LEGISLATIVE COUNCIL

Thursday 18 November 1999

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

SUMMARY OFFENCES (SEARCHES) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Summary Offences Act 1953. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

This Bill was first introduced into this place at the end of the last Session. Extensive consultation has taken place since the original Bill was introduced. I now commend a revised Bill to the House.

Two revisions have been made. The original Bill purported to control access to, and destruction of, records of intimate searches through the regulations. However, the revised Bill will now deal with the issue of who may play video recordings of intimate searches, and when records of intimate searches may be destroyed in the legislation. Firstly, the Bill will restrict the playing of video recordings made under section 81 except for purposes related to the investigation of an offence or alleged misconduct to which the person reasonably believes the recording may be relevant, or for the purposes of, or purposes related to, legal proceedings, or proposed legal proceedings, to which the recording is relevant. It will be an offence to contravene the provision. Secondly, it is now clear on the face of the Bill that video recordings and written recordings relating to intimate searches must be destroyed when the records are not required for the purposes outlined above, or if a court or tribunal orders that the record be destroyed.

I will now outline the other features of this Bill.

At common law the police are permitted to search a person following arrest. The degree of intrusion must be reasonable and in pursuit of a valid objective such as safety. In South Australia, the common law applies in conjunction with section 81 of the *Summary Offences Act*.

The legislation provides that the search may be conducted (this states the common law), that it may be conducted by a member of the police force or a medical practitioner acting on the request of a police officer, and that anything found on the person may be taken. The common law operates to fill the gaps in the legislation; that is, it indicates that the search must be reasonable, and provides an indication as to the grounds justifying the conduct of a search.

The common law does not, however, make detailed provisions for the method of a search, nor does it deal with matters ancillary to a search. This lack of guidance is a characteristic of the common law system, but that is of little comfort to both police and those subject to a search, particularly searches which, although legally proper, may be embarrassing or humiliating. Moreover, it is inevitable that conflicts will arise between the searchers and those searched about the propriety of what occurred at that time. The object of this Bill is, therefore, not to state or alter the grounds upon which a search may be conducted, but rather to supplement the common law by making detailed provisions for how the powers conferred by law may be carried out. I stress that the object of the Bill is to provide protection for both the police and those searched. It is in the interests of both parties, and the criminal justice system generally, that any disputes be quickly and authoritatively determined.

The amendments contained in this Bill can be encapsulated under three headings;

1. General Principles to observe in search and seizure
2. Intrusive Search Procedures
3. Intimate Search Procedures

I will explain all three elements of this Bill in turn.

General Principles To Observe In Search And Seizure.

It is obvious that a police procedure, such as a body search or forensic procedure, must be carried out humanely and with care so as to avoid, as far as practicable, offending genuinely held cultural values and religious beliefs. Also, the procedure should be carried out in a way that avoids the infliction of unnecessary physical harm, humiliation, or embarrassment on the particular person. Possibly not as obvious as the previous general principles, but still important, a procedure should be carried out in the presence of no more people than necessary, and, in most circumstances, only by a person of the same sex as the detainee.

These principles were included in section 10 of the *Criminal Law (Forensic Procedures) Act*, which was debated in Parliament last year. While it is acknowledged that police do observe these general principles in conducting procedures under section 81, this Bill provides Parliament with an opportunity to make it clear that it believes that these principles are important.

Intrusive Procedures

At common law, it is the duty of a police officer to take all reasonable measures to ensure that a prisoner does not escape or assist others to do so, does not injure him or herself or others, does not destroy or dispose of evidence and does not commit further crime such as malicious damage to property. The common law also indicates that the measures that are reasonable in the discharge of this duty will depend on the likelihood that the particular prisoner will do any of these things unless prevented. Therefore, on the basis of these principles, in South Australia there is authority to conduct a intrusive search, where circumstances justify. Again, there is no suggestion that the police have been inappropriately exercising the power to conduct an intrusive search.

The *Summary Offences Act* gives some scope for a medical practitioner to conduct a search of a person. The Act provides that the medical practitioner may search a person in lawful custody at the request of a member of the police force in charge of a police station. However, the legislation does not provide that only a medical practitioner or other suitably qualified person can conduct an intrusive search. This restriction currently appears in the Police standing orders. The standing orders provide that only a medical practitioner may conduct an internal examination (being an anal or vaginal search, according to the standing orders).

The Government believes that it would be appropriate to specify in the legislation who may appropriately conduct an internal search of any bodily orifice. The Government believes that the restriction on who may conduct an intrusive search is so fundamental that the restriction should be expressly stated in the legislation.

Based on the precedent provided by the forensic procedures legislation, it is clear that only a medical practitioner or a registered nurse should be eligible to conduct an intrusive search. The Bill will insert a provision in section 81 of the Act to make this clear.

Intimate Procedures

In accordance with section 81 of the Act and the common law, the Police, when it is reasonable to do so, will be authorised to carry out an intimate search. In accordance with the general principles to be observed when conducting a body search, the intimate search will be carried out only in the presence of the persons necessary for the purpose of the search. While an intimate intrusive search (i.e. intrusive search of the rectum or vagina) will of necessity have an independent third party present during the search, only the person being searched and the police officers conducting the search will be present during a strip search.

The lack of a third party being present has been identified as a potential problem in relation to strip searches. If a complaint is subsequently made in relation to a strip search there will, almost always, be two non-independent and diametrically opposed accounts of the event; one account by the police and one account by the accused. This makes investigation, and ultimate resolution of a complaint difficult. The investigation of the complaint is made significantly more problematic if the detainee was intoxicated or drug affected at the time. The Government believes that this is not an appropriate situation given that the best safeguard against impropriety or allegation of impropriety is by independent review and conclusive determination of complaints.

The increasing availability of affordable technology provides an opportunity to overcome this problem. Video recording a strip search has benefits in that it ensures that undue humiliation or embarrassment is not caused to the detainee through the presence of an increased number of people to view the search. Yet, it also provides an independent record of the search if a complaint is subsequently made. Unless a complaint is subsequently made, the video recording does not need to be replayed, and provided that all recordings are kept under tight security, there should be no question of an undue infringement of a person's privacy.

To date, the Police have been able to video record strip searches when the consent of the detainee is given. There can be no question about the legality of a video recording where the detainee consents. However, it is not always possible to obtain the detainee's consent; not only on the grounds that the person refuses to give his or her consent, but that the detainee does not have the capacity to give consent at the time because he or she is under the influence of alcohol or drugs.

It is important to resolve one way or another allegations of misconduct by police where a person is in custody. Video recording is the only real hope of achieving that when an independent third party is not present. I note that, when commenting on current police use of video recording, the Police Complaints Authority advised that from his point of view, the significant benefit of video recording strip searches is that it is very much easier to resolve, one way or another, complaints alleging misconduct in the course of a strip search.

It is unlikely that, without Parliament's sanction, the police would be able to video record a strip search without first obtaining the consent of the detainee. As a result, only in limited cases will independent evidence be available to assist the Police Complaints Authority in resolving a complaint about the conduct of the search, or a court in trying to determine the admissibility of evidence. This leaves us with the undesirable situation that, if a complaint is subsequently made, an allegation of impropriety against the police may remain unresolved due to the lack of independent evidence.

To resolve this shortcoming, the Government proposes to amend section 81 to require the police to video record all intimate searches. The video recording procedures in the Bill are largely based on the provisions relating to the recording of interviews with suspects in section 74D of the Act. In general terms, the Bill, in so far as it deals with the video recording of intimate searches, adopts the following policies;

1 Intimate searches must be video recorded where reasonably practicable, unless it is an intimate intrusive search and the detainee objects to the recording.
2 The police must explain why the search is being recorded and the detainee's right to object to the recording.
3 If the search is not video recorded in accordance with the legislation, there is a procedure whereby a written record of the search is made at the time of the search and a video recording is made of that record being read to the detainee.
4 The detainee is given rights to watch the recording and obtain a copy of the recording, and the police have obligations to inform the detainee of these rights and facilitate the detainee's exercise of these rights.
5 All video recordings and written records of intimate searches must be destroyed when the records are no longer required for a purpose specified in the legislation. A court or tribunal is also given power to order the destruction of the material at an earlier date.
6 The Bill allows the Governor to make regulations about the storage, control, movement and destruction of the video recordings and other documentation aimed at ensuring that the power to record the intimate searches is not abused by inappropriate handling of the obtained material.
7 There is a general prohibition on playing a videorecording made under the provision to another person except in limited circumstances. The video tape may be played by the detainee as he or she desires. However, other than the detainee, the video recording may only be played for the purposes related to the investigation of an offence or alleged misconduct to which the person reasonably believes the recording may be relevant, or for the purpose of legal proceedings to which the recording is relevant. It will be an offence to contravene this provision. The benefit of this provision is that it makes it clear on the face of the legislation that the playing of the recordings is restricted.

Given that the reason for the amendment is to ensure that independent evidence of the search is available, generally there will be no grounds for refusing the video recording. There will, however, be one exception to this general principle. When an intimate intrusive search is to be conducted on the detainee, according to the Bill, a medical practitioner or registered nurse must carry out the search; or in other words, an independent third party will be present. As such, the justification for recording the search is not as strong as in relation to strip searches because the Police Complaints Authority will have access to independent evidence. Therefore, the Bill provides that the detainee may object to the video recording of the portion of a search involving an intimate intrusive search conducted by a medical practitioner or a registered nurse, and, if he or she objects, the search will not be recorded.

In providing that all intimate searches must be video recorded, the opportunity has arisen to also recognise a number of other rights that should be available to a detainee where possible. The authority of the police to search a person taken into lawful custody is just that, a power to search. There is currently no requirement that the police take steps to secure the attendance of a solicitor or adult relative or friend before conducting an intimate search of a minor. Nor is there a requirement that the police secure the attendance of a interpreter for a person not reasonably fluent in English before conducting an intimate search. The Bill will require the police to take action to obtain the presence of a suitable person before conducting an intimate search on a minor or a person not fluent in the English language, unless it is not reasonably practicable to do so in view of the urgency of the search.

Ultimately, the police power to search a person taken into lawful custody is a fundamental element of the arrest, or otherwise detention, of a person. This has been recognised in the common law and has been strongly supported by the Royal Commission into Aboriginal Deaths in Custody. However, it is important that this power be exercised properly, especially in relation to intimate searches, which is one of the most extreme exercises of police powers.

The Government does not believe that are problems in relation to the exercise of the police powers to body search, and therefore, it does not intend to alter the substantive search power. Yet, the Government does believe that it is an appropriate time to finetune police procedures relating to body searches. The Government believes that this Bill will make it clear what Parliament expects in the conduct of body searches, and will establish a mechanism for safeguarding against impropriety through ensuring that evidence is available to hold the police accountable for impropriety where necessary.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 81

Clause 3 amends section 81 of the principal Act. The current search provisions are restructured and extended with the effect of providing legislative parameters to the conduct of intimate and intrusive searches.

New subsection (1) sets out the general power to search a person and to take anything found as a result of that search.

New subsection (2) sets out who is to carry out a search, namely, a police officer, or a medical practitioner or registered nurse acting on the request of a police officer. However, in the case of an intrusive search (i.e. a search of any orifice), only such a doctor or nurse may carry out that search. Paragraph *(b)* provides that the person carrying out the search may use such force as is reasonably necessary for the purpose and may use the assistance of another person. Paragraph *(c)* allows a detainee to have a doctor or nurse of their own choice present during an intrusive search.

New subsection (3) sets out further requirements that must be complied with where an intimate search is carried out.

Paragraph *(a)* provides that a solicitor or adult relative or friend must be present if an intimate search is to be carried out on a minor. Paragraphs *(b)* and *(c)* provide for the entitlement to an interpreter before and during an intimate search of a person whose native language is not English and who is not reasonably fluent in English. However, an intimate search of a minor or non English speaking person may proceed in the absence of persons to whom the detainee would otherwise be entitled, if the search has to be conducted urgently. Paragraph *(d)* provides that an intimate search must be carried out by a person of the same sex as the detainee (unless it is not practicable or the detainee requests otherwise). Paragraph *(e)* provides that, unless it is not practicable to do so, an intimate search must be recorded on videotape. However, the detainee may veto the video-recording of an intrusive search of the rectum or vagina. Paragraph *(f)* sets out the matters to be explained to the detainee before an intimate search is carried out. Paragraph *(g)* sets out the steps to be followed by a police officer if an intimate search, or that part of an intimate search consisting of an intimate intrusive search, is not to be recorded on videotape. The effect of this paragraph is to ensure that some record is kept of the search, and that the detainee has the opportunity to verify, or note errors in, the written record.

New subsection (3a) sets out the matters a police officer must take into consideration when deciding whether it is reasonably practicable to make a videotape recording under this section.

New subsections (3b), (3c) and (3d) provide for the detainee's rights of access to a videotape recording made under this section.

New subsection (3e) prohibits the playing of videotape recordings of intimate searches except for limited purposes relating to the investigation of offences or misconduct or to legal proceedings to which the recordings are relevant.

New subsection (3f) provides for the destruction of a videotape recording or written record of a search made under the section if the Commissioner of Police is satisfied that it is not likely to be required for purposes referred to in subsection (3e), or if a court or tribunal so orders.

New subsection (3g) provides that the Governor's regulation-making power extends to the storage, control, movement or destruction of videotape recordings and other documentation made of intimate searches under this section.

New subsection (4g) introduces legislative guidelines as to the general conduct of all procedures (including searches) carried out under this section. (Section 81 also provides for the fingerprinting, photographing, etc., of detainees).

New subsection (6) defines the terms 'intimate intrusive search', 'intimate search', 'intrusive search', 'medical practitioner' and 'registered nurse'.

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

YOUNG OFFENDERS (PUBLICATION OF INFORMATION) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Young Offenders Act 1993. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

This Bill will amend section 13 of the *Young Offenders Act* (the Act) to allow the Youth Court to permit, in limited circumstances, the publication of particulars that would otherwise be suppressed under that section.

There are currently two provisions in the Act dealing with suppression of a young offenders identity, and other related information. Section 13 of the Act provides that a person must not publish a report of any action taken against a youth by a police officer or family conference if that report identifies, or tends to identify, the youth, victim, or other person to the action or proceeding. The section also provides that a person employed in the administration of the Act must not divulge information about a youth against whom any action or proceedings have been taken except for official purposes. Section 63C of the Act provides that the a person must not publish a report of proceedings in which a youth is alleged to have committed an offence if the court prohibits the publication of the report, or the report identifies, or tends to identify, the alleged young offender or any other youth involved in the proceedings, as a witness or a party.

The identity of the victim or another person (not being the young offender) involved in the action by the police officer or family conference can be published with the consent of that person. In addition, publication of particulars otherwise suppressed under section 63C of the Act may be permitted by the Court on such conditions as it thinks fit. The only area where publication of certain particulars is not permitted under any circumstances is in relation to the identity of a young offender dealt with by police caution or family conference.

A few years ago, a situation arose in which a person proposed to make a documentary on juvenile justice matters. As part of the project, it was anticipated that a young offender, whose identity was suppressed under section 13, would be identified. The youth, the youth's guardians, and the Youth Court were all in agreement that it was appropriate for the youth to be identified in the documentary about the juvenile justice system. However, despite these parties agreeing to the publication, the legislation, without any scope for exception, prohibited the publication of the youth's identity.

It is important that, as a general rule, a young offender's identity be suppressed, particularly young offenders dealt with by police caution or family conference. Young offenders dealt with by police caution or family conference will have committed offences of a relatively minor nature, and generally will not be habitual offenders. Also, the overwhelming majority of these young people do not offend again. Others may re-offend on a number of occasions but subsequently grow out of it. To publicly label such young people as criminals by identifying them may have a detrimental effect on their ability to integrate into the community. However, having said this, if there is general agreement by a youth, the youth's guardian, and the Youth Court that in all the circumstances it is appropriate for the youth to be identified there should be some scope in the legislation to allow this to occur. Currently, there is no scope in the legislation.

As a consequence, this Bill will grant limited scope for the identity of a young offender, which is otherwise suppressed under section 13, to be published in a documentary or a report for an educational or research project about the juvenile justice system. An application will need to be made by the person proposing to make the documentary or undertake the educational or research project to the Youth Court. The application must be endorsed with the written consent of the youth and a guardian of the youth. The Youth Court will be able to permit the publication, on such conditions it thinks fit, after having regard to the impact of the publication on the youth, the purpose and necessity of the publication, considerations of public interest, and other matters of relevance.

It is not anticipated that this provision will be widely used. Its limited scope and tight criteria mean that the provision will only have limited application. However, it is still important that the legislation be flexible to allow persons meeting specified criteria to publish otherwise suppressed information.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 13—Limitation on publicity

Clause 3 amends section 13 of the principal Act which currently restricts the publishing of action or proceedings taken against a youth by a police officer or family conference under Part 2 of the principal Act. New subsections (1a) to (1f) are inserted.

New subsection (1a) provides for an exception to the restriction by allowing a person who proposes to make a documentary or undertake an educational or research project about juvenile justice matters, to apply to the Youth Court for permission to publish information relating to a youth that would otherwise be suppressed.

New subsection (1b) requires the endorsement of the youth and his or her guardian to an application under subsection (1a).

New subsection (1c) requires the Court to give reasonable notice of the hearing of the application to the applicant, the youth, the guardians of the youth and such other persons as the Court believes have a proper interest in the matter.

New subsection (1d) provides that the Court is not required (despite subsection (1c)) to give notice of the hearing to a person whose whereabouts cannot, after reasonable inquiries, be ascertained.

New subsection (1e) provides for the matters that the Court must take into consideration in determining an application under the section.

New subsection (1f) provides that the Court may make an order permitting the publication of the information (with or without conditions), an order refusing the application or any ancillary order it thinks fit (including an order as to costs).

Subsection (2) is amended by allowing a person employed in the administration of the Act to divulge information for the purposes of a publication permitted by an order under subsection (1f)*(a)*.

Clause 3 further amends section 13 by providing in subsection (3) that it is an offence to be in breach of any condition imposed on the publication of information under subsection (1f)*(a)*.

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

AUDITOR-GENERAL'S SUPPLEMENTARY REPORT

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

That if, prior to 30 June 2000 and at a time when parliament is prorogued or this Council is adjourned for a period exceeding two weeks, the Auditor-General (acting pursuant to section 36(3) of the Public Finance and Audit Act 1987) delivers to the President a supplementary report on the probity of the processes leading up to the making of a relevant long-term lease (as that term is defined in section 22(8) of the Electricity Corporations (Restructuring and Disposals) Act 1999), the President is hereby authorised, upon presentation of that report to the President, to publish and distribute that report.

I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

DISTRICT COURT (ADMINISTRATIVE AND DISCIPLINARY DIVISION) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the District Court Act 1991 and to make related amendments to other acts. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

This Bill aims to simplify and clarify the procedural law relating to administrative appeals.

At present, there are many statutes which create appeals against administrative decisions to the District Court in its Administrative and Disciplinary Division. The appeals cover a wide range of decisions made by government which affect the lives of ordinary people. Examples include appeals against the refusal of a licence to engage in a particular occupation (such as a licence to be a second-hand vehicle dealer, travel agent, or land agent), against decisions under the *Freedom of Information Act* about the release of information by government agencies, decisions of the Guardianship Board about the care of incapacitated persons, or decisions by councils requiring rectification of premises or control of health hazards.

The purpose of these appeals is to permit a person, who is affected by a decision of government about his or her affairs, to have the decision reviewed by the Court. The Government does not propose any change to this fundamental purpose, nor to the substance of the appeal intended, but seeks to amend the legislation creating such appeals to make the nature of the appeal as clear as possible to the users of the process and to the Court.

Because these appeals have been created statute by statute over several decades, the wording which defines the nature and scope of the appeal in each case can vary considerably from one Act to another, even though the substance of the Court's inquiry is intended to be the same. The variations in wording create a problem. To determine the nature of the appeal created by a statute, the Court must engage in an exercise of statutory interpretation. If different words are used, even though the differences are only slight, the Court must determine whether there is a reason for the difference such that a different meaning should be assigned. This can add to the complexity and difficulty of these appeals, and hence to the cost in time and money, without adding any real benefit to the parties.

The reality is that it is the same appeal which is intended. What is intended is a review of the administrative decision, with a discretion to receive new evidence and a broad power to decide differently. The small differences of wording tend to obscure this. It is this problem which the Bill addresses.

The solution which is proposed by the Bill is to add provisions to the *District Court Act 1991* which will apply generally to all such appeals. These provisions make clear the nature of the appeal which is intended, and the powers of the Court in dealing with it. They will apply to all appeals to the District Court in its Administrative and Disciplinary Division, regardless of which statute gives rise to the particular appeal. Only special and different features of a particular appeal need to be set out in the Act creating the appeal. In this way, there is no need for complex exercises of statutory interpretation and for the development of a body of case law about each particular appeal.

For this reason, the Bill amends the *District Court Act* and also amends each particular Act creating an administrative appeal to the Administrative and Disciplinary Division of the Court. In each case, where a matter is dealt with in the general provision in the *District Court Act*, reference to that matter is deleted from the particular Act.

The appeal to be provided in the *District Court Act*, as amended by this Bill, does not fall exactly into any of the three categories of appeal in the strict sense, appeal *de novo* or rehearing. In many of the Acts creating these appeals, it is called a 'fresh hearing' or, sometimes, a 'review'. The Bill does not adopt this terminology but sets out directly the powers of the Court. The Court is to examine the decision in the light of the evidence and material presented to the original decision-maker.

The Court is not limited to consideration of whether the original decision was correct, at the time when it was made, on the evidence then available. The Court may receive new evidence and may substitute its own decision in place of the original decision.

However, the Court must give due weight to the original decision and must not depart from it unless satisfied that there are cogent reasons to do so. This is to ensure that parties present their evidence or submissions fully and properly to the original decision-maker, and do not simply rely on the right of appeal to sort things out. It is also to ensure that the expertise of the original decision-maker and the policy framework in which the original decision was made is not devalued. The Court will not proceed as if the original decision had never been made. The original decision will be the starting point, but the Court is free to depart from it if proper reasons exist.

There are, of course, some matters which will necessarily and properly vary from one Act to another. Examples are the persons entitled to appeal, the time limit for appeal, and the time within which written reasons for decision must be supplied. These are dealt with by the particular Act creating the appeal. However, in some cases, the new *District Court Act* provisions will provide a general rule, to which the statute creating a particular appeal may provide an exception. For example, the Bill provides that, normally, the original decision does not cease to operate because an appeal is lodged but continues to have effect pending the appeal. However, there will be some particular cases where it is desirable that the decision be stayed on the lodgement of an appeal, and the particular Act in that case may provide accordingly.

The Bill is of a technical nature. It does not seek to change or cut down the right to appeal against certain administrative decisions. Its aim is to remove minor differences in wording in the statutes creating these appeals, which have arisen for historical reasons, but which, if not corrected, could perhaps cause technical difficulty for litigants and waste time and resources both for parties and the Court.

In addition to its main purpose, the Bill also makes minor technical amendments to the Act. For the avoidance of doubt, it makes clear that proceedings in the Administrative and Disciplinary Division, and in the Criminal Injuries Compensation Division, are civil proceedings and, in particular, that the Court has a power to award costs in disciplinary proceedings. This undoes the effect of a recent decision holding that the Court has no such power in disciplinary proceedings. However, costs in disciplinary proceedings, like those in administrative appeals, are only to be awarded where the interests of justice so require. They do not simply follow the event.

The Bill also makes clear that, although the Court is to sit with assessors wherever the specific Act so requires, assessors need not be used for certain technical aspects of the litigation. For example, assessors need not be used in determining questions of costs, in entering orders by consent of the parties or for any part of the proceedings concerned only with questions of law. No benefit is gained by using assessors in these situations as it is unlikely that they would be able to assist the Court in such matters.

Also, it will be noticed that the Bill makes a minor alteration to the requirement for the use of assessors in appeals from the Guardianship Board. It can sometimes happen that these appeals, which concern the liberty and medical treatment of persons under disability, need to be heard urgently. Because assessors are often health professionals at work in the field, they are not always available at very short notice. At present, there is no power for the Court to proceed without assessors in urgent cases when they are unavailable. The Bill provides for that power. This is not, however, intended to detract for the general principle that assessors are to be used for such appeals.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause is formal; however, the clause of Schedule 1 amending the *Local Government Act 1999* will not commence until section 256 of that Act comes into operation and the clause of Schedule 1 amending certain provisions of the *Motor Vehicles Act 1959* will not commence until sections 52 and 75 of the *Motor Vehicles (Miscellaneous) Amendment Act 1999* come into operation.

Clause 3: Amendment of s. 8—Civil jurisdiction

The proposed amendment makes it clear that all proceedings before the District Court (the Court), other than in its Criminal Division, are to be regarded as civil proceedings.

Clause 4: Amendment of s. 20—The Court, how constituted

This clause proposes to strike out subsection (3) which provides that if an Act conferring a statutory jurisdiction on the Court in its Administrative and Disciplinary Division (the ADD) provides that the ADD is to be constituted of a Magistrate, the ADD will, in exercising that jurisdiction, be constituted of a Magistrate. This provision is not required.

Further amendments proposed will ensure that even when the ADD is otherwise required to sit with assessors, it is not required to sit with them for the purposes of dealing with preliminary, interlocutory or procedural matters, for determining questions of costs or entering consent orders, or for a part of proceedings relating only to questions of law.

Clause 5: Insertion of Division heading in Part 6

The heading 'DIVISION 1—GENERAL' is to be inserted immediately after the heading to Part 6 of the principal Act.

Clause 6: Insertion of new Division

The following new Division is to be inserted in Part 6 of the principal Act after section 42:

DIVISION 2—ADMINISTRATIVE AND DISCIPLINARY DIVISION

SUBDIVISION 1—PRELIMINARY

42A. Interpretation

New section 42A provides that, in this new Division, Court means the Court sitting in its Administrative and Disciplinary Division.

SUBDIVISION 2—ADMINISTRATIVE APPEALS

42B. Application of Subdivision and interpretation

New section 42B provides that new Subdivision 2 applies in relation to the appellate jurisdiction conferred on the ADD by the provisions of some other Act (the special Act) subject to the provisions of the special Act.

The following additional terms are defined for the purposes of this new Division:

- decision;
- original decision-maker.

42C. Extension of time to appeal

New section 42C provides that the ADD may, in its discretion, extend the time fixed by the special Act for instituting an appeal, even if the time for instituting the appeal has ended.

42D. Stay of operation of decision appealed against

New section 42D provides that the making of an appeal against a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

However, the ADD (on application) or the original decision-maker (on application or at its own initiative) may make an order staying or varying the operation or implementation of the whole or a part of a decision appealed against pending the determination of the appeal, if the special Act does not provide that the decision must not be stayed or varied pending the determination of an appeal and the ADD, or the original decision-maker, is satisfied that it is just and reasonable in the circumstances to make the order.

Such an order is subject to any conditions specified in the order and may be varied or revoked by the Court or the original decision-maker (as the case may be) by further order.

42E. Conduct of appeal

New section 42E provides that the ADD must, on an appeal, examine the decision of the original decision-maker on the evidence or material that was before the original decision-maker. The ADD may, however, allow further evidence or material to be presented to it.

An appeal is to be fairly informal and thus, on an appeal, the ADD is not bound by the rules of evidence and must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

42F. Decision on appeal

The ADD may, on an appeal, do one or more of the following:

- affirm the decision appealed against;
- rescind the decision and substitute a decision that the ADD considers appropriate;
- remit matters to the original decision-maker for consideration or further consideration in accordance with any directions or recommendations of the ADD.

42G. Costs and ancillary orders, etc., on appeals

The ADD may make any ancillary or consequential order that the ADD considers appropriate, except that no order for costs is to be made unless the ADD considers it to be necessary in the interests of justice.

SUBDIVISION 3—DISCIPLINARY PROCEEDINGS

42H. Costs and ancillary orders, etc., in disciplinary proceedings

This clause mirrors new section 42G except that it applies in relation to disciplinary proceedings before the ADD.

Clause 7: Repeal of s. 52

Section 52 of the principal Act is rendered obsolete by new Division 2 of Part 6.

Clause 8: Related amendments

Schedule 1 contains related amendments to other Acts, while Schedule 2 contains related amendments to statutory instruments (in this case, regulations) made under other Acts.

SCHEDULE 1: Related Amendments to Acts

Schedule 1 contains related amendments to a number of Acts that confer jurisdiction on the ADD (*ie* special Acts, as defined in new Part 6 Division 2 of the principal Act) that are consequential on the proposed amendments to the principal Act.

The proposed amendments to the *District Court Act 1991* provide for the following general principles in relation to administrative appeals to be heard by the ADD:

- the period within which an appeal must be instituted may be extended by the ADD;
- the staying of the operation of a decision appealed against;
- the conduct of an appeal;
- the powers of the ADD in an appeal, including the making of orders as to costs.

Each of those general principles is, however, subject to the provisions of the relevant special Act. It is proposed to amend each of the special Acts to remove any of the provisions now to be inserted by the amendments into the principal Act. If the special Act contains a provision dealing with the staying of the operation of a decision being appealed against, or costs of the parties in an appeal, different from the general provision inserted into the principal Act, those provisions are to be retained in the special Act.

SCHEDULE 2: Related Amendments to Statutory Instruments

This Schedule contains amendments to 2 sets of regulations, in line with the amendments in Schedule 1.

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

NATIVE TITLE (SOUTH AUSTRALIA) (VALIDATION AND CONFIRMATION) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Native Title (South Australia) Act 1994. Read a first time.

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 explanation inserted in *Hansard* without my reading it.

Leave granted.

Background

The *Native Title Amendment Act 1998* (Cth) came into operation on 30 September 1998. It substantially amended the *Native Title Act 1993*. This Government reviewed the legislative options available under the *Native Title Act 1993* for South Australia and, as a result of that review, introduced the *Statutes Amendment (Native Title No. 2) Bill 1998* ('the 1998 Bill') into Parliament on 10 December 1998.

The 1998 Bill, which has now lapsed, proposed amendments to the State's existing native title scheme, as contained in the:

· *Native Title (South Australia) Act 1994*
· *Environment, Resources and Development Court Act 1993*
· *Mining Act 1971*
· *Opal Mining Act 1995*

The 1998 Bill proposed the insertion of a 'right to negotiate' scheme in the *Petroleum Act 1940* that mirrored the successful schemes that are already operating under the *Mining Act* and the *Opal Mining Act* and proposed incidental amendments to the *Aboriginal Lands Trust Act 1966* and the *Electricity Act 1996.*

Proposed amendments to the State's *Land Acquisition Act 1969* were prepared separately but were dealt with in conjunction with the 1998 Bill.

The Bill now being introduced represents the State's legislative response to the amendments to the *Native Title Act 1993* in so far as they relate to validation and confirmation provisions. A separate Bill (the *Native Title (South Australia) (Miscellaneous) Amendment Bill 1999*) is being introduced as a legislative response to other amendments to the *Native Title Act 1993*.

The amendments proposed in the 1998 Bill to other State Acts and the proposed amendments to the State's *Land Acquisition Act* are presently subject to continuing consultations with Commonwealth officials to ensure strict conformity with the provisions of the *Native Title Act 1993*. Amending legislation to those Acts will be introduced once substantial agreement with Commonwealth officials as to such conformity has been reached and there has been opportunity for further consultation with Aboriginal and other interest groups.

Validation

This Government, like the Commonwealth Parliament, is of the view that it was reasonable to act upon legal advice that pastoral leases necessarily extinguished native title, based upon the decision in *Mabo.*

Section 22F of the *Native Title Act 1993* allows the State to validate acts done over pastoral and other lands in the period between 1 January 1994 and 23 December 1996 (the date of the *Wik* decision) on the assumption that native title was extinguished. This will ensure the validity of acts on pastoral leases prior to the *Wik* decision.

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

Section 24EBA of the *Native Title Act 1993* allows States to validate invalid future acts by an Indigenous Land Use Agreement if State laws so provide. This is an appropriate provision to include in State legislation in case it is required in the future.

New South Wales, Victoria, Queensland, Western Australia, Northern Territory and the Australian Capital Territory have included validation provisions in their respective legislative responses to the *Native Title Act 1993.*

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

Confirmation

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

This Government, like the Commonwealth Parliament, believes that it is an appropriate exercise of legislative power for the Parliament to say which tenures have extinguished native title, rather than to leave it to the Courts to determine the effect on native title of particular leases, on a case by case basis, over an extended period of time.

If this matter is left to the Courts to determine, the resolution of these issues will be lengthy, costly and will appear ad hoc and arbitrary.

