept of a private mine into section 19 of the act.

A significant feature of section 19 is that it excludes, except if expressly provided for by another section in the act, operations at private mines from the operation of other provisions of the act. The only section in the act which specifically relates to private mines, other than section 19, is section 76(3a), which deals with the requirement for the operator of a private mine to submit production returns to the Director of Mines every six months and pay royalties.

Administrative difficulties arise as the operation of private mines is not regulated or controlled by other provisions in the Mining Act and there are no requirements in section 19 for the proper control of operations of a private mine. These amendments rectify this by requiring that any operation at a private mine must operate according to a mine operations plan. Such a plan will include a requirement for rehabilitating the site after completion of mining. In conjunction with the introduction of mine operations plans, these amendments will place an obligation on the operator to exercise a duty of care to avoid undue damage to the environment. This general duty is then linked to the mine operations plan.

These amendments also ensure that the inspectors of mines and authorised officers can legally enter a private mine for appropriate purposes. As many private mines are not being operated and will not be operated in the future because they either do not contain minerals of value or environmental or planning constraints prevent them from being mined, this bill provides for an efficient process for the revocation of these private mines.

To provide the community with a level of assurance that operations at private mines will meet community expectations, these amendments provide for community participation in the development of the objectives and the criteria of new mine operations plans. The transitional provisions allow for developmental plans authorised under the Mines and Works Inspection Act 1920 to be deemed mine operations plans over a phasing-in period. This ensures that existing operations at private mines will be required to operate under the new system but are not disadvantaged by it.

The passage of this bill will fulfil the government's desire to assure the community that mining operations at private mines will be undertaken in a manner that is consistent with best environmental practice. I have had some experience with this in the area to the north of my property at Gawler River and in the Kangaroo Flat area where considerable mining has been done in the longitudinal sand rises; and also loam has been mined on the banks of the Gawler River. It is very important that there is proper revocation of those areas when the mining is complete. I think that a number of us over some time have noted the fact that some mines have been left without any rehabilitation and, as a result, they can be quite an eyesore. I support the passage of the bill.

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

## OCCUPATIONAL HEALTH, SAFETY AND WELFARE (PENALTIES) AMENDMENT BILL

Second reading.

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

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

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

Leave granted.

Introduction

Last year, around 2 900 Australians died at work and 650 000 were injured.

In South Australia, during 1997-98 there were 24 workplace fatalities and it is estimated that there are 50 000 work related injuries or illnesses reported each year. The annual cost of workplace related injuries to the South Australian community is considered to be more than $2 billion.

The South Australian Government established its policy in relation to worker safety in 1997 with its pre-election policy document 'Focus on the Workplace'. Linking health, safety and economic development is an integral theme of the government's policy. In order to achieve this, the government is committed to reviewing the existing occupational health, safety and welfare system and to continue the reduction of the incidence of workplace injury or disease.

In the Ministerial Statement of 26 March 1999 on Workplace Safety, a number of integrated initiatives of the Government were outlined to provide the framework to allow South Australia to be a truly safe, productive and competitive State. These initiatives may be summarised as follows:

- The promotion of the vision of South Australia as a State of safe and productive workplaces.
- The abolition of a number of outmoded and unnecessarily complex regulations under the Occupational Health, Safety and Welfare Act.
- The trialing by Workplace Services (DAIS) and WorkCover Corporation of industry specific approaches to occupational health and safety.
- Two information initiatives designed to improve everybody's understanding of their obligations:
  - (1) WorkCover's 'Work to Live' campaign, which promotes increased awareness of safety in South Australia by drawing attention to the social and economic cost of injuries, illness and death in our workplaces, has already attracted considerable attention.
  - (2) Workplace Services will also be commencing a revitalised industry liaison and awareness strategy aimed at better linkage of inspectors with industry and better dissemination of information on key safety risks to the community.
- The development by Workplace Services of a comprehensive prosecution policy for breaches of the Occupational Health, Safety and Welfare legislation.
- Finally, the Occupational Health, Safety and Welfare Advisory Committee was requested to provide advice to the Government in relation to the adequacy of maximum penalties provided in the Occupational Health, Safety and Welfare Act. At the time the Government foreshadowed its intention to increase penalties significantly, if it was supported by that advice.

In November 1998 the Advisory Committee formed a tripartite working party to carry out the task. In preparing its report, the Working Party consulted with its respective constituencies. The Advisory Committee made minor refinements to the recommendations of the Working Party and this Bill implements that advice.

Rationale for Increased Penalties

Maximum penalties under the Occupational Health, Safety and Welfare Act have remained unchanged since the inception of the Act. Since then, there has been considerable erosion of the real impact of the fines. In the intervening period, the general level of prices, as measured by the CPI All Groups Index (weighted average of the eight capitals) has risen by 52.7 per cent.

A comparison of interstate penalty structures reveals that the level of penalties in South Australia is now towards the lower end of the scale in relation to other States.

The Government considers that maximum penalties under the Act must be maintained as an appropriate deterrent and act as an inducement to bring about behavioural change in the workplace. Significant penalties and the threat of prosecution do elicit a response in the workplace. The increases in maximum penalties contained in this Bill will convey a message to the community at large as to the importance of occupational health and safety in the workplace and that all offenders, be they corporate or otherwise, who commit these offences will face substantial penalties.

Discussion of Proposed Penalties

Generally speaking, the Bill will double the existing maximum level of penalties in the Occupational Health, Safety and Welfare Act. However, the Bill will increase a number of maximum penalties even further, to rectify perceived anomalies, whilst a few will be retained at their existing level, principally because the offences are viewed as administrative in nature.

Conclusion

This Bill demonstrates that the South Australian Government continues to view the improvement of occupational health and safety in the workforce as a top priority.

The Government looks forward to the passage of this Bill, which will send a clear message to all parties in the workplace in the promotion of workplace health and safety.

Explanation of Clauses

*Clause 1: Short title*

*Clause 2: Commencement*

These clauses are formal.

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

This amendment proposes to substitute new amounts for the divisional fines set for the purposes of the principal Act.

- a Division 1 fine means a fine not exceeding $200 000 (increased from $100 000);
- a Division 2 fine means a fine not exceeding $100 000 (increased from $50 000);
- a Division 3 fine means a fine not exceeding $40 000 (increased from $20 000);
- a Division 4 fine means a fine not exceeding $30 000 (increased from $15 000);
- a Division 5 fine means a fine not exceeding $20 000 (increased from $10 000);
- a Division 6 fine means a fine not exceeding $10 000 (increased from $5 000);
- a Division 7 fine means a fine not exceeding $5 000 (increased from $1 000).

*Clause 4: Amendment of s. 21—Duties of workers*

Currently, subsection (1) of this section imposes a duty on an employee to protect his or her own health and safety at work and to avoid adversely effecting the health or safety of any other person through an act or omission at work. The penalty imposed for breach of this subsection is a fine of $1 000.

The amendment is not very different, substantively, from current subsection (1) but proposes to split that subsection into a number of different subsections to enable different penalties to be imposed for different elements of the offence.

New subsection (1) provides that an employee must take reasonable care to protect his or her own health and safety at work with the penalty for a breach is a fine to be $5 000.

New subsection (1a) provides that an employee must take reasonable care to avoid adversely affecting the health or safety of any other person through an act or omission at work with the penalty for a breach to be a fine of $10 000.

New subsection (1b) provides that an employee must so far as is reasonable (but without derogating from new subsection (1) or (1a) or from any common law right)—

- use equipment provided for health or safety purposes; and
- obey reasonable instruction that the employer may give in relation to health or safety at work; and
- comply with any policy that applies at the workplace published or approved by the Minister after seeking the advice of the Advisory Committee; and
- ensure that the employee is not, by the consumption of alcohol or a drug, in such a state as to endanger the employee's own safety at work or the safety of any other person at work.

The penalty for a breach of this subsection will be a fine of $5 000.

*Clause 5: Substitution of s. 22*

Currently, section 22 imposes a duty of care on employers and self-employed persons in respect of their own safety at work and in respect of other persons who are not employees or engaged by the employer or self-employed person. The current penalty for a breach is a fine of $5 000.

New section 22 will separate the duty owed by employers and self-employed persons to themselves from the duty they owe to others, with different penalties being imposed for breaches of the separate duties.

*22. Duties of employers and self-employed persons*

New subsection (1) provides that an employer or a self-employed person must take reasonable care to protect his or her own health and safety at work with the penalty for a breach being a fine of $10 000.

New subsection (2) provides that an employer or a self-employed person must take reasonable care to avoid adversely affecting the health or safety of any other person (not being an employee employed or engaged by the employer or the self-employed person) through an act or omission at work. The penalty for a first offence is a fine of $100 000 and, for a subsequent offence, a fine of $200 000.

*Clause 6: Amendment of s. 58—Offences*

This amendment proposes to substitute a new subsection (7) to provide that proceedings for a summary offence against this Act must be commenced—

- in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1953*;
- in any other case—within 2 years of the date on which the offence is alleged to have been committed.

*Clause 7: Further amendment of principal Act*

The schedule of the Bill contains amendments to the principal Act in respect of penalties for breaches of the Act.

Where the amendment does not change the divisional penalty, the monetary penalty will, in fact, have increased because of the operation of new section 4(5) (*see clause 3*).

Some of the amendments insert differential penalties for first and subsequent offences.

Other amendments insert penalties where previously no specific penalty was provided.

The general penalty under section 58 will now be $20 000 through the operation of new section 4(5) (*see clause 3*).

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

## COMMONWEALTH PLACES (MIRROR TAXES ADMINISTRATION) BILL

Second reading.

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

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

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

Leave granted.

This Bill implements essential elements of safety net arrangements agreed between South Australia and the Commonwealth to ensure the continuation of appropriate taxation arrangements in respect of Commonwealth places situated in South Australia.

The need for these arrangements arose from the 1996 High Court decision in *Allders International Pty Ltd v Commissioner of State Revenue (Victoria).* In that case, the Court held that State stamp duty

on a lease covering part of Commonwealth land was constitutionally invalid. Consequently, the validity of other State taxes as imposed in Commonwealth places was brought into question.

As a consequence of the High Court decision, South Australia and the other States requested that the Commonwealth enact a scheme to protect the revenue derived from Commonwealth places formerly collected by the States.

In April 1998 the Commonwealth Government enacted a package of legislation to protect the revenue of the States. The package included a Commonwealth 'mirror tax' Act (which would apply, in relation to each State, that State's taxing laws to Commonwealth places in that State) and windfall tax legislation (to tax refunds of State taxes paid before 6 October 1997 where the refund is sought after that date on the basis of the constitutional invalidity of the State taxing law).

Under the principal Commonwealth mirror tax Act, the *Commonwealth Places (Mirror Taxes) Act 1998*, the provisions of State taxing laws are applied and operate in Commonwealth places as laws of the Commonwealth. For example, South Australia's debits tax, financial institutions duty, stamp duty, and pay-roll taxes apply in Commonwealth places as Commonwealth taxes (to the extent to which they cannot apply as State taxes in Commonwealth places because of the operation of section 52*(i)* of The Constitution). The revenue will be passed on to the respective States under agreements to be signed by the Commonwealth and States.

The South Australian Bill complements the principal Commonwealth mirror tax Act, and provides for a number of important objectives.

First, it permits an arrangement to be entered into between the Governor of the State and the Governor-General of the Commonwealth to provide for the administration of the Commonwealth mirror tax laws by officers of the State.