The proposed provisions are consistent with the decisions in the *Mabo* and *Wik* cases and the principles identified in them. They will remove perpetual and other lessees who hold rights of exclusive possession from the process of determining native title applications in the Federal Court.

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

I commend the Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Substitution of heading to Part 6

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

Clause 4: Insertion of heading to Part 6 Division 2

Division 2 as amended will deal with validation.

Clause 5: Insertion of ss. 32A to 32C and Division heading

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

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

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

Clause 6: Insertion of ss. 36A to 36J and Division headings

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

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

Clause 7: Substitution of s. 38

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

Clause 8: Amendment of s. 39—Confirmation

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

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

NATIVE TITLE (SOUTH AUSTRALIA) (MISCELLANEOUS) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Native Title (South Australia) Act 1994. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

Background

The Commonwealth *Native Title Amendment Act 1998* came into operation on 30 September 1998. It substantially amended the *Native Title Act 1993*.

The State Government reviewed the legislative options available under the Commonwealth legislation for South Australia and, as a result of that review, introduced the *Statutes Amendment (Native Title No. 2) Bill 1998* ('the 1998 Bill') into Parliament on 10 December 1998.

The 1998 Bill, which has now lapsed, proposed amendments to the State's existing native title scheme, as contained in the:

· *Native Title (South Australia) Act 1994*
· *Environment, Resources and Development Court Act 1993*
· *Mining Act 1971*
· *Opal Mining Act 1995*

The 1998 Bill proposed the insertion of a new 'right to negotiate' scheme in the *Petroleum Act 1940* that mirrored the successful schemes that are already operating under the *Mining Act* and the *Opal Mining Act*. It proposed incidental amendments to the *Aboriginal Land Trust Act 1966* and the *Electricity Act 1996.* Proposed amendments to the State's *Land Acquisition Act 1969* were

prepared separately but were dealt with in conjunction with the 1998 Bill.

The Bill now being introduced contains only amendments to the first of the Acts mentioned above, namely, the *Native Title (South Australia) Act*. It represents the State's legislative response to the amendments to the *Native Title Act* in so far as they relate to the section 207A (recognised State bodies) scheme.

A separate Bill (the *Native Title (South Australia) (Validation and Confirmation) Bill 1999*) is being introduced to amend the *Native Title (South Australia) Act* to include validation and confirmation provisions as contemplated by the Commonwealth *Native Title Act*.

The amendments proposed in the 1998 Bill to other State Acts and the proposed amendments to the State's *Land Acquisition Act* are presently subject to continuing consultations with Commonwealth officials to ensure strict conformity with the provisions of the *Native Title Act*.

Amending legislation for those Acts will be introduced once substantial agreement with Commonwealth officials as to such conformity has been reached and there has been an opportunity for further consultation with Aboriginal and other interest groups.

Recognised State bodies

Section 207A (formerly section 251) of the *Native Title Act* allows the States to establish their own Courts or bodies to decide native title claims (subject to approval from the relevant Commonwealth Minister).

The section envisages that there be will be a nationally consistent approach to the recognition and protection of native title and therefore requires that the law of a State and procedures thereunder be broadly consistent with the provisions of the *Native Title Act.*

South Australia received a determination from the Commonwealth Minister in 1995 stating that the ERD Court and Supreme Court are both recognised State bodies for the purposes of section 251 (now 207A) of the *Native Title Act.*

As a result of the 1998 amendments to the *Native Title Act*, it is necessary to amend the existing State legislation constituting the Supreme Court and ERD Court as recognised bodies to ensure the consistency of State processes with those in the amended *Native Title Act.*

Under the provisions of the *Native Title Act*, the Commonwealth Minister may write to the Attorney-General at any stage, as the State Minister concerned, to indicate that he considers the State's recognised bodies scheme to be non-compliant. It is therefore important to ensure that the scheme is rendered compliant.

State and Commonwealth officials have liaised closely (and will continue to liaise) in order to ensure that the proposed amendments are consistent with the amended *Native Title Act* provisions.

Procedural amendments

The legislation amends South Australia's registration test under the *Native Title (South Australia) Act*. The proposed new State registration test applies from the date of the proclamation of the Commonwealth legislation (30 September 1998) to avoid potential inconsistency or forum shopping on the part of claimants. The Government indicated in a public statement last year that it intended to amend the *Native Title (South Australia) Act* in this way.

A new section 39A has been introduced in terms similar to the equivalent provisions in the *Native Title Act* to specify the content of orders for the payment of compensation.

Amendments to the definition sections

A number of definitions and amendments are made to sections 3 and 4 of the *Native Title (South Australia) Act* to reflect definitions in the *Native Title Act* and to clarify aspects of the operation of South Australia's scheme. In addition, section 4(5) of the *Native Title (South Australia) Act*, which currently states that native title in land was extinguished by an act occurring before 31 October 1975 that was inconsistent with the continued existence, enjoyment or exercise of native title in the land, has been removed as it is no longer necessary in light of the confirmation of extinguishment provisions which is proposed to be inserted in a later part of the *Native Title (South Australia) Act* by the *Native Title (South Australia) (Validation and Confirmation) Amendment Bill*. The section only had a declaratory effect which is now covered by the *Native Title Act*.

Change to notification processes

Section 30 of the *Native Title (South Australia) Act* has been amended to differentiate between the processes that must be followed depending on whether the notice issued is initiating right to negotiate proceedings or simply part of a general notification/consultation process. Notices that do not initiate the right to negotiate process will have a more streamlined process to follow, consistent with the *Native Title Act*.

A new section 15A has been inserted in the *Native Title (South Australia) Act*, consistent with similar provisions in the *Native Title Act*, providing for notice to be given of applications involving native title questions (as distinct from notice of hearings or decisions provided pursuant to section 16 of the Act). Section 16 of the *Native Title (South Australia) Act* has been amended to require notice of court hearings or decisions to also be provided to the relevant local council. As a corollary, the relevant local council has been included as an 'interested person' for the purposes of section 23 of the *Native Title (South Australia) Act* pertaining to the hearing and determination of applications for native title declarations. These provisions are consistent with similar provisions in the *Native Title Act*.

I commend the bill to the house.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 3—Interpretation of Acts and statutory instruments

This clause amends the interpretation provision. Subsection (1) of section 3 of the Act contains definitions that apply across the Statute Book. The following alterations are made to those definitions:

- A new definition of Aboriginal group is included for two purposes—to describe the persons to be considered a group for the purposes of making a claim to native title (namely, those that hold or claim to hold the native title under a particular body of traditional laws and customs) and to make it clear that, if there is only one surviving member of the group, that person will constitute the group.
- What it means to affect native title is defined in terms comparable to section 227 of the NTA.
- Claimant applications and non-claimant applications are defined to simplify references to applications for native title declarations made by Aboriginal groups and those made by others.
- The new definition of native title declaration reflects the terminology used in the NTA.
- A technical amendment to suit Commonwealth terminology is made to the definition of native title question.
- A new definition of native title party is included, referring to the Aboriginal group registered as the claimant to or the holder of native title. The term is used in provisions requiring negotiation with appropriate native title parties.
- A new definition of native title register is included for ease of reference to the Commonwealth and State Registers.
- A new definition of registered is included to make it clear that persons identified or described in a native title register as holders of or claimants to native title will be taken to be registered as holders of or claimants to native title.
- A new definition of registered native title rights is included as a means of limiting, where necessary, a reference to native title to those rights described in the relevant entry in a native title register. Under the Commonwealth scheme it is only acts affecting registered rights in respect of which a claimant has a right to negotiate.
- Substitution of the definition of registered representatives of claimants is a consequential technical amendment.
- The definition of representative Aboriginal body is substituted (and subsection (2) struck out) to reflect sections 202(1) and 203AD of the NTA. The NTA now requires that it is the Minister's action under that Act that will determine the representative bodies for South Australia.

Subsection (3) of section 3 of the Act contains definitions that apply only for the purposes of the Act.

- The substituted definition of mining tenement (and the definition of relevant Act) provides a more flexible approach to ensure that all tenements relating to the recovery of underground resources are covered.
- A new definition of right to exclusive possession of land is included to enable the NTA wording to be conveniently incorporated. The expression is used in proposed sections 18(3)(c) and 23(3)(c).

Clause 4: Amendment of s. 4—Native title

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

Clause 5: Substitution of heading to Part 3 Division 5

The heading to the Division is altered to reflect the broadening of the Division to cover notice of applications involving native title questions as well as notice of hearings and proceedings.

Clause 6: Amendment of s. 15—Registrar to be informed of applications etc involving native title questions

Section 15 is amended to make sure that the Court informs the Registrar of amendments of applications involving native title questions.

Clause 7: Insertion of s. 15A

A new section is inserted to govern notification by the Registrar of relevant parties of applications for native title declarations, amended applications, applications for variation or revocation of native title declarations, applications for compensation payable for an act extinguishing or otherwise affecting native title and other applications of a prescribed kind. Compare section 66 of the NTA.

Clause 8: Amendment of s. 16—Notice of hearing and determination of native title questions

The amendments provide that a notice of hearing need not be given to a person who is not a party to the proceedings if the native title question arises on an application of which notice has been given under section 15A, extend the requirement for notification to councils, reflect the longer time limit contained in s. 66(10) of the NTA and enable the regulations to require public notice of a hearing of a native title question to be given.

Clause 9: Insertion of s. 16A

A new section is inserted to expressly provide that the Court may order that a person who appears to have a proper interest in proceedings involving a native title question be joined as a party at any time.

Clause 10: Amendment of s. 17—Register

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

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

New subsection (5) requires the Registrar to keep the register up to date.

Clause 11: Substitution of ss. 18, 19 and 20

These sections are substituted in order to mirror the new registration test and the processes for registration of a native title claim contained in the NTA.

Proposed section 18 sets out the persons who may make an application for a native title declaration. This corresponds to the table in section 61 of the NTA. Various restrictions on the making of applications are set out, corresponding to section 61A of the NTA.

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

Proposed section 19 requires the Registrar to determine whether, in the case of a claimant application, the claim should be registered. A claimant may choose not to submit the claim for registration—for example, where it is clear that the registration tests are not met but the claimant requires the matter to be determined by the Court.

Proposed section 19A sets out the test to be applied to claims by the Registrar and corresponds to ss. 61A, 190B, 190C and 190D of the NTA.

Proposed section 19B is similar to s. 190D(2) of the NTA. Under the State scheme, all decisions in relation to registration are reviewable (for example, a decision to register some rights but not others). The test relating to association with the land by a parent of a member of the claimant group is applied directly at the registration stage in the State provisions rather than at the review stage as in the Commonwealth provisions.

Clause 12: Amendment of s. 21 and relocation of ss. 21 and 22

The amendment to section 21 is consequential on the inclusion of definitions of claimant and non-claimant applications. The provisions are relocated to alter the structure of the Part. Matters not relating to native title declarations (Division 3) are shifted to Division 4, Miscellaneous.

Clause 13: Amendment of s. 23—Hearing and determination of application for native title declaration

The amendment to subsection (2) allows a council to be heard on the hearing of an application for a native title declaration.

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

Clause 14: Insertion of heading

A new Division 4 heading is inserted to better structure Part 4.

Clause 15: Amendment of s. 27—Protection of native title from encumbrance and execution

This is a consequential amendment relating to the restructuring of Part 4.

Clause 16: Amendment of s. 30—Service where existence of native title, or identity of native title holders, uncertain

These amendments introduce two different requirements for service on all who hold or may hold native title in land depending on whether the notice to be served is a right to negotiate notice (as defined) or not. If it is, the notice requirements derive from section 29 of the NTA (those that apply in relation to future acts giving rise to a 'right to negotiate'). If it is not, more limited notification requirements apply similar to those set out in provisions giving native title holders procedural rights, such as 24MD of the NTA.

Clause 17: Insertion of s. 39A—Content of orders for compensation to Aboriginal group

Proposed section 39A corresponds to section 94 of the NTA.

Clause 18: Transitional provision—Previous registration or application for registration of claim to native title

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

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

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. R.I. LUCAS (Treasurer) obtained leave and introduced a bill for an act to amend the Superannuation Act 1988. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

This Bill seeks to make a number of amendments to the *Superannuation Act 1988*, which establishes and maintains the two defined benefit schemes for government employees. The amendments deal with some technical issues and matters that are designed to simplify the administration of the schemes.

One of the proposed package of amendments deals with issues relating to arrangements that have been entered into between the South Australian Superannuation Board and an instrumentality or agency of the Crown, for the purposes of providing eligibility for membership of the schemes. These arrangements are entered into in terms of Section 5 of the Act. The proposed amendments seek to expand the current provisions to deal with the issues that need to be considered and addressed before an employer can terminate an arrangement. Whilst the current provisions provide for the termination of an arrangement by an employer, the Act is silent on the matters that need to be addressed. The amendments will also make it clear that an arrangement can be modified from time to time. Modification of an arrangement is sometimes necessary to reflect changes, for example in matters like terms and conditions of employment. The expanded provisions will also deal with the situation where an instrumentality or agency ceases to be a body of the Crown.

In terms of the new provisions, an arrangement will not be able to be terminated by an employer before a majority of the members covered by the arrangement support the termination. Whilst this has been the case where a termination has occurred up until now, the Superannuation Board and the Government believe this should be made a legislative requirement. This will ensure that full consultation occurs on the matter of superannuation in such circumstances. The new provisions will also require the Superannuation Board to obtain an actuarial valuation before an arrangement is terminated to ensure that adequate financial provision has been made to support the accrued benefit liabilities. In the situation where a body ceases to be an instrumentality or agency of the Crown, the proposed provisions will provide for the Minister to inform the Superannuation Board that the accrual of further benefits will terminate on the basis that the employees will no longer be employees of the Crown. The new provisions also specify the terms and conditions relating to the accrued benefits where there is either a termination of an arrange-

ment by an employer, and in the situation where the employing body ceases to be an instrumentality or agency of the Crown. Members will be able to either preserve their accrued benefits or roll them over to another scheme if they are under the age of retirement. Persons over the age of 60 years will be able to take their accrued benefit as though they had retired from employment.

The proposed amendments dealing with arrangements under Section 5 of the Act will provide greater clarity for employers in relation to their rights and obligations, together with greater clarity for employees.

The Act currently provides that where a person in receipt of a invalidity pension is on medical grounds considered to be capable of being gainfully employed, the person remains in receipt of the pension unless Government employment is made available to the individual. The Bill seeks to amend the Act to provide an additional option to recipients who are considered capable of being gainfully employed. The Government wishes to make it clear that the new provision complements rather than replaces the current provisions enabling an offer of employment to be made to an invalid pensioner. The new alternative will provide the ability for the former government employee to exchange their pension entitlement under the scheme for a lump sum. It is considered that in some situations former employees may prefer to be paid a lump sum that could be used in the pursuit of employment that the Government has been unable to provide, or for assisting in the establishment of a business. The lump sum to be paid in such circumstances will be based on a commutation of the pension that would have been accrued in the scheme up to the date of accepting the payout. To protect any person with only a short period of membership, the proposed amendment establishes a minimum lump sum that must be paid to a member who accepts an offer under the proposed provision. The minimum will be an amount equivalent to three times the amount of the annual invalidity pension being paid to the member. Whilst it is unknown how many offers will be made under this provision, the Government is aware that a number of persons have sought the introduction of this option. It is expected that the Superannuation Board will be ensuring that before persons take up one of these offers, financial advice be provided.

An amendment is also proposed which will cease the current requirement of the Superannuation Board to maintain a member contribution account for each contributor pensioner after they have retired on account of age, and during the period in which they and any future beneficiaries are paid a pension. The previous reasoning behind maintaining the contribution account was to ensure that each contributory member and his or her prescribed beneficiaries under the scheme, receive in total an amount of no less than the balance of member contributions paid into the scheme, together with interest. The fact is it is very rare for a refund to be made to a deceased contributor pensioner's estate in accordance with this accounting procedure. It will generally only occur where the person dies within a short period after retirement and without a spouse or dependent child entitled to a benefit. In the circumstances, significant administrative efficiencies can be created by replacing the current accounting requirement with a system that guarantees pension payments for a minimum length of time. The amendment proposed in the Bill provides that where a person becomes entitled to a pension, a guaranteed amount of benefit must be paid from the scheme. The proposal is that each retiree must receive an amount equivalent to 4.5 years of pension, or a combination of 4.5 years of pension paid to a retiree, spouse and eligible child. Where a person commutes pension to a lump sum, the guaranteed term for pension payments would be proportionately reduced, to take account of the fact that commutation 'brings forward' benefit payments. Actuarial calculations show that under the employer/employee cost sharing arrangements of the pension scheme, all members would receive the balance of their contribution account back within a period of 4.5 years. The proposed amendment will enable significant simplification of the accounting and administration procedures, without disadvantaging any person. Estimates are that about once in every 5 years, a deceased member's estate will benefit to a small extent by this new provision.

The amendments being made to Section 45 of the Act are intended to provide clarity to the existing provisions under which a person's invalidity or retrenchment pension can be reduced due to earnings from remunerative activities engaged in by the pensioner. The Superannuation Board has always applied the 'income from remunerative activities' provisions of Section 45 in such a way that has been fair to the person in receipt of the pension. Specifically this has meant assuming that a person's earnings during a financial year were earned at an even rate over the whole financial year. This has assisted the rehabilitation of invalids by not penalising them in situations where they have had short periods of employment involving two or more days work a week. The Superannuation Board has implemented this policy by applying a financial year basis to the words 'particular period' in the current provisions of the Act. The Crown Solicitor has advised that if the Superannuation Board uses a financial year as the period over which remunerative income is measured, then the provisions of the Act should be amended to more appropriately reflect this policy position. On the basis that the Superannuation Board has always applied a financial year earnings test to invalid and retrenchment pensions, the Bill proposes that the amendment to Section 45 be made retrospective to the commencement of the Act. No pensioner will be affected by this proposal nor the retrospectivity of the provision's commencement.

The other amendments being proposed in the Bill deal with technical issues which have emerged in the administration of the Act. For example, the amendments being made to Section 34 of the Act which sets out the formulas for calculating retirement pensions, are being made to ensure that persons who have resigned and preserved an accrued pension do not become entitled to windfall gains through having a shorter period of membership. Other amendments clarify existing provisions, ensure consistency between similar provisions, or enhance the general administration of the Act.

The Australian Education Union, the Public Service Association and the South Australian Superannuation Board have been fully consulted in relation to these amendments. All these bodies have indicated their support for the proposed amendments.

I commend this Bill to Honourable Members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the commencement of the Bill. As already stated, clause 11 which amends section 45 of the principal Act will be taken to have come into operation when the principal Act came into operation.

Clause 3: Amendment of s. 5—Superannuation arrangements

This clause amends section 5 of the principal Act in relation to arrangements between the South Australian Superannuation Board and employers in the manner already discussed.

Clause 4: Amendment of s. 20B—Payment of benefits

This clause amends section 20B of the principal Act. This amendment is consequential on the amendments made by clauses 9 and 10.

Clause 5: Amendment of s. 21—Reports

This clause replaces paragraph *(b)* of subsection (4) of section 21 of the principal Act. The new wording focuses on the issue that is important in this context—the proportion of future benefits that will be able to be met from the Fund.

Clause 6: Amendment of s. 34—Retirement

Paragraph *(b)* of this clause makes a technical amendment to section 34. Paragraph *(a)* is consequential on the amendment made by paragraph *(b)*.

Clause 7: Amendment of s. 39—Resignation and preservation of benefits

This clause makes technical amendments to section 39 of the principal Act.

Clause 8: Insertion of s. 42A

This clause inserts new section 42A which enables the Board to offer a lump sum payment to an invalid pensioner in full satisfaction of the pensioner's entitlement to remaining pension payments. The pensioner is free to accept or refuse the offer.

Clause 9: Substitution of s. 43A

This clause replaces section 43A of the principal Act. Under the existing provision the proportion of a pension or lump sum to be charged against the contributor's contribution account is fixed by regulation. Under the new provision the proportion will be equivalent to the proportion of future benefits that can be met from the South Australian Superannuation Fund.

Clause 10: Insertion of s. 43AA

This clause inserts a new section that enables the Board to close a contributor's contribution account in certain circumstances.

Clause 11: Amendment of s. 45—Effect of workers compensation, etc., on pensions

This clause makes amendments to section 45 already discussed.

Clause 12: Amendment of s. 48—Repayment of contribution account balance and minimum benefits

This clause amends section 48 of the principal Act. This amendment will save the administrative cost of maintaining contribution

accounts in respect of contributors whose employment has terminated.

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

ALICE SPRINGS TO DARWIN RAILWAY (FINANCIAL COMMITMENT) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

This Bill provides for amendments to the *Alice Springs to Darwin Railway Act 1997* (the 'Act') which authorised an agreement between the South Australian and Northern Territory Governments to facilitate the construction of a railway link between Alice Springs and Darwin and the operation of a railway from Darwin linking into the national rail network at Tarcoola.

The passage of this legislation will be an important step in the realisation of a new gateway to Asia. This Bill reflects the culmination of almost a century of work to bring about the construction of a railway linking Darwin to South Australia and from there to the rest of the Australian rail network. This marks an important moment in Australia's history. Construction of the railway will provide South Australia with an alternative and high speed link to markets in Asia.

The rail link will also provide jobs to regional South Australia and will be an icon construction project as we enter the new millennium. The railway is a strategic infrastructure project that forms an essential part of the State's economic strategy. It will build on the momentum for economic growth that this Government has fostered, lift confidence in the State's economic future and will provide opportunities during both the construction and operation phase for South Australian industry.

This project comes at a particularly important time for the Upper Spencer Gulf region which stands to be a major beneficiary of the work that will flow from the project. In November 1996, the South Australian and Northern Territory Governments signed an Inter Governmental Agreement recording the extent of the negotiations between the governments in relation to the Alice Springs to Darwin Railway at the date of the Agreement, and in particular, agreeing in principle, subject to conditions, the financial contributions to the project to be made by each government. The Agreement also contemplated that both governments would participate in a statutory corporation to be established for the purpose of holding title to the rail corridor and facilitating the management of the project.

The Northern Territory Parliament subsequently passed the *AustralAsia Railway Corporation Act 1996* to provide for the establishment of the AustralAsia Railway Corporation (AARC).

Upon the establishment of AARC, an extensive and competitive submission process was conducted resulting in three international consortia, all with significant Australian partners, being shortlisted to provide detailed proposals. Following the receipt of detailed bids from each of the three consortia on 31 March 1999, the South Australian and Northern Territory governments announced on 7 June 1999 that the Asia Pacific Transport Consortium (APTC) had been selected as the Preferred Consortium.

APTC comprises Brown & Root, a major US based multi national engineering and construction company that incorporates SA based project managers Kinhill, as bid leader, SA based civil construction company, Macmahon Holdings, rail maintenance and construction companies Barclay Mowlem and John Holland, SA based US rail operator Genesee & Wyoming and NPG Logistics as logistics manager. As can be seen, this Consortium has significant South Australian and Australian consortium members.

Since the appointment of APTC as Preferred Consortium, AARC has worked with APTC on the resolution of a number of threshold issues which has resulted in AARC recommending to the two governments a basis on which the project can proceed.

Based on the proposal received from AARC, the South Australian, Northern Territory and Commonwealth governments have considered and approved the provision of additional grant funding above the $300 million initially on offer to the project. This has resulted in the need to amend the existing legislation relating to the project to provide for these changes.

At present the legislation places a limit on the State's financial commitment to the project of $100 million in 1996 dollar terms by way of capital grants. Clause 4 of the Bill seeks to repeal section 6 of the Act and replace it with an authorisation for the State to make funds available for the performance of certain works in connection with the project up to a total amount of $125 million. Clause 4 also seeks to authorise the giving of a guarantee of up to $25 million to the project (plus any associated costs). This guarantee may be called if the estimated landbridge revenues are not realised by the operators of the Railway.

In addition to the above, Clause 4 deals with the State's guarantee of the AustralAsia Railway Corporation (AARC). The Bill authorises a guarantee of the performance by AARC of its obligations under any contract entered into by it for the purposes of the implementation of the Alice Springs to Darwin Railway project. It is intended that the Northern Territory Government will provide a similar guarantee. Other related obligations may also arise as the project is implemented.

The Bill also sets out the requirements of the State to act so as to facilitate the implementation of the Alice Springs to Darwin Railway project and ensures that money can now be applied for the purposes of the project. These requirements will provide assurance to the Preferred Consortium that State agencies will use the appropriate effort to expedite the necessary approvals and processes required by the State to bring the project to fruition and that financial commitments can be put in place as required.

Clause 5 of the Bill sets out the provisions for all building and development work carried out by or on behalf of the Commonwealth on the railway line between Tarcoola and the Northern Territory border to be recognised as complying with statutory and regulatory requirements applicable at the time of the work.

I commend this bill to honourable members.

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. 3—Definitions

This clause will provide definitions with respect to GST.

Clause 4: Substitution of s. 6

It is proposed to revise section 6 of the Act to reflect the financial commitments that will apply in relation to the authorised project and to ensure that appropriate appropriations are made.

Clause 5: Insertion of ss. 8 and 9

Three new sections are to be inserted into the Act. The Minister and other State instrumentalities and agencies are to be authorised and required to do anything reasonably required for the project and no further statutory step or authorisation will need to be taken or obtained before money can be applied for the purposes of the authorised project. It is also to be made clear that work carried out on the existing railway between Tarcoola and the Northern Territory border will be taken to comply with the statutory and regulatory requirements applicable at the time of the work, in a manner similar to section 11A of the *Non-Metropolitan Railways (Transfer) Act 1997*.

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

GOVERNMENT BUSINESS ENTERPRISES (COMPETITION) (MISCELLANEOUS) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

A review of the Government of South Australia's *Competitive Neutrality Policy Statement, 1996* conducted by a Key Agency Working Group was recently completed. As a result of experience

and this review, it is clear that a number of refinements and revisions to the *Government Business Enterprises (Competition) Act 1996* are necessary.

Following successful passage through Parliament of the proposed amendments to the Act it is intended to publish a new South Australian Competitive Neutrality Policy Statement, to replace the existing Policy Statement. Publication of the new Statement is to be timed with the legislative amendments coming into operation.

The Bill and the new Policy Statement are designed to achieve two things. Firstly, to provide additional clarification on the application of competitive neutrality to significant government business activities, and secondly, to refine the complaints mechanism and process as a result of experience.

The Act came into operation in August 1996 and provides *inter alia* for a formal competitive neutrality complaints mechanism. Since that time eight formal complaints have been received, six of which have been assigned to the Competition Commissioner for investigation.

Clarification and further definition is provided in this Bill concerning the meaning of 'government agency', 'local government agency' and 'confidential information'.

The Bill seeks to make explicit that competitive neutrality applies to local government agencies, as well as State government agencies which are subject to control and direction by a Minister. The Government considers this necessary to make certain that entities, over which it has neither the power to control or direct, such as the Adelaide and Monarto zoos, the State's Universities and the Ngapartji Multi Media Centre are not unintentionally captured under clause 3 of the *Competition Principles Agreement 1995.*

Presently, both proclamations under the Act, the SA Government Competitive Neutrality Policy Statement, and the Clause 7 Statement on the Application of Competition Principles to Local Government, co-exist. The Clause 7 Statement is presently being reviewed by a Joint State and Local Government Working Group and it intended that there be consistency between the two statements.

Provision for proclamation by the Governor of competitive neutrality principles has been removed and replaced with reference to policies published by the Minister from time to time. Proclamations made to date largely duplicate parts of the existing two Policy Statements. This duplication is considered unhelpful and potentially confusing to end users. The proposed amendments to the Act and the revised Policy Statements will encompass any matter peculiar to the existing proclamations as appropriate.

As mentioned, the Bill also seeks to refine the complaints mechanism and processes. An amendment is proposed to make explicit that a complaint will not be assigned to the Competition Commissioner for investigation unless it is clear that the matter cannot be resolved between the complainant and the government or local government agency involved, or where there has been a previous investigation by the Commissioner, and the government or local government business activity was found to be complying with competitive neutrality principles, and its circumstances have not changed.

The Bill seeks amendment to the Commissioner's reporting requirements to elucidate the information to be included in reports as well as requiring a summary which is suitable to be made publicly available.

Finally, an amendment to the confidentiality provisions will ensure that confidential information obtained as part of an investigation, including an investigation by the government or local government agency, is not disclosed or used, except as authorised, for any purpose unrelated to the making or resolution of the complaint.

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. 3—Interpretation

It is proposed to insert a definition of "confidential information" in the Act. The definition of "government agency" is to be revamped and a definition of "local government agency" included.

Clause 4: Amendment of s. 16—Principles of competitive neutrality

Various amendments are proposed to section 16 of the Act. The principles of competitive neutrality will now be identified in policies published by the Minister from time to time for the purposes of Part 4 of the Act.

Clause 5: Amendment of s. 18—Assignment of Commissioner

It is proposed to amend section 18 of the Act so as to provide that the Minister will not assign a complaint to a Commissioner unless the Minister is satisfied that the matter has already been investigated by the relevant agency. The Minister will also be able to refuse to assign a complaint if the matter has previously been investigated by a Commissioner and a finding made that the relevant business activities of the agency comply with the principles of competitive neutrality.

Clause 6: Amendment of s. 19—Investigation of complaint by Commissioner

A Commissioner will now prepare a summary of the contents of a report, which will be available for public inspection.

Clause 7: Amendment of s. 20—Confidentiality

A complainant will not be able to release confidential information obtained through the provision of a report of an investigation except in accordance with proposed new section 20(2).

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

BUILDING WORK CONTRACTORS (GST) 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 explanation inserted in *Hansard* without my reading it.

Leave granted.

Although the GST is a tax to be paid by suppliers of goods and services, the GST is to be cost neutral to business. The GST legislation is structured to allow parties to a contract to negotiate the effect of the GST on the contract price.

However, unlike other industries where contractual arrangements for variations are not constrained by statute, contracts for domestic building work are constrained by the effects of section 29 of the *Building Work Contractors Act* and the limited areas for price review prescribed by that Act.

Two leading building industry associations have approached the Government about the effect of the GST on domestic building work contracts in South Australia.

The *Building Work Contractors Act* requires domestic building work contracts to be fixed price contracts, contracts which contain a rise and fall clause in relation to the price of materials and labour only, or cost plus contracts limited to the actual costs of materials and labour plus an additional amount of up to 15 per cent.

Legal advice provided to industry organisations and advice provided by the Crown Solicitor is that section 29 of the *Building Work Contractors Act* may limit the ability of builders to pass on the effect of the GST.

Legislation in other States regarding domestic building work contracts takes a variety of forms. GST is only an issue in those States which have legislation affecting rise and fall or cost escalation clauses. It is understood that Victoria and Queensland can deal with the issues which arise from the GST administratively, and both States are in the process of making the necessary regulatory changes. Western Australia has received legal advice that no change is necessary to their Act.

In view of the foregoing, it has been determined that the *Building Work Contractors Act* should be amended. The amendments permit the inclusion of a GST clause in a domestic building work contract to enable the builder to recover the GST paid or payable on goods or services supplied under the contract. Specific provision is also included to ensure that the matter of the potential for GST increases is drawn to the attention of the other party to the contract.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 3—Interpretation

This clause inserts a definition of GST into the interpretation provision of the principal Act for the purposes of the amendments to section 29.

Clause 3: Amendment of s. 29—Price and domestic building work contracts

After the introduction of GST on 1 July 2000, fixed price contracts will need to incorporate the GST component within the fixed price.

The amendment to section 29 allows a building work contractor to include a clause in a domestic building work contract (other than such a fixed price contract) entitling the contractor to recover the GST paid or payable by the contractor on the supply of goods and services under the contract.

If a GST clause is included in a contract, the contract must make it clear that the contract price may or will increase to cover GST.

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

SOUTHERN STATE SUPERANNUATION (SALARY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 November. Page 510.)

The Hon. P. HOLLOWAY: The opposition will support the bill and will enable its passage through both houses before we adjourn for the Christmas break. The need for this bill comes about because of the agreement that was reached earlier this year between the public sector unions and the government to introduce the option for employees to sacrifice part of their salary; perhaps it would be more correct to say to have the option of salary sacrifice schemes as part of the state government's enterprise agreement.

This bill is required because, under the act, unless this amendment was passed, any reduction in salary would actually reduce the superannuation benefits available to people who took part in the scheme, and that, of course, is the reverse of the point of introducing these schemes in the first place. That is an unintended consequence of the definition of 'salary' under the act. This bill simply changes the definition of 'salary' to address that point.

I would like to say something about the principle behind the bill and about salary sacrifice. Salary sacrifice in a general sense involves a portion of the salary being taken in the form of fringe benefits including cars, Medicare contributions, superannuation surcharges, child support and so on. We now know that such schemes have become virtually the norm throughout the private sector, but they have now spread into the public sector in other states.