Secondly, it empowers State officers to exercise or perform all necessary powers and functions for the Commonwealth when administering the Commonwealth mirror tax laws, including the collection of taxes, and enforcing compliance.

Thirdly, it allows for the modification of State taxing laws to enable them to operate effectively in conjunction with the Commonwealth mirror tax laws so that a taxpayer does not incur any additional liabilities due to two tax systems applying. Where a taxpayer is liable to both Commonwealth and State taxes, because of operations on and off Commonwealth places, the calculation and payment of taxes that apply to each place should not involve the taxpayer in additional cost or effort. For example, pay-roll tax in respect of wages paid to employees working at Adelaide Airport and employees working at other sites should not have to be broken up and paid separately by the employer to the Commonwealth and to South Australia.

The Commonwealth and the States will determine the relevant breakdown of revenues, as appropriate, to ensure that the operation of the legislation does not adversely impact on the business activities of taxpayers and is effectively 'seamless' in its operation.

I commend this Bill to honourable members.

Explanation of Clauses

*Clause 1: Short title*

This clause is formal.

*Clause 2: Commencement*

This clause sets out the commencement provisions. Clause 2(1) provides that subject to subsection (2), the proposed Act will come into operation on the day on which it is assented to. Clause 2(2) provides that when an arrangement has been made between the State Governor and the Governor-General of the Commonwealth as provided for under section 5, section 7 is taken to have come into operation on 6 October 1997. This means that the modified State taxing laws (modified, that is, by regulations made pursuant to section 7) will be taken to have come into operation on 6 October 1997. The 6 October 1997 date is tied to the date from which the Commonwealth mirror tax liability will apply. The note to clause 2 provides that under the operation of the *Commonwealth Places (Mirror Taxes) Act 1998* (the 'Commonwealth Act') the State taxing laws are taken to have always applied in relation to Commonwealth places in South Australia, but not so as to impose any liability for tax things that happened before 6 October 1997.

*Clause 3: Definitions*

This clause defines certain words and expressions used in the Bill. Key definitions are as follows:

'applied law' means the provisions of a State taxing law that apply in relation to a Commonwealth place in accordance with the Commonwealth Act (*see* also explanation of the definition of 'State taxing law', below).

'Commonwealth place' means a place in the State acquired by the Commonwealth for public purposes. Examples of such places include airports, defence bases and office blocks purchased by the Commonwealth to accommodate employees of Commonwealth Government Departments. The Commonwealth must hold the title to the property before it falls within the definition of 'Commonwealth place'. Places merely leased by the Commonwealth, regardless of the length of the lease, are not Commonwealth places.

'State authority' is defined as the Governor, a Minister, a member of the Executive Council, a court, a member of a court, a body created by or under a law of the State and an officer or employee of the State or of such a body. For South Australia, this definition will include persons such as the Commissioner of State Taxation, and taxation officers within the Department of Treasury and Finance who will be associated with the administration of applied laws on behalf of the Commonwealth.

'State taxing law' is defined to mean a State law that is a State taxing law within the meaning of the Commonwealth Act. The Commonwealth Act provides that a State taxing law is:

- a scheduled law of the State (paragraph *(a)*). The South Australian laws scheduled in the Commonwealth Act as State taxing laws are the *Debits Tax Act 1994*, the *Financial Institutions Duty Act 1983*, the *Pay-roll Tax Act 1971* and the *Stamp Duties Act 1923*;
- any other State law that imposes tax and is prescribed by regulations (paragraph *(b)*). Although no such law has been prescribed at the present time, should other State taxes prove likely to be similarly affected by the decision of the High Court in the *Allder's* case, there is flexibility to add the relevant State laws to the mirror tax regime at a later date. This would be done by means of regulations made by the Governor-General under the Commonwealth Act. Such later prescription of other taxing laws will give those laws retrospective effect for the purposes of the mirror tax regime and they will become State taxing laws as if they had always been listed in the Schedule. This ensures that the State revenue concerned is protected as from 6 October 1997; and
- any other State law to the extent that it is relevant to the laws scheduled or prescribed (paragraph *(c)*). As new laws that are relevant to scheduled or prescribed laws are introduced, they are automatically included as State taxing laws by virtue of this definition. Existing State legislation is automatically included so far as it is relevant to scheduled or prescribed laws.

This reflects the broad policy of the mirror taxes scheme. Under the Commonwealth Act (section 6), the provisions of State taxing laws that would be excluded from applying to Commonwealth places under paragraph 52*(i)* of the Commonwealth Constitution are taken to apply as 'applied laws' of the Commonwealth. The provisions of a State taxing law and its corresponding (Commonwealth) applied law will be identical in substance, hence the term 'mirror taxes'. By virtue of section 6 of the Commonwealth Act and paragraph *(c)* of the definition of 'State taxing law' in the Commonwealth Act, the applied laws will operate and be applied and interpreted in the same way as the State taxing laws they mirror. Thus, for example, South Australia's *Acts Interpretation Act 1915* and criminal administration laws, falling within the definition of 'State taxing laws' (paragraph *(c)*) will also become applied laws of the Commonwealth and be applied to other applied laws.

*Clause 4: This Act binds the Crown*

This clause provides that the Act binds the Crown in the right of the State of South Australia and, subject to the limitations on the legislative power of the State, in all its other capacities.

*Clause 5: Arrangements with Commonwealth*

This clause provides for the Governor to enter into an arrangement with the Governor-General for the administration of applied laws in relation to Commonwealth places in South Australia. Until such an arrangement is made, the State taxing laws applied by the Commonwealth Act in relation to Commonwealth places will not have effect. This arrangement therefore acts as a trigger for the operation of the applied laws. Should such an arrangement cease, State taxing laws would no longer have effect as applied laws.

One of the matters which may be the subject of such arrangement is the assent by the State to its authorities such as the Commissioner of State Taxation to undertake the various duties which are implicit in the applied laws. Assent is required as a result of the constitutional

restrictions on the Commonwealth imposing obligations on State authorities without the agreement of the States.

Clause 5(2) provides for the variation or revocation of such an arrangement, subject to agreement between the Governor and the Governor-General.

*Clause 6: Exercise of powers etc. by State authorities*

This clause provides for a State authority to exercise or perform any power, duty or function that the Commonwealth Act requires or authorises it to exercise or perform despite any State law. The principal State authorities that will exercise or perform powers, duties and functions under the applied laws will be the Commissioner of State Taxation and taxation officers within the Department of Treasury and Finance.

*Clause 7: Modified operation of State taxing laws*

This clause provides a framework for the modification of State taxing laws, to ensure their effective operation side by side with the Commonwealth applied laws.

Clause 7(1) provides that the regulations may prescribe modifications of a State taxing law.

Clause 7(2) provides that the modifications may be made only to the extent that they are necessary or convenient either to enable the effective operation of the State taxing law, together with the corresponding applied law, or to enable the State taxing law to operate so that the taxpayer's combined liability under the State taxing law and the corresponding applied law is nearly as possible the same as the taxpayer's liability would be under the State taxing law alone if the Commonwealth places in the State were not Commonwealth places. Clause 7(2) authorises modifications for the purposes, for example, of obviating the need for the taxpayer to lodge tax returns under both the State taxing law and the corresponding applied law, or of ensuring that a taxpayer with a liability under a State taxing law and the corresponding applied law pays no more and no less tax overall than he or she would have paid had only the State taxing law applied.

The modification that is proposed in relation to South Australia's taxing laws is that each State taxing law is to be read together with its corresponding applied law as a single body of law. The intended effect is to ensure that there is as little change as possible in the overall tax liability of a taxpayer who has a liability under a State taxing law and the corresponding applied law.

Clause 7(3) provides that the modifications may take effect from a date earlier than the publication of the regulation in the *Gazette*, however can not pre-date the commencement of the operation of the section: that is, 6 October 1997. The modifications may deal with the circumstances in which the modifications apply and with matters of a transitional or saving nature.

*Clause 8: Continuation of proceedings if place found not to be a Commonwealth place*

This clause provides that where proceedings have been commenced under an applied law and the court is satisfied that they should have been commenced under a State taxing law as the State taxing law is not excluded by section 52*(i)* of the Commonwealth Constitution, those proceedings must continue as though they had been commenced under the State taxing law.

The definition of 'proceedings' (in clause 3) is cast widely to include any stage of judicial proceedings whether civil or criminal. It includes judicial proceedings such as enforcement, recovery, and tax appeal matters.

The effect of clause 8 is that an action commenced under an applied law in the mistaken belief that the State taxing law was excluded by section 52*(i)* of the Commonwealth Constitution does not have to be restarted, nor does an action have to be redone, where there is a corresponding State taxing law. This prevents a range of possible procedural mischiefs, including the application of limitation provisions, that might otherwise arise.

*Clause 9: Objection not allowable on ground of duplicate proceedings*

This clause prevents objections against proceedings under a State taxing law merely on the ground that proceedings have been commenced or are pending under a corresponding applied law. It will ensure that proceedings under a State taxing law are not frustrated because a similar proceeding is also taken under the corresponding applied law. Duplicate proceedings may be instituted by a State taxing authority where, for example, it is unsure about the correct jurisdiction. There may also be merit in duplicate proceedings where part or all of the proceedings instituted under a State taxing law are in danger of offending section 52*(i)* of the Commonwealth Constitution. In that case the proceedings would be taken to have been instituted under the corresponding applied law.

It should be noted that this section does not prevent a taxpayer who has liabilities under both a State taxing law and the corresponding Commonwealth applied law from facing proceedings under both the State taxing law and the corresponding Commonwealth applied law. For example, duplicate recovery proceedings could be instituted by the Commissioner of State Taxation against a taxpayer who owed tax under both a State taxing law and the corresponding Commonwealth applied law. In such a situation, both the taxpayer and the Commissioner would be faced with the prospect of two sets of legal costs and it is likely that they would each take the steps available to them under the rules of court to either consolidate the two proceedings or have both matters heard at the same time in order to minimise the costs. It should be noted that rather than commencing duplicate recovery proceedings it may be possible for the Commissioner to pursue as a single debt, tax payable under a State taxing law and the corresponding Commonwealth applied law, relying on clause 9 of the Bill.

Where a taxpayer proceeds with an appeal under both a State taxing law and the corresponding Commonwealth applied law and the appeals involve the same legal issues, it is likely that the taxpayer and the Commissioner will agree to proceed with just one of the appeals and to hold the other(s) in abeyance pending the outcome of the test case, again, rather than pursue as a single appeal the issue that is in dispute under both the State taxing law and the corresponding applied law.

In the case of a prosecution where an act or omission constitutes an offence under both a State taxing law and the corresponding Commonwealth applied law, it would be possible for the taxpayer to be charged with an offence under both the State taxing law and the corresponding Commonwealth applied law. For example, a taxpayer might provide the Commissioner with a document that contains false information that relates to the taxpayer's liability under both the *Pay-Roll Tax Act 1971* and the corresponding Commonwealth applied law. If a taxpayer was to be charged with two separate offences the taxpayer would not be able to object to this duplication. It is likely, however, that when determining the appropriate penalty for each offence, the court would take into account the fact that the two offences arose out of the same act or omission.

*Clause 10: Proceedings on certain appeals*

This clause provides that a court can deal with an appeal from a judgment, decree, order or sentence of a court in proceedings under an applied law as though it was commenced under the corresponding State taxing law, where the court is satisfied that the State taxing law is not excluded by section 52*(i)* of the Commonwealth Constitution.