It is my understanding that in New South Wales and Victoria public service salary sacrifice schemes have been established for some time. This means that employees in those states who participate in such schemes, for a given size of salary package, are better off than employees who are getting that amount of package in straight cash. In other words, if an employee was getting, say, a package of $60 000 which involved some salary sacrifice element, they would effectively be better off than someone receiving a straight salary of $60 000. Of course, the reason they are better off is that the tax that applies to fringe benefits is lower in most cases than the tax that would be applicable to their income. Effectively, it means that the additional benefits of a package are paid by the commonwealth taxpayer.

I guess we could say a lot about the morality of that. There has been a growth in fringe benefits and salary sacrifice arrangements over the past 20 years, and that has involved some inequity in the community. Those who have had access to those schemes have been better off than those who have not. That has posed a dilemma for successive federal governments. They have really been faced with two solutions: either you tax fringe benefits at the same rate as other income or in some other way treat them as the same, or you spread the opportunity for concessional fringe benefits to everyone.

I guess the approach that we have seen from commonwealth governments over the past 20 years has been a bit of both. There was the introduction of the fringe benefits tax and some form of capping of benefits to try to stem the flow, and at the same time there has been a widespread extension of this practice. So, the dilemma that we would have in this state, if we were the only state that did not provide such an opportunity to our employees, is that those employees would be worse off than their colleagues in other state public services. It would mean that, if the taxpayers of this state were paying a public sector employee the same as a public sector employee in another state, those employees in the other state would be better off.

Clearly, in terms of equity and keeping and attracting staff to this state we have to match what is offered in other states and in the private sector, regardless of whatever one might think of the morality or equity of such schemes. As I say, they are now the norm whether or not we like it. I think it is only fair to our public servants that they should be treated equally to employees in the private sector and executives in other states.

It is for those reasons that we support the bill. If it passes this session, when the agreements are introduced in December this year, that opportunity will be available to public servants in this state. The opposition supports the bill, and we understand that the Public Service Association also welcomes it.

The Hon. M.J. ELLIOTT: I rise to support the second reading of the bill. I note that it is supported by the Public Service Association, the major representative of public sector employees. If the association is satisfied with it, I will not tell it that it is wrong.

However, we note that it was introduced into the parliament yesterday and that it is going through this chamber today. In this place one frequently expresses a wish that bills were around a little longer than that, regardless of the apparently non-contentious nature of them. In fact, if anything, the pattern is getting worse rather than better in this regard, without ever being accompanied by an adequate explanation. It is one thing if a court suddenly exposes a major weakness and it has to be addressed very quickly, but here we have a parliament that will not sit for four months and in the dying stages of the session we have the introduction of several bits of legislation that we are being asked to put straight through.

The Hon. R.I. LUCAS (Treasurer): I thank members for their indication of support for the bill. I do not intend to waste the time of the chamber, but I will briefly respond to the Hon. Mr Elliott. I think that all governments appreciate the cooperation of members as regards non-controversial legislation, and we hope that that continues to occur in the dying embers of a session. I might add that cooperation does extend both ways. We were advised of the motion for the Queen Victoria Hospital select committee at very short notice.

Members interjecting:

The Hon. R.I. LUCAS: Sorry, the Queen Elizabeth Hospital. It is not my particular concern, Mr President, as is well evidenced by what I have just said. The Hon. Mr Elliott approached me on Tuesday, I think, in relation to his intention on Wednesday to move for a select committee in

respect of Hindmarsh Island. So, it is easy to highlight these issues—

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Hindmarsh stadium, not Hindmarsh Island.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: It's not that early; it's just not enough sleep. Hindmarsh stadium—

The Hon. T.G. Cameron: Are you having trouble sleeping, Rob?

The Hon. R.I. LUCAS: No, I'm just not getting enough of it: I'm sleeping like a log.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: Exactly. Just not getting enough of it, I'm afraid, particularly when the media ring you at 6.30.

The Hon. K.T. Griffin: In the morning.

The Hon. R.I. LUCAS: In the morning, yes. I am highlighting the fact that there are a number of motions from private members, together with government bills, that are introduced at relatively short notice. We appreciate the cooperation of members in relation to this bill. As all members have highlighted, it is supported by everybody, including the unions. We look forward to its speedy passage.

The Hon. T.G. CAMERON: SA First supports the bill.

Bill read a second time and taken through its remaining stages.

CRIMINAL LAW CONSOLIDATION (SERIOUS CRIMINAL TRESPASS) AMENDMENT BILL

In committee.

Clauses 1 to 4 passed.

Clause 5.

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

Page 2—

Line 15—After 'place' insert:

(other than a place that is open to the public)

After line 16—Insert:

(2) A place is to be regarded as open to the public if the public is admitted even though—

(a) a charge is made for admission; or

(b) the occupier limits the purposes for which a person may enter or remain in the place by express or implied terms of a public invitation.

(3) A person who enters or remains in a place with the consent of the occupier is not to be regarded as a trespasser unless that consent was obtained by—

(a) force; or

(b) a threat; or

(c) an act of deception.

(4) A reference in this section to the occupier of a place extends to any person entitled to control access to the place.

These two amendments are related, and I will give an explanation in relation to both as that will help in the comprehension of what the amendments seek to do. The first amendment amends the definition of 'serious criminal trespass' in what is proposed to be new section 168, so that the offences do not apply in relation to places that are open to the public. What are not places that are open to the public are defined in the second amendment.

The general purpose of this and the following amendment is to reduce the width of the notion of trespass. This prevents a shoplifter being turned into a serious criminal trespasser. For example, if X enters a shop intending to steal, he or she, arguably, enters as a trespasser and could, if the situation is not addressed, therefore by operation of law be guilty of the office of being a serious criminal trespasser. This is simply undesirable and not sensible. It is not and was never contemplated by this bill. The idea is to confine within acceptable limits the import of civil law doctrines of trespass into the criminal law arena, as the High Court did in the decision in Barker's case (1983) 153 CLR 338. That concerned a similar Victorian statute.

The second amendment inserts new subsections (2), (3) and (4) into section 168. Proposed new section 168(2) complements the first amendment. It defines what is and what is not a place open to the public. It is a modern version of the definition of public place in the Summary Offences Act. New subsections (3) and (4) are of more general import, although the general policy reason behind them, that is, limiting the wide notion of civil trespass in a criminal setting is the same. In doing away with the notion of breaking as a qualifier to mere entering as a trespasser, however technical, as it was, the notion of breaking, the proposals opened these very serious criminal offences to some quite trivial possibilities.

This more general amendment deals with situations in which the person alleged to be a trespasser enters with the consent of the occupier. The amendment says that if a person enters with consent of the occupier that person is not a criminal trespasser, unless the consent was obtained by force, fraud or an act of deception. This deals directly with the Barker case and some of those cases identified by the Office of Crime Statistics as not being real home invasions. I should refresh honourable members' memories that the Office of Crime Statistics published an information bulletin in August of this year which sought to deal with some raw data from police statistics. That raw data dealt with those offences which the Office of Crime Statistics believed could be described, at least on the surface, as home invasions, and robbery in a dwelling, for example, was presumed to be a home invasion.

The second stage of the work which the Office of Crime Statistics is doing is to go into the actual police incident reports, to get a better appreciation of what were the circumstances of the offences committed for which robbery in a dwelling, for example, was charged. There has been some quite enlightening information come to light. That was one of the reasons why in the discussion paper I indicated that I would ask the Director of Public Prosecutions to consider publishing guidelines for prosecutors, his own prosecutors as well as police prosecutors, about the appropriate offences with which to charge, arising out of identifiable sets of circumstances.

It was quite obvious from the work that is now being done by the Office of Crime Statistics going into those police incident reports that there is a disparity in the charging practices, but, more particularly, a number of those cases could not be brought within the generally understood description of a home invasion. For example, one of the cases was described in the police incident report as follows:

> The victim was at home when he invited the four offenders into his house for a drink. Sometime later the males assaulted the victim by hitting him on the head.

That is certainly a criminal offence against the person, but it is not a criminal trespass and it is not home invasion, and I should say that there are a number of other similar sorts of examples that have been identified.

It should be noted that the proposed limited definition also conforms to the common law definition of constructive breaking, which now exists, so there is no diminution of

current law. I commend the amendments to honourable members.

The Hon. CAROLYN PICKLES: The opposition supports the amendments.

The Hon. IAN GILFILLAN: It appears that the amendments certainly improve the bill. I want to repeat what I indicated earlier: the Democrats believe that this is legislation with almost indecent haste, and I would ask the Attorney-General to answer my question as to why this bill and the succeeding one need to be dealt with before Christmas. Why is there this peremptory insistence that it be dealt with when it was quite clear that, on reflection, quite substantial amendments were needed to the original draft.

It is not often that one finds a spelling mistake in bills introduced in this place, but on page 3, in clause 170, 'commits' has three m's. I do not point that out with any emphasis of pedantry but an emphasis that the way we have been dealing with this legislation is really an embarrassment. It is an embarrassment to me, and I would far rather that this legislation be held over and dealt with after even further opportunity for the Attorney and his very efficient department and staff to look more closely at it. It is interesting that the whole of this impetus was given its horsepower through the term 'home invasion'. 'Home invasion' does not appear in the legislation, for which I am very grateful. The term 'serious criminal trespass' is a worthwhile legal phrase and one which I can see having meaning and interpretation away from the emotional hype and the media pressure which really, in my view, has got us into this rather embarrassing situation.

I am also very interested to know that the Office of Crime Statistics is doing further work: I am very pleased to hear that, because I am optimistic that, given the opportunity and the freedom to make decisions, we will get some very sensible leadership from the Attorney's department and his advisers in improving legislation in South Australia. The fact that currently reliable, objective research is being carried out surely indicates that it would have been much wiser for us to have held over and analysed that information. The Attorney referred to the report from the Office of Crime Statistics dated 31 August. It is one which I found most enlightening and I am sure he did. It really puts the lie to the impression that has been put onto the people of South Australia that there is a sort of outbreak, a plague, of home invasion, and that its major targets are elderly people. There is a colloquial phrase, and the two letters 'BS' are about as accurate as one can get for that interpretation of the facts.

The Hon. T.G. Cameron interjecting:

The Hon. IAN GILFILLAN: I have the authority to say it, but I think I will leave it to an interjection. I cannot express my disappointment strongly enough. In the many years I have been in this place, through the Attorney and prior to him, the Hon. Chris Sumner, when he was Attorney, I believe we have approached legislation dealing with the law in a tripartisan, cooperative way to achieve the best, also recognising the independence of the judiciary. I highlight that, under the next bill, there is an instruction to judges in a unique way to consider imprisonment as if the crime commonly known as 'home invasion' and now 'serious criminal trespass' deserves specific and particular attention in terms of sentencing.

I indicate that the Democrats will be supporting the amendments on the basis that we believe they are in part an improvement. I would not be at all surprised if amendments to this legislation were debated before long. I certainly will not resist that move. I look forward to helping, if we can, to make it better legislation. I ask the Attorney again why there is pressure on this parliament to pass this legislation before Christmas. What is the advantage to the people of South Australia in having this passed in haste, before Christmas, when we could have continued to consider it in the new year?

The Hon. K.T. GRIFFIN: The reason is that there was a public commitment given to do it. The honourable member knows that I have tried to keep this debate on a balanced keel. In dealing with the issue publicly, it was obvious that there needed to be some circuit breaker to address the concerns which were being promoted and which were genuinely affecting many, particularly senior people, in our community. I said when I replied that the rally which was held on the steps of Parliament House had a very frightening aspect to it, almost bordering on hysteria. Notwithstanding that there were a number of older people who were particularly venting their spleen at me, nevertheless a number of those people, with a quite genuine sense of concern, were present both at that rally and in other forums. They are sensible people, including many single women, older single women, and widows in particular, and they have expressed to me the concern that they are very afraid and they want something done about that.

I have indicated, both in the second reading explanation and in my reply, that just passing a law such as this will not solve the problem. We need to have a much broader approach to dealing with the causes of crime, but ensuring that there is a criminal offence which is not breaching the integrity of the criminal law may go some way towards sending a signal to people that at least the criminal law aspect of the broad issue has been addressed. Many of those people who have spoken to me quite obviously were afraid because of a lot of the hype that had occurred through the media and public comment. I have sought to urge everybody who talks about this sort of issue, and crime in general, to act with a sense of responsibility in the way in which they promote a particular issue or set of circumstances, so that we do not unnecessarily beat up crime to the extent where ordinary citizens, who are only exposed to the facts or what they believe to be the facts through the media, suffer heightened fear as a result of that hype.

It is perfectly legitimate in the public arena for members of parliament and others to comment on crime statistics and court cases (provided they are still not sub judice—and even then there can be comment, provided it is measured comment), and for people to deal with the issues responsibly. The Institute of Justice Studies, for example, promotes an annual competition for the media and makes media awards for responsible reporting of issues relating to crime, safety and justice.

That is to be commended, because it seeks to set some standards. Responsibility is something which I have always sought to promote in dealing with this issue. Another perspective which again I have sought to promote is that this is not just an issue for government, or the police: it is an issue for the whole community, because frequently the causes of crime originate not as a result of government failure or lack of policing but because of dysfunctional families and because of particular problems. They may be social in the sense of unemployment, or they may be as a result of some intellectual, learning or other disabilities. They are not an excuse for criminal behaviour but nevertheless they are causes which, if we address them appropriately, are likely to result in those persons not thereafter leading a life which is on the other side of the law. That is the perspective which I bring to this.

In respect of these two bills, the genesis for this form of amendment was really back in the report from the Model

Criminal Code Officers Committee, published first as a discussion paper and then as a report in 1996 or 1997, dealing with theft, fraud and related offences. Among other things it sought to significantly restructure the offences of burglary, robbery and other similar offences. The pattern of this amendment, which reflects quite significant restructuring of the law relating to criminal trespass, is in the Model Criminal Code Officers Committee's recommendations in that report.

It is acknowledged that there are differences, but it is not as though this has not been considered. The government has made a decision that it will seek to adopt a substantial number of the recommendations of that Model Criminal Code Officers Committee report. We made that decision some time ago. The drafting is occurring; even though there is a model bill in the report, we are still addressing some issues at the governmental level. We made that decision quite some time ago. So, the principles of this bill are picked out of the MCCOC report. They do not reflect on all fours the recommendations of that committee, but that is the genesis of this proposal.

I have indicated previously that for some time we have been doing a lot of thinking about so-called home invasions, and the evidence of that is in the August 1999 report from the Office of Crime Statistics. Obviously, when this issue is being talked about on a regular basis you cannot help focusing minds on it. The discussion paper took some time to develop and sought to put it into a perspective, and the sorts of things I am now indicating are encompassed in that discussion paper. It was intended that we would wait until 11 November for submissions on the discussion paper. We introduced the two bills prior to that, but I indicated that there would still be an opportunity for public consultation. As a result of that consultation—and I might say that submissions were not thick on the ground, but there were several that were of particular value—the legislation was recast, particularly the sentencing bill and also this bill in respect of the amendments which I am now moving.

So, the public commitment having been given to pass these, having done a large amount of work on them, I am reasonably comfortable that they are now in a form that will not compromise the integrity of the criminal law and will not, as far as one can guess—and perhaps also reason—result in injustice. However, I can give an undertaking to the honourable member, as I do to the committee, that we will be monitoring the implementation of this. There will be consultations, particularly with the judges, the Director of Public Prosecutions and police, as to the most appropriate time to bring this into operation. All members will be aware of the opposition's challenge to bring it into operation by Christmas. That may well be an achievable target, and certainly we will do our best to ensure that that occurs, but nevertheless will also ensure that it is done properly and constructively.

The Hon. IAN GILFILLAN: I appreciate that the Attorney's answer to my question was 'We made a commitment.' I interpret that to mean that the commitment was made in the face of pressure from the opposition, the media and the crowd on the steps of parliament and that if the Attorney had had his way we would have had more time to deliberate. When these two bills are passed in their amended form, does the Attorney expect that those people who are frightened of home invasion will be able to rest easier in their homes as a result? If so, in what way will the two pieces of legislation have an effect on the commitment of the offences?

I recognise that the Attorney has already partially answered that question, but we need to crystallise it. If there is to be little or no effect on the offence, is not the charade of putting up these two bills, with both the push from the opposition and support from the nervous Nellies in the government, an act of deception on a rather gullible public, who think they will be safe as a result of these two bills?

The Hon. K.T. GRIFFIN: I would not accept that it is a charade. I would not accept—

The Hon. Ian Gilfillan: The bills are not a charade, but the image that they will make people immune from home invasion is a charade.

The Hon. K.T. GRIFFIN: With respect—

The Hon. T.G. Cameron: Do you believe that home invasions will fall now as a result of this legislation?

The Hon. K.T. GRIFFIN: I do not think anybody can make a judgment about that, but it is not a deception, because symbolism is important in endeavouring to ensure that the level of fear is diminished. We have to come at it from two perspectives. I do not think anybody denies that the current offence of burglary is an archaic offence. As I have indicated, the Model Criminal Code Officers Committee considered that and published a report which the government adopted, but it has not yet satisfied itself with the drafting of legislation to implement those changes—theft, fraud and related offences.

This part of the criminal law was in need of reform. So, putting aside the issue of perception, if one looks at the way in which we are now structuring this area of serious criminal trespass it is, as I have already indicated, something which is appropriate. It was going to occur at some stage. The way in which we have done it I believe maintains the integrity of the criminal law.

The whole object of these amendments which I now move is directed towards ensuring that we constrain it even more and limit, if not totally eliminate, the prospect of injustice. However, where you have a system in which juries make decisions—you prosecute and you have to prove your case beyond a reasonable doubt—there is no way in which you can give an absolute guarantee that there will be no injustice. You just have to endeavour to identify where there are potential injustices and develop processes to ensure that you limit the opportunity for that to occur.

So, in terms of the substance of the criminal law, in none of the submissions or public comment has anyone denied that some reform of this area of the law is necessary. They might have disagreed with the way in which we have done it, but I think that, as a result of the consultations we have had—recognising that we have just not waited for people to say that they have a submission to make: we have been out there actively soliciting comment on the bill—with these amendments the bill will be a good reform of this part of the criminal law.

If one accepts that, we then need to move to the next stage: what impact will this legislation have? One can never really judge what impact changes to the criminal law will have on crime. I said in my second reading explanation when I introduced the bill that the impact of deterrence and whether it is actually achieved is something which frequently is difficult to discern. However, that is one of the sentencing principles that the court must take into consideration when imposing a sentence. There is no doubt that—

The Hon. Ian Gilfillan: If you find it tough to determine, how much tougher will it be for the court to determine?

The Hon. K.T. GRIFFIN: The courts deal with these sorts of cases daily. On a practical basis, they are endeavour-

ing to balance the various principles which must be taken into account under the Criminal Law (Sentencing) Act. So, the principle of deterrence is one which the court must take into consideration.

In terms of the way in which these matters are dealt with, I have no doubt that there will be a significant difference, first, because the DPP will issue some policy guidelines relating to the offences which are to be charged and the circumstances in which particular charges are to be laid, and for all and sundry when a serious criminal trespass is charged—

The Hon. T.G. Cameron: Is that the normal practice?

The Hon. K.T. GRIFFIN: For policy guidelines?

The Hon. T.G. Cameron: Yes.

The Hon. K.T. GRIFFIN: Well, the—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: There is power under the act for—

The Hon. T.G. Cameron: Does the DPP normally do that when you introduce changes to acts or is this a one-off?

The Hon. K.T. GRIFFIN: No, not necessarily. The charging policy is a broader issue. However, in relation to these changes he does not have to do it. I can only give him a direction in writing—and I have tabled that direction. I have had a discussion and have written requesting that it be considered. I have been fairly circumspect in my dealings with the DPP to ensure that no-one can say that I have exerted any undue pressure.

The Hon. T.G. Cameron: We wouldn't say that.

The Hon. K.T. GRIFFIN: You might not, but I am always watching out to make sure that no-one can ever criticise the way in which I deal with the DPP. The DPP, in only the last month or so, has released a policy that identifies a number of principles which are applied to police prosecutors and the DPP across-the-board. If the honourable member wants a copy, I can arrange that for him so that he can see what the prosecution policies are in relation to the exercise of the functions.

There is no doubt that we will have more detailed statistical data relating to serious criminal trespass than we have at the moment. We will have a more consistent charging practice, and this bill (and the second bill) will reinforce what a lot of people have been asserting: that your home is a place where you are meant to be secure and protected. Hopefully, the bill—as a symbolic act if nothing else, but I think it is a substantive act—will help to allay some of the concern which has been created in the minds of older people—even though they are less likely to be the victim of a home invasion than, say, the 18 to 35 year old group—and that, thereafter, the whole issue will quieten down.

All I can say to politicians, media presenters and others who want to make a noise about this is: do so constructively, do not go over the top, just think of the impact that this is having upon citizens in the community—single people who perhaps do not have around them a framework to provide support, comfort and reassurance—who believe when they listen to the gurus on air or read in the newspapers that this is something which is prevalent when, in fact, it is not so prevalent. Nevertheless, this is a serious matter, and these people ought to be given some reassurance that they can lead normal lives if they take sensible precautions rather than living in fear.

The Hon. T.G. CAMERON: I echo many of the sentiments expressed by the Hon. Ian Gilfillan including the fact that this legislation is being rushed through with undue haste. Everyone in this chamber would now be aware of the politics of this issue. However, as the Hon. Ian Gilfillan pointed out, significant changes are being introduced. I suspect that the truth of the situation lies in the comment made by the Attorney-General that the reason why this legislation is being rushed through before Christmas is that a public commitment was made.

I also submit to the committee that another reason could well be the fact that we will have an extremely extended break over Christmas—we will not come back until the end of March. For the first time since I have been here we are being laid off, if you like, on a four month break. If parliament were to resume at the usual time, the case for this matter being held over so that we could have a more thorough look at it would probably have carried the day. I am somewhat surprised that we are not coming back until the end of March and that we will sit for only 42 days next year. Heaven knows what Ralph Clarke will say about that in due course!

I want to make some observations about the significant changes that this bill introduces. I will put my first question to the Attorney. A number of contributors to the debate in this place referred to the issue of drugs and home invasions. I do not intend to bore the committee with a recitation of what everyone has already said but, quite simply, the connection between drug abuse and home invasions is so strong, there is such a positive correlation between the two, that I am surprised that the Attorney-General has not referred at all to the claims that have been made by a number of speakers in both houses that, until we find a satisfactory way of breaking this cycle of physically addictive drugs such as heroin, cocaine, amphetamines, etc, we will not resolve this thorny question of home invasions, which I understand has now been euphemised into 'criminal trespass'.

Why has the Attorney not referred to the issue of drugs and crime, particularly to the connection between drugs and home invasions? What is the Attorney's view on this subject? I share many of the sentiments expressed by the Hon. Ian Gilfillan, that this may have very little impact on the actual number of home invasions taking place, but I also take on board the comments that the Attorney made that this is not just about reducing home invasions but about helping people in our society to feel more safe and secure in their own home.

Will the Attorney-General comment on this relationship between drug abuse and home invasions and why he has not mentioned it; what his views are; and does the government intend at some stage, as the Premier has indicated, to have a good look at this issue and do something about it?

The Hon. K.T. GRIFFIN: With respect to the honourable member, when I replied I did refer to that, particularly in relation to the drug court trial. I indicated that we have been doing a lot of work in relation to the drug court trial and hope to have it up early in the new year. That will also focus on those who might have committed not only serious criminal trespass offences but other criminal behaviour, and who, either because of the drugs or for other reasons—

The Hon. T.G. Cameron: I plead guilty to attention deficit syndrome on occasions when you're talking, Mr Attorney!

The Hon. K.T. GRIFFIN: That is all right. I talk at length sometimes and I can't blame you for having it. But I did talk about that on the basis that we would seek to be able to deal with those offenders who are willing to go on to the program but who also were offenders with a drug dependency problem. The honourable member has also raised the broader issue of what the government is doing about it. In the budget,

I think about $2.6 million in the current financial year was specifically approved in addition to other funding for a variety of programs that were directed towards trying to help people get off drugs and also to deal with preventing people from going on to drugs or encouraging people not to go onto drugs in the first place.

I cannot give the honourable member the exact figures, but a significant amount of money, I think about $430 000-odd, was made available for new education programs. There was about $1.2 million for the drug court and, I think, about $700 000 for police drug diversion activities. I can get the exact figures and give them to the honourable member by letter. There is an evaluation of the Drug Aid and Assessment Panel that has been operating for a number of years for those who have committed simple possession and usage offences, and a lot of activity, all directed towards both prevention and rehabilitation.

In terms of the effect of drugs upon crime, the Commissioner is of the view that, from his officers' experience, drugs (either directly or indirectly) play a significant part in some of the more serious crimes of violence such as robbery, break and enter, and so on. From some of the work we have done it is obvious that a number of these offences occurred because people are dependent upon drugs. But the other interesting thing about the research work we are doing in relation to home invasion-type offences is that a number of offences are committed by persons who must be known to the occupant or, at least, the occupant is known to them, because they are related to the stealing of marijuana on the premises.

They have been included in the robbery in a dwelling category, and one cannot really say that they are typical home invasion cases as we would normally describe them. But the stealing of the three marijuana plants from the back yard is an offence that has been put into the category of robbery in a dwelling. Surprisingly, there are more of those cases—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: That is the information that comes from the police incident reports. I do not know whether they are factual, and that is one of the difficulties with this sort of research. And you cannot blame police for not recording every fact, some of which might not appear to be relevant to the particular offence. But it is surprising that there are more of those sorts of offences than there are in relation to persons seeking to get into a place to steal other drugs.

The problem is that we have had no structured approach to the gathering of information in relation to those sorts of offences. I can tell the honourable member little more about that at the present time. I will obtain the information about programs being funded out of the budget and other programs that are already in existence. There are programs in prisons, remembering that a significant number of those in prisons have an alcohol or drug dependency problem. Again, I do not have all the details of those programs at my fingertips but there are a substantial number of those.

The Hon. T.G. CAMERON: I thank the Attorney for his answer but I think he missed the point I was trying to make. That is that, despite all the programs he has outlined and many more that other state governments (particularly in New South Wales and Victoria) have tried, they have not been able to break this drug abuse cycle and the correlation that it has with home invasion, and I am referring principally to the addictive nature of heroin. Until society recognises that it is a health problem and not a law problem, I suspect we will continue to throw additional millions of dollars at the problem and will not really resolve it. However, that can be a subject for another day.

Whilst it is not directly related to this bill, the Attorney did raise the following subject. When is this government going to undertake a public education program to let our kids know that it is illegal to grow more than three plants and that, particularly if they are 18 years of age, they are placing themselves in great danger by having five or even six? There has been so little publicity by the government and so little attention given to a decent public education on that issue that I ask the attorney: could it be used as a defence by someone? I suspect that I know the answer to this, but could it actually be used as a defence by someone down the track?

Public awareness of the regulatory change that has been introduced is almost zilch. I have had to caution a young male and a young female who were unaware of the change and who had no idea that they could be placing themselves in a position where they could receive a drug sentence. They still believed they were operating within the law by each having nine marijuana plants happily growing in their backyard. Would the government give some consideration to making the public more aware of this law—as stupid as it is?

The Hon. K.T. GRIFFIN: Anecdotally, there appears to be a perception that, as the honourable member said, originally growing 10 plants, now growing three plants, is lawful. But it is not: it is illegal. It is just that the person who might be the offender receives an expiation notice. I will dodge the question at the moment, but I will undertake to get a reply from the Minister for Human Services. The Controlled Substances Act under which this law has been made is committed to the Minister for Human Services.

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: He has a Controlled Substances Advisory Council which considers these sorts of issues and reports to him. I will have to refer the issue of an education campaign to him.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: Yes, if I forget do not criticise me, just remind me. I will get the answer for the Hon. Mr Cameron. If I forget to circulate it to all members, do not criticise me but just remind me. However, I will endeavour to circulate it to all members.

The Hon. T.G. CAMERON: We can only hope that the Attorney's memory is a little better than the Treasurer's on all these commitments that are given to get back to us, to obtain information, 'I will send you a copy', and so on. One day I might table a list of the information I am awaiting from the Treasurer.

I am interested in the amendments that have been moved in relation to how we define a serious criminal trespass. The Attorney-General gave some examples of a drug invasion, etc. One area that exercises my mind—and it is largely being exercised by its ignorance on this matter—is the relationship between domestic disputes and a serious criminal trespass. I do not suppose there is any more despicable type of crime than domestic violence (and I have made comments on that subject before), but I am concerned because I do not know how it operates. For example, if a de facto couple are living together and then separate, and for some reason or another an assault then takes place at either one of the partner's home by the other partner, how does the law in relation to domestic violence operate in relation to a serious criminal trespass? Could we get into a situation where a former de facto assaults their former partner in their home and has no real defence as to why they were there? Could the Attorney-General outline

what sort of circumstances or situations could occur which would differentiate an assault under these circumstances from domestic violence or entering the arena of serious criminal trespass?

Another example is that of a boyfriend and girlfriend: they break up, or they are at the house, a dispute breaks out, either one of the partners assaults the other and they then get reported. Under what circumstances could such an incident fall under serious criminal trespass? Do we have amendments in place to ensure that we will not get a problem? There could be further examples between couples of the same sex. Often when these relationships break down and disputes arise further down the track, you can end up with a very complicated, messy legal situation. Could the Attorney-General address some of those issues?

The Hon. K.T. GRIFFIN: That issue was addressed in the drafting of both the bill and the amendments, but I suppose the issue of a relationship is largely irrelevant. It is the intention of the person who might ultimately be the assailant and also whether or not consent to enter or remain on the premises is given. The provision in the amendments is that a person who enters or remains in a place with the consent of the occupier is not to be regarded as a trespasser. I suppose, if you have a couple who—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: I use that as a manner of speaking. If there is a couple, say married, who separate and live apart, and who have agreed that they will live separate and apart, if the one who is living away from the particular premises returns and is invited into the premises, that is fine. If the occupier of the premises—the former partner—and the visitor have an argument and if the occupant says, 'Get out', generally speaking that is likely to indicate the removal of consent to remain on the premises. If, at the same time—

The Hon. T.G. Cameron: I would have thought it meant, 'Get out.'

The Hon. K.T. GRIFFIN: I am trying to be as specific as I can be. If the visitor says, 'I'm not going', and, instead, assaults the occupant, then that person would fall within the category of serious criminal trespass. Ultimately, in relation to the offence with which that person is charged, the prosecuting authorities will determine from all the circumstances whether it will be prosecuted as a common assault, a domestic violence assault (depending on whether or not the relationship is a continuing relationship), assault occasioning actual bodily harm or even attempted murder. There will still remain a discretion on the prosecuting authorities, hopefully within the guidelines that are proposed to be issued by the Director of Public Prosecutions.

The Hon. T.G. CAMERON: I thank the Attorney for his answer but make the observation that, with many of these domestic disputes when assaults or violence break out, there are only two people present: the person who commits the assault and the victim. We are looking at a situation where the penalties for common assault and serious criminal trespass are very wide apart. I guess that part of my concern is that many situations will arise where it will be extremely difficult for a judge or jury to determine who is telling the truth. In many of these situations involving a domestic dispute, truth is often the first casualty when hostilities break out.

I guess what concerns me is the onus of proof—and if I mess this up please correct me, because I am a bush lawyer at best—which would rest with the Crown, because ascertaining who is telling the truth—either the assaulter or the victim—could be extremely difficult. I am a bit concerned that in some of these situations we could find ourselves in a position where serious allegations were made by an aggrieved partner and the testing of the truth would be an extremely difficult process.

Let me give the Attorney another example, because I am a bit concerned about this and I guess that is why I am inclined to support the view of the Hon. Ian Gilfillan. It does appear to me that this is being done on the run, with indecent haste for, I submit, populist political reasons. I have been in this place for five years and this is the first time I can recall the Attorney pushing through such a complex piece of legislation as quickly as this. Without wishing to be critical, I point out that it is a little out of character.

The example I cite is related to the example that the Attorney gave me: we could easily end up with a situation where the person is not invited in but merely walks past the person who opens the door and reposes in the lounge room and, without anything else taking place, an assault immediately occurs—and it could be the person who owns the house who assaults the other person. That is not a home invasion.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. CAMERON: But a situation could arise where you do not know who started it, who threw the first punch or precisely what happened. In a situation such as that, how do you determine whether that is a common assault or a serious criminal trespass if all that has occurred is that one person has pushed past another, is inside the house and then an assault takes place, with claim and counterclaim? How do you differentiate between the two? I make the point again that we are talking about significant penalty differences.