*Clause 11: Certificates about ownership of land*

This clause is designed to facilitate proof of interests in land where an issue arises in proceedings under a State taxing law as to whether a particular place is a Commonwealth place. Although not determinative of the question of whether or not a place has been acquired by the Commonwealth 'for public purposes' (which is a question of law rather than one for formal proof by certificate), such a certificate may nonetheless evidence the fact that the place was 'acquired by the Commonwealth'.

To ensure that certificates are effective, there is a rebuttable presumption in favour of the conclusiveness of the certificate—that is, documents purporting to be such certificates are taken to be so unless proved otherwise.

*Clause 12: Validation of things purportedly done under an applied law*

This clause is designed to overcome uncertainty by ensuring that if an action is purportedly done under an applied law and the corresponding State taxing law is not excluded by section 52*(i)* of the Commonwealth Constitution, it will be taken to have been done under the State taxing law that corresponds to the applied law.

The provision will, for example, validate the action of the Commissioner of State Taxation who pursues as a single debt under an applied law a tax debt that relates to a business that is partly in a Commonwealth place, and partly elsewhere in the State. It will ensure that if a taxpayer pays as Commonwealth mirror tax an amount that was properly due as State tax, the amount will be taken to have been paid as State tax so the taxpayer will not be entitled to a refund and the Commissioner will not be required to pursue a separate payment of State tax.

*Clause 13: Provisions as to operation of applied law and State taxing law if a place ceases to be a Commonwealth place*

This clause is a saving provision for situations where a place ceases to be a Commonwealth place, for example where the Commonwealth sells land which it acquired for a public purpose.

The effect of clause 13 is that in such circumstances, all rights, privileges, duties and liabilities that were acquired or created under an applied law while the place was a Commonwealth place, continue. Penalties, forfeitures and punishments can be imposed as though the applied law continued to have effect, and investigations, legal proceedings and remedies may be instituted or enforced in the same way.

*Clause 14: Provisions as to operation of State taxing law if a place becomes a Commonwealth place*

This clause is a saving provision similar to clause 13, however this clause provides for the reverse situation, that is, where a place becomes a Commonwealth place.

Clause 14 has the effect that, in such circumstances, all rights, privileges, duties and liabilities that were acquired or created under a State taxing law before the place became a Commonwealth place continue. Penalties, forfeitures and punishments can be imposed as though the State taxing law continued to have effect and investigations, legal proceedings and remedies may be instituted or enforced in the same way.

*Clause 15: Instruments referring to applied law*

This clause provides for references to an applied law in an instrument or other writing to be read as a reference to the corresponding State taxing law if the State taxing law is not excluded by section 52*(i)* of the Commonwealth Constitution. This ensures the validity of such documents and obviates the need for new documents to specify the State taxing laws.

*Clause 16: Regulations*

This clause sets out the Governor's regulation-making powers.

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

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

Adjourned debate on second reading.

(Continued from 30 September. Page 72.)

**The Hon. IAN GILFILLAN:** As honourable members are aware, I have been concerned for many years about the problems that arise or that are perceived to arise when police investigate police. For the public to have confidence in our police force there needs to be a mechanism for resolving police complaints which is not only fair but which is also seen to be fair and, of course, transparent. Regrettably, that has not been a priority for this government. It has sought to entrench the status quo, whereby nearly all complaints against police are handled by the internal affairs section.

The bill which is before us is the government's considered response to the Iris Stevens review, last year, of the way police complaints are handled. It is worth recalling here the terms of reference that were given to Mrs Stevens. The terms of reference were (and I quote from the Attorney-General—26 February 1998):

1. Examine and review generally the operations and processes of the Police Complaints Authority (the Authority), the Commissioner of Police and the Internal Investigations Branch in relation to their statutory functions in investigating and reporting on complaints against police officers under the Police (Complaints and Disciplinary Proceedings) Act (the Act) and report upon the effectiveness and appropriateness of those operations and processes.
2. Without limiting the generality of paragraph 1 above, examine, review and report upon the following practices and procedures of the PCA:
   - responses by the authority to inquiries by complainants (section 30 of the Act);
   - the provision of reports of investigations, assessments of other materials to complainants, police officers, the subject of complaints and the Commissioner of Police;
   - the relevance of the principles of natural justice to the exercise of statutory functions by the authority; and
   - complaint handling mechanisms within the PCA office.

Under these terms of reference Mrs Stevens was not permitted to recommend changes to the act, to the resources available to the PCA, nor investigate any of the cases dealt with by the PCA or the police Internal Investigations Branch. I said at the time that it was a Clayton's inquiry, and I quote myself: 'the inquiry you have when you don't want an inquiry'. Mrs Stevens was authorised to determine how well the PCA was performing under its act but could not make any recommendations as to how the act might be improved or what resources could or should be employed; nor could she examine the nitty-gritty of individual cases.

Consider, Mr President, how ludicrous this is. Suppose I want to consider the best way of getting from Perth to Adelaide. Suppose I started off on the journey by cycling on my bike. The government would authorise a review of how well I am performing in cycling from Perth to Adelaide but it would prevent any consideration of how I might get there a lot faster if I drove a car. It would prevent any consideration of whether I could afford to hire or drive a car. It would even prevent any consideration of whether I could use a better bicycle. It was, as the Attorney-General described it, a review of process. Like the person cycling across the Nullarbor, instead of driving, it looked at the way the PCA is obliged to lift up one pedal and press down on another while complying with the act. Whether or not the act is the best method of handling complaints or whether sufficient resources have been allocated, like hiring a car, or even buying a plane ticket, to get from Perth to Adelaide, did not at any stage come into consideration.

*Members interjecting:*

**The Hon. IAN GILFILLAN:** All the cyclists are coming out of the woodwork! It was not surprising then that one of the common reactions to the Stevens report was that it was bland and cautious. It was bland and cautious because that was the only sort of report that was sanctioned under her terms of reference, the terms of reference given to her by the government. Instead of recommendations for reform we got questions, options for the government to consider, some anomalies and minor matters of procedure which might be corrected, like a question about whether we should change the pedals or the tyres on a bike. Now, a year later, we are considering what the government has proposed in response to those suggestions—a year later.

As limited as this process is, it has also been a very low priority for the government. Although the government has had the Stevens report for more than a year (it was tabled on 11 August 1998), the process of getting this bill before parliament took another 12 months, and as late as the end of October 1999 was still going on. A bill was introduced in the budget sitting on 5 August 1999. A slightly different bill appeared in this sitting, on 30 September. It had been modified with the addition of another subclause. The government proposes to modify it yet again, with some amendments which were placed on file in the Attorney's name on 22 October.

This ad hoc approach is evidence of the very limited government response to the very limited Stevens inquiry, not merely limited but also apparently a very low priority. It is a measure of how little consideration the government has given to the whole issue of police integrity and the complaint handling process in general. In short, first we had the Clayton's inquiry by Mrs Stevens; second, we had the response delayed by more than a year with bits and pieces added on, week after week, as an afterthought. This does not

inspire me with much confidence in the government, let alone in the way the government allows police to investigate police.

During the parliamentary recess I took the opportunity to do some research into the way that police complaints are handled in other countries, notably England and Ireland. On my travels I met, among others, Mr Fred Broughton, President of the United Kingdom Federation of Police Officers, and Mr Peter Moorhouse, chair of the British Police Complaints Authority. One thing that I found striking about the discussions with Mr Broughton and Mr Moorhouse was that the rate of police complaints lodged in Britain is much lower than the rate in South Australia. There are approximately 126 000 British police officers and about 10 000 annual complaints received by the British PCA. That is an average of one complaint for every 12.6 police officers per year.

As is the case here, the PCA does not determine all complaints itself. It supervises only about 10 per cent, usually the most serious cases. Many others are discarded without investigation, but the majority are referred back to police for internal investigation. That is broadly comparable to our system. In Britain, a complaint is upheld (that is, some type of disciplinary action is taken) in about 12 per cent of complaints, which represents action taken against just under 1 per cent of British police officers per year. In South Australia, we have about 3 500 police officers, and about 1 300 annual formal complaints (not counting the more numerous mere allegations). That is an average of one formal complaint for every 2.7 officers. The complaint is upheld in one form or another in about 150 cases per year (that is, 12 per cent of all complaints). This represents about 4.3 per cent of police officers per year.

I remind honourable members that the British experience is just under 1 per cent. So, South Australians complain about their police about five times as much as British people complain about theirs. The complaints are upheld at the same rate—12 per cent—with the result that a South Australian police officer is four and a half times more likely to have an adverse finding made by the PCA against him or her than a British police officer. I find it hard to believe that our police force is four and a half times worse than the British police. In fact, I do not believe that. I believe that it reflects on the idiosyncrasies of either the system or the wider acceptance by the South Australian public that they have a right to complain when they see something that they want to raise with the PCA.

Perhaps as Mr Wainwright in the Police Complaints Authority observes in his most recent annual report, it may be that here in South Australia people have sufficient confidence in the SA complaints handling procedure that they are prepared to go through the system to make their complaint. Alternatively, of course, there may be less public confidence by Britons in the British process, so that in Britain perhaps many complaints are simply not made and hence not followed up. A third possibility is that we South Australians may be less tolerant whenever we believe that police have stepped over the line of proper behaviour and we are not afraid to say so.

No matter which of these explanations we prefer, we can take from it both positives and negatives. If confidence in the procedure here is high, that is good, and we need to ensure that it stays that way. However, if the South Australian public is to a greater extent intolerant of behaviour which the PCA subsequently finds is wrong, then that also is a good thing. It is a public statement that we expect very high standards of our police officers, and that the PCA agrees. But despite the positive slant of these potential explanations, it remains the case that in South Australia complaints are upheld against more than 4 per cent of police officers per year, on average. I would suggest that that is too high and an indication that this government is putting too little resources into training and other preventative measures to help police avoid committing mistakes that will result in justifiable complaints.

I believe that the vast majority of police are or would be keen to continually work at raising their own standards of professionalism to minimise the potential for adverse findings to be made against them. It is not just operational police who come under criticism. One of the bland things that Mrs Stevens was permitted to say in her review of operations was that she received submissions from the public complaining about a 'lack of professionalism at times in the investigative procedure' of handling police complaints. One of the reasons for that may be again a lack of resources for accomplishing the level of professionalism and high standards that the public of South Australia have come to expect, not only in policing but in addressing police complaints. In spite of my lack of confidence in the government in this area, I do have confidence in the Police Complaints Authority, Mr Tony Wainwright, despite the limitations placed upon him by a lack of resources and the act. I have sought his opinion on aspects of this bill and have been persuaded by some of his arguments.

The Democrats will be supporting most of the measures which this bill seeks to achieve. However, there are a couple of exceptions, which I will describe shortly, and there are also a couple of important omissions from this bill which I hope to address with some amendments that I have on file. First, in my study of the principal act I discovered that under section 22A(5) the authority is prevented from investigating a matter on his or her own initiative unless such an investigation has the support of the commissioner and/or the minister. In fact, the authority of the act can allow a commissioner to put a veto on an investigation and, if he and the authority do not reach agreement as to what should eventuate, the matter is referred to the minister, who can then put a veto on the investigation.