The Hon. K.T. GRIFFIN: I do not think I can give the honourable member a definitive answer, because we have to come back to trying to determine the facts from all the circumstances. The same issue arises already in allegations of rape, where it is very difficult to establish from the two different stories. Only two persons might have been present, with an allegation that there was no consent and a counter allegation that there was. Those issues are now resolved. Ultimately, they are questions for a jury but, before they get to that point, the Director of Public Prosecutions has a responsibility to determine whether or not on the evidence he believes that there is a reasonable case to present which may, at least on the face of it, lead to a conviction.

They are very difficult decisions. The honourable member would have noted the controversy in the cases where the Director of Public Prosecutions has said, 'I'm not prepared to proceed.' They can be controversial cases for a variety of reasons. I instance an altercation in a home where the assailant and the victim (the victim being the occupant) might have had a relationship but have separated. The police, when they get to the premises, may see that the place is in a shambles, that there has been a huge brawl and that one person is suffering significant injuries which could have occurred only as a result of the acts of the other person, however that situation developed. It is more than likely, in those circumstances, that all the evidence would point to a lack of consent if not to enter the premises then to remain on the premises, from the very fact that you have a victim who is seriously injured and who is the occupant.

A lot of the factual information might relate to perhaps a continuing saga over a period of time of behaviour by the assailant that will lead ultimately to establishing that it is the assailant who entered the premises without consent, remained there without consent, and committed a serious criminal offence in addition to the serious criminal trespass. The

Director of Public Prosecutions ultimately has to weigh up all those factors and make a decision about what charge should be laid, if any, and whether he has sufficient evidence upon which there will be a reasonable prospect of a conviction.

The Hon. CAROLYN PICKLES: I thank the Attorney for giving a definition on the issue. I have to say quite frankly that if any man breaks into a house, whether or not they have been a marital partner of the woman, and beats her up almost to the point of death I have absolutely no sympathy with him whatsoever, and I hope the judge throws the book at them. I do not think it makes any difference whether it has been a relationship. In fact, there may have been a fairly reasonable discussion initially and then it deteriorates, and I would think that the DPP would take all those things into consideration. However, I think this is a fine point here. I am quite satisfied that the government has taken these things into consideration, in looking at these amendments, we hope, and this was one of the reasons that we asked in relation to this bill whether the Attorney would report back to the parliament on the effectiveness—

The Hon. K.T. Griffin: I have indicated that.

The Hon. CAROLYN PICKLES: The Attorney has indicated that he will do so. So I think that even though there are accusations that this has been introduced in great haste I remind honourable members that the Labor Party had similar legislation which we proposed at the time of the last election, and we are certainly supporting this. I again reiterate that I have no sympathy for anyone who breaks into or enters unlawfully, when they have been in a relationship, and terrorises the person involved. I think it is exactly the same, if not worse, than a stranger breaking into a person's home and terrorising them. In fact, possibly the long-term effects in relation to someone a person has known and had a relationship with would be more horrific than if it was a stranger, which situation a person can at least rationalise in their mind.

The Hon. T.G. CAMERON: In view of the concerns that have been expressed by a number of speakers in both houses, I would ask the Attorney-General whether he would be prepared to monitor this legislation.

The Hon. Carolyn Pickles: He did say that.

The Hon. K.T. GRIFFIN: Yes, across the chamber, and I have already indicated in reply to the Hon. Mr Gilfillan that I would do that.

Amendments carried.

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

Page 2, after line 16—Insert new section as follows:

Criminal trespass—places of residence

170A.(1) A person who trespasses in a place of residence is guilty of an offence if another person is lawfully present in the place and the person knows of the other's presence or is reckless about whether anyone is in the place.

Maximum penalty: Imprisonment for three years.

(2) In this section—

'place of residence' means a building, structure, vehicle or vessel, or part of a building, structure, vehicle or vessel, used as a place of residence.

This amendment inserts a new offence into the bill. As is the current law, all the proposed offences are what might be called 'trespass plus'. The 'plus' is the intention to commit a further offence after unlawful entry or remaining on the premises, but there are some marginal cases which seem to fall within the notion of home invasion in which that further intention may be difficult to prove. The point may be illustrated by an example: suppose an elderly lady in her flat alone wakes up in the middle of the night to find a masked person standing in her bedroom. She cries out and flees the scene. Most people would call this a home invasion. It is certainly a trespass in the victim's residential property, but it may not be an offence as such. If in the situation which I have described the jury cannot find sufficient evidence of the 'plus' intention to commit a further offence, no offence is committed.

Mere trespass on to private property is not and never has been an offence without something more. Now, it may be that even in the kind of situation that I have described the jury might find a technical assault quite frightening. They might be able to infer in most cases an intention to steal, but that cannot be guaranteed. For all anyone knows, the person might just enjoy the thrill of invading other people's homes. It may not be a common case. In most cases some kind of inference could be drawn, but technically there is a possible mismatch between a lay person's definition of home invasion and the scope of the law now and as proposed.

The amendment is designed to fill the gap. It is proposed to insert an offence of criminal trespass in a place of residence where another person is lawfully present and the person trespassing knows or is reckless about the presence of that other person. The maximum penalty is set at three years, and that is done because we wanted to make that comparable with the maximum penalty for the offence of stalking.

The Hon. CAROLYN PICKLES: The opposition supports the amendment. To clarify that: is the Attorney telling me that if somebody broke into my home at night and I woke and screamed and subsequently the person was caught after having left the premises that person is not guilty of any offence?

The Hon. K.T. GRIFFIN: No; what I am saying is that it might be possible to infer that they were there for the purpose of stealing; they might have been there for some other purpose which was of a criminal nature. But there is just a possibility that you might not have been able to get them for anything. What we are trying to do is just make sure that that does not happen.

The Hon. T.G. CAMERON: SA First indicates, after hearing the Attorney-General's submissions and his answers to my questions, that we will be supporting the government's amendment.

Amendment carried; clause as amended passed.

Clause 6 passed.

New schedule.

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

After clause 6, page 3—Insert new schedule as follows:

SCHEDULE

Amendment of Summary Procedure Act 1921

The Summary Procedure Act 1921 is amended—

(a) by striking out from the last item in section 5(3)(a)(iii) 'section 169, 170, 171 or 172 of the Criminal Law Consolidation Act 1935 (breaking and entering, etc.)' and substituting 'section 171 of the Criminal Law Consolidation Act 1935 (nocturnal offences)';

(b) by inserting before the item referred to in paragraph (a) the following item:

— an offence against section 169(1) or 170(1) of the Criminal Law Consolidation Act 1935 (serious criminal trespass, etc.) where the intended offence is an offence or dishonesty (not being an offence of violence) involving $25 000 or less or an offence of interference with, damage to or destruction of property involving $25 000 or less;;

(c) by striking out from the table in Schedule 3 the item relating to section 173 of the Criminal Law Consolidation Act 1935.

This amendment is procedural in nature. It deals with the appropriate classification of the proposed new offences and hence with the way in which they are prosecuted and tried. Section 5(3) of the Summary Offences Act in effect creates a list making what would otherwise be major indictable offences minor indictable offences. In relation to the current burglary and related offences the current minor indictable list reads: an offence against section 169, 170, 171 or 172 of the Criminal Law Consolidation Act 1935, breaking and entering etc., where the attended offence is an offence of dishonesty, not being an offence of violence, involving $25 000 or less, or an offence of interference with damage to or destruction of property involving $25 000 or less, and the defendant is not alleged to have been armed with an offensive weapon or in company with a person so armed.

Section 172 disappeared and became section 270B in 1995 as a result of the felonies and misdemeanours legislation. It can be left out. Section 171 is unchanged by this bill and previous legislation, so the rules remain the same for it. Sections 169 and 170 will become completely different. Section 169(2) is punishable by 25 years, and section 170(2) by life, so they must be major indictable. Section 169(1) is punishable by 10 years, and section 170(1) by 15 years. They are made minor indictable. Section 173, larceny in dwelling houses, is repealed by the bill, so the reference to it in the schedule to the Summary Offences Act should be removed.

The Hon. CAROLYN PICKLES: The opposition supports the amendment.

New schedule inserted.

Long title.

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

After '1935' insert:

; and to make a related amendment to the Summary Procedure Act 1921

Amendment carried; long title as amended passed.

Bill read a third time and passed.

BUILDING WORK CONTRACTORS (GST) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 524.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports the second reading of this bill. Again, this is a bill that we agreed to deal with expeditiously because, once the session concludes, parliament will not resume for four months. The Attorney has brought to the attention of the opposition that, when we are looking at the issue of a GST, which is a tax to be paid by suppliers of goods and services, it is supposed to be cost neutral to business, and it has been structured to operate that way. However, within the building industry, section 29 of the Building Work Contractors Act constrains the passing on of the fee in this situation.

Two building industry associations have approached the government and indicated that, after 1 July, if this provision is not amended, building contractors would not be able to pass on the GST in respect of domestic building contracts. We have contacted a number of people in relation to this bill, and not all people support the government's legislation. We feel that it would be a rather stupid move not to support this, because it would have quite a serious impact not just on large building contractors but on small building contractors, and that would not have been the intention behind the introduction of the GST. I think South Australia is the only state that has this kind of limitation in its legislation, so it would seem to me that this is something that needs to be done and done with some urgency so that people are not disadvantaged in any way.

It has been brought to my attention by some people when we have contacted them that they believe that building contractors are already adding on the GST levy of 15 per cent. They may be doing that, but it is highly illegal, and legislation has been passed to make that illegal with quite serious penalties. So, this is a sensible measure which will ensure that the building industry is not disadvantaged in any way as a result of the introduction of the GST in July next year.

The Hon. IAN GILFILLAN: I see no difficulties with this bill. The Attorney-General has pointed out in his second reading explanation why the bill is necessary. The reasons are persuasive and reflect commonsense. It is most encouraging to realise that the home building industry is booming. In this climate there is undoubtedly a positive advantage for consumers in requiring contractors to spell out the possible effects of the GST in 'prominent type or handwriting'.

Also it will operate as a safeguard for builders who otherwise may be unjustifiably accused of profiteering. If the commonwealth in its legislation has provided that all contracts may be negotiated to incorporate the effect of the GST, I would have thought that this would cover the field adequately. Under section 109 of the Constitution, I assume that the commonwealth legislation would override section 29 of the Building Work Contractors Act to the extent of any inconsistency. Nevertheless, it is probably just as well that the rights of the parties are made perfectly clear in the Building Work Contractors Act, and to this end the Democrats support the second reading.

The Hon. A.J. REDFORD secured the adjournment of the debate.

[Sitting suspended from 12.57 to 2.15 p.m.]

PROSTITUTION

A petition signed by 97 residents of South Australia praying that the Council will strengthen the present law and ban all prostitution related advertising to enable the police to suppress the prostitution trade more effectively was presented by the Hon. R.D. Lawson.

AUDITOR-GENERAL'S SUPPLEMENTARY REPORT

The PRESIDENT: I lay upon the table the supplementary report of the Auditor-General entitled 'Agency Audit Reports 1998-1999'.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Reports, 1998-99

Adelaide Convention Centre

Seventh Australian Masters Games Corporation
South Australian Motor Sport Board
South Australian Tourism Commission

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

Reports, 1998-99
Freedom of Information Act 1991
Industrial Relations Court and Commission
Occupational Health, Safety and Welfare Advisory Committee
Privacy Committee of South Australia
State Emergency Services SA
State Records of South Australia
State Supply Board
Construction Industry Long Service Leave Board—
Actuarial Report, 1998-99

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

Reports, 1998-99
Aboriginal Housing Authority
Administration of the Radiation Protection and Control Act 1982
Commissioner for Charitable Funds
Department for Environment, Heritage and Aboriginal Affairs
Departments for Transport, Urban Planning and the Arts
Next Stop, 2000! (TransAdelaide)
Optometrists Board
Passenger Transport Board
South Australian Community Housing Authority
South Australian Housing Trust
Transport SA

By the Minister for Disability Services (Hon. R.D. Lawson)—

Office of the Public Advocate—Report, 1998-99.

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE

The Hon. A.J. REDFORD: I lay on the table the second report of the committee on impacts of past and present coal mining operations on the health of workers and residents of Leigh Creek and environs.

WOMEN'S STATEMENT

The Hon. DIANA LAIDLAW (Minister for the Status of Women): I seek leave to make a ministerial statement on the subject of the women's statement 1999-2000.

Leave granted.

The Hon. DIANA LAIDLAW: I seek leave to table the statement.

Leave granted.

The Hon. DIANA LAIDLAW: The women's statement 1999-2000 highlights government initiatives to bring about significant changes for women in the public sector. The initiatives build on the investment that has been made over the past six years in programs and services to enhance the status of women. For instance, for women in rural and regional South Australia, we are breaking down the barriers of isolation and distance.

1. Passenger transport networks have been established in six rural areas—Victor Harbor, the Riverland, the Mid North, the South-East, the Barossa and Eyre Peninsula. These networks assist women with transportation where there is no public transport.

2. In August a business plan and kit for rural women entitled 'Road map to reality: planning your business dream' was released by the Women's Advisory Council to help women transform their ideas into successful businesses.

3. Rural women's health and well being plans have been developed for the first time in seven country regions and a 'Shaping the future' leadership development course is enabling rural women to take leading roles in their communities.

4. The Women's Information Service has expanded its information support and referral service for women in rural areas through mobile outreach services and the rural internet access sites. During this year the Women's Information Service has increased client contacts by 43 per cent.

Two new publications, 'On board', an induction kit for new members of boards and committees, and a 'Mentoring for women' guide, have been developed to assist women to achieve their career and personal goals. These are an important part of the government's efforts to increase the representation of women on government boards and committees. South Australia continues to lead all the states in Australia with the highest number of women on government boards and committees; 47 per cent of all appointments made last month (October) were women.

Public and personal safety for women continues to be high on the agenda of the government. A central violence intervention project and a new family violence court in Adelaide have been established to ensure a better response to families affected by violence.

During this International Year of Older Persons, a number of women's organisations, including the Asian Women's Consultative Council and the Bangshees Women's Drumming and Percussion Group, were funded to promote the theme of positive ageing. The government has realised the following three important policy initiatives this year:

1. In March the South Australian Women's Trust was launched with the government contributing the first donation of $10 000. The trust will fund women's organisations, groups and individuals for projects that advance the economic, social, health and welfare status of women in South Australia;

2. As part of the 1999 Telstra Businesswoman of the Year Award, the government sponsored a new category for women under the age of 30 in line with our commitment to promote the achievements and skills of young women; and

3. The outstanding contributions being made by women to our state are now being recorded by the State Library as part of a collection of oral histories of women.

Meanwhile, the Women's Advisory Council has produced a series of financial checklists to provide tips for women to gain financial independence. Paid maternity leave has been introduced for the first time in the South Australian public service. The government has expanded the Roma Mitchell House vacation care program to help government employees (including the work force of Parliament House) to balance their work and family responsibilities.

A number of government departments have established women's development groups, including: Treasury and Finance; Transport, Urban Planning and the Arts; Industry and Trade; and Administrative and Information Services. Measures have also been put in place to increase the number of women at senior levels in the public sector. The Department of Treasury and Finance now requires the development of women to senior positions as part of performance agreements with executives. I commend the Treasurer for undertaking such an initiative and hope—

The Hon. R.I. Lucas interjecting:

The Hon. DIANA LAIDLAW: This is your effort to encourage the appointment of women to senior positions within the office.

The Hon. R.I. Lucas interjecting:

The Hon. DIANA LAIDLAW: Exactly. Also, an equal opportunity employment program for women in schools and TAFE aims to increase the ability of women to compete more effectively for promotion by allowing senior management positions to be advertised to women in the first instance. In recognition of the contribution that women make in so many ways and in every sphere of life, this year's Women's Statement profiles six outstanding achievers, including Joanne Pappin, the first South Australian Telstra Young Businesswoman of the Year. I commend the 1999-2000 Women's Statement to all members. I note that the printed version of the statement will be formally launched on 15 December, and thereafter it will be available to all members through the Office for the Status of Women.

QUESTION TIME

ELECTRICITY, PRIVATISATION

The Hon. CAROLYN PICKLES (Leader of the Opposition): My question is directed to the Treasurer. Will the Treasurer provide an unequivocal guarantee that there will be no scope for litigation against the South Australian taxpayer by one or more of the bidders for the ETSA privatisation contract arising from the introduction of the supplementary rules for bidders just 10 days before the close of bids on 6 December, and has the Treasurer consulted with the Auditor-General on this matter to receive his assurance that this process adequately addresses the Auditor-General's concerns about the potential exposure of the state to litigation?

The Hon. R.I. LUCAS (Treasurer): That is one of the silliest questions that the Leader of the Opposition has ever asked in this chamber. Of course—

Members interjecting:

The Hon. R.I. LUCAS: It's a big call, because the Leader of the Opposition has asked a few silly questions in her time, and this is one of the silliest that the honourable member has ever asked in this chamber. Who in the world can ever give an undertaking in relation to the legal rights of individuals who are part of any process?

The Hon. Carolyn Pickles: You can't, obviously.

The Hon. R.I. LUCAS: Well, neither can the Leader of the Opposition. It is simply not physically possible for anyone to give a guarantee in respect of the actions of third parties. Those decisions can be taken by the individuals and organisations concerned. What we can say is that the government believes that it has in place a process of integrity and probity, which I outlined to the Council yesterday in response to the concerns raised by the Auditor-General. Based on the not inconsiderable legal advice available to the government from two leading national law firms, two leading South Australian based law firms, and crown law within our own state public sector, the government is doing everything humanly possible to ensure that there is no prospect of successful action being taken by unsuccessful bidders or third parties.

The whole process has been structured to ensure that the possibility of people being able to take successful action against the process is limited to the smallest degree possible. That is why we have structured a process contract which, as I highlighted, was used by previous Governments in relation to the sale of Bank SA. It is interesting to observe that the Labor Party's spokespersons were notably quiet in their criticisms in this area when I highlighted this issue yesterday.

The process contract is structured deliberately to try to ensure that the liability of the government in respect of a number of these issues is limited. As with the sale of Bank SA, the Treasurer has considerable discretion. The interested parties sign not only a confidentiality agreement but a process contract where they indicate that they understand the bidding rules. Those bidding rules make quite clear the considerable discretion that the Treasurer (the responsible minister) has in this process.

I can only say in conclusion that the honourable member's question is a further indication—if anyone needed it—of the fact that the Labor Party in South Australia is deliberately trying to scuttle the ETSA leasing process. For all the fine words of members of the Labor Party and others that they want to ensure the maximum benefits to the people of South Australia, the only reason the Leader of the Opposition asks a question as inane as the one she has asked this afternoon, which is designed to turn up the heat in respect of possible litigation by unsuccessful bidders or third parties, is deliberately to try to scuttle this process to ensure that in spite of what will be a successful process for the taxpayers of South Australia the dollars that we receive will be impacted in some way.

The Labor Party of South Australia is terrified that the government will be able to nail a good deal with the ETSA leasing process contrary to all the claims that it has made over the past 18 months about the value of these businesses, and it is now deliberately—

An honourable member interjecting:

The Hon. R.I. LUCAS: It is trying to ensure—

The Hon. T.G. Cameron: Heavens above, you can't have the money too early—you might be able to help fix our economy!

The Hon. R.I. LUCAS: The Hon. Mr Cameron is exactly right. It is trying to delay and scuttle this process.

Members interjecting:

The PRESIDENT: Order! Members have had a fair go.

The Hon. R.I. LUCAS: It knows that, if it can delay this process, because of pressures in the international marketplace on bidders, it can place pressure on the value that might come back to the state and also on the state budget.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It wants to delay the process so that the government cannot pay off the debt and set about trying to correct some of the problems in the budget and in the state economy. The base political motives of the Labor Party have been revealed for all to see. It is sad that the Leader of the Opposition (not only in this but in the other chamber) and the shadow Treasurer are doing all they can to delay the process and to try to scuttle the process so we cannot maximise the proceeds and benefits for the people of South Australia.

The Hon. P. HOLLOWAY: My question is directed to the Treasurer. Given that the Treasurer yesterday told the Council that the company of the adviser identified by the Auditor-General as having a conflict of interest in the ETSA privatisation still has contractual arrangements with the government, will he confirm that the adviser is in fact the

chief executive of the company concerned? If so, how can the chief executive of that company be quarantined from the privatisation process?

The Hon. R.I. LUCAS: I answered these questions yesterday. I indicated yesterday that there was a contractual arrangement with the company, and I will find the exact title that the consultant or adviser held or holds. It is all academic, as I indicated yesterday, because the particular adviser or consultant was removed from the evaluation process way before indicative bids were ever received, way before the detailed data room negotiations that have been going on for the past month or so, and certainly a long way before the final bids will have been received next month. The consultant concerned advised of the potential conflict himself: it was not discovered by the Auditor-General, by the probity auditor or by me as Treasurer. It was advised as soon as he became aware of it.

He took action and then I took action, as I described yesterday, to make sure that there could be no perception of a conflict of interest in relation to this issue. Based on all the legal advice made available to it, the government has done all that it can do—

The Hon. T.G. Cameron: Is the Auditor-General happy? It appears to be so from the press this morning, but is he happy? He seems to be happy now: are you happy that he is happy that the process will go ahead?

The PRESIDENT: Order! A question in an interjection is out of order.

The Hon. R.I. LUCAS: The Hon. Mr Cameron is referring to a question directly put to the Auditor-General yesterday and reported on the front page of the *Advertiser* today. From the government's viewpoint, I welcome that statement from the Auditor-General.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: You can't get much fuller than a question and an answer. The honourable member can continue to try to stir the pot if he wishes. If there are specific issues that he wants pursued, I will certainly consider those to see whether there is anything further I might be able to provide to him.

The Hon. P. HOLLOWAY: As a supplementary question, has the Treasurer received from the Auditor-General an opinion that the state is safe from litigation arising from the activities of this individual, as a result of the explanations provided by the Treasurer?

Members interjecting:

The PRESIDENT: Order! A question has been asked of the Treasurer: let him answer it.

The Hon. R.I. LUCAS: The Hon. Mr Holloway evidently knows what the Auditor-General said. I am not sure that he was actually present yesterday either at the committee hearings or, indeed, afterwards. But it is interesting that the Hon. Mr Holloway says that he knows what the Auditor-General said yesterday.

Members interjecting:

The Hon. R.I. LUCAS: No, I didn't say that: the Hon. Mr Holloway said he knew what the Auditor-General had said.

Members interjecting:

The Hon. R.I. LUCAS: Is that where it comes from? Is that what happened? A confidential meeting? Is that right? The Hon. Mr Holloway confirming—

The Hon. P. HOLLOWAY: On a point of order, the Treasurer is making false allegations. I ask him to withdraw.

The Hon. L.H. Davis: I heard you say it.

The Hon. P. HOLLOWAY: I did not say that.

The PRESIDENT: Order! I cannot hear the point of order, so I take it that there is no point of order.

The Hon. R.I. LUCAS: It was an inane point of order: the honourable member does not know his standing orders. I advise the honourable member that, if he wants to take a point of order, he ought to consult the standing orders and find out exactly under what provisions and conditions he can take a point of order. As I indicated, the Auditor-General—

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Redford. The Hon. Mr Cameron will come to order.

The Hon. R.I. LUCAS: I thank the Hon. Mr Holloway for stopping his chattering. In the past 24 hours the Auditor-General has appeared before the Economic and Finance Committee. I am not a member of that committee: it was in confidential session and I am therefore not privy to what he said to that committee.

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Cameron! I don't think the Hon. Treasurer needs your help.

The Hon. R.I. LUCAS: I do know that part-way through the Economic and Finance Committee hearing yesterday the member for Hart (Mr Foley) excused himself from the meeting to do a range of media interviews—half-way through the Auditor-General's evidence yesterday.

Members interjecting:

The PRESIDENT: Order! It is your question time. I hope that members can keep the energy up for the next two days.

The Hon. R.I. LUCAS: I am perfectly relaxed, Mr President. The Auditor-General has not written to me or provided me with any advice in the past 24 hours. He has been down to the Economic and Finance Committee and provided the members of that committee with advice. He has not provided me with any advice in relation to his response to the government's 60 or so pages, for example. I am not aware of his view on that because he has neither written to me nor contacted me about his views on that issue.

It may well be that in due course he provides some feedback. If that is the case, I may be better informed as to the Auditor-General's views not only on that issue but on a range of others. At this stage he has spoken only to the Economic and Finance Committee, subsequent to having received the information we provided yesterday.

The Hon. T. CROTHERS: As a supplementary question, has the Treasurer read the great Shakespearian epic *Much Ado About Nothing* and, if he has, are there any germane points of pertinency that he sees between that situation of 400 years ago and that which is currently—

The PRESIDENT: Order! I do not believe that is a supplementary question.

The Hon. T.G. ROBERTS: Mr President, it is hard to beat that one for relevancy. I seek leave to make a brief explanation before asking the Treasurer a question about the bidding rules for the ETSA lease.

Leave granted.

The Hon. T.G. ROBERTS: Yesterday, the Treasurer outlined to the chamber the information that bidders are required to provide under the existing bidding rules. The Treasurer also told the chamber that supplementary bidding rules will be issued to bidders and will contain a list of information—

The Hon. T.G. Cameron interjecting:

The Hon. T.G. ROBERTS: I am not sure what figures you are reading, but they are different from the figures I am reading. They will contain a list of information which bidders will be required to include in their final bids to be lodged by 6 December. That is already established. My questions are:

1. Can the Treasurer explain why bidders were not requested to provide complete information at the beginning of the process?

2. Can the Treasurer tell the Council when he became aware that additional information from bidders would be needed and explain the reason for having to issue supplementary bidding rules?

3. Can the Treasurer list the additional information that will be sought under the supplementary bidding rules?

The Hon. R.I. LUCAS: I am a touch disappointed in the Hon. Terry Roberts.

The Hon. T.G. Cameron: He's been made to do it.

The Hon. R.I. LUCAS: I suggest he go back to Mike Rann's office or Kevin Foley's office and suggest they get someone else to ask their questions for them in this chamber.

Members interjecting:

The Hon. R.I. LUCAS: You're curious: I am sure you are. The problem with the advisers to Mr Rann and Mr Foley is that they obviously have not yet had the opportunity to read the 11 page ministerial statement that I made yesterday—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order, the Hon. Mr Cameron!

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order!

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! I warn the Hon. Mr Cameron.

Members interjecting:

The Hon. R.I. LUCAS: I am momentarily diverted. I am surprised at the language that the Hon. Ron Roberts would use about a parliamentary colleague in this chamber—

The Hon. R.R. Roberts: You should hear what I say about you outside.

Members interjecting:

The Hon. R.I. LUCAS: I am not a sensitive and litigious soul. I am disappointed that the statements made by the Hon. Mr Ron Roberts are now on the parliamentary record. I will get back to the Hon. Mr Terry Roberts' questions. The staff of Mr Rann and Mr Foley have obviously not had a chance to either read or understand the statement I made yesterday. That highlights the distinction between an indicative bid process and a final bid process. Indicative bids are not binding: they are obviously not final. They are used to, in essence—

The Hon. T.G. Cameron: Are you sure they understand that?

The Hon. R.I. LUCAS: Well, I don't think so. I will say it again: they are not final and binding. They are used as a process of sifting through those who have expressed interest and made indicative bids to get a good group of short listed bidders, who then spend many weeks working through the data and going through all the detail. Once they have been through all the detail, they then put a final bid to the government. So, it is a different process and that is why it is a silly question that Mr Rann and his advisers have given to Mr Roberts.

The Hon. T.G. Cameron: Don't blame him for it.

The Hon. R.I. LUCAS: No, as I said, the Hon. Terry Roberts is smarter than the average bear and I am sure that he would not have asked the question unless he had to. It is a different process and therefore you require different information at that stage.

In relation to when I became aware of the desire to issue supplementary bidding rules, I would need to check. Certainly, there is documentation. On 20 August in a meeting between the audit staff and ERSU staff, they were advised that supplementary rules would be issued. And, of course, that 20 August meeting is a critical issue, because it makes quite clear that the Auditor-General's own staff were told that the government would be issuing supplementary bidding rules for the final bid stage. It is a critical document, a critical minute and a critical part of the government's argument in relation to this—that we had always intended that the final bid evaluation would be different from the indicative bid evaluation, and that supplementary bidding rules would be issued to assist us in that particular task.

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: Well, obviously now, because, as a result of the ministerial statement and the report yesterday, it is quite clear that his own staff were advised on 20 August of the government's intentions in relation to that. I would imagine that at some stage around then would have been the period when I would have been aware that supplementary bidding rules were to be issued but, to be honest, I would be surprised if I could nominate the date that that piece of information was first registered in my memory bank.

The Hon. T.G. Roberts: Did the staff notify—

The Hon. R.I. LUCAS: The Auditor-General's staff?

The Hon. T.G. Roberts: Yes.

The Hon. R.I. LUCAS: What I said in the ministerial statement yesterday is that we do not know—and I make no criticism of the Auditor-General. We know that the audit staff were there. The Auditor-General was an apology: he is listed as an apology for the meeting. I do not know whether or not they advised the Auditor-General—and that is an issue for the Auditor-General and his staff.

The Hon. Diana Laidlaw: Well, he saw the minutes of the meeting.

The Hon. R.I. LUCAS: I cannot state whether or not he saw them and at what time he saw those minutes, but it is quite clear—and this is why the minute of 20 August is a critical document—that right from that date audit staff had been told that the government would issue supplementary bidding rules for the final bid stage. That is many months ago. In the early hours of the morning, sometime last week, I heard criticisms that the government had locked itself into a process in relation to the indicative bids and a lot of concern was being expressed as to how we would evaluate the final bids. I was concerned to hear that in terms of the criticism last week. If those criticisms or concerns had been raised with me prior to the Economic and Finance Committee meeting, I am sure I could have provided the Auditor-General himself with all that information and with some of the work in progress in terms of the evaluation matrices and also supplementary bidding rules which had been undertaken.

The final question was: what is the nature of the information to be sought? I will take advice on that as to whether or not it is in the state's best interest to announce that publicly. It may not be of any particular concern. I will take advice on that and see whether there is any information I can provide to the honourable member.

The Hon. P. HOLLOWAY: I have a supplementary question. Have the supplementary rules, which the Treasurer announced to the Auditor-General's staff on 20 August 1999,

been cleared with the Auditor-General and has he indicated that the additional information sought will satisfy his concerns about evaluating the bid?

The Hon. R.I. LUCAS: The committee and the Auditor-General yesterday were provided with a number of working documents which are the precursors and part of the final draft that I will approve for supplementary bidding rules. The Auditor-General has those but, as I said in response to the previous question, the Auditor-General has provided comment to the Economic and Finance Committee about the government's response yesterday. The government has not received, and I have not received, any comment from the Auditor-General as to our report or indeed the evaluation matrix, the core of the supplementary bidding rules, how we will evaluate the final bids—that total package of information which was provided yesterday. To be fair to the Auditor-General, it was provided to him only yesterday morning or lunch time. It was obviously a fair effort for the Auditor-General—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, it is not the final form. As I said, it is work in progress. The government is working through that and will be concluding it over the next two to three days, I would imagine, because evidently, I am advised, we have told the bidders that they will see the final supplementary bidding rules on or around 26 November.

NATIONAL CARP TASK FORCE

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about the National Carp Task Force.

Leave granted.

The Hon. J.S.L. DAWKINS: Most members of this place would be aware of the introduced fish known as carp which have been dubbed 'the rabbits of the river' and which have gained the dubious honour of being Australia's most abundant yet most despised large freshwater fish. In recent years, the concerns of the community across Australia have been focused on the development of the national carp task force established at the initiative of the Murray-Darling Association, with limited funding. It has had some additional funding from governments in recent times, but the Murray-Darling Association took the brunt of the funding situation in the early days.

As a result of the work of the National Carp Task Force, in recent times we have seen the development of the National Management Strategy for Carp Control (NMSCC). Part of the strategy includes the roles and responsibilities in respect of carp control for the various tiers of government, particularly for state and territory governments. They include:

· the encouragement of responsible carp management by providing suitable and uniform institutional and legislative frameworks;

· developing and implementing effective policies and programs;

· the provision of leadership, coordination and resources for research, assessment, advisory services, education and public awareness programs for carp;

· to develop and apply local and region specific carp management strategies consistent with the NMSCC;

· to provide ongoing resources to continue to address carp control activities;

· to monitor state and regional carp initiatives to ensure that any state carp management strategy is consistent with the NMSCC; and

· to coordinate and respond to reports detecting new infestations.

My questions are:

1. Can the minister indicate what action the government intends to take to ensure that the strategy is implemented in an integrated fashion in South Australia over the longer term?