When section 22A was incorporated into the act by an amending bill in 1996, subsection (5) was not debated at all in either chamber of this parliament. The Attorney pointed out in his second reading speech on the present bill that there had never been an occasion when the PCA had disagreed with the commissioner on a possible investigation on the authority's own initiative. Nevertheless, I consider that this subsection represents an opportunity for what could be an unnecessary obstruction of the PCA's powers. I would like to set the following scenario, although I am not arguing that it has happened.

A PCA that is aware of this power of the commissioner to chop off an investigation at the knees may very well be sensitive to not pursuing an investigation, fearful that having gone down that path and having invested a certain amount of resources it is quashed by the commissioner. This may generally create an unsatisfactory relationship between the authority and the commissioner. I believe that to be totally unacceptable in the way the PCA should work. It is all too easy to imagine a scenario in which a future commissioner and future minister would prefer not to have the authority delving into a particular matter. I can see no reason for including section 22A(5) in the act, and I shall be moving for its deletion.

Secondly, I make the point that it is not only the public who make submissions about the complaint handling procedure: it is far from perfect for police officers, especially the honest ones, who are the keenest to clear their name if any suggestion of improper procedure should be laid against them. When an investigation into alleged misconduct by a police officer is under way, at some stage the officer is entitled to know the details of the allegations against him or her. At present, in effect, three different standards operate. First, where a police officer voluntarily attends to answer PCA questions, he/she need not be told the particulars alleged; they must simply sit there, answer questions and give information without in some cases having the faintest idea what allegations have been made or what the line of questioning is seeking to discover. Secondly, when the SAPOL internal investigation branch requires a police officer to answer questions, section 25(7) provides that he or she must first be informed orally of the particulars of the matter under investigation. Thirdly (and this is the oddity), section 28(8) provides that when the PCA is investigating it must give written notice of the particulars of the matter under investigation.

In her report Mrs Stevens suggested that there should be but one standard, that is, written notice of particulars before all interviews. This is also the view of the Police Association, which lobbied me courteously and efficiently. I find this a difficult decision to make. On the one hand, as the Police Association points out, giving written notice of the allegation would permit a police officer to refer to notes and check what he or she was doing at the time of any alleged incident, thereby ensuring that answers would be accurate. This is important, because when they are required to attend an interview they do not have the benefit of a right to silence: they must answer. I must say in addition to that point, however, that, in any reasonable questioning if the police officer wanted to acquire information to more satisfactorily and fully answer questions, I cannot imagine that that officer would not be given the opportunity to gather that information for a later occasion.

On the other hand, a police officer who has done something wrong should not have notice of 24 hours or more in which to concoct a believable story or persuade others to back up their version. Neither should they have a guaranteed statutory right to such a notice. That sort of thing is not routinely available to other people accused of breaches of discipline in their profession; for example, lawyers under investigation by the Legal Practitioners Conduct Board generally have a complaint published to them as a first step, according to the *Law Society Bulletin* of September 1999, page 31. However, this is not a statutory right.

In the end I was persuaded by Mr Wainwright that notice of the matter under investigation should be given only at the interview, not before. He believes that if an officer has nothing to hide this is not a burden. Further, he believes this would help him get to the bottom of a matter under investigation, and therefore the Democrats will be supporting this aspect of the government's bill. It is interesting that on ABC radio this morning the minister did not seem to fully understand his own bill, on the basis that he felt that when I was indicating that that was what happened I was attacking the government's position. I hope to clarify that in the near future.

Having said that, there remains one inconsistency in the government's approach in the minister's second reading speech. According to page 70 of the Legislative Council *Hansard* of 30 September, the minister stated:

> When a police officer voluntarily attends to answer the PCA's questions there is no requirement that the officer be given the particulars of the matter under investigation.

Later (the same page) he stated:

> Mrs Stevens suggests that it is inequitable that a person who attends voluntarily before the PCA to answer questions does not have to be informed of the particulars of the allegation.

It is quite surprising to me that, having identified this inequity, the government has not addressed it or has not addressed it adequately. It is very unfair on the honest police officer who wishes to cooperate voluntarily with any inquiries that he or she should be under a disadvantage when compared with any other officer who may be summonsed or required to answer questions on demand by either the internal investigation branch or the PCA. I give notice that I will be moving an amendment to address that inequity which has been highlighted by Mrs Stevens and which has obviously been recognised by the government then overlooked in the legislation.

The government has adopted a particular course of action in relation to those who may be the subject of adverse comments or criticism by the Police Complaints Authority. On the one hand the government is seeking to delete from the act section 28(5). This section has effect whenever the authority is making a report which is critical of any person. Before making such findings the PCA must invite the person concerned to make a submission. That does not seem to be an onerous responsibility for the authority, but the government is seeking to delete this requirement.

On the other hand, the government's most recent amendments dated 22 October seek to insert into the bill (and hence into the act at section 36) something which is similar but different in three key respects. The proposed new section 36(5) seeks to tie the authority's tongue more tightly than does current section 28(5). Proposed new section 36(5) requires notice to be given to a person in writing. It requires a submission to be made in writing and not merely orally, and it requires the authority to take into account such a submission which the current section 28(5) does not. Unless all three of these steps are carried out, the authority is gagged: he or she is not to make any critical comment.

In addition, proposed new section 36(5) applies only where there is no recommendation or determination in relation to a matter under investigation, and hence when there will be no official follow-up. It is at this last stage, when the authority has been unable to pin something on an errant officer sufficient to make it stick, that the authority would now be prevented even from making a comment unless three new steps are fulfilled. The Democrats are not persuaded that this is a change for the better and so we will be supporting the retention of the original section 28(5) and opposing the last subclause in the Government's amendment in respect of new section 36.

Let me say in conclusion how disappointed I am in the government's lacklustre response to the issue of police integrity. After a Clayton's review of process we have a bill which does not begin to address legitimate public concerns about the perceptions of police investigating police. While this bill makes some worthwhile minor changes, it is merely tinkering around the edges. In the interests of the public and thousands of honest, trustworthy and ethical police in South Australia, I urge the government to take this matter much more seriously than it has until now. In the meantime, I

indicate that, taking into account the matters to which I have previously alluded, the Democrats will support the second reading of the bill.

**The Hon. J.S.L. DAWKINS** secured the adjournment of the debate.

## CRIMINAL LAW CONSOLIDATION (SEXUAL SERVITUDE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 October. Page 169.)

**The Hon. CAROLYN PICKLES (Leader of the Opposition):** The opposition supports the second reading. This is an important area of public policy and I am pleased to note the government's moves in this general direction. I understand the general intention of this bill is the prevention of sexual servitude and, in doing so, proposes four offences which I welcome. It is true, as the Attorney has acknowledged, that the present law is outdated and limited, failing to recognise the ways in which people become entrapped and coerced into working in the sex industry. My views on prostitution are well-known not only in this place but the community at large, and in fact I was commenting on the government's latest round of bills only the other day. I am eagerly waiting to see how on earth we will deal with them.

I believe that women have the right to choose to engage in prostitution, but I am certainly aware that women and children especially are not always in control of their own destiny and do not always find themselves making conscious decisions about operating as a sex worker. It is for these very reasons which are outlined by the Attorney that I am happy to support the bill. The bill defines sexual servitude as a condition of a person who provides commercial sexual services under compulsion. This definition, which was recommended by the moral criminal code committee's standing committee of Attorneys-General, is based on the recognition that a victim, first, is incapable of leaving the industry and that such incapacity is caused by threats to the victim of violence and deportation, for example.

I note that this bill is based on the sexual servitude provisions contained in the Commonwealth Criminal Code Amendment (Slavery and Servitude) Act 1999. Can the Attorney advise whether any other states have introduced similar legislation? The four offences resulting from the introduction of this legislation are as follows: to procure another to become a prostitute; to procure a person who is not a prostitute to become an inmate of a brothel for the purposes of prostitution in or outside South Australia; to procure another to have sexual intercourse by threat or intimidation; and by false pretence or fraud to procure someone who is not a common prostitute or a person of known immoral character to have sexual character.

As per usual, I have distributed this bill to a number of organisations, including Ms Helen Vicqua, who is the convenor of a task force for prostitution law reform. Ms Vicqua welcomed the bill generally and in particular the government's attempts to clarify the laws surrounding entrapment and coercion. She hoped that it would make it easier for the police as well as prostitutes to interpret and apply the law. Finally, I welcome the recognition by the government of the growing international trade in young women and children. In these cases the victims are relocated from another country and once arrived find themselves totally vulnerable and forced into work as sex slaves, losing any control over their lives. I welcome the strong penalties attached to offences committed against children.

**The Hon. J.S.L. DAWKINS** secured the adjournment of the debate.

## LOCAL GOVERNMENT (IMPLEMENTATION) BILL

Adjourned debate on second reading.

(Continued from 28 October. Page 282.)

**The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning):** I thank all members for their contributions to this bill. It is a short bill arising from legislation addressed last session. It is important in terms of local government arrangements and it is important that we have this legislation and all the provisions in place well before the elections scheduled for next year. I thank all members for their cooperation in dealing with this bill expeditiously. I highlight that there are a couple of small amendments and related amendments to which I have been alerted today and, in turn, all members who have some responsibility for this bill have also been made aware of them. They are of a technical nature and I would appreciate their support when I move them.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2.

**The Hon. DIANA LAIDLAW:** I move:

Page 1—
Line 16—Leave out 'This Act' and insert:
Subject to subsection (2) this Act
After line 16—Insert:
(2) Section 12(5) will come into operation on assent.

The amendments are both technical in nature and enable the amendment to clause 12 to be brought into operation on assent. Clause 12 relates to the definition of 'authorised person', which I will explain more fully under clause 12.

Amendments carried; clause as amended passed.

Clauses 3 and 4 passed.

Clause 5.

**The Hon. DIANA LAIDLAW:** I move:

Page 5—
After line 26—Insert:
(zaa) by striking out from section 39(2) 'on the first Saturday of May in' and substituting 'in May';
After line 29—Insert:
(zca) by striking out from clause 4 of schedule 1 'on the first Saturday of May in' and substituting 'in May';

These amendments are purely technical to correct references to the date of the next periodic elections, in two places, and to ensure consistency between all the provisions of the City of Adelaide Act that refer to the date of the next election. Section 5 of the Local Government (Elections) Act 1999 fixes the date for the next periodical elections. This date also applies to the City of Adelaide by virtue of schedule 1, clause 1 (2) of the City of Adelaide Act.

Amendments carried; clause as amended passed.

Clauses 6 to 11 passed.

Clause 12.

**The Hon. DIANA LAIDLAW:** I move:

Page 17, after line 16—Insert:

(5) A reference in another Act to an authorised person as defined in the Local Government Act 1999 will, until the relevant day, be taken to include a reference to an authorised person as defined in the Local Government Act 1934.

I mentioned this amendment under clause 2. It is a technical amendment and will cover any transitional period between the commencement of the Local Government Act 1999 and other legislation. I refer, for instance, to the commencement of the Road Traffic (Road Rules) Amendment Act 1999 in December, that being earlier than the commencement of the Local Government Act 1999 in January 2000.

Amendment carried; clause as amended passed.

Remaining clauses (13 to 46) and title passed.

Bill read a third time and passed.

## LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 October. Page 258.)

**The Hon. A.J. REDFORD:** It strikes me that the legal profession, of which I am a member, is probably one of the most regulated professions in this country. Indeed, if one looks at the original 1991 state act one sees that, in the 18 years of its existence, it has been the subject of 24 sets of amendments or, indeed, eight sets of amendments in the past six years. This bill has a number of objectives, including the exclusion from the guarantee fund claims for losses incurred as a result of a practitioner's mortgage investment activities and the clarification of the basis upon which a legal practitioner may make a claim against the guaranteed fund. It also excludes claims by legal practitioners where the loss has been caused by a partner unless that legal practitioner acted both honestly and, importantly, without negligence.

Finally, the act provides that the employment in legal practices of persons who have been suspended or struck off is to be prohibited without express approval of the tribunal or the Supreme Court on appeal. As I understand it, these proposals have been initiated by the Law Society. Given that I have not heard at all from the Law Society, I assume that it has no objection to this legislation.

As a member of parliament, one can never be confident of the position of the legal profession in relation to legislative initiatives and, with the notable exception of the Bar Association, it is and has been one of the more difficult groups that I have encountered since being elected to parliament, and I will give a couple of examples.

One needed only to witness the recent performance of a prominent Queen's Counsel in relation to the government's response to the demonstration on the steps of parliament concerning home invasion. It was clear that the Attorney had a particular point of view. A political process took place in relation to that point of view, principally conducted on the airwaves of night-time radio under the auspices of the well-known radio announcer Bob Francis and radio 5AA. It was a pretty open process: we had letters to the editor; speakers from the opposition; constant discussions on talk-back radio; press releases; and a very active lady in Mike Rann's electorate secured an extraordinary number of signatures, by any definition, to a petition expressing the concerns of the community.

Whatever one might say about why the Attorney failed to respond or was delayed in his response, he did initiate a response, and before this place we now have a series of legislation. It was a fairly long, open and public process but, after it was all over and after the Attorney announced and introduced legislation into this parliament, along came members of the legal profession—

*The Hon. Carolyn Pickles interjecting:*

**The Hon. A.J. REDFORD:** —yes implying that the Attorney-General had kowtowed to public opinion. It is my view as a member of this place that there are occasions when Attorneys-General do have to respond to public opinion. I suppose the point I make is: where were these people during the course of that debate? Where were they on the auspices of talk back radio? One might consider that, if the Law Society is to engage in this public forum, it acts in a more timely fashion. I will not go into much detail, but I have had correspondence with the Law Society on the basis that matters be kept confidential, and I have had the enjoyment and privilege of reading about that correspondence in the *Advertiser* not a few days after sending that confidential correspondence. I am still awaiting an apology from the Law Society for that breach of confidence.

In view of my recent experience I have decided that I should examine the Law Society's suggestions more critically in that I have decided not to simply accept on face value suggestions that it might make for legislative amendment in this place.

**The Hon. T.G. Cameron:** Very wise of you.

**The Hon. A.J. REDFORD:** The honourable member interjects and says, 'Very wise', and my experience would indicate that that is correct. The first issue I will raise in relation to this bill is the question of the activities of lawyers engaged in mortgage broking. The legislation refers to mortgage financing and says that it means 'negotiating or arranging loans secured by mortgage, including receiving or dealing with payments for the purpose of or under such transactions'. The exclusion of coverage for this activity from entitlement to a claim under the guarantee fund in my view could well cause some injustice for those members of the public who deal with legal practitioners thinking that they may have the benefit of access to that fund.

Indeed the statement in the second reading explanation of the Attorney that 'mortgage investment broking is not a general part of legal practice' might on the face of it be correct, but this bill does not use the term 'mortgage investment broking' but rather uses the term 'mortgage financing'. When one looks at the definition, it is much broader than the term 'mortgage investment broking'. It covers 'mortgage financing' and the definition is far broader. On my reading of the provision it covers many activities commonly conducted by practitioners who are involved in mainstream legal work. Indeed, it is not uncommon for legal practitioners engaged in commercial work, that is, real estate transactions, buying and selling or long-term leasing, to become involved in the negotiation with financiers of clients to secure the best deal for their clients.

I am not sure how the application of this legislation would apply if one tried to dissect the activity of a particular legal practitioner in the course of a complex commercial arrangement where the activity might be covered by payments from this fund for some activities but not others. Indeed, it is not uncommon for family lawyers who are engaged in the provision of advice and services associated with family break-up to become involved in negotiations with banks. If one looks at mortgage financing, it means negotiating or arranging loans. As an example, a family lawyer might ring up a bank on behalf of a client and say, 'Look, the marriage

has broken up; there needs to be a deferral on mortgage payments while the house is sold because of the difficult financial situation'. That activity might well be covered by this broad term of 'mortgage finance'.

Indeed, one might also be forgiven for thinking that the activity of a conveyancing solicitor might be incorporated in this exclusion where finance that might have been arranged by a land broker or some other third party falls through and at the last minute the solicitor involved in that land transaction engages in an attempt to secure finance but something might go wrong. Again, that member of the public would not have access to the fund. There are other examples, such as a situation where a legal practitioner might become the trustee of estate, where shortly after becoming trustee a loan might mature or expire and that lawyer might be engaged or require himself as being obliged to re-negotiate an existing financial arrangement in order to protect the assets of the trust.

I am not sure how any of those examples I have given would be treated under this piece of legislation. Indeed, I invite the Law Society to write to me direct (which would be a first) to explain how it sees that operating and how the public can be properly protected.

**The Hon. T.G. Cameron:** If they do, can I have a copy?

**The Hon. A.J. REDFORD:** As is my usual custom, unless there is some condition that it be kept confidential, I would be delighted to provide the honourable member with a copy. In any event, all this lack of clarity would be against the public interest. It is incumbent upon us in this place to ensure that we do have some clarity. In summary, the definition of 'mortgage financing' under this bill is very broad. Indeed, I would like to know what effect this provision might have, to what extent it would intrude on normal activities and what, if any, would be the effect on the general public. I would be grateful—and there is another part of the bill where the Law Society justifies its insertion on the basis of interstate experience—if my attention could be drawn to equivalent provisions in other states for this sort of exclusion. In that regard, I would be grateful if someone could provide me with a copy before I reach a final conclusion about whether or not to support this.

The second issue I wish to raise relates to the third aspect of this bill. The third aspect of this bill seeks to prevent a claim by a legal practitioner against the guarantee fund unless and until a legal practitioner satisfies the society that that legal practitioner acted honestly and without negligence in a case where there has been default by a partner, a clerk or an employee. I note that other categories which one might think might be included under the umbrella of this clause are not included. In particular, two come to my mind, namely, the activities of spouses of practitioners and, indeed, the activities of those who do not fall within either the category of partner or employee. By that, I mean the category of consultants. In that regard, I disclose that I am a consultant to a legal firm and do not see any reason why someone in my position should be treated any differently from an employee.

I do have some sympathy for the final aspect of this bill, although I am not sure what is its rationale at this point in time. I would be most interested to know how and why this provision was sought to be included in the Legal Practitioners Act at this time. I do well recall a very prominent legal firm where a number of partners were struck off the roll for activities in which they were involved associated with tax avoidance. I must admit that to a large extent I am relying on what people told me, but it was common knowledge that those practitioners—and they were well respected and well connected practitioners—obtained employment as law clerks for a number of years.

Throughout that whole period, the Law Society was silent and made no attempt to encourage the government to introduce legislation of this sort. I would like to know why, back then, the Law Society did not act as it has this time and what the problem is now that did not exist then. During his second reading explanation, the Attorney-General said:

> Such persons may nevertheless be able to secure employment in legal practices as law clerks or paralegals, or in like roles.

I would be interested to hear from the Attorney who has been able to secure such employment, when and with whom, what were the circumstances, and whether there was any supervision. I would also like the Attorney to explain whether there are practitioners who have been suspended or struck off and who have engaged in duties very similar to the duties they would have carried out if engaged as a legal practitioner over the past 10 or 15 years. The Attorney says that, legally, practitioners or persons who fall into that category might under the existing law give legal advice and prepare legal documents and the like. Again, I am interested to know when that has occurred, what was the occasion and who was involved. The Attorney went on in his second reading explanation to say:

> It has not been an offence for a legal practitioner, employer or contractor to employ or engage in a legal practice a suspended or struck off practitioner.

Again, I would appreciate being given any examples of where that has occurred in the past, and I would be delighted to learn whether any specific problems have come to the attention of the Attorney-General, the Law Society or the tribunal where that sort of thing has occurred. I would be most grateful to know whether there have been any examples of inadequate supervision by legal firms of people who fall into this category. Will the Attorney advise me whether or not there has been any short-term suspension and whether in those cases practitioners or persons who have been suspended have engaged in legal or paralegal activities?

I note that the bill contains a provision to seek an exemption from the tribunal. However, this is a narrow provision in that a person who has been suspended or struck off can seek permission to obtain employment as long as they do not engage in the practice of the profession of the law. One would assume that that would enable them to go to the tribunal and seek permission to be employed as a tea lady or a driver. I would like to know the rationale behind that.

One might think of occasions where practitioners who have been suspended or been struck off might, in the interests of the public, be engaged. Where they have been struck off and are providing assistance to an admitted practitioner under appropriate supervision in the continuing conduct of long-standing legal matters, that might be in the best interests of a particular client.

There might well be occasions where a person is suspended for a very short period and, again, it might be in the best interests of the client for that person to continue to be engaged in legal practice. Finally, there might well be occasions when practitioners, who have either been suspended for a long period or struck off with advice that this is not to be a permanent status, might benefit from going back and involving themselves as law clerks prior to making an application for reinstatement.

In closing, and in relation to this aspect, I must say that I do have some sympathy with the sentiments of the Attorney-

General in that we do not want practitioners who have been struck off or suspended thumbing their nose at the legislation, at the parliament and at the community by simply changing the name of what they do and continuing to engage in the conduct, practice or business in which they were formerly engaged. That potentially brings the law into some disrepute. However, I am not sure why we have gone as far as we have in relation to this aspect. I will await the response from the Law Society and the Attorney-General with a great deal of interest.

**The Hon. IAN GILFILLAN:** My understanding of the bill is that it does two things.

**The Hon. A.J. Redford:** Three things.

**The Hon. IAN GILFILLAN:** My understanding is limited. The interjection is, to my improvement, that there are apparently three, so I am enlightened by the Hon. Angus Redford. I will comment on just two. First, it excludes from both the Legal Practitioners' Professional Indemnity Insurance Scheme (LPPIIS) and the Solicitors' Guarantee Fund (SGF) any claims arising out of a lawyer's mortgage investment activities as distinct from a lawyer's legal practice. In his second reading explanation, the Attorney-General said:

> Mortgage investment broking is not a general part of legal practice, and the government believes there is no justification for providing greater protection to a person who accepts mortgage investment services from a person who is a legal practitioner.

The government might have chosen to increase consumer protection for clients of other mortgage investment brokers rather than remove consumer protection from clients of lawyers. This can and should be attacked on the ground that it is anti-consumer.

In fact, we need to know the answer to three questions: how many claims against guarantee funds have been made as a result of lawyers' mortgage investment activities; how much has been paid out; and what consideration has been given to the alternative strategy of seeking higher contributions to the guarantee fund from lawyers engaged in mortgage investment activities? On 8 September this year my colleague the Hon. Mike Elliott sent a letter to the Hon. Trevor Griffin as Attorney-General asking those three questions. We have not as yet received an answer. It may well be—and I hope it is—that these questions are addressed by the Attorney-General in his second reading response.

In a letter dated 20 September from its then president (Lindy Powell), the Law Society welcomes the amendment but suggests a technical change is needed to clause 5 of the bill covering transitional arrangements where claims arise from moneys or instructions received before the commencement of the amendment. There is a potential anomaly in clause 5 because of the different treatment in part 5 of the principal act (the Solicitors' Guarantee Fund), as opposed to parts 3 and 4 (the Legal Practitioners' Professional Indemnity Insurance Scheme).

Secondly, the bill makes it an offence for a law firm to employ in any capacity a person who has been struck off the role of practitioners. Some ex-lawyers have been employed as para-legals or law clerks, and there is no restriction on that in South Australia, unlike in Victoria, Western Australia and New South Wales. I noted with some interest that the Hon. Angus Redford sought from the Attorney-General detail of where this has actually transpired. It will be possible to apply for an exemption from the ban to the Legal Practitioners' Disciplinary Tribunal, which can permit specified employment on such conditions as it sees fit. This measure sounds sensible to me, and the Law Society also views this second matter as appropriate and has no suggestions for change.

I indicate the Democrats' support for the second reading of this bill but we will be interested in looking more closely at the matters I have raised regarding the first part of the actual guarantee fund cover for mortgage investment broking after having heard the Attorney-General's answer to these arguments and in the committee stage.

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

## TRANSPLANTATION AND ANATOMY (CONSENT TO BLOOD DONATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 October. Page 258.)

**The Hon. CARMEL ZOLLO:** I indicate that the opposition supports this bill. The purpose of the bill is to lower the age of consent from 18 years to 16 years for the donation of blood. I understand that such a move will bring South Australia into line with states such as Victoria and New South Wales where the age for the donation of blood is already 16 years of age. The Australian Red Cross service of South Australia is concerned that, based on the age profile of active blood donors in South Australia as at September 1998, the majority (57.2 per cent) are older than 40 years. We all appreciate that, with the ageing of the South Australian population, it is anticipated that the demand for blood will increase. Naturally, the service is concerned with our future supply of blood, as less than 4 per cent of all persons younger than 25 years donate blood regularly.

I understand that, following the passing of this legislation, a strategy will be put in place regarding an education campaign in our schools. It is a very well thought out campaign to get young people involved in what is an important community service. A similar campaign has been successful interstate where a schools collection program incorporating 350 schools accounts for 6 per cent to 7 per cent of all donations in New South Wales. New South Wales passed legislation to lower the age of donation in 1987, so it has been established for some time and it has proved to be very successful. In South Australia we have 40 000 people aged 16 to 18 years who, if they are to be compared with New South Wales, would be willing and economically viable donors.

I notice that my colleague in the other place the shadow Minister for Health (the member for Elizabeth) raised the issue of donation for country South Australian citizens. The issue was not addressed in the health minister's summing up and perhaps the minister in this chamber might do so. My colleague expressed concern at the lack of facilities to give blood in the country and the concern is apparently shared by the Red Cross. She rightly made the point that country people are just as community minded and we should be giving the opportunity for country South Australians to donate on a regular basis. I am certain I am joined by all members of the Council in placing on record the opposition's thanks to the Australian Red Cross blood service of South Australia for its efforts in all its services to this country.

**The Hon. J.S.L. DAWKINS** secured the adjournment of debate.

## CRIMINAL LAW CONSOLIDATION (SERIOUS CRIMINAL TRESPASS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 October. Page 274.)

**The Hon. CAROLYN PICKLES (Leader of the Opposition):** The opposition supports the second reading. The issue of home invasions has been on the community's agenda for a long time now. More recently, we had the efforts of Ms Ivy Skowronski in attracting both the community's and the parliament's attention. It was state Labor at the last state election that proposed tough new laws regarding home invasions. The state opposition was the first to identify the significant fear of crime in the community, especially among our elderly community who feel most at risk.

In supporting this bill, our focus as law-makers should be on the real task at hand, which is to understand and thereby address the causes of crimes such as home invasion. The government and the whole community indeed should be working together in addressing the fear of crime, which can be just as debilitating as the trauma of being a victim of crime.

It is relevant at this point to quote some of the comments from the Victim Support Service in relation to the home invasion discussion paper released by the Attorney-General. This information was sent to me by way of a letter that was addressed to the Attorney-General when I asked for the service's comments on this proposed legislation.

The Victim Support Service stated that the proposed legislative and procedural changes seem appropriate, although not sufficient on their own to address this issue, which needs a multifaceted approach. The letter states:

> We are confident that home invasion is a growing problem in our community and results from target hardening of more traditional institutional robbery targets. Small business, individuals and homes remain largely undefended and vulnerable to armed robbers. It is the Victim Support Service who first identified this problem and began to stimulate meaningful debate rather than accepting purely sensational reporting in the media. We began defining home invasion and recording statistics in February 1998. These figures were reported in our quarterly newsletter of March 1999.

The organisation set out in its correspondence to the Attorney-General a number of concerns that it has about the issue of home invasion, one being that current laws are inadequate, outdated and need to be changed. It is also interesting to note that the service made this comment:

> We do not, in principle, seek to have mandatory minimum sentences set down for the court—we believe this will undermine the role of the court, conflict with some basic human rights and will not allow enough flexibility to respond to individual differences and exceptional circumstances which need to be considered if rehabilitation opportunities are to be maximised.

In general, the service supports this move by the government. As to the question of punishment, the Victim Support Service stated:

> We have great concern that there appears to be a considerable number of people demanding greater levels of punishment, not just for home invasions but for all crime. We are adamant that this cry is misplaced because it is ill-informed. Psychological research clearly shows that punishment is not effective in changing behaviour—criminal or otherwise.

The service attached to its letter some papers that it drew to the Attorney's attention. It made suggestions about the way forward, and in conclusion stated:

> In general, we are in support of the discussion paper and prefer to have the opportunity for input rather than have legislators and parliament seek quick solutions (or do nothing) in isolation.

So, the service is generally in support of what the government is doing. Earlier this year the Office of Crime Statistics reported on a number of statistical conclusions about the type of crime that is home invasion. It found that an increase in home invasions had been reported between 1997 and 1998 and that incidents involving armed robbery almost doubled in the same period.

Interestingly, the office also found that, while the media have reported the elderly as the most vulnerable group, it is the 25 to 34 year old age group that has a greater risk of being victimised by a home invader. So the government has acted begrudgingly by proposing an amendment to the present burglary and break and enter laws.

In relation to the present burglary offence, which carries a maximum penalty of life imprisonment, it is worth noting that the offence is restricted to taking place at night, in places of residence and only in cases of break and enter as opposed to unlawful entry. Time has clearly passed these limitations by. Furthermore, other unlawful trespass crimes attract maximum penalties of seven to eight years, which are minor compared with life imprisonment.

The bill addresses this disparity by replacing the current set of offences with a new regime divided into two parts, the first being serious criminal trespass of a residence, attracting the maximum penalty of life imprisonment, and the second being serious criminal trespass of other places. The offences occurring at a residence are subject to higher maximum penalties, with life imprisonment remaining for aggravated criminal trespass, which is where home invasion is included. This effectively raises the maximum penalties for all offences, because the new maxima are higher, and restrictions regarding night offences and break and enter are eliminated. I would be interested to know, and perhaps the Attorney can advise, what was the overall response to his discussion paper. I note that, according to the *Sunday Mail* of 7 November, some criminal lawyers oppose the adoption of this legislation and are mounting some kind of campaign. Does the Attorney wish to comment on their statements in that edition of the *Sunday Mail*?

It is always interesting to see the effect of any new legislation. I ask the Attorney whether he can bring back a report on the effectiveness and applicability of the new legislation within 12 months or two years, whichever he considers appropriate, after its introduction. I support the second reading.

**The Hon. J.S.L. DAWKINS** secured the adjournment of the debate.

## CRIMINAL LAW (SENTENCING) (SENTENCING PRINCIPLES) AMENDMENT BILL

**The Hon. CAROLYN PICKLES (Leader of the Opposition):** The opposition supports the second reading. This bill seeks to make amendments to the Criminal Law (Sentencing) Act 1988 by altering the principles that govern the imposition of a sentence so they reflect the problem of home invasions. Current sentencing legislation contains a statement about the general principles that govern the imposition of a sentence by the courts. There are 15 such guiding principles, some of which are, for example, the circumstances of the offence, the degree to which the

defendant has cooperated in the investigation and the rehabilitation of the defendant. The effect of this bill is, first, to ensure that the need to deter home invasion offenders and other potential offenders from committing such crimes is a primary consideration when sentencing.

Secondly, the bill also amends the circumstances in which prison sentences are warranted. Existing circumstances influencing consideration of a prison sentence include the defendant's tendency towards violence and whether the defendant is likely to commit a future serious offence. The effect of the bill is to include the home invasion offence as a circumstance where imprisonment is appropriate. The opposition supports the second reading.

**The Hon. J.S.L. DAWKINS** secured the adjournment of the debate.

## GUARDIANSHIP AND ADMINISTRATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 September. Page 80.)

**The Hon. P. HOLLOWAY:** I indicate that the opposition will support the second reading of the bill. The Guardianship and Administration Act was introduced in 1993, and it was something of a breakthrough. Indeed, in his second reading speech, the minister acknowledges that the act was a significant step forward. He said:

> The 1993 legislation was a significant step forward in seeking to reduce the dominance of tribunal hearings, and maintain family and local support for people with a mental incapacity but at the same time ensure that checks and balances existed. The creation of the Public Advocate was a major initiative aimed at promoting and protecting the rights and interests of people with mental capacity and their carers.

So it was an advance when that bill was passed. Of course, one of the conditions that was contained within that act when it was passed was that act be reviewed in five years, after its passage. On several occasions, this parliament has extended the deadline of the sunset clause to enable a review of the act to take place. Indeed, in that time there have been two reviews of the Guardianship and Administration Act—a review of the legislation itself—and also an operational review that was conducted by Ted Chapman. This bill is really about dealing with some of those recommendations.

The Guardianship and Administration Act provides a legal framework for the support and protection of people who, through mental incapacity, are unable to look after their own health, safety or welfare, or to manage their own affairs. The two principal structures that were established under that act were the Guardianship Board and the Public Advocate. The amendment bill seeks to introduce a process of mediation and preliminary assistance. Clause 5 of the bill seeks to insert a new section 15(a), which seeks to separate the executive and administrative functions of the current registrar and place them with the executive officer and place new mediation and preliminary assistance with the position of registrar. The bill provides that the board, the president or a deputy president may refer proceedings or issues to the registrar for mediation.

Other amendments to the act contained in this bill include changes to definitions of 'authorised witness', 'medical treatment' and principles to include 'good conscience'. In relation to guardians, there are provisions to make it clear that the powers of both enduring guardians and board appointed guardians are subject to any limitations set out in the act. A new form is contained in the bill for the appointment of sole or joint enduring guardians, and the bill also contains provision for the concurrent hearing of an application for placement or detention with an application for guardianship. As I said earlier, the opposition will support the second reading of this bill.