2. Can he also indicate what steps will be taken to highlight to the public the dangers of carp infiltrating river systems that are currently free of that fish, particularly the Cooper Creek?

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

ELECTRICITY, PRIVATISATION

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Treasurer a question about the privatisation of South Australia's electricity assets.

Leave granted.

The Hon. SANDRA KANCK: Thank you, Mr President.

The Hon. A.J. Redford interjecting:

The Hon. SANDRA KANCK: Wait until you hear the question.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order, the Hon. Angus Redford!

The Hon. SANDRA KANCK: It is actually an important question. The current controversy regarding the lack of a consistent evaluation basis for the financial details of the bids for the state's electricity assets raises the vital issue of whether or not the leasing process will provide South Australia with a reliable electricity supply.

The Auditor-General told the Economic and Finance Committee, 'The information that has been requested from the bidders is insufficient to allow the government to determine which of the bidders are offering the best price.' Discussion has thus far focused on price, but I have not heard anything said about security of supply. A brief reflection on the social and economic mayhem that Auckland endured after its electricity supply crashed confirms the importance of operational experience.

I note that in his ministerial statement to this Council yesterday the Treasurer indicated that details of the bidders' operational experience were included with the indicative bids. My questions to the Treasurer are:

1. Did the details of the bidders' operational experience include details of operational performance?

2. Will an independent assessment of the bidders' operational performance be obtained prior to a final decision?

3. How will this be obtained?

4. What weighting will the bid assessment process give to previous operational performance?

The Hon. R.I. LUCAS (Treasurer): To be fair, the honourable member obviously drafted her question prior to question time. I have already responded to two previous questions explaining the difference between the indicative bid stage and the final bid stage. With regard to the quote of the Auditor-General from last Wednesday's Economic and Finance Committee, my response is exactly the same as earlier: the government, from 20 August onwards, had advised the Auditor-General's staff that supplementary bidding rules would be issued for the final bid process. So,

the process for the indicative bid is different to the process for the final bid. I do not want to repeat the explanation I gave before, but the honourable member's question traverses the same ground, that is—

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: Sorry, the honourable member's explanation does, and that is the supposed criticism that there is no consistent basis as to how we will evaluate these bids.

The Hon. T.G. Cameron: Don't despair, Treasurer, some of us understand it.

The Hon. R.I. LUCAS: I thank the Hon. Mr Cameron: I am delighted to hear that, together with my colleagues, there is at least one member who does understand it in the chamber. In relation to operational experience—and I will need to refresh my memory as to the detail—I would be surprised if information as to the current performance of existing utilities that the bidding companies operate was not a part of that.

In relation to the final part of the question, I do not think it is in the best interests of taxpayers and in the best interests of limiting the liability to the state to enter into a public debate about how we will weigh various criteria against other criteria for the successful bid. This is part of the issue that the Auditor-General was talking about, that is, ensuring that we have an appropriate evaluation process in place in terms of evaluating the bids. I do not believe that publicly speculating about the weighting of various issues would be part of an appropriate evaluation process. Therefore, I politely decline to put myself in an area where I potentially might be criticised by the Auditor-General for publicly talking about some of these issues.

What I did indicate in the ministerial statement yesterday is that we sought a whole range of information which obviously includes information on the operational experience of our bidding companies. This government is not interested in getting top value and minimising risk, which are the key issues we have talked about, and having a company that cannot run an electricity system. It is foolishness to even think that a minister or a government would want to have somebody who cannot run an electricity system.

The Hon. T. Crothers: It would be electoral madness.

The Hon. R.I. LUCAS: It would be electoral madness, electoral suicide—all the above. We want a system that works. I would have thought that even the government can be given the benefit of the doubt that it is not about trying to destroy our electricity system, sell it off at the maximum price and not worry about the standards for service and delivery. I would have thought that our bona fides—the rigorous regulatory system, the establishment of the independent regulator, the Electricity Ombudsman's scheme, and the codes I have issued in terms of service standards which must govern the operation of the new businesses, which is a highly regulated industry—were well demonstrated by our genuineness, in terms of the regulatory package, that we have looked at.

There is nothing in it for the government to be approving a bidder that will run down the system and cause not only electoral grief for it but obviously a lack of service and quality service for the consumers of South Australia. So, it has been and will be an issue that the government will appropriately consider when it decides who is the successful bidder.

NEW YEAR'S EVE

The Hon. CAROLINE SCHAEFER: My question is directed to the Minister for Transport. Why has TransAdelaide been excluded from the government's New Year's Eve pay offer? Is the minister aware of the statements of union representatives that this exclusion could lead to no TransAdelaide bus, train or tram operating on New Year's Eve?

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

Members interjecting:

The PRESIDENT: Order! The question has been asked.

The Hon. DIANA LAIDLAW: It is true that the rumours are rife that the union secretary elected last year has one agenda—and that is to join up with the Labor Party again. I suspect the shadow minister has been active in promoting such an agenda. But I should not be diverted from what the goals and objectives of the union secretary are. I would like to confirm that for some years TransAdelaide has had a number of differing—

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! Debate should not revolve around the Hon. Mr Cameron. The minister is on her feet; let her answer the question.

The Hon. DIANA LAIDLAW: You are right, Mr President, I was distracted; it was just interesting information that the Hon. Mr Cameron was providing by way of interjection about the union election, and possible investigations of that election. Anyway, I will get back to the matter of the question. For some years TransAdelaide has had a number of differing industrial awards and certified agreements. Those various awards and agreements have, in turn, provided various provisions for employees on New Year's Eve going on to New Year's Day. It has been a long-standing practice that the drivers' wages and conditions should be catered for and respected in terms of their working New Year's Eve and New Year's Day.

The government was made aware that the proposed model for New Year's Eve and New Year's Day entitlements that was being prepared by the Department of Premier and Cabinet would cause varied payments to be made to employees performing this same work within TransAdelaide as a result of local depot certified agreement provisions. This was considered unacceptable. It would certainly be inequitable in terms of bus operators working into New Year's Day, and there were further inequities not only between bus depots but also within TransAdelaide's rail business.

It is my advice from TransAdelaide management that the exclusion from the package that the government has announced does provide TransAdelaide with an opportunity to get equity into the benefits that would be provided to bus drivers, train drivers, and everybody else working on the bus, rail and tram business over the New Year. They want to present a formula that is equitable, and the exclusion does provide TransAdelaide management an opportunity to do so.

The government values the work of all bus drivers and train and tram operators over this period, when many of us will have time off with family and friends, and we do not seek in any way to undervalue that work. We would like it respected, and TransAdelaide management has the capacity to negotiate an entitlement that will meet both the needs of TransAdelaide as a business, the work force, and the customers that they are keen to serve on what is predicted to be one of the busiest days and nights that public transport will

possibly encounter, certainly for this century, and maybe for much longer. So I am confident that the negotiations that are under way now will successfully realise the operation of transport services on New Year's Eve and New Year's Day. I should add that this is an issue in relation to TransAdelaide; Serco and Adelaide Hills are negotiating separately with various unions, and that is being done without the threat of industrial action.

BASKETBALL ASSOCIATION OF SOUTH AUSTRALIA

The Hon. CARMEL ZOLLO: I seek leave to make a short explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Recreation and Sport, a question about the Basketball Association of South Australia.

Leave granted.

The Hon. CARMEL ZOLLO: As members are aware, the Basketball Association of South Australia (BASA) has a $15 million government loan which enabled it to build the Powerhouse stadium. The opposition has been advised that in 1995 the government renegotiated the terms of the BASA loan and gave it a $250 000 annual grant in lieu of the Basketball Association holding concerts in the stadium. We have been informed that recently, following protracted negotiations, the government agreed to grant BASA an additional $250 000 per annum and lengthened the term of its loan to assist it in overcoming further financial difficulties.

Despite undertaking to do so, the Minister for Recreation and Sport is yet to provide adequate answers to opposition inquiries made a month ago regarding whether the Basketball Association has been meeting all of its payments on the Powerhouse loan. In addition, the opposition has been advised that BASA's auditors have identified major credit card irregularities, totalling over $20 000, including items such as personal wear, and that there has been a high turnover of BASA staff, including senior staff and board members, who have resigned in protest in recent months.

Can the minister confirm that BASA now receives two annual grants of $250 000, and can the minister assure the Council that there is now no threat to taxpayer funds arising from the $15 million loan from the South Australian Financing Authority to the Basketball Association of South Australia for the Powerhouse Basketball Stadium, and will the government now take up its option of placing a government official on the BASA board?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I will refer the honourable member's questions to the minister and bring back a reply.

FISHERIES COMPLIANCE OFFICER

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Primary Industries, a question about a River Murray fisheries compliance officer.

Leave granted.

The Hon. IAN GILFILLAN: In the *Murray Pioneer* of Friday 12 November there is an article entitled 'Fisheries officer role under review', and I shall quote some paragraphs from it as follows:

> The Riverland may lose its only fisheries compliance officer next year.
>
> Mr Webb was in the area for only 12 months and was the first to be appointed to the region in three years.
>
> Fisheries compliance manager, Brian Hemming, said this week that because there were not enough compliance officers in the state the positions had to be reviewed annually so areas of the highest priority would be covered.

He was quoted as saying:

> When you have a compliance officer, people are conscious of his daily routine and it makes the level of compliance more manageable.
>
> If you don't have that full-time presence, you are pushing the whole battle of trying to prevent illegal fishing up hill.

The editorial of the same paper states in its first sentence:

> A River Murray without a fisheries compliance officer is environmental suicide.

Further down in the same editorial it states:

> A lack of funding is the major reason the River Murray is not policed properly.
>
> If the government was to introduce a recreational fishing licence for all inland waters, the problem would be solved.

I asked a question on 8 July this year regarding River Murray fishing and some problems relating to it and the Attorney brought back an answer from the Deputy Premier and Minister for Primary Industries, and I quote from point 4 of that very answer as follows:

> The number of persons prosecuted for fisheries offences in any year has varied in accordance with the presence of fishing compliance officers on a permanent basis. For example, in the first month of operation the officer currently located at Berri issued nine enforcement actions, including the compilation of one prosecution brief and the retrieval of 14 illegal devices from the River Murray. Since the opening of the Berri office at least 100 illegal devices have been retrieved from the river, which are not related to commercial licence holders. A few expiations have been issued. However, in the majority of cases the offender is never located.

The reason why offenders are never located is that there is a dramatic shortfall in the number of compliance officers currently on the river. There is just one who is currently placed. At a Walkers Flat meeting which I attended some weeks ago and which I mentioned in this Council, the Director of Fisheries, Dr Garry Morgan, consulting with his staff, said in answer to my question that at least four compliance officers were needed. This is the Director of Fisheries saying the same thing.

Given the overwhelming evidence indicating the importance of compliance officers in protecting and supervising fishing and the taking of native fish from the River Murray, will the minister guarantee the continuance of the currently appointed compliance officer? As the commercial fishers' licences fund that one compliance officer, will he consider instituting a form of recreational fisher licence to fund more compliance officers, at least to the number which his own director, Dr Garry Morgan, asks for, namely four compliance officers?

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

ELECTRICITY, PRIVATISATION

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Treasurer a question regarding the ETSA leasing process.

Leave granted.

The Hon. T.G. CAMERON: I am becoming increasingly concerned about the nature and direction of the attacks that are being made on the government and a whole range of other people regarding the ETSA leasing process. As everyone in this Council is obviously aware, I am no longer a member of the Australian Labor Party, but I read—

The Hon. T.G. Roberts: I hadn't noticed!

The Hon. T.G. CAMERON: I am pleased that you have not missed me.

Members interjecting:

The Hon. T.G. CAMERON: It would appear that the Hon. Carolyn Pickles is happy to miss me. It is good to see there are differing opinions on the subject. I do not want to be distracted, otherwise I will be guilty of going on for too long in my preamble as some others do, and I always try to keep them brief. I noticed in the newspaper this morning that it appears that the government is settling on a joint house committee of two members from the Labor Party and two from the Liberal Party to examine the ETSA leasing process. I am unaware of where all that now is, but perhaps the Treasurer can explain to me where that process is going as well.

I am a little concerned about where we are going and about the proposal to set up a joint parliamentary committee. I say that because I have been a member of a select committee inquiring into the SA Water outsourcing process. I can remember quite clearly the brief and the instructions I received when I attended committee meetings. They were quite simple: convince the public of South Australia that we have privatised the entire SA Water and do whatever you can to destroy the bidding process—cast a cloud over it, destroy it.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: They were the riding instructions that I received from the Labor Party.

The Hon. T.G. Roberts: They weren't given to me and I was on the same committee.

The Hon. T.G. CAMERON: I can understand why they weren't given to you. You might not have been able to carry out the objectives.

The Hon. T.G. Roberts: Obviously you didn't either.

The Hon. T.G. CAMERON: Any reasonable assessment of my role on that committee would show that the government was damaged, and one would hope it learnt some lessons from it. It would appear it has learnt some lessons but the process of learning is still under way.

Beside all that, my concern is about the impact that these attacks will have on the final result for the people of South Australia. We are selling off an asset that the people own. Any actions taken which undermine that process and which reduce the price of the leasing asset that we are selling will be reduced. The losers of that process will be the people of South Australia. I submit to this Council that the Labor Party has already cost the people of South Australia $400 million or $500 million with its convoluted strategies in relation to this process and its final backflip when members voted with the government, Trevor Crothers and I against Nick Xenophon and the Democrats on the leasing process. The hypocrisy was there for all to see. My questions are:

1. Can the Treasurer assure the people of South Australia that the bidding process will go ahead and that at long last we will start the process of reducing our $8 billion State Bank induced state debt that hangs over the heads of all South Australians?

2. Can the Treasurer assure the people of South Australia that the government will resist the tactics of the Labor Party, which are about holding up the process for as long as it can in the lead-up to the next state election, and to reduce the price that we receive for the ETSA lease, to further cast a cloud over the government and anyone else who might have supported it in this proposition?

The Hon. R.I. LUCAS (Treasurer): It is one of the better questions that this chamber has heard over recent years. It comes from the Hon. Terry Cameron, who knows the insides of the Labor Party better than anyone on the other side of this chamber, and it demonstrates that Mike Rann, in relation to the water contract and now in relation to the electricity contract, has set about a deliberate tactic to try to scuttle, first, the water contract and now the electricity leasing contract. The Hon. Terry Cameron for the first time has revealed the instructions he was given by—he did not mention them but let me name them—Mike Rann and others within the Labor Party, to deliberately scuttle the water contract deal, and this is exactly the process that Mike Rann and Kevin Foley are now undertaking in relation to the leasing process.

Members interjecting:

The PRESIDENT: Order, the Leader of the Opposition!

The Hon. R.I. LUCAS: This is a stunning revelation from the Hon. Terry Cameron in relation to the tactics that the Labor Party uses and its leadership—

Members interjecting:

The PRESIDENT: Order!

The Hon. T.G. Cameron: Stop playing politics and think about people for a change.

Members interjecting:

The PRESIDENT: Order, the honourable Treasurer!

The Hon. R.I. LUCAS: The tactics to which Mike Rann and Kevin Foley will stoop to try to scuttle this ETSA leasing process have been revealed, and it is exactly the same process as revealed by the Hon. Terry Cameron that he was asked to undertake to try to scuttle the SA Water contract in relation to that deal a number of years ago.

An honourable member interjecting:

The Hon. R.I. LUCAS: The Hon. Terry Cameron is not a bad operator in relation to some of these issues. He certainly has a bit more talent than some of the rabble on the benches opposite that we confront in question time every day.

Members interjecting:

The Hon. R.I. LUCAS: No, the Hon. Trevor Crothers is not in the Labor Party. There is no doubt that the actions of Mike Rann and Kevin Foley have already cost the taxpayers millions of dollars. There is no doubt. I will not put a figure on it at this stage.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: I am tracing this back to February last year. This is two years in the making from Mike Rann and Kevin Foley. What we have seen in the past few weeks have been deliberate and misleading leaks from the Economic and Finance Committee, and we can all surmise where those deliberate and misleading leaks from that committee have come from. I will not put the name on the public record, but every member in this chamber knows—

The Hon. L.H. Davis: You don't have to: we know.

The Hon. R.I. LUCAS: We know. Every member in this chamber knows the person responsible for the deliberate and misleading leaks. Last week, after the Auditor-General gave his evidence, staff from Mike Rann's office were telling the media that the Auditor-General had made serious allegations of insider trading. We have now seen the transcript; let us see what Mike Rann and his staff say now, when they were deliberately backgrounding journalists last week in relation to insider trading. We can see in two or three of the media outlets where insider trading was listed as being one of the concerns raised by the Auditor-General last week. That transcript has been released, and there is no indication at all

of allegations of insider trading by the Auditor-General—contrary to the leaks from we-know-whom on that committee and, we also know, contrary to the information peddled to the media last week by Mike Rann's staff.

Members interjecting:

The PRESIDENT: Order! Can't the Hon. Paul Holloway take a hint?

The Hon. R.I. LUCAS: It is an example of the base political motives of Mike Rann and Kevin Foley and, as the Hon. Mr Cameron has just said, it is an indication of how they tackled the SA Water issue and they now want to scuttle the electricity leasing issue. They want to delay it and cost the taxpayers' money, and then in the end they want to be able to say, 'There; we told you that you would not get as much money for the leasing of the electricity businesses as you thought you might.'

YUMBARRA CONSERVATION PARK

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking you a question, Mr President.

Leave granted.

The Hon. R.R. ROBERTS: On Tuesday I asked you a question about the procedures involved in the motion in respect of the Yumbarra Conservation Park. I asked you whether there were any precedents and, if so, whether you would supply the details. I also asked you what was the earliest that these matters could be put, the consequence of that being that the Governor can make his proclamation. I understand that you have been seeking advice, including legal advice. As that advice would have been gleaned to assist this parliament, will you provide that information—all those opinions and those precedents that I have asked for—to this parliament? Will you be advising His Excellency the Governor of all that advice before such time as he is asked to make the proclamation, if indeed this proclamation is not done in accordance with past practices and the codes of this parliament and the precedents set on the occasion when the Belair National Park was redefined?

The PRESIDENT: I thank the Hon. Ron Roberts for his reiteration of the question. I do not understand where he gets the idea that I am seeking legal advice. I do not know how he arrived at that understanding; I certainly did not speak to him about that, so I assume that he is making it up.

The Hon. R.R. ROBERTS: I rise on a point of order, Sir. I have not misled this parliament. In fact, I had a conversation with you—not in the Council—when you told me you were seeking advice.

The PRESIDENT: There is a difference between seeking advice and seeking legal advice. I have not sought legal advice. I do not know where the Hon. Mr Roberts got the understanding that I have been seeking such advice; that is the point I am trying to make. He certainly asked me a question last Tuesday—

The Hon. R.R. Roberts interjecting:

The PRESIDENT: I will answer the question. In fact, the time for questions has expired, but under the new rules I assume that, like ministers, the President can complete a reply.

Members interjecting:

The PRESIDENT: I point out to the leader that I do not need advice from the floor. The Hon. Ron Roberts asked me a couple of questions during the debate on the Yumbarra Conservation Park, and the question today refers to the debate which is on the Notice Paper. I am finalising my reply to him, so I think it would be proper for me to give the Hon. Ron Roberts a reply to that question, to which he has now added some other questions, when we reach that debate. I will seek advice on the other questions regarding advice to the Governor and add that to my reply at the appropriate time. I call on the business of the day.

CRIMINAL LAW (SENTENCING) (SENTENCING PRINCIPLES) AMENDMENT BILL

In committee.

Clauses 1 and 2 passed.

Clause 3.

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

Page 1, lines 16 to 25, page 2, lines 1 to 3—

Leave out all the words on these lines after 'amended' on page 1 line 16 and insert:

—

(a) by inserting after the definition of 'goods' the following definition:

'home' means a building, structure, vehicle or vessel, or part of a building, structure, vehicle or vessel, used as a place of residence;;

(b) by inserting after the definition of 'injury' the following definition:

'intruder' means a person who commits a criminal trespass;.

The effect of this amendment is to remove the whole of clause 3 of the bill and replace it with another clause. Since these amendments form part of a cohesive whole I should explain their purpose at the outset. These amendments result from the observation that the sentencing bill provisions were drafted and intended as an alternative to a home invasion offence rather than as a supplement to one. Put another way, the two bills were originally drafted as alternatives rather than as cumulative. This, it could be argued, may lead to complex legal problems. Two have been pointed out and they are:

A. Suppose a defendant is found guilty of or pleads guilty to a simple trespass in a residential building under new section 170(1). It is then open to the sentencing judge to sentence the defendant under the sentencing provisions as a home invader if in the course of the sentencing hearing the judge forms the view that, for example, the defendant knew there were people in the dwelling at the time. In short, despite pleading guilty to the simple offence, the defendant may in effect be sentenced for the aggravated offence. This appears to be incongruous.

B. Suppose the defendant is found guilty of the new aggravated criminal trespass offence on the basis that he was armed with an offensive weapon. Again, it is then open to the sentencing judge to sentence the defendant under the sentencing provisions as a home invader if in the course of the sentencing hearing the judge forms the view that, for example, the defendant knew that there were people in the dwelling at the time. In this situation there would be aggravation in sentence upon aggravation in law.

These observations have led to amendments recasting the sentencing bill so as to complement the serious criminal trespass bill. Since it is not an alternative bill any more, the detailed definition of the home invasion offence is no longer required, because it is in the serious criminal trespass bill. So, instead, a more general concept of an offence committed in the course of a home intrusion has been created, which may

be rape, robbery, theft or anything else; and it is deployed in two ways.

First, it is added to the list of things that the court is obliged to take into account in passing sentence under section 10; and, secondly, the amendments redesign the formula for the criterion for considering imprisonment under section 11. Now it is proposed that the sentencing criterion be a much more general one of home intrusion, and the former potential for overlap is eliminated by making the criteria more general and, therefore, in my opinion, more suitable for the notion of sentencing principles. The amendments currently under consideration define what is meant by 'home' and 'intruder'. The former is designed to catch 'any place of residence'; the latter is simply defined as 'a person who commits a criminal trespass'. This could be any criminal trespass.

The Hon. CAROLYN PICKLES: The opposition supports the amendment.

The Hon. IAN GILFILLAN: The Democrats support the amendment. This appears to be an improvement, and I am personally pleased to see the words 'home invasion offence' removed from the statute book.

Amendment carried; clause as amended passed.

Clause 4.

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

Page 2—

Line 5—After 'is amended' insert:

(a) by inserting after paragraph (e) the following paragraph:

(ea) in the case of an offence committed by an intruder in the home of another—the need to give proper effect to the policy stated in subsection (2);

Lines 7 to 9—Leave out proposed subsection (2) and substitute the following:

(2) A primary policy of the criminal law is to protect the security of the lawful occupants of the home from intruders.

The effect of the first amendment is to insert within the list of matters to which a court is obliged to give consideration under section 10 of the Criminal Law (Sentencing) Act the need to give effect to a policy set out in the following amendment. The effect of the second amendment is to replace the proposed amendment to section 10 by creating a new section 10 subsection (2) and replacing the old one.

It refers to the new concept of home intrusion rather than a home invasion offence. It is noted that this will cover any offence committed in the course of a home intrusion. It also eliminates the potential overlap between the proposed new criminal trespass offences and the sentencing principles. I have referred to that conflict previously in my general remarks.

The Hon. CAROLYN PICKLES: The opposition indicates its support for the amendments.

The Hon. T.G. CAMERON: I indicate my support for the amendments.

The Hon. IAN GILFILLAN: The committee will note that I have amendments on file which reflect an attempt to ameliorate the mischief that I think stands to be done under the original drafting of the bill. I am magnanimous enough to concede that I think the Attorney's amendments are probably even better than mine.

The Hon. K.T. Griffin: That is very generous of you.

The Hon. IAN GILFILLAN: I realise that. There are times when my magnanimity shines forth. I have one lingering area of concern, which I mentioned earlier during my comments on this whole matter, and that is the impression that the sentencing judge is to give a higher priority to imprisonment for this offence than other offences. As far as I know, there is nothing equivalent, even to the amendment to paragraph (b) which provides:

If a sentence of imprisonment is necessary to give proper effect to the primary policy stated in section 10(2).

The Attorney might care to give an opinion on the record about this. Is it the Attorney's understanding that this is a unique direction to the judiciary? If so, why is it considered to be essential to include it in this bill?

The Hon. K.T. GRIFFIN: I do not accept that this provision is unique. I think the honourable member's remarks are directed more towards clause 5 than clause 4. However, dealing with this issue, section 11 of the Criminal Law (Sentencing) Act provides that 'a sentence of imprisonment must not be imposed. . . unless, in the opinion of the court'—and then certain issues and characteristics are identified. So, already there are circumstances in which it is implied that imprisonment must be considered.

Regarding an offence committed in a home, as I said when we were discussing the Criminal Law Consolidation Act amendments, the government takes the view—and I support this; it is a generally accepted view—that you are entitled to regard your home as a sanctuary, to protect it and to make it secure. So, I support the view that a special reference to the home and protection and security in the home should at least be recognised in the law. In this instance, it is recognised in the sentencing principles which complement the substantive offences relating to serious criminal trespass and which, as we know, provide for the serious offence of serious criminal trespass in a residential property.

The Hon. IAN GILFILLAN: I apologise. I was confused. When the Attorney said that he wished to move the two amendments together, obviously he was referring to the two amendments to clause 4. The Attorney is right: my comments relate to the amendment to clause 5. It may save time if we talk this through.

Although the Attorney referred to current legislation, the wording is subtlety different. I cannot remember exactly what it is but it something like 'an injunction to a judge not to impose a prison sentence unless', whereas the wording in the amendment is 'a sentence of imprisonment may only be imposed'. Although it is only marginally different, it is definitely cast in a more positive sense. So, I still stand on my argument that there is an extra emphasis on imprisonment being applicable to this offence. I will not belabour the point, but I think there is a subtle difference in the wording.

I am a little more concerned about the other matter that the Attorney raised because, in a way, I think he is being indoctrinated by some of the rather insidious propaganda. No-one denies the fact that a home should be regarded as something precious for people to enjoy with the expectation of protection and privacy. I do not think that issue is in debate. However, what I do think is in debate is: because the sentiment around the word 'home' comes into an offence, that offence then automatically becomes more liable to a heavier penalty because of that fact alone. That is my observation on part of the answer which the Attorney gave before.

To be effective, the law has to be almost sterile of emotion and sentiment, otherwise it has a tendency to be warped. That is why I think that the biggest hazard we had in this legislation was that it galloped along in response to emotion, sentiment and fear. We have reined back a lot of that, and I feel that it is much better now as amended than it was in its original state. But if the Attorney ever refers to *Hansard* he will note that I still have this concern that, by the force of

gravity of the propaganda, because it has the word 'home' attached to it, the offence will not be measured on the actual merits, culpability or nature of the offence but will get a more severe sentence, more severe treatment by the judge because it has this association with 'home'.

Amendments carried; clause as amended passed.

Clause 5.

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

Page 2, line 23—Leave out proposed paragraph (b) and substitute the following paragraph:

(b) if a sentence of imprisonment is necessary to give proper effect to the primary policy stated in section 10(2).

This is an amendment to section 11 of the act, which deals with the circumstances in which a court should consider imposing a sentence of imprisonment. It is therefore a serious matter. The effect of the amendment proposed here is to make sure that, when considering whether or not to impose a sentence of imprisonment, the sentencing court has due regard to the primary policy set out in the previous amendment.

The Hon. CAROLYN PICKLES: The opposition initially had some reservations about this amendment, feeling that it somehow watered down the intent, but in further discussions with the Attorney-General's officers we are now satisfied with the intent. Therefore, we are pleased to support the amendment.

The Hon. IAN GILFILLAN: As was the purpose of my amendment originally, we do not believe that (b), even in its reworded form, is desirable, but I have indicated to the Council that I do not intend to move my amendment to leave out the paragraph entirely and, as I commented before, at least it has improved the wording. But it is my firm conviction that this is an unfortunate distortion of sentencing principle.

Amendment carried; clause as amended passed.

New clause 6.

The Hon. NICK XENOPHON: I move:

After clause 5, page 2—Insert new clause as follows:

6. The following section is inserted after section 74 of the principal act:

Statistics relating to background of defendants.

74A. (1) If it appears from material placed before a court for the purposes of sentencing a defendant for an indictable offence that the defendant has a history of—

(a) truancy; or
(b) mental illness, impairment or psychological disorder; or
(c) alcohol or drug dependency; or
(d) problem gambling; or
(e) being the victim of domestic violence; or
(f) unemployment; or
(g) illiteracy; or
(h) being placed under the guardianship or in the custody of a government authority pursuant to laws dealing with the care or protection of children,

the court must provide the Attorney-General with a report containing details of the offence or offences for which the defendant is sentenced and indicating which of the circumstances listed above are applicable in relation to the defendant.

(2) The Attorney-General must cause statistics to be kept relating to the information reported under this section and, on an annual or more frequent basis, include the statistics in a report made available to the public.

I foreshadowed this amendment during the second reading debate and do not propose to restate what I put then. This clause provides that statistics relating to the background of defendants be made available to the Attorney-General from the judiciary, from the court, in cases where sentencing takes place for an indictable offence. This amendment is not saying that the court has to undertake a forensic analysis as to whether truancy, mental illness, problem gambling or any of the matters listed were a cause of the particular offence, but it does ask that the court set out which of the background circumstances of the defendant are applicable.

I quote Lindy Powell QC, former President of the Law Society of South Australia and a barrister with extensive experience in the criminal law jurisdiction, from her column in the *Advertiser* last Saturday, 13 November. In discussing this amendment (and I provided Ms Powell with a copy of the proposed amendment) she said:

> His amendments require superior court judges to report to the Attorney-General particular background information concerning the people they are sentencing for serious offences. Those matters include whether the person has suffered from mental illness or impairment, alcohol or drug dependency or problem gambling. Other matters relate to childhood problems. The burden on judges would be relatively light. Presumably, they could comply by simply ticking boxes.
>
> The statistical information which could be gathered as a result, however, would be of significance. If profiles of the background of offenders with respect to specific offences could be developed from these statistics, then we would have the information necessary to start to tackle the cause of crime. Some real good may come out of legislative reform initially driven by fear and lack of information.

I am also grateful for the advice of Marie Shaw QC, another well-known Adelaide—

The Hon. K.T. Griffin: She ought to know better. I bet she didn't advise you to do this.

The Hon. NICK XENOPHON: The Attorney says that Marie Shaw should have known better and she didn't advise me to do this. I suggest that the Attorney have a conversation with Marie Shaw.

The Hon. K.T. Griffin: I will.

The Hon. NICK XENOPHON: I suggest that he do so sooner rather than later. I have discussed this matter with Marie Shaw and she has been supportive of that. Obviously, the Attorney can have that confirmed directly from Ms Shaw.

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: I think we should at least make an attempt to focus the debate on the causes of crime. There is not much more I can say about this. There have been some tentative expressions of support, from the Hon. Terry Cameron and other members. I know the Hon. Ian Gilfillan was attracted to the idea: whether the attraction has turned into something more fervent remains to be seen. I commend the amendment to members.

The Hon. K.T. GRIFFIN: I have as much interest as anyone in trying to determine the causes of crime, what drove people to crime, what caused them to commit crime; but with all due respect to the honourable member this is not going to help us one jot in getting closer to the answers to those sorts of questions.

It is superficially very attractive, but we are not going to get that information by asking the court in some way or another to try to identify in rather simplistic terms whether a person has a history of truancy. What does a history of truancy mean? For a 50 year old who is up for break and enter, what does a history of truancy mean? Does it mean 30 years ago? With respect to the honourable member, I do not believe that Ms Marie Shaw QC would have looked at this drafting and said, 'That is practical'. She would certainly have had sympathy for the intention, and certainly from her criminal practice at the defence bar she would undoubtedly have seen defendants and clients who may be suffering from alcohol or drug dependency, but I just do not believe that she would have looked at the final drafting, carefully considered it and said, 'That is a function of the court and something

which the court can easily do in every case which comes before it.'

Because I have been here in parliament, I had one of my officers speak to the Chief Justice. I am informed that the Chief Justice has no objection to my making known to the Council his views on this amendment. I hope the honourable member is listening to this because it will be a bit enlightening. First, it is not a judicial function (in the sense of individual judicial officers) to gather and distribute statistics of this kind. It might be different if it was possible for ancillary staff to do the job, but in the Chief Justice's opinion they could not. The amendment requires not merely a ticking of boxes but also an assessment of the material placed before the court (which may be verbal) and an assessment of which of the listed matters were applicable—whatever that means. Only the sentencing judge could do that without a lot of trouble.

Even if it was appropriate for judges to perform this task, the task they are being set is far from clear. For example, the judge must provide the details of the offence. What does that mean? If it simply means what offence or what section number, that is not so bad, but it could also mean other things such as the factual circumstances of the case, whether there were other offences taken into account either formally or by way of sentencing for a course of conduct, and so on. The requirement is for reporting about whether or not the offender 'has a history of the listed matters'. Does this mean that the factors are limited to those on which the judge makes a formal finding of fact? In many cases the judge does not do so. Apart from cases in which the court may receive such evidence, either as evidence or assertion from the bar table, without finding one way or the other on it as a formal matter, there are also cases in which the evidence is received and may be true but no finding on it is necessary because other factors or facts are so overwhelming that they dictate the course which must be taken.

The Chief Justice also observed that his off-the-cuff estimate would be that up to 95 per cent of offenders would fall into one or another category or more and that this would mean the generation of a great deal of statistics which would tell us very little that we do not know from anecdotal evidence, albeit experienced anecdotal evidence. In short, he questions the value of generating the statistics in the first place.

I am making more general observations; these are not remarks now attributable to the Chief Justice. If it is supposed that the research generated by these statistics shows that conservatively 50 per cent of offenders have a history of unemployment at some time—and you have to note, not necessarily according to the amendment at the time of the offending—does this tell us anything more than this: people who are poor commit, say, more offences of dishonesty than those who are employed? If that is what is shown, so what? We all know that unemployment is a bad thing and should be lowered; that is a priority for governments of all kinds.

What else do we learn from this? In addition, these proposed statistics may confirm what we all think about the relationship between crime and the listed factors, but they do not necessarily tell us anything about the causes of crime. Put simply, just because X is unemployed does not necessarily tell us why he or she committed an offence. For example, I refer to the offence of cheating on unemployment benefits. All offenders will have a history of unemployment, but that does not tell us why some cheat on the system and some do not. More accurately, it does not tell us why some are caught cheating on the system and some are not. It is more complicated than that.

This amendment is simply an easy and potentially inaccurate and misleading surrogate for research done on the causes of crime which has been going on for very many years. A century ago, Lombroso postulated that one could predict criminal propensity from body type, particularly the shape of the head and forehead. In the 1960s, some geneticists claimed that one could predict potential criminality from chromosomes, particularly the prevalence of the XYY chromosome. They were both wrong. There have also been social science attempts to explain the causes of crime based, for example, on the anomie theory of Emile Durkheim and Robert Merton.

If those properly and rightly concerned about the causes of crime want the Attorney-General's Department to undertake a study of the massive amount of national and international research which has been done and which continues to be done on the social and environmental causes of crime, it may justly do so, but this amendment is not the way to do it. It will merely muddy the waters with statistics upon which false conclusions can be drawn. The effort involved will not produce the results properly and rightly desired.

What I can say is that the Office of Crime Statistics, and my department, is always concerned to try to develop a picture of the offender, to gain information about offending and why offending occurs, and also to determine whether by way of the actions that we take in some instances, whether it be by way of penalties or addressing particular causes of crime in particular persons, it has the effect of reducing the propensity to criminal conduct.

There is a lot of interesting research on the propensity to commit crimes. Professor Homel was the author of the first stage of a report 'Pathways to Prevention', which was released by the commonwealth national crime prevention minister and by the state crime prevention ministers several months ago, but it is in the early stages of a more comprehensive study. It is not as though, by ignoring this amendment or opposing this amendment, a signal is being sent that we do not want to know why people commit crime. But what we are saying is that this is a grossly inefficient and likely to be a totally ineffective way of gathering information and undertaking research.

If the amendment passes, I would suspect that the next annual report of the judges will be along the lines that they think it is unworkable (going on what the Chief Justice has indicated), that it is resource intensive and serves no useful purpose, and that they will make a recommendation to the parliament that it be repealed. I would plead with members that, although I can appreciate the sentiment behind the amendment, they not foist this upon the courts or the Attorney-General's Department; that they look carefully at the issues I have raised and the objections which I have put on the record and acknowledge that perhaps the sentiment cannot be reflected in this way in legislation and accept my commitment to ensure, as I have been doing in the past, that we do undertake valuable and comprehensive research into the cause of criminal behaviour.

The Hon. IAN GILFILLAN: I support the amendment. I wonder whether the Attorney thought to get the Chief Justice's opinion of the original drafts of the home invasion legislation; and, had he done so, would he have shared that information with this chamber? It seems to me to be a good dose of overkill to quote at length an opinion from a judge

who, with due respect, had previously had no invitation to consider the intended implications of the new section.

I take on board both the voluble explanation of the Attorney's personal point of view and the opinion of the Chief Justice which the Attorney read. I do not see the new section as being particularly onerous because it relates purely to material placed before the court: only data of a purely statistical nature is required. The Office of Crime Statistics and most people who attempt to solve the puzzle of the causes of crime and what we can do about it often suffer from a dearth of information. A percentage of it may be superfluous and some of it may be inaccurate, but at least it is valuable material coming from the coalface, from the area where these offenders are being assessed as people.

If there are observations that come from these categories, rather than knock them out as being impractical, let us accept the fact that they may not be perfect in their original drafting. We spend our time in this place amending and improving measures that are brought before us, and most of the time we spend considering improvements to legislation that the government puts forward. I do not intend to dump on this idea. Even if it does not prove to be significantly effective, I believe it is worthy of support, because it does approach what is a far more potentially profitable line in dealing with offences and offenders than the provisions of the principal legislation that this amends. I indicate that the Democrats support the amendment.

The Hon. K.T. GRIFFIN: I want to reply to that quickly, because I do not want the honourable member's representation about what I had to say to continue. When I spoke about the Chief Justice's comments, that was a report of the verbal consultation. The amendment was received by me only yesterday; it was filed only yesterday. The Chief Justice chairs the Courts Administration Authority—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: That is right, but I got the amendment only yesterday, so I do not have a response in writing from the Chief Justice about the amendment. It was referred to him because it had resource implications and was directly within his area of responsibility. I do not have a letter from him. I have not asked him for a letter only because there has not been time to get one. I have been reporting on the conversation with the Chief Justice. I referred the matter to the Chief Justice because he has the responsibility, as the presiding member, of the Courts Administration Authority, in respect of which this will create both some resourcing and practical issues.

The Hon. CAROLYN PICKLES: The opposition supports the amendment. I have taken on board some of the issues that the Attorney-General has pointed out. I propose to amend the Hon. Mr Xenophon's amendment. I move:

That the words 'where practicable' be inserted before the words 'must provide the Attorney-General with a report. . . '

The Hon. A.J. REDFORD: What concerns me about this new section—forgetting the whys and wherefores of it—is that we are dealing with an issue of home invasion. I fully acknowledge the comments made by the Hon. Ian Gilfillan in particular, and to a lesser extent the Hon. Terry Cameron, that we need to be cautious about reacting in a knee jerk way to the demands of the media. I think the honourable member's points are well made.

However, we live in a practical and real world and there are occasions when we have to respond to those demands, and sometimes we have to respond as a parliament in a time frame that might be faster than we are accustomed to. It seems to me, in terms of the general home invasion legislation, that the Hon. Ian Gilfillan's point is well made. Notwithstanding that, as happens in the political environment, we have to deal with these issues in a timely fashion.

Also, to be fair to the proponents of the bill—that is, the Attorney-General and the opposition—there was considerable public debate leading to the introduction of this legislation. One might argue about the quality of that debate, but there has been an extent of public debate and this has been an issue that has been coming down the tunnel for some considerable period of time. We perhaps have not had sufficient time, as we would like, in a perfect world, to debate the clauses and some of the finer nuances concerning home invasion that we might otherwise have liked, but at least we are debating it in the context of a public debate that has run its course, that has been fully explored, with perhaps the exception of the Johnny-come-lately Law Society. However, this particular provision—

The Hon. Carolyn Pickles interjecting:

The Hon. A.J. REDFORD: I think the way they behaved in this particular matter leads one to some concern. It has never been backward in criticising politicians—both government and opposition politicians—and I think that, when it leaves itself so open as it has in this case to be criticised, it deserves to be criticised in the fulsome and frank way in which it delivers criticism to us. I am sorry I took so long to respond to that, but I think I needed to go on the record.

In relation to this new section, this is not what I would call germane to home invasion. This provision is one that affects sentencing right across the board. It affects sentencing for all indictable offences, and sentencing for all indictable offences not only takes place in the Supreme Court—and I must say on a very rare occasion. It takes place most commonly in the Magistrates Court and very commonly in the District Court. There are a lot of issues to be resolved in relation to the sorts of information that might be required.

I take on board what the former president of the Law Society, Lindy Powell, says, and she may be absolutely correct. This is simple, and we can tick a box and go through a process. But there has been very little public debate other than a column in the *Advertiser* by a former president of the Law Society and a statement from the Chief Justice, who, I might add, with the greatest of respect, has distinguished himself not as a criminal lawyer but in other areas of law.

I might say—and this is an observation of someone who occasionally has to be involved in some of these things—that I am not sure, and the section is silent, about how that information is to be collected. First, is the information to be collected by requiring a defendant to fill out a form? What is the position of a defendant who says, 'I am not prepared to fill out such a form'? Is there a question that this might subvert the right to silence? Is there a question that in some cases some defendants may think that by filling in every box they might get a lighter sentence? Is this to be completed prior to or subsequent to the sentencing process? Is it to be completed during the period leading up to the entering of a plea?

What is meant by some of the terms? For argument's sake, the section talks about a history of unemployment. So a 50 year old man who took six weeks to get employment immediately upon leaving school, what does he do? Does he tick the box that he has a history of unemployment? Those who get the information—what do they make of it? Do they say this man committed an offence because he has a back-

ground of unemployment? It is statistical evidence that one might argue is of limited value if not done carefully and properly throughout. There is no qualitative aspect to the collection of the statistics. If one looks at the question of truancy, I must say that that is a very ill-defined term. There are occasions, dare I say it, not very many I might add, where I wagged school. Does the wagging school give me an opportunity, if I happen to be charged with an indictable offence, to say, 'Your Honour, the reason I am before you is because I was a truant, I nicked off from school an hour early on a couple of occasions because I knew the PE teacher was slack'?

In relation to the question of mental illness, I must say that my personal experience as a legal practitioner is that 98 per cent of my clients either do not or will not admit that they suffer any mental illness or, alternatively, under some procedures they are disadvantaged if they raise the question and the issue of mental illness or impairment. There are occasions where some magistrates, for proper sentencing reasons, tend to be tougher on defendants who acknowledge that they committed offences whilst under the influence of alcohol than might otherwise be the case. In fact there are actually laws that do that in other jurisdictions. There are occasions, and we went through this with the drunk's defence, where lawyers will advise their client not to concede that they were affected by alcohol as this may undermine or subvert the fact finding body, whether it be a jury or a judge's assessment, as to the nature of the evidence.

If one looks at the question of problem gambling—and I do not want to be flippant because this is an important issue—sometimes when you use a term such as problem gambling that can well be in the eye of the beholder. To a person who is very strongly opposed to gambling, going to the races regularly every Saturday and losing $20 may well be a problem gambling habit, whereas to a person who is prepared to spend $20 a week on entertainment that is not problem gambling. It is very subjective. And then we go on and look at the concept of being a victim of domestic violence. Domestic violence comes in all sorts of shapes and forms, and there is no qualitative aspect to that.

Finally, there is the question of illiteracy and, again, there is no qualitative aspect to that. There are some people who claim to be literate who have the reading capacity of what educators call an 8 or 9 year old. In some quarters that would be described as being literate and in other quarters it would be described as illiterate. So they are all the question marks in relation to this particular clause.

I do not know what the costs of this would be, but having put the courts to all the expense of gathering all this information and then presenting it to the Attorney-General who, in turn, presents it to this place or, in turn, presents it to other policy makers, I do not know how that specifically would help the development of policy. We are the best practitioners, if you look at the electoral results in the state, of what you can do politically with these things, and particularly in the area of crime.

At the end of the day it will be in the eye of the beholder. If there are particular statistics that might suit a particular political objective, you will get blame being placed on governments, or former governments, and we have all been through that process. You will get the government or the former government saying, 'Yes, but you can't take any notice of those statistics.' At the end of the day you may well go down the path of not developing policy in a proper and appropriate manner.

I have no problem, I must say, with this being debated over a period of time. This is not germane to home invasion; this is germane to every single indictable offence that comes before any court, whether it be the Supreme Court, the District Court or the Magistrates Court. This is the sort of amendment that should be the subject of a separate bill, perhaps a separate private member's bill, or if the Hon. Nick Xenophon is persuasive enough, and the Attorney is prepared, as he has done in the past, to table a draft bill looking at some of the issues of collection of statistics, for discussion broadly by practitioners and thus allowing this debate to be held in the fullness of time.

The Hon. Ian Gilfillan and the Hon. Terry Cameron said we ought to make haste slowly in relation to home invasion. I know the numbers are against them on that aspect, but I invite them to maintain their consistent argument and consistency in relation to this and oppose the amendment and, indeed, I invite the Hon. Nick Xenophon to bring back a private member's bill, and allow us to consider this carefully and not in a rushed fashion.

The Hon. NICK XENOPHON: If I can clarify that, whilst an amendment was apparently filed yesterday in relation to this clause, it was previously filed, I understand, on 10 November. There was apparently an administrative error. I am not sure whether the Attorney agrees with that, but the fact is—

The Hon. K.T. Griffin: I only got it yesterday.

The Hon. NICK XENOPHON: The Attorney only got it yesterday, but it was filed over a week ago.

The Hon. K.T. Griffin interjecting:

The Hon. NICK XENOPHON: If it was filed a week ago or eight days ago, it was filed eight days ago.

The Hon. K.T. Griffin interjecting:

The Hon. NICK XENOPHON: It is part of the substance, because what you are saying is that you have not been given sufficient notice. This in fact was filed over a week ago. In any event, I can reiterate that this is an attempt, and I concede that it is by no means a perfect attempt, to look at the causes of crime. I am not accusing the Attorney of not being interested in the causes of crime. I believe that during the home invasion debate he was treated most unfairly by some sections of the media and that the criticisms were unwarranted, and I still stand by that. I am simply saying, let us attempt to look at some of the causes, gather some statistics that we do not appear to have to date so that we can at least begin a public debate, based on facts rather than emotion, which a lot of this particular debate in recent times has been based on.

The Hon. K.T. GRIFFIN: My information is that it was officially filed on 17 November. We can argue about that, but it was officially filed and then became available on 17 November. Be that as it may, that is when I got it, and I have indicated the reason why I have not got a letter from the Chief Justice about the reasons why this amendment is not appropriate. But I have indicated the reasons which were given to one of my officers in discussion with the Chief Justice and authorised by him to be disclosed. If the amendment is going to carry, then I would much rather have 'where practicable' in there than nothing at all. But I hope that the amendment is not going to be carried.

The Hon. T.G. Cameron: What does that mean?

The Hon. K.T. GRIFFIN: I don't know what that means, but it just means there is a bit more flexibility.

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: I am not going to issue any instruction, because it is the parliament that will issue the instruction by passing this bill, and the court will then be required to comply with the will of the parliament. I have been saying that the difficulty is that it will place a significant burden upon the courts for no discernible benefit. As I have indicated, it says: if it appears from material placed before a court for the purposes of sentencing a defendant for an indictable offence—so it will apply in the Magistrates Court where minor indictable offences particularly are dealt with, in the District Court and in the Supreme Court—that the defendant has 'a history of'. What does 'a history of' mean? As an example, I have suggested truancy. Was it 20 years ago when the person was at school? What does that tell us about the relationship of truancy to the offending?

Mental illness is another area. A history of mental illness, impairment or psychological disorder will be on the court file, presumably, because anybody who has a history of mental illness will presumably disclose that in the sentencing process. A history of alcohol or drug dependency is another area. Does that mean one of those people we were talking about in the previous bill who has managed to kick the habit? Is that to be disclosed? If someone who has kicked the habit comes before the court, is that information to be disclosed in the sentencing—

The Hon. T.G. Cameron: One would hope not.

The Hon. K.T. GRIFFIN: We do not know. This clause says, 'if it appears from material placed before a court'. It may be that the defendant and the defendant's counsel believe that it will be helpful to disclose that information. None of us has control over that, and nor does the court. Problem gambling is another area. Is that a history of problem gambling now, when the offence is committed, or at some time previously and the offender has since kicked the habit? Another area is to have been the victim of domestic violence. When was it: at the time of the offence, over a long period of time, or 20 years ago in a former relationship and they are now living a happy married life or, if not happy, certainly not in a violent relationship.

Another area is: history of unemployment. Unemployment at the time of the offence or unemployment at some time in the past 10 or 15 years? A history of illiteracy is another area. What does that mean? You are only literate or illiterate. Does that mean at the time of the offence, or being placed under guardianship or in the custody of a government authority, pursuant to laws dealing with the care or protection of children?

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: You might. We can all think of it. The difficulty is: what does this mean and what burdens does it place on the court and what discernible benefit will come from it? I just plead with members to recognise that this is just a totally impractical and not particularly useful exercise which will create significant difficulties for the courts.

The Hon. T.G. CAMERON: I have some questions for the Attorney-General because I am still trying to make up my mind on this. Does the Attorney-General have any idea about what the costs to the taxpayer would be for the collection and dissemination of the material requested in the amendment?

The Hon. K.T. GRIFFIN: No, we do not because, as I said, according to my information, this was filed officially and came into my possession only yesterday. It has 10 November on it. That is obviously the date it was printed. It does not mean that it went on file on that day. So there has just been no time to make an assessment of it. I do not know, even if I had a week or so, that we could accurately do it until we got to the point of doing a computer program—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: What I am saying is that I have no estimate of the likely costs or the difficulty involved.

The Hon. T.G. CAMERON: If this information was collected, could the attorney throw any light on how it may be tabulated, in what form it may be distributed and to whom it would be distributed?

The Hon. K.T. GRIFFIN: According to the amendment in subsection (2), it is statistical information, so presumably there are no identifying characteristics to be produced to me, although, in subsection (1), the court must provide to me the report containing details of the offence or offences for which the defendant, that is, presumably a specific defendant, is sentenced, and indicating which of the circumstances are applicable in relation to the defendant. Presumably it comes to me as Attorney-General with identifying information. I will then have to get someone to sanitise it, because according to—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: Let me use a different word. It was probably an unfortunate choice of words. I will then have to get someone to deal with it under subsection (2) to distil out of it the statistical information, and then it has to be made available to the public. So, presumably I will table it in the parliament. That would be my immediate reaction to it.

The Hon. T.G. CAMERON: I have some further questions and, if I again display my lack of knowledge of the legal system, I ask members to accept my apology. How many jurisdictions would this amendment, if it were carried, apply to; how many judges or magistrates would be required to submit information; who would be responsible for the tabulation of that information; how many offenders are we likely to be collecting information on; who will have access to this information; and, if this amendment is carried, can the Attorney-General give this parliament an absolute assurance that this information, which could be personal in nature if one is to take note of some of the examples that the Attorney gave, would be treated with absolute confidentiality?

In other words, based on a couple of the examples he gave, if someone was a reformed heroin addict from 15 years ago, is this information somehow or other going to end up, 'Fred Bloggs is a reformed heroin addict; 15 years ago he kicked the habit, but somehow or other this may have something to do with the crime he has committed'—tick, and the information gets out into the public arena. I am a little concerned about just what information we will be gathering. I know I am asking about 10 questions here.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. Cameron: I know, you always do. I am concerned as to the discretion in relation to the gathering of that information and the discretion as to how that information might eventually be supplied to the public.

The Hon. K.T. GRIFFIN: I am happy to try to answer them. If I do not deal with any of them, the honourable member can prompt me by interjecting. As to the number, it will apply to the Supreme Court, where there are 14 judges and I think two masters. It will apply to the District Court, where I think there are something like 30 or so judges. It will apply to the Magistrates Court, but only in so far as it relates to minor indictable matters, and there are over 30 magistrates. Presumably the information would be required to be collated by an officer of the court under the authority of the particular

judge or magistrate and then forwarded on to me as Attorney-General.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: As to a ball park figure of the number of offenders to whom this would relate, I am trying to remember the last lot of statistics from the courts, but I would expect it to be of the order of 1 000 or 2 000 indictable offences. There may be more or less, but that is the ball park figure.

The Hon. T.G. Cameron: Who will have access to the information?

The Hon. K.T. GRIFFIN: As it is currently drafted, certainly the court will have access to the information.

The Hon. T.G. Cameron: Does that mean the judge's associate might have access to the information?

The Hon. K.T. GRIFFIN: It might be the judge or the judge's associate; it may come on a docket to me. It will come through my correspondence section to me, and I will have to have someone do the physical work of collating it. But the information which is put before the court, unless the court is closed—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: No, because that is not what it provides. It provides for a report containing details of the offence or offences for which the defendant is sentenced, and indicating which of the circumstances listed above are applicable to the defendant. I have had only 24 hours to look at it and am just giving my reaction to it.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: I am just trying to be sensible about it. I was going on to say that, presumably, some of this information may be in the public arena but, when there is a pre-sentence report, frequently a lot of information is handed up to the judge in a report made by psychologists, psychiatrists and sociologists. The prosecutor gets a copy and the defence counsel provide it. Some of that information may not be publicly available so, presumably, information will have to be gleaned from that by the judge or magistrate and his or her associate, or some other official who is designated with this responsibility. The information is then collated and comes through in a report to me. It may be that it ought not to have any identifying information on it, but I cannot tell from this whether or not that is the case. It looks as if it would have to have identifying information on it, but the report which I make available is of a statistical nature. Does that cover the field?

The Hon. T.G. CAMERON: The last question was: if this amendment were to be carried, what assurances can the Attorney-General give that this information would not find its way into the public arena?

The Hon. K.T. GRIFFIN: If I have it, it will not escape from me. It will pass through a number of hands to get to the Attorney-General. One would hope that it would not get into the public arena if it was information that had not previously been disclosed in open court, but I can give no guarantee about that. I have been reminded that this will also extend to the Youth Court, because the Youth Court deals with indictable offences against young offenders.

The Hon. T.G. CAMERON: I thank the Attorney-General for his answers to my questions. After carefully considering the comments made by all the speakers, I am most attracted to the arguments that have been put forward by the Hon. Angus Redford. Whilst I have a great deal of sympathy for the intent of the amendment and I support the notion that what we really should be trying to do with crime is find out the causes of it rather than the populist notion of 'Let us lock them up and punish the offenders', that is not a long-term solution for crime prevention in our society. So, whilst I support the intent of the amendment, before making a few comments on it, I would put two final questions to the Attorney-General. If this amendment fails, is the Attorney prepared to look at the causes of crime, as outlined in the amendment? Would the Attorney be prepared to give an undertaking that sometime within the next 12 months to two years a report prepared by his department on the causes of crime would be provided to the parliament?

I ask him those questions, because the replies will bear on my decision. At the moment I am not particularly disposed to walk down the path of supporting the amendment, notwithstanding my sympathy for it. It is something that has been on the table only for the past few days. I am not sure and do not really care about when it was lodged, but I have had only a few days to look at this matter. I have a number of concerns, and I thank the Hon. Angus Redford for alerting me to them. I am not sure that it is appropriate to move with undue haste on this. It is a timely reminder of my criticisms on the original bill that we are moving in haste and it leaves me in somewhat of a quandary if I were to support these amendments, notwithstanding my sentiment for their intent.

I also note the comments that were made by the Chief Justice and have read Lindy Powell's comments in the *Advertiser*, but I am attracted to the argument that we should look carefully at the need for this legislation. I accept the Hon. Angus Redford's comments that perhaps what we really need to be looking at is a separate bill which is not specifically related to the bill that we are dealing with. Perhaps that will create an environment where the information that is gathered is less contaminated and can be looked at in a clearer light. We always have to be careful about how we interpret purely statistical information.

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: You can interject if you like and whine and sigh, but I will just keep talking. One has to be very careful about the collection of statistics. I often run into the Transport SA accident statistics pamphlet, which is conveniently left in the corridors for all of us to read. If one merely reads the statistics without having a full knowledge of what really causes road accidents, one can quickly come to an erroneous conclusion. I would be more than prepared at a future time to look carefully at a separate bill in relation to this matter. I hope that the Attorney can see his way clear to providing a more detailed report within 12 months to two years on the causes of crime in South Australia. I do not place any strictures or caveats on the form of that document, but it seems to me, particularly given my comments in relation to drug abuse, that we do need to be focusing our attention more on what is causing crime in our society and how we can prevent crime from actually occurring, rather than focusing on how we can punish the offenders.

It was always a principle of the Australian Labor Party that I was proud of that it concentrated on rehabilitation rather than the punishment of offenders. I am somewhat disappointed that it has departed from that track. Notwithstanding that, I would like to hear what the Attorney-General has to say in relation to my request. If the Attorney is able to meet my request, I suspect I will vote against the amendment. I would like to receive some indication or undertaking that we will examine the causes of crime and present something to the Council so that we can have a proper look at this whole area. If we are not careful, we will find that we have lost control

of the debate on this matter and we will lose control of the issue. That would be to the detriment of everyone.

The Hon. CAROLYN PICKLES: I think the Legislative Review Committee would be well placed to look at the possibility of including something in a broad way, as the Hon. Angus Redford indicated, for every indictable offence. I think some members have tried to muddy the waters, because it is obvious that, when you set out to get an answer to something, you usually devise a questionnaire that is confidential in nature, appropriate and will give some options as some kind of a guide. I would like the Legislative Review Committee to look at this issue in a far reaching way to see whether it would be practicable to include an amendment of this nature for all indictable offences.

The Hon. T.G. CAMERON: Mr Chairman, is it in order for me to ask the Chair of the Legislative Review Committee a question after the Attorney has responded to my question?

The CHAIRMAN: That is one of the ways in which the committee can proceed.

The Hon. K.T. GRIFFIN: A lot of research is being done into the causes of crime, not just by my department but across Australia. In fact, we have published some material in that regard. I undertake to compile information which identifies, first, what research has been undertaken, the outcome of that research, and the projects which we currently have running on the causes of crime.

We must be careful not to cast the net so broadly that we get nothing out of it of value to determine how we should address the causes of specific crimes. For example, domestic violence may have a cause that is different from an offence that is committed outside the family relationship. I undertake to bring back to the Council a paper which will attempt to bring together that research identifying what it is, its scope, where it is, and what it seeks to achieve. There are some current research projects, and I will bring back information about those. I will have to take this part of it on notice, but I may be able to identify what future research projects might be contemplated.

The Hon. T.G. CAMERON: I thank the Attorney for his answer and that undertaking. In view of that undertaking, I indicate that I will not support either the amendment of the Hon. Nick Xenophon or the Hon. Carolyn Pickles.

There is one further matter that I want to pursue. I hope the Attorney does not take offence because, at the end of the day, he was responsible for persuading me to the position that I have adopted in respect of these amendments. My question relates to the comment by the Leader of the Opposition regarding her reference to the Legislative Review Committee. My question to the Chair of the Legislative Review Committee, the Hon. Angus Redford is: will he respond to the suggestion by the Leader of the Opposition concerning an amendment that we refer this matter to the Legislative Review Committee?

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: I apologise to the Leader of the Opposition—I misinterpreted her intent. It appears that she does not intend to move an amendment. The Leader of the Opposition's position is: will the Legislative Review Committee be prepared to look at this issue and the causes of crime? I am pleased that I got it wrong, because—I know that this is rare—my position is exactly the same as that of the Leader of the Opposition.

My second question to the Chair of the Legislative Review Committee is: is he prepared to raise this subject with that committee and at a subsequent date advise the parliament of the committee's view?

The Hon. A.J. REDFORD: I listened closely to the comments of the Leader of the Opposition and the Hon. Terry Cameron, and I think they raise pertinent points. I also acknowledge the comment by the Attorney that there has been and continues to be considerable work done by the government and other governments of the commonwealth. Obviously, I do not wish to duplicate the work that has been done by them. However, I will give an undertaking and an assurance to this place and the members who have raised this that I will bring up this matter at the next meeting of the Legislative Review Committee. I also give an assurance that the relevant extracts of the debate on this clause will be circulated to all members of that committee before we discuss this matter.

The Hon. Carolyn Pickles' amendment carried; new clause as amended negatived.

Title passed.

Bill read a third time and passed.

HINDMARSH ISLAND BRIDGE BILL

Adjourned debate on second reading.

(Continued from 16 November. Page 455.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): With a great deal of reluctance, I support the second reading of this bill. From the outset I make perfectly clear that I always thought this bridge was a stupid idea. It was a stupid idea in 1993 and it is a stupid idea now. However, legally we are stuck with it, and this bill sets out to implement the legal process. The bill is completely divorced from the question of whether or not the Hindmarsh Island bridge should be built and, in fact, the bridge is in the process of being built. Rather, following the decision of the government to proceed with the building of the bridge this is an attempt to recoup for the taxpayers some of the costs of building the bridge from those who will benefit directly from its construction.

It seems to me that the Aboriginal people have been at the losing end of most arguments in our state's and nation's history. From being on the end of a settler's gun to the sad and sorry amendments to the commonwealth native title legislation, Aboriginal people have lost out. The small moves forward for Aboriginal people that are taken by legislators and the community are always accompanied by deep resistance and bitter acrimony. Following every move forward there is always a shameful anti-Aboriginal backlash and attempts to withhold the progress made, and I think that we have seen some anti-Aboriginal backlash in this place in the past day or two, and from one honourable member in particular.

The aftermath of the High Court's progressive Mabo decision is a case in point. First, we saw the commonwealth's Native Title Amendment Act, which the United Nations Committee on the Elimination of Racial Discrimination says is racially discriminatory. Then we saw the Prime Minister's abject failure to say one small word: 'sorry'. It was indicative of the bigotry and ignorance that has accompanied discussion on Aboriginal issues in the community. It was sad and an embarrassment.

Now we have our own state Liberal Party, which in the past has generally taken a reasonably progressive and bipartisan stand on Aboriginal issues (particularly when in

opposition), moving to introduce legislation. In fact, prior to our returning in this session, it moved legislation that will complement the commonwealth legislation—the same legislation that the United Nations committee says is racially discriminatory. Those state government plans amounted to an attempt to extinguish native title for a number of Aboriginal people in this state.

I note today that the Attorney-General has introduced two more native title bills, although I have not had a chance to look at them. I am sure that my colleague the Hon. Terry Roberts (as shadow Minister for Aboriginal Affairs) will be scrutinising them in detail over the next four months to ensure that they are not racially discriminatory. I trust that this will be a serious rethink by the state government and that the government stands up to the commonwealth and ensures that the legislation, which was an undisguised attack on Aboriginal people, has not seen the light of day again in the draconian form in which it was originally drafted.

When one looks at the plans for this bridge, I would think that, if one had had any sense in the past, one would have opposed it merely on environmental grounds. It is a monster of a bridge. It is totally inappropriate and should never have been conceived or built, but it is going to be built, therefore I do not wish to see the state incur any more costs in relation to this issue. For that reason, we are supporting the bill. It does not debate the merits of the bridge but simply provides a funding mechanism for the state now that the bridge is going ahead.

This will be done by directly levying a rate on the owners of allotments whose properties have been subdivided or created since 28 September 1993. The amount of the levy varies according to whether the allotment is residential or non-residential. This legislation will enable the council to collect the levies and forward them to government. Will the government indicate what might be the average payment by an allotment owner, and the total revenue anticipated? What happens in the case of an owner who chooses to pay the upfront $4 500 fee and then sells the property?

The RAA has raised concerns about the government's intended use of the funds collected from the levy. It is its view that the Highways Fund should be credited with the funds. Does the Attorney have a comment in reply? I suggest that the answer to that would be no. Whatever the merits of the case, it has been a long drawn-out process and, no matter what one might think of the Chapmans (and another honourable member made this point), I do not think that anyone who enters into some kind of agreement should be subjected to a prolonged litigation process in this way. However, having said that, it is not been a very happy reflection on the way that we have dealt with the Aboriginal people in this state.

There is no doubt in my mind that there are deep divisions as to whether or not this is a sacred site, and it is not for me as a white person in this community to say whether or not there is truth in this issue. I do not wish to enter into that debate, but it is quite evident from the briefing that the Labor Party had from the Ngarrindjeri people that they are still deeply upset by the building of this bridge, and I think that they will continue to be so. I very much regret that but, unfortunately, we do have a legislative process here. The Ngarrindjeri people have gone to every court in this land and their case has been unsuccessful.

So, in order to save the state incurring any more expenses, we propose to support this bill. However, yesterday I received a whole series of questions regarding the history of this bridge; questions to do with Aboriginal issues dating back to 1993. As I have said before, I do not think that this bill relates to the merits of building the bridge, therefore it is probably not appropriate to proceed with asking the Attorney any of these questions, and at this late stage of the parliament it is probably not possible for him to answer them. However, I will forward them to the Attorney-General to see whether during the long break he could advise me of some of the answers. They do go back in history.