At this stage, I indicate that when my colleague in another place, Lea Stevens, who is the shadow minister for health and family services, speaks to the bill in the House of Assembly, she will go into much greater detail regarding the opposition's position on this bill than I will this afternoon. I indicate that, in coming to our position, the opposition has consulted extensively with groups that may be affected by this bill. I will list some of those groups from whom my colleague in another place has sought information: the Public Advocate, ACROD, the Nurses Federation, the Palliative Care Council, Modbury public hospital, Southern Domiciliary Care and Rehabilitation Service, the AMA, the Western Domiciliary Care and Rehabilitation Service, Southern Mental Health Services, the Council of Pensioners and Retired Persons' Association, the Royal Australian and New Zealand College of Psychologists, the Carers Association, Disability Action, SACOSS, COTA, the ALHMWU, the Law Society of South Australia, the Legal Services Commission, the Alzheimer's Association, MALSSA Inc., the North-Western Adelaide Mental Health Service, the RAH and the COPPAS group.

The opposition sought views from those organisations and it is clear from the response that, by and large, there is widespread agreement that the act has worked fairly well, but there are some problems with it, particularly in relation to resources. The fact that this act requires relatively minor amendment after the five years is a tribute to those who devised the original bill—and I note that my former colleague Martyn Evans (who was in this building this afternoon for a CSIRO meeting) was the minister at the time that this bill passed through the parliament. By and large, the act has worked well but there are some problems with it.

I mentioned earlier that there were two reviews of this legislation. First, there was the legislative review. I must say that when examining this matter the opposition was concerned to discover that apparently the guardianship board had not been consulted on the bill. The legislative review made 29 recommendations, a handful of which the government has picked up in this bill. The shadow minister and I have discussed this matter with the minister, but I would like the minister in his response to comment on his attitude to the other recommendations of the legislative review which were not picked up, and perhaps he could indicate where the government sees the process going from here in terms of future changes.

I would like to comment on one change that was not addressed in the legislative review but it was certainly an issue when this piece of legislation was discussed in this chamber in 1993; that is, where the public advocate could sit. It was a considerable issue at the time whether the public advocate should be in the Attorney-General's department or what is now the Department of Human Services. That matter was not addressed, as I say, in the legislative review, but it is interesting to note, under the heading 'Consumer comfort', that one of the recommendations in the operational review conducted by Ted Chapman was that the guardianship board and the Office of the Public Advocate should be located separately, even though that does not address the issue of to whom the public advocate ultimately should be responsible.

The operational review made about 34 recommendations in all and they related largely to the operation of the act rather than to legislative change. Again I think one could make the point that the fact that most of the problems that appear to have arisen under the Guardianship Act are operational ones tends to suggest that the 1993 act is fairly sound. Most of the problems that have arisen appear to be related to resources, which is quite a serious question. To underline this point, I refer to a recent article in the *COTA Update* (the Council on the Ageing publication) for September 1999. I will refer to the first part of this article, headed 'Office Public Advocate: Funding Crisis', because it is important to the issues now before the Council. It states:

> South Australia's Public Advocate John Harley called together service providers for an urgent meeting on 19 August, to draw attention to an acute shortage of resources and staff, which affects the services the office can provide.
>
> Officially the Office of the Public Advocate has 9.5 full-time equivalent staff, but at present it is 7.7. The OPA's budget has remained static in spite of steadily increasing workloads. The OPA has 2.5 guardians to look after 220 people under guardianship orders or 'Guardian of last resort'.

The article continues:

> John Harley compared the office in South Australia with that in Western Australia, which has a fairly similar population base. WA has more than double the budget and staff, but only 95 people under guardianship. He pointed out that with so few guardians for so many guardianships the South Australian office cannot guarantee that the substitute decision-making, which is the Public Advocate's role, is in line with the person's own wishes, that is, what the person would have wanted to happen before he or she became incapacitated.
>
> He pointed out that in SA this is the basis for substitute decision-making rather than what is considered to be in the person's best interest. John Harley expressed concerns that many orders seek to achieve an outcome which cannot be achieved. Many doctors, dentists and nursing homes are only willing to act if a guardianship order is in place, but in most cases this is not necessary.

So, it is clear that there are problems with resources in the department and, indeed, the flavour of the 34 recommendations made in the operational review by Ted Chapman is that certainly more resources need to be devoted to this area.

I will not go through the 34 recommendations: perhaps my colleague in another place will have more to say about some of them. If I list the headings it will give an idea of the flavour of the recommendations. Under the heading 'Schools', it is suggested that more effort should be made to inform people about the role of guardianship. Under the heading 'General community', there are again suggestions about information pamphlets and the translation of pamphlets into other languages—the sorts of issues that again address these issues of guardianship.

Under the heading 'Professions', there are suggestions about training and lectures on substitute decision-making to improve the information available about the act. There is a heading 'Consumer comfort', and I have mentioned one of the recommendations—that the Guardianship Board and the Office of Public Advocate be located separately. The operational review also lists 'Resourcing' issues, and some of those changes have been incorporated into the legislation.

As I mentioned earlier, there is a suggestion about the splitting of the role of the Registrar and the CEO, but the report suggests that more resources are required. Some of the other headings regarding the operational review are 'Guardianship Board hearings and related issues' and 'Diversion'. There is a suggestion that pilot funding be sought for a trial to test the feasibility of community-based specialist mediation services. There is a heading 'Multiple single member hearings before the Guardianship Board'. There are recommendations on the manner of conducting hearings and quality assurance; post hearing debriefing; the location of hearings; the review of orders; and, finally, the various roles of the Office of Public Advocate.

I do not expect the minister to respond to every one of those recommendations, but perhaps he might indicate what this government intends to do, particularly in relation to the resource question but also regarding where he sees us going from here, given that we now have this comprehensive report on the operation of the Guardianship and Administration Act and the Office of Public Advocate.

One issue raised with us by some of the groups, and a matter that we discussed with the minister, was the question of community guardians. The suggestion made to us was that section 23 of the current act empowers the Public Advocate to delegate his or her powers or functions to any Public Service employee or Health Commission employee who has been assigned to assist the Public Advocate in the performance of his or her functions. Due to the limitations on resources to which I referred earlier, it has been suggested that the Public Advocate should be able to delegate his powers and functions in relation to guardianship to suitable persons in the community.

It is envisaged that the Office of the Public Advocate would support the so-called community guardians with training and resources, and I understand that similar schemes may be operating in other states. We have discussed this matter with the minister and I understand that he was prepared to consider some sort of trialling of these schemes. We had originally envisaged moving some amendments to permit that, but that may not be necessary and I will be interested to hear what the minister says in his response to the bill as to how we might proceed from here. If some sort of trial can be undertaken, that may well be a better alternative to the sorts of prescriptive amendments we had originally envisaged. So, I will not be proceeding with those, at least until we hear what the minister has to say.

The Office of Public Advocate had also made some recommendations in relation to declaratory orders. We discussed these with the minister and decided, after listening to argument, that we would not proceed with any amendments in that area. I would ask the minister whether, during his second reading response, he could make some comments in relation to that matter and to the need for declaratory orders. The suggestion was that many people execute enduring power of guardianship and enduring power of attorney, subject to the condition that they do not become effective until they lose capacity, and it has been argued that this results in some confusion as to how to notify banks, registries and bodies of a similar kind that this power has become effective.

As I said, I have discussed this matter with the minister and appreciate that making amendments in this area could well create as many problems as it solves, but I would appreciate the minister in his response making some comments in relation to that suggestion. One of the changes in this bill is to introduce preliminary assistance hearings and for those to be followed possibly by mediation disputes, part of the objective being that we should try to reduce the number of hearings that actually make their way to the board; that we should try to solve matters at an early stage. We had discussed the possibility of making a little clearer in clause 15(a) of the bill exactly what these preliminary assistance hearings and mediation might mean. I will be interested to hear the minister's comments in relation to those matters.

One suggestion made to us was that the public advocate should have a monitoring committee—that is a committee that would monitor the implementation and functioning of this act—at his disposal to assist him in his duties. The opposition believes that such a committee should be permitted. We understand that the government may also support this matter. Hopefully, as a result of the discussions that have taken place, all our concerns in relation to this bill will be addressed and that it will not be necessary for us to move amendments to the bill.

I trust that, in his response, the minister will address the issues that I have raised and, hopefully, take up some of those issues so that we can get on and pass this bill, and hope that it serves us as well in the future as it has clearly done over its five years of existence. We support the bill.

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

## WHALING ACT REPEAL BILL

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

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

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

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

Leave granted.

History

After two unsuccessful attempts to regulate whaling by the League of Nations in 1924 and 1927, 21 countries, including Australia, signed the Convention for the Regulation of Whaling in 1931. This was ratified in 1935 and the South Australian *Whaling Act 1937* was drafted to apply the provisions of that Convention. However, the Convention was quickly considered to be ineffective and was abandoned in 1937 in favour of the International Agreement for the Regulation of Whaling, which gave greater protection to some species and set minimum size limits for a range of other species.

In the international spirit of cooperation that followed the Second World War, the International Convention for the Regulation of Whaling was ratified and entered into force in 1946, with Australia an original signatory. The Convention established the International Whaling Commission to formulate and be responsible for the application of regulatory measures for safeguarding whale stocks while allowing the orderly development of the whaling industry. Since 1986 the International Whaling Commission has placed a moratorium on whaling under the Schedule to the Convention, although some nations have continued to whale under the Convention.

Since 1979, it has been Australian Government policy to oppose whaling both domestically and internationally through the International Whaling Commission. Indeed, the National Task Force on Whaling, which reported in May 1997, was charged with the responsibility of advising the Federal Minister for the Environment on the most practical ways to achieve Australia's stated policy of bringing about a permanent ban on commercial whaling worldwide. Australia's policy on whaling and whale protection in both Australian and international waters has a legislative basis in the *Whale Protection Act 1980*.

General Considerations

The Whaling Act (no. 2361 of 1937) was assented to on 1 December 1937 but was never proclaimed and therefore never committed to any Minister. It is assumed that it was not proclaimed because the 1931 Convention, to which the Act was intended to apply, was abandoned in 1937 in favour of the International Agreement for the Regulation of Whaling.

Protection for marine mammals in South Australian waters is now principally covered by the *National Parks and Wildlife Act 1972*. This Bill has been drafted to repeal the *Whaling Act 1937* and the passage of this Bill will formally close an era of South Australia's history, that of whaling. It was a remarkable time, creating some of the enduring images of early South Australia. However, new images have replaced the old; the tourist's camera has replaced the whaler's harpoon.

I commend this Bill to honourable members.

Explanation of Clauses

*Clause 1: Short title*

This clause is formal.

*Clause 2: Repeal*

This clause repeals the *Whaling Act 1937*.

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

## PREVENTION OF CRUELTY TO ANIMALS (MISCELLANEOUS) AMENDMENT BILL

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

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

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

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

Leave granted.

The *Prevention of Cruelty to Animals Act* received Royal Assent in 1985. It was the first the modern animal welfare legislation in Australia; in most jurisdictions, the animal protection laws had not been reviewed for half a century. The persons involved in the development, drafting and Parliamentary passage of that legislation are to be commended. The Act, in essence, is sound and has been the benchmark in the development of similar legislation in other States and Territories.

Clause 5 of the Competition Principles Agreement requires that all legislation impacting on competition must be reviewed by the end of 1999 and that recommendations must be considered and implemented by the end of the Year 2000. Under the automatic expiry program, the regulations were also required to be reviewed by the end of 1999. To facilitate these processes, the decision was made to undertake an extensive general review of the Act, Regulations and the adopted Codes of Practice at the one time.

The Review Panel reaffirmed that the legislation is contemporary, necessary, adequate and appropriate. However, in the 15 years since the Act was drafted, it has become apparent that sundry administrative matters and other minor matters require attention. Some of these were noted by the Review Panel, others were identified in the preparation of drafting instructions and in the course of drafting. This Bill addresses these relatively minor matters while retaining the basic policies and spirit of the legislation.

When the Act was first drafted it was envisaged that the position of Chief Inspector would be filled by a public servant who would act as a liaison between Government and the RSPCA. However, the Act does not specify any role or responsibilities relating to the position and it has not been used for the past decade. On this basis, the position is seen as unnecessary and will be revoked by this Bill.

The development of codes of practice and their recommendation to the Minister has become an important function of the Animal Welfare Advisory Committee and the Act is amended to reflect this developing role in the committee's duties.

Various other minor amendments are proposed. It is made clear that breach of a code that has been adopted by the regulations does not constitute ill-treatment of animals, but is a regulatory offence attracting the lesser penalty.

The forms required for various purposes are no longer to be prescribed by the regulations but will be approved by the Minister, thus allowing a greater degree of flexibility in accommodating ongoing change.

The minimum membership of animal ethics committees is increased from four to five, in compliance with the national code (see the definition in clause 3). The committees are also to be bound by this code in performing their functions.

Inspectors are to be appointed by the Minister instead of the Governor, thus bringing the Act into line with the *National Parks and Wildlife Act*; some persons are appointed under both Acts. An offence is to be created of failing to surrender an identity certificate when a person ceases to be an inspector.

The powers of inspectors are to be upgraded to enable animals to be seized as evidence of an offence. At the moment, if an inspector

suspects on reasonable grounds that an offence against this Act has been committed, the inspector may seize and remove from the premises or vehicle any object that may afford evidence of the offence. On occasion, where there is no evidence of cruelty, inspectors may need to confiscate an animal as evidence. This is particularly relevant when a person is the subject of a court order preventing them from owning an animal of a certain class. Inspectors do not have the specific authority under the Act to use video and audio tapes but both are commonly used as evidence. The Bill specifically allows for such evidence to be gathered. Currently, if the RSPCA holds an animal because it has been ill-treated, there is no provision for costs to be recouped. In some cases, animals may be held for extended periods and the RSPCA must provide agistment. This Bill would permit the Society or the Crown (in circumstances where an ill-treated animal is held by police or stock inspectors) to recover reasonable costs.

The Act provides inspectors with the authority to give notice to owners of animals in situations where the animal should not be worked (e.g. horses). These notices may include directions as to feed, water or any other treatment. Currently, the provision only relates to working animals. In all other cases the inspector only has the authority to seize the animal. In many cases, this is not in the interests of the owner or the animal and it would be preferable for the inspector to be able to give suitable directions (e.g. a thin dog must be fed three times daily for the next month). This amendment extends the provision beyond working animals.

At times, an animal is seized under the provisions of this Act on the grounds of suffering unnecessary pain. Theoretically, at some time in the future the owner of the animal may be able to claim it back and not reimburse the RSPCA for veterinary or boarding costs. In many cases, an owner who has deserted the animal, e.g. a farmer who walks off his property, never returns. There is no provision for the RSPCA to sell or otherwise dispose of the animals in this situation. The Bill provides that the RSPCA may dispose of the animal if, after reasonable enquiries, the Society is unable to locate the owner or, if the owner is found, if that person does not collect the animal within three working days of being given written notice advising of the animal's whereabouts.

The existing Act empowers a magistrate to order that a convicted person surrender the animal in question and to forbid the person from having custody of another animal or animals of a certain class. It is not clear whether the magistrate can order the surrender of other animals, or merely the ones relating to the charges laid. The Bill seeks to clarify the intent of the provision.

Consistent with the Government commitment to update legislation as it is amended, sundry statute law revision amendments are set out in the schedule to the Bill.

I commend the Bill to the House.

Explanation of Clauses

*Clause 1: Short title*

This clause is formal.

*Clause 2: Commencement*

This clause provides for commencement of the Act by proclamation.

*Clause 3: Amendment of s. 3—Interpretation*

This clause amends various definitions. The definition of 'Chief Inspector' is deleted as the position is obsolete and is to be removed from the Act. The Code of Practice referred to in Part 4 of the Act (Teaching and Research) is defined.

*Clause 4: Amendment of s. 12—Functions of the Committee*

This clause adds a function of developing codes of practice to the list of functions carried out by the Animal Welfare Advisory Committee.

*Clause 5: Amendment of s. 13—Ill treatment of animals*

This clause amends section 13, which sets out the behaviour that constitutes ill treatment of animals. The amendment inserts a paragraph relating to killing animals by too slow a method, a matter that is currently covered by the regulations. New paragraph *(i)* combines the matters currently referred to in paragraphs *(i)* to *(l)*.

*Clause 6: Amendment of s. 17—Application for a licence*

*Clause 7: Amendment of s. 18—Grant of licences*

These clauses remove references to prescribed forms and allow for the forms to be approved by the Minister.

*Clause 8: Amendment of s. 19—Conditions of licences*

This clause creates an offence of failing to comply with a condition of a licence permitting the use of animals in teaching and research.

*Clause 9: Amendment of s. 23—Animal ethics committees*

This clause increases the minimum size of animal ethics committees from four to five.

*Clause 10: Amendment of s. 24—Procedure*

This clause requires an animal ethics committee to comply with the Code (as defined above) in conducting its business.

*Clause 11: Amendment of s. 25—Functions of animal ethics committees*

This clause requires an animal ethics committee to furnish the Minister with annual reports in accordance with the regulations. The functions of such a committee are broadened to include functions prescribed by the Code. A committee must also comply with the Code in carrying out its functions, in particular, the function of approving the use of specific animals in research by licensees. An offence is created of a licensee failing to comply with a condition attached to an approval.

*Clause 12: Amendment of s. 28—Inspectors*

This clause deletes the office of Chief Inspector and also provides for inspectors to be appointed by the Minister instead of the Governor. A provision is inserted requiring inspectors to hand in their identity cards on ceasing to be an inspector. Inspectors who are police officers must, if not in uniform when exercising powers under the Act, present their warrant cards when requested to do so.

*Clause 13: Amendment of s. 29—Powers of inspectors*

This clause broadens some of the powers exercisable by inspectors. The power to seize evidence is extended to animals. The power to take photographs is extended to films and video or audio recordings. If an animal is seized on the ground of suffering, the costs of seizing, treating or caring for the animal may be recovered from the animal's owner.

The power to give directions to the owner of an animal is extended to include orders to provide the animal (whether a working animal or not) with rest and shelter and to exercise the animal as stipulated in the notice.

*Clause 14: Insertion of s. 30A*

This clause inserts a new section which sets out the powers of inspectors to kill, sell or otherwise dispose of animals that have been forfeited to the Society by court order or that have been seized under the Act and are to be returned to the owner, but the owner cannot be found or fails to collect the animal when requested to do so. Proceeds from selling such an animal go to the Society, unless a court orders otherwise.

*Clause 15: Amendment of s. 34—Permits to hold rodeos*

This clause allows the Minister to approve the forms for rodeo permits. An offence is created of failing to comply with a condition attached to a rodeo permit.

*Clause 16: Amendment of s. 36—Power of court to deprive convicted person of animal*

This clause clarifies and amplifies the orders that a court may make against the owner of an animal where the owner is convicted of an offence in respect of the animal. In particular, it is made clear that not only the animal the subject of the offence may be forfeited to the Society but also other specified animals owned by the defendant.

*Clause 17: Insertion of s. 42A*

This clause inserts the usual evidentiary provision in respect of codes that are incorporated or referred to in the Act or the regulations.

*Clause 18: Further amendments of principal Act*

*Schedule*

This clause and the Schedule make various amendments to the Act of a statute law revision nature.

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

## HERITAGE (DELEGATION BY MINISTER) AMENDMENT BILL

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

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

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

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

Leave granted.

While the current *Heritage Act* allows the State Heritage Authority to delegate some of its powers, there are no provisions in the Act to allow the Minister to delegate her powers as Minister responsible for administering the Act. This issue was highlighted by a decision of the Environment, Resources and Development Court

last year where the Court held that the Minister had no power to delegate her functions under this, or any other Act.

This Bill proposes some simple amendments to remedy this situation.

One of the roles of the Minister responsible for administering the *Heritage Act 1993* is to advise the relevant planning authority on the impact that any development is likely to have on a place listed in the State Heritage Register. The procedure followed is detailed in Schedule 8 of the *Development Act 1993*.

Section 4(1) of the *Development Act* defines "development" in relation to a State heritage place as being:

*the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place*

Section 37 of the *Development Act* allows for development affecting a heritage place to be defined as a prescribed class of development, and Schedule 8 indicates that the class of development is that:

*which directly affects a State heritage place, or development which in the opinion of the relevant authority materially affects the context within which the State heritage place is situated.*

It had been a long standing practice of Heritage South Australia, formerly the State Heritage Branch, of the Department for Environment, Heritage and Aboriginal Affairs to assess Development Applications relating to State Heritage places on behalf of the Minister for Environment and Heritage, believing that an instrument of delegation approved by the responsible Minister on 1 February 1994, two weeks after the proclamation of the Development and Heritage Acts on 15 January, was valid.

This delegation also extended to Heritage Advisers, who are contracted to the Department for Environment, Heritage and Aboriginal Affairs on a part-time basis and jointly funded by State and Local governments.

In March 1998 the Environment, Resources and Development Court found that the instrument of delegation was not valid and noted that the *Heritage Act 1993* did not provide for the Minister administering the *Heritage Act* to delegate her powers under that Act or any other Act.

As a result this Bill has been drafted to allow for proper delegation of the Minister's powers, and to thereby expedite the development approval process.

Provisions have been included which require contracted Heritage Advisers to disclose any direct or indirect personal or pecuniary interest in any matter which they may have delegation from the responsible Minister. A register of delegations will also be kept to ensure a high level of transparency relating to delegations and disclosures made.

Since the Environment, Resources and Development Court finding, I as Minister have had to personally sign all responses to Development Applications, including responses of 'no comment'. The passage of this Bill will allow an appropriate regime of delegations to be implemented.

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. 41A*

A new section 41A is inserted into the principal Act allowing the Minister to delegate to any person or body duties, functions or powers under the principal Act or duties, functions or powers under another Act that are assigned to the Minister for the time being administering the principal Act.

The new section includes a provision that is intended to prevent conflicts of interest in relation to delegates who are not public sector employees. Under subsection (4) where such a delegate has a direct or indirect personal or pecuniary interest in any matter in relation to which it is proposed that he or she perform a duty or function or exercise a power, the delegate must disclose the nature of the interest in writing to the Minister and not perform the duty or function, or exercise the power, until the Minister responds to the disclosure. Subsections (5) and (6) of this proposed new section provide for a register to be made publicly accessible, of all delegations and disclosures of interest made under the section and any responses by the Minister to those disclosures.

*Clause 4: Amendment of s. 44—Evidence*

This clause inserts an evidentiary provision to facilitate proof of a delegation by the Minister.

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

## STATUTES AMENDMENT (MAGISTRATES COURT APPEALS) BILL

Returned from the House of Assembly without amendment.

## JUDICIAL ADMINISTRATION (AUXILIARY APPOINTMENTS AND POWERS) (DEFINITION OF JUDICIAL OFFICE) AMENDMENT BILL

Returned from the House of Assembly without amendment.

## ADJOURNMENT

At 6.05 p.m. the Council adjourned until Wednesday 10 November at 2.15 p.m.