The Hon. Sandra Kanck interjecting:

The Hon. CAROLYN PICKLES: There are so many of them—60 or 70. I have to say that sending them to us at this late stage makes life a little difficult. I will forward them onto the Attorney-General and, if he is able to answer some of them, I will be grateful. He may not wish respond directly to me: he may wish to respond to the person who sent this fax to me. He may wish to respond to some of the statements. However, that is up to him, because it does not relate to this particular bill at all, but it may alleviate some of the pain that these people feel about this whole issue. I will certainly send them onto the Attorney-General to see whether he can look at this and make a response to either me or the person who sent them to me.

It does seem to me that this long and sorry saga is in some part at an end for the government—I guess for the opposition, too, because we started the process—but it is not at an end for the Aboriginal people. There are still many people who feel sad and aggrieved by this process—and I guess they will not give up. We can do little about that but, when we are looking in the future at how to deal with these kinds of developments, I think we have to be more sensitive to environmental issues; I think we have to be more sensitive to the wishes of Aboriginal communities; and I think we also have to look at a process of development that allows things to go forward more expeditiously if all things are in place.

My colleague the Hon. Terry Roberts made, I thought, some constructive suggestions in his contribution the other evening whereby he thought that it would be possible to look at some kind of interpretive centre to assist the Aboriginal people in the area to overcome some of their hard feelings about this whole issue and to allow them to become involved in it. I think that is an excellent suggestion, and I commend the Hon. Terry Roberts for making it. Sometimes if you do something positive it does help in some part to alleviate long-term pain. The pain for these people will not go away, but for us in the white community it is a legal process, and therefore we support the bill.

The Hon. A.J. REDFORD: I support the second reading of this bill. I declare an interest. I acted as a lawyer for the Chapmans and their companies from mid 1986 until the day that I was elected to this parliament in December 1993—over 7½ years. I was involved with a substantial range of matters in my capacity as their legal adviser, including planning issues associated with the development; planning issues associated with the bridge; licensing and planning issues associated with the tavern; and negotiating and dealing with issues involving the Chapmans, their former partner, their financiers, the government, planners and many others. I must say that the above is not exhaustive.

I have spoken with my former clients and they have indicated that they have no objection to my speaking generally about the bill. I have not spoken publicly about this long and drawn out saga before and, hopefully, with the passage of this bill, there will be no future need for me to speak. At the outset I should deal directly with the issue of

another legal practitioner and some comments made by the Hon. Sandra Kanck about that legal practitioner. Indeed, yesterday, in relation to Mr Steve Palyga, she said:

> I believe that the Law Society should investigate the conduct of the Chapmans' solicitor, Mr Steve Palyga. I suspect that the advent of this type of legal intimidation requires a legislative remedy.

The comments made by the honourable member are regrettable and do her and this parliament no service. Mr Palyga is currently acting for me in two matters, and I also note that the Hon. Sandra Kanck is involved through her political party in litigation in which the Chapmans have engaged Mr Palyga. I think it is important that I should make some comment about the nature of the legal profession before speaking about Mr Palyga. One of the most important aspects of being an advocate in our courts is the courage to take up unpopular causes and act on behalf of clients without fear and without favour.

The Hon. Sandra Kanck interjecting:

The Hon. A.J. REDFORD: The honourable member referred in some detail in her contribution to the concept of a SLAPP writ and, in the terms that it is being used in a derogatory sense in many other publications, it is used in the sense that a SLAPP writ is regrettable or is to be frowned upon where people issue proceedings for defamation simply and solely for the purpose of inhibiting public debate. Indeed, the common practice where this legal device was developed in the United States was not to follow through those writs. In other words, the writ would be issued, it would sit on a court file and, as a result of the issuing of that writ or summons, people would be precluded from engaging in what is general public debate.

In that context, the Chapmans differ because, on my understanding and from my reading of newspaper articles, the Chapmans on every occasion have sought to follow through and continue to follow through each and every one of the writs that they have issued in relation to the alleged defamation. Indeed, in a number of cases which have been dealt with by the court they have been successful. Indeed, I understand—and I do not want to go into any detail about it—that the writ issued against the Australian Democrats has not been left on file but has been proceeded with. Obviously, the Hon. Sandra Kanck, her advisers and other people in the Australian Democrats, including Mr Coulter, who I understand is also a defendant, will have the opportunity to put their position when the matter comes before the court.

The honourable member's comments were intemperate and not needed to be said. I go on record as saying that Mr Steve Palyga is a very well respected lawyer. He has a reputation for diligence, honesty and, above all, courage. I cannot understand, when the honourable member calls for an investigation by the legal conduct tribunal into his conduct, what specific conduct she is alleging is unprofessional. What does she want him investigated for? Does she want him investigated because he acted in the best interests of his client? Does she want him investigated because he is acting on the instructions of his client? Does she want him investigated because he happens to be suing the Australian Democrats on behalf of a client? Does she want him investigated because he has been successful in achieving a result on behalf of his client?

Mr Palyga has achieved a result for his clients that many other lawyers would have been unable to achieve. He has been tough, persistent, ethical and courteous. I know this view is shared—and he has given me permission to state this—by the Hon. Nick Xenophon, and neither he nor I have ever heard a complaint from any practitioner about the conduct of Mr Palyga in relation to any matter. He has displayed a far greater discipline in the exercise of his profession than has the Hon. Sandra Kanck. Indeed, if one looks at the often difficult dispute that has intruded into the courts between the Treasurer and the Hon. Nick Xenophon, even in their most intemperate moments they have not sought to attack their respective legal advisers.

I do not propose to talk in great detail about this, but there are a number of things that I should go on the record as saying. First, I think the Chapmans are people who are versed of enormous courage. They have continued to live their lives and pursue their dreams and ambitions in the face of enormous pressure. They have continued despite being confronted with the depths of despair over the past few years and despite waves—and I mean waves—of adverse publicity and, in some cases—and I am backed up by various court decisions—defamatory publicity that was grossly unfair. They have continued in the face of orchestrated government power and in the face of rumours, whispers and lies about their character and their motives. They have continued in the face of unfair and hurtful attacks upon their family, and in particular upon their children.

I would defy most ordinary people to have prevailed in the face of all this adversity from the politically correct brigade, the media (at one stage), the North Adelaide set, the ABC, a range of governments whether hostile or incompetent, and some who would seek to advance themselves at the expense of the Chapmans. Indeed, the Chapmans deserve enormous respect, as do the dissident women who proceeded in the face of enormous criticism and despite enormous stress because, at the end of the day, they sought the truth.

The politics associated with this matter have been nothing less than shabby and opportunistic. All sides of politics deserve condemnation for the way in which they have dealt with this matter. We start off with a state ALP government which supported the bridge, and at the same time the state Liberal opposition opposed the bridge. After the election, we had the state Liberal government which opposed the bridge, and the state ALP opposition which supported the bridge.

The federal ALP government entered the arena and, in 1984, opposed the bridge under the auspices of Mr Tickner. The state Liberal government then decided that it would support the bridge, and the state ALP opposition at that stage then chose to oppose the bridge. That was quickly followed by the state ALP supporting the bridge. I must say that about the only government or opposition that has been consistent in relation to this sordid and ridiculous affair has been the Liberal federal opposition until 1996, and the federal Liberal government to date. It has been consistent all the way through, and that is to its credit.

Those who get too close to this affair in a political sense and who have sought to secure and gain political advantage out of it, notwithstanding dealing with basic principles, have got themselves into trouble. There are those who also inadvertently got themselves into difficulty in relation to this matter. The three key politicians who have really suffered through all of this for varying reasons are Mr Tickner (mainly due to his naivety and stupidity), the Hon. Ian McLachlan and the Hon. Barbara Wiese.

I think that it is incumbent upon me to go through a few pre 1994 events to put in perspective some of the matters raised by the Hon. Sandra Kanck. I had my first association with the Chapmans in 1986, and I dealt with them in relation to a number of matters including the process that led to the

first dig at the mouth of the Hindmarsh Island bridge site. In April 1988 I recall a meeting held at the Greenhill Road offices of Walter Brooke and Associates. I recall that there was a full presentation and briefing on the proposed development given to government department representatives, including the National Parks and Wildlife chief executive, Bruce Leaver. Indeed, the DEP's assessment branch was in attendance at the time.

Following that, I remember my first meeting with the then minister, Don Hopgood, and his officers on 1 June 1988. At that stage Dr Hopgood was provided with a draft planning application. Dr Hopgood, uninvited and unrequested, indicated to the Chapmans that there was no need for an environmental impact statement. He said at that meeting that there was some question about whether or not there ought to be a bridge. I remember that the suggestion of a bridge was strongly opposed by the Chapmans and their planning adviser, Doug Wallace, who proceeded to explain to the minister that a doubling of the ferry could take place both economically and quickly. That was in June 1988.

Just to paint the picture, in June 1988 the then Bannon Labor government was desperate. It could not get any development of any type approved on any occasion because there was a general anti-development attitude that prevailed in the state at the time. I only need to draw members' attention to some of the articles published in the *Advertiser* at the time which sought to be critical of every single development.

The Bannon government sought to have developments take place at Mount Lofty and failed. It sought the development of a cable car—and this is probably a more ludicrous development—at Mount Lofty and that failed. There were proposed developments in the Flinders Ranges and on Kangaroo Island and they also ultimately failed. They are just some of the proposed developments. At the time the Bannon government was keen to get at least one development off the ground.

In June 1988 there was a meeting and the Goolwa council issued a public demand that a bridge be built. A number of meetings took place throughout June and July 1988 where some residents opposed the construction of the bridge. In July 1988 the department approached the Chapmans who were told not to deposit their plan because the department was proposing to issue, in a very short space of time, a supplementary development plan which would make it more simple, easy and effective in so far as the Chapman's application was concerned. All of this was publicly disclosed.

In August 1988 a further meeting took place and the then minister, Dr Hopgood, was present. At that meeting he indicated that it was his view that a bridge was a desirable option. Again the Chapmans protested. He also said on consideration and reflection—bearing in mind that this was more than two months after the first meeting—that perhaps (and I remember the term he used) 'a partial EIS might be required'. He indicated that that so-called partial EIS was only to cover some limited issues.

In November 1988, based on the advice provided by the then minister, a planning application was lodged. In December 1988 the planning application was put on display. Throughout January 1989 the Chapmans had extensive meetings with the heritage department and various local Aborigines. My recollection of those meetings is that the only issue that was raised was an area immediately adjacent to the barrage, and the Chapmans readily accepted that the development should be modified to ensure that that area of the proposed development was not affected or interfered with. They agreed with that suggestion without any disagreement or rancour.

On 11 January 1989 a public meeting took place; 111 people attended. At that meeting a unanimous resolution was passed requesting that a bridge be built. On 16 January 1989 the closure date occurred for submissions, and 12 submissions were received in relation to the development. Some two days later a public meeting took place, with a substantial crowd and a vote took place, and everyone voted for a bridge. In March 1989 the council and the government made an announcement that their preferred option was that a bridge be constructed. I must say that we are now talking about March 1989 where the issue of a bridge was fairly and squarely out in the open, on the public agenda for everyone to see.

On 21 April 1989 a letter was sent by the Chapmans, bearing in mind that there was significant political pressure following the public meetings and the announcement by the government and the council that they were prepared to build a bridge. In June 1989 the government acknowledged that letter and said that they were prepared to enter into agreement concerning the construction of a bridge. On 7 August 1989 Mr Hopgood, the then minister, arranged for a meeting with the Chapmans, some 14 months after the first meeting.

I remind members that at that first meeting he indicated that it was his view that there was no need for a bridge and no need for an EIS. At that meeting he advised the Chapmans that an EIS was required and that the EIS and the proposal must include the construction of a bridge. That might hardly seem unusual but one must understand that some 14 months had been wasted by the Chapmans in relation to following the advice both of the minister and of the department, and that was at a time when the prevailing interest rate on borrowings was something between 18 and 25 per cent, a horrendous burden on any developer.

In September 1989 Cabinet again confirmed the bridge, and on 23 October 1989 they issued a section 50 declaration. On 3 November 1989 an EIS was displayed and advertised and on 29 November 1989 a meeting of the Goolwa Residents Association took place, and they urged the Chapmans to change the bridge alignment. On 18 December 1989 the Conservation Council provided a response to the EIS, and the Hon. Sandra Kanck may well be very interested in this because at that time she was the executive officer of the Conservation Council of South Australia. The Hon. Sandra Kanck's organisation, the Conservation Council, made some comments about the EIS.

First, they said that the EIS was thoroughly prepared. Secondly, they said that the Aboriginal issues were covered and, thirdly, they said, and I quote: 'No extant mythology exists on Hindmarsh Island.' The Hon. Sandra Kanck's Conservation Council on 18 December 1989 fully and wholeheartedly endorsed the development, and indeed the bridge. On 31 January 1990 a supplementary draft EIS was released, which incorporated the bridge. On 1 February 1990, Mr Beresford, of the Conservation Council, who at that stage I understand still employed the Hon. Sandra Kanck, pointed out that the marina and the development were carefully thought through in relation to the environment. On 6 February, in a letter to the *News*, Mr Beresford, in the face of significant criticism that the Conservation Council was anti development and automatically took a negative attitude to development, said:

> SA development is well and alive without opposition.

Indeed, he went on and said in that letter:

> The Hindmarsh Island development was one example where the Conservation Council was taking a constructive response and a constructive attitude towards development in South Australia.

Mr President, put yourself in the shoes of the Bannon government in February 1990, and one would have to assume that they could confidently go forward and endorse the construction of the Hindmarsh Island bridge. In March 1990 the EIS was completed. There were 35 submissions supporting the bridge; 12 supported the bridge if the alignment was shifted. Indeed, only 12 out of 77 submissions were against the bridge. On 27 March 1990 a section 51 application was lodged, and on 29 March 1990 that approval by the Governor in Executive Council was gazetted. On 12 April 1990 a section 13 Aboriginal Heritage Act certificate approval—and it was a complete approval—was given, and indeed on 12 April 1990 formal planning approval was granted.

Following April 1990 there was a general hiatus, and I must say that that probably was not unusual at that time in relation to developments in South Australia, because of a number of debates over a number of issues, including the ownership of the bridge and an argument over the financing of the bridge. Indeed, at that time the Bannon government was faced with severe and substantial criticism both from the public and from the media that they were simply unable to get any development to take place in South Australia. I might add that in other states in Australia there had been unprecedented development, particularly in New South Wales, Victoria and Queensland, and there was a general feeling both within government and within the community that South Australia was missing out.

I recall that on 6 October 1991 I attended the opening of stage one of the development, and I well and clearly remember that the then Premier, Hon. John Bannon, was standing up the front with the developers and the planners, and the lawyers and the potential politicians were actually seated right down in the back row, and I did have the opportunity to share a conversation with Alexander Downer, who perhaps was not as well known then. I was there, and at that stage I was not contemplating a political career. On 31 March 1993 the agreement for the bridge was signed.

Until late 1993, despite daily headlines, despite public meetings, despite broad consultation, despite meetings with the Aboriginal heritage, not one suggestion of secret women's business was raised—not one. The first time it was publicly raised in fact took place after my election. I do not want to go on about secret women's business or anything of that nature, but the Hon. Sandra Kanck goes on and says—

The Hon. Sandra Kanck: It's not secret.

The Hon. A.J. REDFORD: Well, you referred to it as that, and I will quote you if you like.

The Hon. Sandra Kanck: I said it was referred to in a derogatory manner by other persons.

The Hon. A.J. REDFORD: She says:

> This tradition of women's business became known in a derogatory way as secret women's business. It was secret to the extent that all Aboriginal people in Australia have men's and women's business, and women do not partake of the ceremonies around the men's business, and vice versa.

It is typical of the honourable member, and indeed those whom she supports, to make assertions such as that, but there is nothing that I know that would support such assertions, unless they are being made in a political context with a view to embarrassing the Chapmans or the government.

The Hon. Sandra Kanck interjecting:

The Hon. A.J. REDFORD: I certainly do not jump on bandwagons. Where there is a dispute between the Hon. Sandra Kanck and the Hon. Trevor Crothers, I would certainly prefer the view of the Hon. Trevor Crothers, who has substantially greater qualifications in this area than the honourable member. There are a number of suggestions that have been made in that regard.

I would invite the honourable member to read a book, and I suspect that she has not or she would not have made those silly statements. Entitled *A World That Was—The Yaraldi of the Murray River and the Lakes, South Australia*, it was written by Ronald Berndt, Catherine Berndt and John Stanton, well-known anthropologists in relation to this issue. I would invite the honourable member to read that book and in particular the chapters entitled, 'Keeping the Peace' and 'Ceremony and Song'. I will read one quote from page 210 in the book which may interest the honourable member:

> Kukabrak society appears to have had no secret-sacred rituals, at least not in terms of a separation of the sexes.

It goes on and talks about performances and other issues. That is just but one line, and I do not wish to go over all the issues associated with that. I must say I get substantially sick and tired of discredited anthropologists with limited scientific principle and limited understanding of how these matters develop continuing to push the lie because, at the end of the day, all they do is undermine the integrity and confidence of the broader Australian public in what I would describe as real substantial and genuinely held Aboriginal beliefs.

The tragedy that has been inflicted on the Aboriginal people by the Hon. Sandra Kancks of this world is that some groups of Aborigines who now seek to advance genuinely held beliefs and long-held beliefs are denigrated by some quarters in our community because of the substantially discredited allegations and substantially discredited claims made in so far as this bridge is concerned. No-one at any stage has been able to stand up and explain why, when this bridge was first mooted publicly in 1987, it took six years for people to come forward and say that there should be no bridge because of a cultural aspect associated with the Aboriginal community.

The Hon. Michael Elliott also falls into the same trap as the Hon. Sandra Kanck in that they have a rather liberal and strange view of history. In his contribution yesterday, the Hon. Michael Elliott said (and I will not go through all his false allegations, because I am mindful of the stage of the calendar):

> In fact, as wetlands of international significance, it is absolutely staggering that the chief wildlife officer of the National Parks and Wildlife Service was not consulted at any time in relation to the EIS process or the assessment of the EIS. Again, this shows the very farce that the EIS process was.

I remind the honourable member that meetings were held as early as April 1988 involving Bruce Lever, and appendix 10 of the EIS published in November 1989 stated:

> At all times, open and positive discussions have been held with staff from the Department of Environment and Planning (Planning Division Assessment Branch), heritage group, Coastal Management and National Parks and Wildlife Service, Department of Engineering and Water Supply, Department of Marine and Harbors, Highways Department, the Health Commission and the Department of Tourism. Inquiries were also made with the relevant service authorities such as Telecom and the Electricity Trust of South Australia.

I would like to know how the Hon. Michael Elliott can stand up with any sense of credibility and suggest that there was no consultation with the chief wildlife officer of the National Parks and Wildlife Service or, indeed, consultation with other

groups of people. The EIS process was substantial and it was conducted amid a great deal of publicity.

I note that the Hon. Carolyn Pickles referred to some recent correspondence. The Hon. Sandra Kanck spent a significant part of her speech talking about this man who owns a catamaran with a big mast. This bridge has been on the agenda since 1988. Plans have been about since 1989. If people want to buy boats with big masts, they ought to check the heights of bridges proposed to be built. The Hindmarsh Island bridge has hardly been a well kept secret. When one goes further and understands that the powerlines will be below the bridge, one must question the veracity of the person who at this very late stage has sought to prevent the construction of a bridge because he has a catamaran with a big mast.

In closing, I think it is time we got on and built the bridge. The whole issue concerning the bridge has become a symbol of the excess of political correctness. I hope in future that developers can be assured by the processes that parliaments and governments adopt and not be hijacked as the Chapmans were at a late stage in the development process. There will always be developments that attract controversy, and there may well be developments that I oppose but, if developers are given a process through which they can work, and be given the confidence that once they work through that process the result will be something that they can stand by and that the community will stand by, then we will have achieved an appropriate development culture. The importance is the integrity of the process and, whether or not you oppose a development, that integrity must be maintained as much as possible.

This has been a sad affair. I must say that the majority of Australians and I are heartily fed up with those people who continually want to re-visit some of the excesses of political correctness. I think that a substantial majority of Australians and I just want this bridge built and the whole sorry saga put behind us, and perhaps then there might be some prospect for real reconciliation to take place between white Australia and Aboriginal Australia. If there is one symbol that continually holds up that process, it has been this saga and the Hindmarsh Island bridge that has been at the heart of it.

The Hon. R.R. ROBERTS: It was not my intention to enter this debate at all today, because the opposition is supporting the bill, but I do have to take objection to that last contribution by the Hon. Angus Redford. First, he declares that he has an interest—he represented them. Then he declared that he was biased, and then rabbited on and abused everybody, including the Hon. Mr Tickner, saying that he acted through stupidity and naivety.

Let us recap what the Hon. Angus Redford told us. When this bridge was proposed, the Labor government supported it and the Liberal opposition did everything it possibly could to oppose it. You were here at the time, Mr President, when the Hon. Diana Laidlaw in this chamber instituted proceedings to set up the Jacobs royal commission into the Hindmarsh Island bridge, just before we went to the election. The outcome of that exercise was the Jacobs report. The Jacobs report has never seen the light of day. That is obviously 'secret white man's business' as far as this government is concerned, because it has never been presented; nobody knows what is in the report.

So, when the Hon. Mr Tickner had an inquiry it was drawn to his attention as Minister for Aboriginal Affairs that there could well be a problem involving Aboriginal culture and secret beliefs, at which time he said, 'Halt the process.' He was not opposed to the bridge: he said, 'You cannot proceed.' It was not, as the Hon. Angus Redford said, that he was opposed to the bridge. He did not ever say that he was opposed to the bridge: he said that we had to stop the process and conduct a proper investigation.

That investigation was not condemned until such time as it came down with findings on matters on which the Hon. Angus Redford's party had since changed its position, because the Hon. Dean Brown was under pressure at Hindmarsh Island and had flipped over. Bear in mind that we still had not seen the Jacobs report—and we still have not seen it. The Hon. Angus Redford wants to kiss the boots of the Chapmans and other people. It is very easy now, after the white man's courts have made their judgment and the Chapmans will be compensated. It has not cost members of the Legislative Council such as the Hon. Angus Redford anything. The only people who have been left lamenting, sad and crushed in this exercise are the Aboriginal people in and around Hindmarsh Island, the Ngarrindjeri people.

This government has made sure that it and the Chapmans have been covered. Nobody has cared too much about the state that the Ngarrindjeri were in. They are having criticism and crude innuendo heaped on them about their motives. If this government was serious and even-handed about all of this, perhaps it might take the position with the Ngarrindjeri people that they should not do things that will get them into the same position. It has given compensation to the Chapmans. If it was sensible it would be even-handed about this and assist the Ngarrindjeri people to set up some structures whereby we do not have these problems in future. But, no; the Ngarrindjeri people are crushed because of their beliefs that some white Australians do not believe in.

I commend the speech made by the Hon. Terry Roberts in respect of the truth of this matter. It was a very good speech; it showed sensitivity. If this government is fair dinkum about Aboriginal affairs and the culture of indigenous Australians, it ought to do something by way of putting in some education processes and structures so that in the future we do not have to suffer these long and sorry sagas. Then, people can go to Hindmarsh Island and if they want further developments we can do it in a coordinated and efficient way so that the rights of all the people are respected, including the Ngarrindjeri people and the white community who live there, because they all have a role to play.

I take particular exception when the Hon. Angus Redford comes in here, the biggest squealer when anybody casts a slight aspersion on him or any of his colleagues, and gets straight into the Hon. Mr Tickner and defames him with immunity. He is the typical coward who sits on that side; they come in here and condemn everyone else and impugn their reputations but, on the first occasion someone says the slightest thing against them, they scream for points of order.

I make this contribution with some regret, Sir; I know that you want to get on with the criminal justice legislation. But I believe it is about time that the Liberal Party started to pull these backbenchers into line. If they want to maintain decorum in the Council they can start with their own. If the Hon. Angus Redford has one iota of decency and wants to live by his own standards, he will get up and make a personal explanation and apologise to the Hon. Mr Tickner for the statements he made about him in his contribution. The Labor opposition supports the second reading of this bill, as we did when we were in government in 1989.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for the bill. I refute—

The Hon. Sandra Kanck: Or lack of.

The Hon. K.T. GRIFFIN: Or lack of; I am not quite sure what, sometimes. The Hon. Ron Roberts has made some pleas to the government, suggesting that we are not concerned about the Ngarrindjeri Aboriginal people. Let us face it: who got us into this mess? It was the Labor government in 1989. If we are to start throwing stones, let us throw them at the right target. I will not get into mud slinging and a debate about the sorts of issues the honourable member raised. The response has been on the record for a long period of time.

I will deal with the substantive issues which have been raised by members. The Hon. Sandra Kanck raised a number of questions. The first is: how much land will need to be subdivided in order for the government to get back that first $4 million? The answer is that the current government has not caused any economic analysis to be done. I do not know what economic analysis was done by the previous government. All the bill seeks to do is to give statutory force to the Alexandrina council's contractual liability by shifting the liability directly to the relevant allotment holders.

Any questions as to what might be recouped are better directed to the opposition, as it was the former government that put these arrangements in place. In any event, it is impossible to know how many allotments will be created over the next 20 years. This will depend in part upon decisions the local council may make in relation to land division on Hindmarsh Island. Stage 2 of the marina development will involve the creation of some 205 allotments, and no doubt there will be other development on Hindmarsh Island. It is impossible for me to predict how many allotments will be created, without using a crystal ball.

The Hon. Sandra Kanck asked for detail of the variations to the tripartite deed. These are contained in the bill itself. There are no other changes to the tripartite deed; it is in fact a schedule to the bill. The Hon. Sandra Kanck asked: what has Beneficial Finance Corporation to do with any litigation over the building of this bridge? Beneficial Finance Corporation and the Chapmans were involved in litigation over an unrelated matter. That litigation was related to finance arrangements for a development at Wellington. It was a condition of the Chapmans agreeing to release the government from any liability in relation to the bridge that this litigation was settled and limited legal costs of the Chapmans paid.

The Hon. Sandra Kanck asked: what is Kebaro; who are the principals and the shareholders of that company; and why is it involved in this? Kebaro Pty Ltd is a company of which Tom Chapman is the sole director. I do not have details of who the shareholders are. The relationship with Kebaro and the building of the bridge is that the liquidator of Binalong Pty Ltd assigned certain rights, including Binalong's rights to sue the state government, to Kebaro. It was necessary, therefore, for the government to secure releases from Kebaro.

The Hon. Sandra Kanck asked: how much is the former home of the Chapmans to be sold for and how much of that will the government recoup into its coffers? The former home of the Chapmans was transferred to the Chapmans for the sum of $152 000 by the Beneficial Finance Corporation. This was linked to the settlement of the action involving the Beneficial Financial Corporation. The state provided the whole of this amount to the Chapmans with the money being directly recouped by Beneficial Finance. Effectively, it was a cost neutral transaction for the government and again a condition of the Chapmans' agreeing to release the state from liability.

The Hon. Terry Cameron asked questions about the number of allotments similar to the first question asked by the Hon. Sandra Kanck, and the same answer obviously applies, but he also asked whether the $4 500 lump sum, which owners can elect to pay, is the same in quantum no matter the value of the block. The answer to this question is 'Yes'. This was the arrangement which was entered into by the former Labor Government.

The Hon. Carolyn Pickles asked: what is the average payment for allotments? The answer to that is $325 per annum CPI indexed from March 2000. That figure is the same as it was in 1993. As part of the whole of the settlement of the prospective litigation involving the Chapmans and their interests, the government agreed that it would CPI index it not from 1993 but from March 2000.

The Hon. Carolyn Pickles' second question is: what happens to the money collected from the levy? Does it go to the Highways Fund? There has been no decision about where it will go except into the Consolidated Account, remembering that the cost of the bridge (about $9 million) is being borne by taxpayers. That amount has substantially escalated from earlier predictions, and it is appropriate that we seek to recover at least some of the costs of building the bridge.

The third question asked by the Hon. Carolyn Pickles is: what happens if the $4 500 is paid? According to the tripartite deed and the bill, the liability for payments will cease. In effect, it is an advance lump sum payment instead of having to meet the recurrent annual repayments.

I understand that the Hon. Carolyn Pickles was also concerned about the height of the bridge. There has been some debate about that. It is 14 metres from pool level. That is higher than the centre of the electricity cables which span the river near the ferry. My recollection is that the height from the lower point of the electricity wires to the pool level is 13.9 metres. ETSA is currently conducting a study to check the height as it has not been checked for some time. I gather that some of the yachts which have been passing under the wires were dodging to the side—

The Hon. Carolyn Pickles: That is a very dangerous occupation.

The Hon. K.T. GRIFFIN: It is a dangerous business, because there is always the risk of drift and hitting a problem with your yacht. It is a serious safety issue. However, ETSA has indicated that it has no intention of raising the height of the cables. The bridge has been planned since 1992 at a height of 14 metres. To change that now would involve having to seek new planning approvals, having to—

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: They could do that, but there would also have to be a substantial increase in cost, not only to lift the bridge the two metres which the yachting community seeks but also the approach roads would have to be much more extensive than at present. The government takes the view that all this was locked in a long time ago, and however—

The Hon. Diana Laidlaw: Contracts have been let.

The Hon. K.T. GRIFFIN: Contracts have been let. However much sympathy one has for people with a yacht with a 16 metre mast rather than a 14 metre mast, the fact is that the issue was resolved in 1992. We are locked into that and, as a government, we have no option but to proceed with

the bridge at the planned height. I think that answers all the questions that have been raised. Again, I thank members for their indication of support.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

The CHAIRMAN: I point out that clause 4, being a money clause, is in erased type. Standing order 298 provides that no question shall be put in committee upon any such clause. The message transmitting the bill to the House of Assembly is required to indicate that this clause is deemed necessary to the bill.

Clauses 5 to 10 passed.

Schedule.

The Hon. SANDRA KANCK: I rise to indicate that the Democrats oppose the inclusion of the schedule in the bill. I raised this matter during my second reading speech. I believe it to be inappropriate that the schedule be included. I refer to a letter in the Victor Harbor *Times*, which I came across recently. It is dated 2 September 1999 and written by Vic F. Mills of Hindmarsh Island. The letter states:

> As a signatory to the tripartite deed signed on 22 March 1993 as the then Mayor of the District Council of Port Elliot and Goolwa, I am absolutely appalled that the government now wants to change terms and conditions within that document which was prepared in conjunction with their own Crown Solicitor and recognised by all three parties as a legal and binding document, and as section 27 states, 'modification'—'This deed shall not be amended or varied other than by written instrument expressed both to be a deed and to be supplemental to or in substitution for the whole or a part of this deed. Further, any such instrument shall be signed by each party or by a person duly authorised to execute such an instrument on behalf of a party.'
>
> Yet this government seeks to put to parliament alterations without having any consultations with the council. As those alterations will have a detrimental effect on ratepayers, I find those actions absolutely offensive and immoral.

As the Council has not agreed to any variations in this deed and Binalong Pty Limited is in liquidation, I think it is entirely inappropriate to give status to a deed such as this by including it in this bill as the schedule.

The Hon. K.T. GRIFFIN: I refute the views expressed by the Hon. Sandra Kanck. The tripartite deed is an essential part of the bill. If you do not have the tripartite deed attached for interpretation purposes, it is a bit more difficult to make the whole thing hang together. In any event, the Hon. Sandra Kanck has read a letter that does not seem to have come to grips with the fact that there was a point at which there was some disagreement with the Alexandrina council, the successors to the District Council of Port Elliot and Goolwa.

Subsequently, the issues raised by the Alexandrina council were adequately addressed and now, as far as I am aware, the deed is supported by the council. So far as Binalong is concerned, it is in liquidation but, notwithstanding that, the deed is still a binding document. That has been the document upon which a lot of legal advice has been given over a long time about the government's liability, in particular. I do not accept the arguments put by the Hon. Sandra Kanck, because I do not believe they are valid.

The committee divided on the schedule:

AYES (16)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Holloway, P.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Pickles, C. A.

AYES (cont.)

Redford, A. J.	Roberts, T. G.
Schaefer, C. V.	Stefani, J. F.
Weatherill, G.	Zollo, C.

NOES (3)

Elliott, M. J.	Gilfillan, I.
Kanck, S. M. (teller)	

Majority of 13 for the Ayes.

Schedule thus passed.

Title passed.

Bill read a third time and passed.

MURRAY DARLING BASIN COMMISSION ANNUAL REPORT

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table the ministerial statement made today by the Hon. Dorothy Kotz, Minister for Environment and Heritage, on the subject of the Murray Darling Basin Commission annual report 1998.

Leave granted.

[Sitting suspended from 6.11 to 8 p.m.]

AUDITOR GENERAL'S SUPPLEMENTARY REPORT

Adjourned debate on motion of the Treasurer (resumed on motion).

(Continued from page 516.)

The Hon. R.I. LUCAS (Treasurer): This motion has been canvassed in a number of other debates and also publicly. The Auditor-General had asked for some opportunity to be provided to him so that during the coming recess—which I understand is being warmly supported by all members of parliament of all persuasions, colours and varieties, at least, in this chamber; I am not sure about the other one—should he desire to make a supplementary report, for him to have the ability to do that and provide a copy to the presiding officers and for that to attract the normal protections that Auditor-General's reports attract when they are tabled in parliament.

This motion has already passed the House of Assembly. I do not expect the Legislative Council to oppose it, given the good degree of unanimity we have on many issues in this chamber, but, should we not support it, it will not have much impact because it will be tabled in the House of Assembly. It has been supported by both the major parties and the three Independents in the House of Assembly. I urge members to support this motion.

There will be a subsequent motion for the establishment of a joint select committee which will again give the Auditor-General another opportunity to present further reports or comments to a joint select committee of both houses. That committee will operate not only through the coming recess but also to the end of the leasing process, so the Auditor-General should not feel concerned at all that he does not have more than enough opportunities to put his particular point of view on any aspect of the ETSA leasing process through these various mechanisms which have been provided by the government and, we hope, supported by all members of the Council.

The Hon. P. HOLLOWAY: The opposition will support this motion which comes about as a result of recommendations contained in the Auditor-General's supplementary report on the electricity businesses' disposal process. On page 43 of the report the Auditor-General makes the following comments:

> It is noted that the parliamentary sitting dates for the current session provide that the parliamentary Christmas recess is expected to commence on 19 November 1999 [which of course is tomorrow] and that the parliament will not resume sitting until 28 March 2000. It is possible that matters of probity concern may arise during the period of the Christmas recess. Unless there is an amendment to the disposal act to provide for the Auditor-General to be able to present to the presiding officers of the parliament a report that can then be made available to the members of each house of parliament within a stipulated time period, there is the possibility that matters that may be capable of legislative correction will not be able to be legislatively dealt with in a timely way.
>
> This inability could prejudice parliament's intention to facilitate the sale-lease process as evidenced in the disposal act. Under the existing arrangements, a report by the Auditor-General can be made to the presiding officers. This report will not, however, be made available to members of parliament until the first sitting day of the next parliamentary session. It is my respectful suggestion that, if the parliament is of the view that the 'publication' of reports out of session has merit, an amendment consistent with the concept in section 2(7) of the disposal act would seem to be one approach of dealing with this matter. It is of course a matter for Parliamentary Counsel and the parliament to determine what may be done in this regard.

When we were discussing amendments to the electricity disposal legislation yesterday, I did have on file an amendment to give effect to the suggestion of the Auditor-General but, as I indicated during that debate, the suggestion made by the Treasurer is arguably a more preferable way of dealing with this matter. I understand it covers questions such as parliamentary privilege of the reports that are issued in a more satisfactory way. That is the reason I did not proceed with the amendment to that bill. We wish to assist the Auditor-General in the operation of his duties in regard to the electricity disposal process, and that is why we warmly support this motion.

The Hon. M.J. ELLIOTT: On behalf of the Democrats, I indicate support for this motion. The Hon. Sandra Kanck has an amendment to a bill in similar terms and indicated last evening that she would not continue with it once this motion was passed. It is unfortunate that, if the Auditor-General has a matter to report to the parliament, we do not enable him to report if the parliament is not sitting. The parliament is about to get up for quite an extended break of some four months and, if there is a matter that the Auditor-General thinks is important, whether it be in relation to processes surrounding the electricity corporation sale or anything else, he should be able to report to the parliament whether or not it is sitting. I believe that the more general principle should apply and not just in relation to this motion. The Democrats support the motion.

Motion carried.

ALICE SPRINGS TO DARWIN RAILWAY (FINANCIAL COMMITMENT) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 522.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): I support the bill. I believe that there has been a very lengthy debate in the House of Assembly on this issue. I am mindful of the fact that we have to deal with a lot of legislation tonight and that we do not particularly want to be here all night. This is an exciting project and it is one that the Labor Party has strongly supported.

We have had a differing view about the level of contribution by the federal government, and that has been the only differing view that we have ever had on the whole issue. The bill seeks to make funds available—up to a total of $125 million—for the performance of certain works in connection with the project; and clause 4 seeks to authorise the giving of a guarantee of up to $25 million to the project plus any associated costs.

I understand that the Premier wrote to the Leader of the Opposition asking whether or not we would support the expeditious passage of the bill, and we agreed to that, because we believe that it will be a symbol to South Australians that we can support in a bipartisan way important projects for this state. However, I must say that we are somewhat disappointed that the federal government took so long to come to the table with the extra money. During the last federal election the Leader of the Opposition, Kim Beazley, committed a total of $300 million to the project.

Recently I was at a rail conference in Sydney where the New South Wales Minister for Transport—and I acknowledge that he is a Labor minister—was critical of the federal government's somewhat slow moves to support the progress of this important project by committing considerable federal government money to it—and it should be federal government money, largely. However, we are happy to support the state government putting in additional funds. We would like an undertaking—and I believe that has been given by the Premier in another place—that, after the South Australian government guarantee of an extra $50 million, we will not again be asked for money. I ask the Treasurer in this place to make that commitment also.

This is a very exciting project; it is one that we hope will bring some sorely needed jobs into South Australia. I think it is a project that all members have looked at over a number of years and thought, 'Will we ever see the day when it gets off the ground?' It does look at if it will get off the ground, and we are pleased to support the project.

It would seem to me that this is an opportunity to provide a number of jobs. In his second reading response I would ask the Treasurer to indicate in what areas there will be additional jobs and whether he has any indication of the number of additional jobs that will be provided. I think that that is something that we all want to know—exactly what ongoing benefit this will be to South Australia.

In the past there has been some criticism by government members that the opposition is not supporting this project to the full, but I think it is quite right that we should question the state's commitment to it. I would have liked to see the federal government commit more funding to it, but that is not to be. However, we support the additional commitment of funding and we would like a guarantee that this is the last commitment of funding that the state will have to give, and that any further commitments will come from the federal government. I do not think the state can afford to put enormous amounts of money on an ongoing basis into projects of this nature. After all, it is to the federal government's advantage that this railway should go ahead, and it seems to me that the federal government should be more generous in its ongoing commitment to the Alice Springs to Darwin railway. It will be an exciting project. The somewhat fast passage of this bill has

bipartisan support given the commitment of the government that this is the last amount of money that we will have to provide.

The Hon. M.J. ELLIOTT: The Democrats have been long-term supporters of rail transport during the past two decades when successive federal governments have not been spending on rail but in fact closing down rail. Throughout South Australia we saw lines being closed or lines, such as the Wolseley to Mount Gambier line, not remaining operative because governments could not find a bare $3 million to standardise.

We have seen an enormous wind back, and it is only during the past couple of years that things have finally been reversed. A number of reasons why I was very happy with the GST package that was finally negotiated was that, as part of those negotiations, some of the disadvantage that rail suffered relative to road was removed. There is no doubt in my mind that the viability of the Adelaide to Darwin line was significantly improved by the GST package.

My greatest disappointment is one which other members in this place have touched on: I believe that the federal government has not done anywhere near enough in this regard, and that might be a political mistake in terms of marketing. Even when I spoke a moment ago I talked about the Adelaide to Darwin line. In fact, there is already a line from Adelaide to Alice Springs, but the line that goes to Alice Springs also connects into the route that goes via Broken Hill to New South Wales, and the line to Adelaide also goes to Melbourne.

I think that we fail to convince Sydney and Melbourne that this is not just an Adelaide to Darwin line, but it is also a Sydney to Darwin line and a Melbourne to Darwin line. I think that was very strongly recognised by the Environment, Resources and Development Committee, which looked at rail links to the eastern states and, in fact, one of its recommendations was that we should be supporting a new line between Melbourne and Brisbane, with a major interchange at Parkes, and we were hoping that Parkes would act as a major centre, sending traffic particularly from Sydney, and even Brisbane, across to the line up to Darwin, and that we might also, of course, see more freight coming from Melbourne via Adelaide to Darwin.

It is worth noting that the Adelaide to Melbourne line has already been significantly upgraded in recent times. Some two hours have been taken off the trip and there is capacity to take another two hours off the trip, with relatively minor spending compared to what the Adelaide to Darwin line is costing us. I hope, of course, that we will have a Mount Gambier to Darwin line, too, because with the upgrade of the line from the South-East to Wolseley I am sure we will see freight even coming from the South-East going directly north.

The South-East is about to have a boom, in my view, and not just of grapes and blue gums, which seem to be the two flavours of the month, but I think we will see a significant increase in a range of other horticultural crops, cherries, apples, etc., and if they have the capacity to go directly to Darwin, which will clearly start acting as an entrepot port, with many small boats dispersing through the archipelago of Indonesia, Philippines and further north, then I think we will see a lot of material coming out of even the South-East of the state. It is not possible at this moment because the line is the wrong gauge.

Some three years ago the Hon. Sandra Kanck suggested in this place that some $800 million may be required to get the line built. I do not think quite that amount is going in. We certainly have some concern that more money may need to be spent.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: They were not just her figures but Rail 2000, among others, had made projections along those lines. We have already seen extra moneys having to go in. I am not for a moment begrudging that money, but I am making the point that I made at the beginning, that the eastern states must be persuaded that this is a project not just for South Australia. Clearly, we will be major beneficiaries, but if we can get very rapid freight moving out of Melbourne and also out of Sydney up to Darwin those two cities will also be major beneficiaries, and it is unreasonable that both the Northern Territory and South Australia have borne a large part of the funding requirements. I must say I do expect that some time in the next couple of years we will see at least a Melbourne to Brisbane line built, and I would just about guarantee that the federal government at that time will pour megabucks into that route.

The Hon. T. Crothers interjecting:

The Hon. M.J. ELLIOTT: I think after East Timor certainly there is the pressure to make sure that we have good links particularly to the north. As I said in commencing, the Democrats are strongly supportive of the line. We have been proponents of it for many years and proponents of rail more generally. We are pleased that now at long last after promises going back to the beginning of the century it looks like it is going to be built and we urge the government to continue to try to get the federal government to pick up more obligation than it appears to have done so far.

The Hon. T.G. CAMERON: I am absolutely delighted to be able to get up on my feet and support this bill. I have no intention of dampening what should be a celebration in this chamber, that we are finally going to get the rail link built between Darwin and Alice Springs. So I have no intention of quibbling or whingeing about who should have put more money in or that the federal government is at fault or the state government is a fault. That would just be playing politics with the issue. The go ahead for the line is in place and all South Australians should celebrate. As the Hon. Michael Elliott said, we have been waiting 100 years for this to happen. All South Australians should be celebrating the announcement that the line will go ahead.

Coming back to the bill, its purpose is simply to introduce a number of clauses that will amend sections of the Alice Springs to Darwin Rail Act of 1999, which is an agreement between the South Australian and Northern Territory governments to construct the railway link between Alice Springs and Darwin. SA First believes that the time for the Darwin-Alice rail link has come. Quite simply, the rail link is of national and strategic importance to the future of Australia, and in building a new bridgehead into Asia for our state. I also note the interjection that came from the Hon. Trevor Crothers and I think his observation is correct. I think the East Timor situation, as unfortunate and sad as it is, also helped crystallise people's minds to the view—

The Hon. T. Crothers interjecting:

The Hon. T.G. CAMERON: It certainly crystallised the MPs over there in Canberra. It focused their attention and the announcement is wonderful news for South Australia. A project of national significance such as the Darwin to Alice Springs rail link will signal to our neighbours that Australia in the new millennium is committed to a dynamic presence

in Asia. This major project should be regarded as an investment whose costs are outweighed by its benefits over the longer term. The Darwin-Alice rail link has been an important matter of Australian public debate over the last century. Eighty-six years ago the commonwealth committed itself to construction of the line. The case for and against the railway has been debated ever since.

I would like to restate a number of compelling reasons for the case for the line being built. First, the expansion of Asian involvement in Australian markets is inevitable. Australia can and must plan the expansion of its involvement in Asian markets if it is to benefit and maximise the advantages to South Australia from the inevitable growth that will now take place in Asia as they come out of their recessions. We must be prepared to invest in infrastructure such as this in order to reap the benefits of the economic growth of our Asian neighbours to our north. By providing an efficient corridor for our exporters to Asia, the railway will improve the competitiveness of our existing exporters and facilitate new activities in areas which until recently were not considered cost competitive. Our reliance of foreign owned shipping services is a costly component of our current account imbalance. The Alice to Darwin railway line would reduce these costs to the national economy and as the project involves very high levels of Australian content it will have a positive multiplier effect domestically.

Secondly, the Darwin-Alice Springs rail link will deliver jobs to some of the people in our state who need them the most, the people of the Upper Spencer Gulf region. The construction phase will lead to the creation of 2 000 jobs; 7 000 jobs during construction. Approximately half of these, I understand, will be in South Australia, and nobody here needs to be reminded, particularly the Hon. Ron Roberts, that the people of the Upper Spencer Gulf cities need jobs as never before. Currently the unemployment rates for Port Augusta stand at 11.3 per cent; Whyalla is at 10.8 per cent; and in the Hon. Roberts' home town of Port Pirie it is sitting on 13.4 per cent. Youth unemployment, of course, is much worse, as it is everywhere, with a rate of 39.2 per cent, that is, two out of every five young people in the Upper Spencer Gulf region are out of work.

Thirdly, the rail link will contribute significantly to the protection of the environment by reducing reliance upon road vehicles, conserving fuel resources, while reducing greenhouse gas emissions. The project will reduce the cost of maintenance of the Stuart and Barkly Highways, caused by road freight vehicles. Further, by reducing our reliance upon an ageing stock of freight ships, we also reduce the danger of environmental disaster along our coastline.

Finally, but not exhaustively, the new line will provide a major boost to tourism by offering access to Australian and overseas tourists to a memorable journey from the north to the south of the continent, the largest island continent of the world. The rail link will offer tourists one of the great train journeys of the world. On 7 June 1999, the South Australian and Northern Territory governments announced that the Asia Pacific transport consortium AARC had been selected as the preferred consortium to build the line. Based on the proposal received from the consortium, the two governments approved the provision of additional funding for the project, and this has resulted in the need to amend the existing legislation.

The legislation before us has two main clauses. Currently, the legislation applies a limit of $100 million in 1996 dollar terms. Clause 4 repeals section 6 of the current act to enable the state to make a capital contribution to the project of up to $125 million. It also authorises a guarantee of the performance by the AARC of its obligations under the contract. Clause 5 inserts three new sections into the act to authorise the minister and state agencies to do anything reasonably required for the project, to authorise funding for the project and to make it clear that work carried out on the existing railway line between Tarcoola and the Northern Territory border will comply with requirements under section 11A of the Non-Metropolitan Railways Transfers Act 1997.

The Darwin to Alice Springs rail link is of the greatest importance, not only to South Australia and the Northern Territory but, as was pointed out by the Hon. Mike Elliott, to all of Australia. Both in practical and symbolic terms, the Darwin to Alice railway can help to position Australia for its future in the new century as an innovative trading economy growing with the dynamic industrial and emerging economies of Asia and, in particular, South-East Asia.

I would like to take this opportunity to congratulate everybody who was involved in the successful securing of this project. That includes naturally the South Australian and federal governments, but I also include the Leader of the Opposition, Mike Rann, who has been a great supporter of the line. From time to time we even witnessed him acting in a bipartisan manner in relation to this line. I would only encourage him to do that—

The Hon. L.H. Davis interjecting:

The Hon. T.G. CAMERON: The Hon. Legh Davis interjects. As I was about to say, I would only encourage the Leader of the Opposition to act in a bipartisan manner on more occasions as he has done so on various occasions with the Darwin to Alice Springs rail link. I would also place on record the long support that the Australian Democrats have had for this project. The Hon. Nick Xenophon, since his arrival in the parliament, has also been a supporter, as has the Hon. Trevor Crothers from Independent Labour.

The Hon. M.J. Elliott: And Terry.

The Hon. T.G. CAMERON: I am not sure whether the Hon. Mike Elliott is referring to me or Terry Roberts, but I assume he was referring to the Hon. Terry Roberts.

The Hon. T.G. Roberts interjecting:

The Hon. T.G. CAMERON: That is correct; I did, too. I had forgotten about that. Maybe the Hon. Mike Elliott was talking about me. Seriously, I think all the political parties and every member of this chamber and of the other place should be proud and absolutely delighted for South Australians that this project is going ahead. Now that we will be reducing our state debt, we can look forward to a welcome and timely fillip to our state economy with the money that this will inject into South Australia. I think all members of parliament from all political parties, and the Independents, can rightly take pride in the fact that this project, after 100 years of debate, will finally go ahead. SA First is absolutely delighted to support the second reading and to facilitate the passage of this legislation.

The Hon. NICK XENOPHON: I rise to endorse briefly the remarks of all honourable members in relation to this bill. This is a great project for South Australia. It is a nation building exercise. All parties involved in relation to this project ought to be congratulated.

The Hon. L.H. Davis interjecting:

The Hon. NICK XENOPHON: It is a pity that the Hon. Legh Davis is making a crack about poker machines in the club car. That was an inane interjection.

The Hon. R.I. Lucas: Sue him!

The Hon. NICK XENOPHON: That is also really quite inane. I wanted to rise to endorse the remarks made by honourable members. It is a very good project and the government needs to be congratulated, as do all the other parties, for its perseverance in relation to this project.

The other night at a dinner partly organised by the Hon. Terry Cameron when David Hale spoke, I had a chance to speak to Graham Baker, President of the Chamber of Commerce at Port Augusta. Graham was very excited about the prospects for Port Augusta. It is a town that has been hit hard in recent years by a number of regional downturns and a number of other factors which I will not go into now. He is thrilled at the prospects for rejuvenating Port Augusta. That is a town that deserves the shot in the arm that this project will provide. In terms of the economic benefits, Alan Wood in the *Australian* cast doubts about the potential benefits of this project.

The Hon. T.G. Roberts interjecting:

The Hon. NICK XENOPHON: I do not know about John Quirke in relation to this. That sort of analysis ignores the long-term benefits. When I recently discussed this matter with Professor Richard Blandy of the School of Applied Economics at the University of South Australia, he too was very enthusiastic about the benefits and the multiplier effects this project will have. With those remarks, I wholeheartedly support this bill.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): Although this is not my bill, I have an intense interest in this matter and, if it was not for finance, I suspect I would be dealing with it as the minister responsible. I want to say how rewarding it is, on what was to be the last day of sitting for this century, for me to hear this place speak with one voice in terms of a project that will unite South Australia and, I hope in time to come, will be embraced across Australia. I have found it extremely taxing, as Minister for Transport, to win the goodwill and understanding of transport operators, ministers or powerbrokers in the Eastern States, and I include here bureaucrats from the National Competition Council, to this project.

My own view has been that we stand here tonight celebrating the success of this project, subject to contractual obligations, notwithstanding the almost collective efforts of the Eastern States to thwart this project. I spoke on this matter when I was shadow Minister for Transport back in 1992 with a motion moved in this place, and it was really quite thrilling as part of that motion to do a lot of research into the *Hansard* record and see that this is in fact one issue where there has been unanimity for over a century and across houses and across parties in this state.

It is really quite a credit to our visionary forebears who, first having established the extraordinary overland telegraph, then decided they would work towards the establishment of this railway. It got as far as Oodnadatta, all at state expense, and then from Darwin to Pine Creek and was thwarted only in 1911 when the Commonwealth became involved. So often I feel that that spirit of enterprise and vision that saw South Australia excel with the railway to Oodnadatta and south to Pine Creek is the spirit we need again in this state to re-establish ourselves, and to do so despite the often collective force of the eastern states and the commonwealth. I remember in the early days of my job as Minister for Transport fighting extraordinarily hard with the federal bureaucrats and successfully with the ministers just to get the survey funds to complete the understanding of the route for this survey. We finally did obtain several million dollars, and I acknowledge the efforts of the former Minister for Transport, the Hon. John Sharp.

Tonight I also acknowledge the efforts of the former Minister for Railways in the Northern Territory, Barry Coulter, who almost lived the railway for many years. He drove us mad. I think the Attorney-General raised his eyebrows, because Barry Coulter's ways were not always according to process, but his heart was in it and he fought solidly. I am quite convinced that we owe an enormous amount to Barry Coulter and his negotiating skills for the Aboriginal land rights agreements that have been secured to provide clear access from Adelaide to Tarcoola and Alice Springs to Darwin. It is very possible that without Barry we would still not have this railway, because we would not be able to get parties seriously interested in this track as they would not be guaranteed access. I also acknowledge former Chief Minister, Shane Stone, and the former Premier Dean Brown.

I do so in a funny sort of way, because this railway has outlived most of us in terms of the positions we have held and the fights we have waged. I must say it is particularly satisfying to still be Minister for Transport and to be able to debate this project tonight. It is important for jobs and important psychologically for the state. It is extraordinarily important for the well-being of the people in the Iron Triangle, and I personally feel an enormously strong commitment to the former work force of Australian National. I chaired a task force based in Port Augusta with union, employer and council representatives and became very emotionally involved in and committed to their plight and that of their families. It is extraordinarily exciting for them to see that rail will again shine. It will advance from Port Augusta, and I hope that many people who might not have been able to secure jobs in rail following the sale of AN may again find that their future job and working life is with rail. I think this provides an enormous possibility, and I hope it provides them and their families with a secure future.

The Hon. T. CROTHERS: I acknowledge all that has been said by all the speakers, but—

The Hon. T.G. Roberts interjecting:

The Hon. T. CROTHERS: Only if you make me one promise—that you will keep your trap shut. The Minister for Transport is being far too modest. She has played no small role in the ongoing battle, which has resulted in no small measure to East Timor. Certainly, consistent through that has been the minister's stand on the workshops at Port Augusta, and no doubt the future use in the top to bottom transcontinental rail link. I have no doubt that she has played a massive role, much more so than her modesty has permitted her to explain to us. I simply make that observation. I am not after anything today or tomorrow.

The Hon. T.G. Cameron: You won't get anything from her; don't worry about that.

The Hon. T. CROTHERS: No; I am kidding, but I thought that had to be said. I am more than happy to say it and more than happy to see that there is unanimity of purpose amongst us all with respect to the link that is so vital to this state's welfare both now and in the future.

The Hon. R.I. LUCAS (Treasurer): I thank members for their contribution to the second reading debate and their indications of support for the bill. I join with the Hon. Trevor Crothers in congratulating my ministerial colleague the

Hon. Diana Laidlaw for her contribution over the years in pursuit of this policy goal. The Hon. Carolyn Pickles asked for some information in relation to estimates of jobs. The Hon. Terry Cameron has used the only figure that I have in my briefing notes, which is an estimated total of 7 000 direct and indirect jobs during the construction stage.

An honourable member interjecting:

The Hon. R.I. LUCAS: I think that is what her question was about. In terms of the long-term future, I have not seen and do not have a figure. One may exist, but I cannot help much more than that at this stage.

In concluding, on behalf of members of the government I want to place on the record congratulations to Premier Olsen for the role that he has played over the years in pursuit of this policy objective. Having worked closely with the Premier over the past two or three years—however long it has been—it is one of the key policy objectives that he has pursued and he has pursued it, as he does with most things, with almost obsessive fervour. Whilst his political opponents may not want to be specific or fulsome in their praise of him personally, on behalf of the government members I place on the record our acknowledgment of the tremendous work that he personally has undertaken on behalf of the government with industry territory leaders, first Shane Stone and more latterly Mr Burke. He had a good understanding and relationship with Shane Stone in many areas and policy objectives, and this is one that they shared and worked on together. The two of them—Shane Stone and John Olsen—in no small part ensured the support of not only the Prime Minister but also enough key cabinet ministers in the federal cabinet to get this policy objective up.

Whilst he is sometimes a figure of fun with people, key cabinet ministers such as the former Deputy Prime Minister, Tim Fischer, with his great love of trains was one of many key cabinet ministers who were important—

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: He has a tremendous record in terms of trade and through the Asian region, as the Hon. Terry Cameron has highlighted. There were key members of the federal cabinet who opposed this policy objective. Those ministers had not inconsiderable clout within the federal cabinet. Too few people recognise the work that Shane Stone and John Olsen did to ensure that the key people within the federal cabinet, assisted by a number of key South Australian based cabinet ministers—

An honourable member interjecting:

The Hon. R.I. LUCAS: He may well have done, but I am not sure. I am here to pay tribute today to the role of our parliamentary leader, the leader of our state, in this most important policy objective for the state. It is an indication of the long-term vision that the Premier has for South Australia and his obsessive fervour as he pursues important policy objectives.

Just 12 months ago, there were many who looked at Premier Olsen and said that he would never get the electricity privatisation program through this parliament or achieve the policy objective of this railway. Those doubters and cynics have been proved wrong. As Premier Olsen looks back on his political career, he will be able to mark up on the achievement side of the register significant policy achievements, one of which will be this railway line. On behalf of government members, I again thank all members in this chamber for their willingness to support the second reading.

Bill read a second time and taken through its remaining stages.

BUILDING WORK CONTRACTORS (GST) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 532.)

The Hon. T.G. CAMERON: I shall be mercifully brief. The Building Work Contractors (GST) Amendment Bill 1999 deals with issues which arise in the South Australian domestic building industry as a result of the forthcoming introduction of the GST. South Australia is currently experiencing high levels of home building activity due to low interest rates. As a consequence, time frames for projects have extended beyond normal limits.

Two leading building industry associations have approached the government about the effect of the GST on domestic building work contracts and the constraints imposed by the current legislation. Section 29 of the current Building Work Contractors Act prevents a builder from passing on the effect of the GST. Whilst the GST will not commence until 1 July 2000, there is an issue which arises now from contracts which are not completed by the GST implementation date. The proposed amendments to the Building Work Contractors Act permit the inclusion of a GST clause to enable a builder to recover the GST paid on goods and services supplied under contract.

I understand that it is the government's view that it is desirable that the act be amended as quickly as possible. Two principal clauses (clauses 2 and 3) are affected by this bill: clause 2 inserts the definition of GST into the principal act; and clause 3 ensures that, if a GST clause is included in a contract, the contract must make it clear that the contract price could increase to cover a GST. SA First supports the legislation.

The Hon. J.F. STEFANI: I wish to say a few words on this measure. I have been approached by the CEO of the Housing Industry Association, Mr Brenton Gardner, regarding this matter. I am pleased to note that the Attorney-General has initiated the appropriate amendments. This measure obviously deals with the forthcoming introduction of the GST. We are all aware that the GST will apply to building contracts—in particular, goods provided under building contracts—and, more particularly, to housing contracts where the Housing Industry Association is bound to a contract form that does not allow the recovery of additional costs. So, this is a reasonable measure.

Whilst I am sympathetic to home buyers who will be required to pay a GST on their new home, I am equally conscious that there will be a transitional provision that will allow first home buyers to claim a rebate on the payment of the GST. Nonetheless, the rebate will not cover the full costs that will be imposed on a new home owner and buyer. Indeed, the GST will come out of the personal pocket of people building their new home or constructing an addition.

Whilst this measure will protect the builder from incurring the GST, that impost will be passed on to the new home owner, unlike commercial premises where the GST will be totally recoverable as a rebate or a deduction for the business. So, I am pleased that the Attorney-General has addressed the issue that was brought to my attention by the Housing Industry Association and that the measure will at least allow the various companies, building contractors and subcontractors to recover the GST component.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indication of support for this bill.

Bill read a second time and taken through its remaining stages.

STATUTES AMENDMENT (VISITING MEDICAL OFFICERS SUPERANNUATION) BILL

The House of Assembly agreed to the bill without any amendment.

BARLEY MARKETING (MISCELLANEOUS NO. 2) AMENDMENT BILL

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

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 explanation inserted in *Hansard* without my reading it.

Leave granted.

This Amendment Bill has two purposes:

(1) To permit authorised receivers to be able to buy or sell barley, effective in the 1999 harvest; and

(2) To explicitly exclude seed from the marketing authority provided by the Barley Marketing Act.

The *Barley Marketing Act 1993* was substantially amended, in early 1999, to finalise deregulation of domestic barley markets and to restructure the Australian Barley Board into grower owned companies ABB Grain Limited and ABB Grain Export Limited.

The amended Act provides that ABB Grain Export Limited may appoint authorised receivers that may receive and hold barley, and that delivery of barley to an authorised receiver is, for the purposes of the Act, delivery to the ABB.

Since the Act achieves a single desk export mechanism by restricting delivery of barley to the ABB, the appointment of authorised receivers is necessary.

However, the Act also prohibits an authorised receiver without, the written approval of ABB Grain Export Ltd, from having a direct or indirect interest in a business involving the buying or selling of barley or in a body corporate carrying on such a business.

This provision that prohibits authorised receivers from engaging in buying or selling barley has been in the Act for several years and originated in relation to separate legislation (the Bulk Handling of Grain Act) that provided for the South Australian Cooperative Bulk Handling (SACBH) to be the only entity that could receive and store grain.

The Bulk Handling of Grain Act was repealed in 1998.

During the review of the Barley Marketing Act in 1997 and 1998 there was an extended period for public comment, during which there were no concerns raised over the issue of this prohibition of authorised receivers buying or selling barley.

After the amended legislation had passed the House of Assembly in March 1999 and just before it was introduced into the Legislative Council in May 1999, SACBH requested removal of the provision of the Act that prohibited authorised receivers from trading in barley.

The Government consulted with SACBH, the South Australian Farmers Federation Grains Council and the then Australian Barley Board in May 1999, and proposed to amend the Barley Marketing Act after the Board had been restructured into grower-owned companies on 1 July 1999 and the resulting equity had been distributed to growers, and before the beginning harvest of the 1999/2000 crop in October 1999.

The changes proposed in this Amendment Bill will permit SACBH, or any other authorised handler, to be able to trade barley on the domestic market and for certain niche export markets beginning in the 1999-2000 crop season.

Due to potential conflicts between the Act and the Commonwealth Plant Breeders Rights Act 1994, as raised in court cases originating in Western Australia, the Crown Solicitor has advised that, at the first convenient opportunity, seed should be explicitly excluded from marketing authority provided by the Act.

Excluding seed from the marketing authority provided by the Act is intended to ensure that ABB Grain Export Ltd (successor to the Australian Barley Board and sole export authority under the Act) can export barley without violating the rights of owners of barley varieties under the Commonwealth PBR Act.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 33—Delivery of barley

This clause amends section 33 of the principal Act which prohibits the sale or delivery of barley for export to a person other than ABB Grain Export Ltd. The clause adds an exception to the section excluding from the application of the section propagating material of a plant variety covered by a plant breeder's right under the Commonwealth *Plant Breeder's Rights Act 1994* if it is sold, delivered or purchased for a purpose involving the production or reproduction of the propagating material.

Clause 3: Amendment of s. 35—Authorised receivers

This clause amends section 35 of the principal Act which provides for the appointment by ABB Grain Export Ltd of authorised receivers to receive barley for the company. The clause removes from the section a restriction contained in subsection (5) under which an authorised receiver must not have a direct or indirect interest in a business involving the buying or selling of barley.

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

STATUTES AMENDMENT (ELECTRICITY) BILL

The House of Assembly agreed to the bill without any amendment.

SOUTHERN STATES SUPERANNUATION (SALARY) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

LAND TAX (INTENSIVE AGISTMENT) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

The *Land Tax Act* currently provides a general exemption from land tax in respect of land used for primary production. However, where the land is within the defined rural area (essentially the greater Adelaide metropolitan area bounded by Gawler in the north, Willunga in the south and the Mt Lofty Ranges in the east and, separately, parts of Mt Gambier) additional criteria apply before the exemption is granted. Namely, the land must be greater than 0.8 hectare, used wholly or mainly for the business of primary production and the principal business of the owner of the land must be that of primary production.

As a result of the current additional criteria for exemption within the defined rural area, primary producers who have entered into arrangements to agist livestock on their property are excluded from the exemption. The Crown Solicitor has advised that the activity of contractual agistment within the defined rural area cannot currently be classified as the business of primary production and therefore the owner is not able to claim exemption.

The *Land Tax (Intensive Agistment) Amendment Bill 1999* proposes to amend the *Land Tax Act 1936* ('the Act') to include the intensive agistment of declared livestock within the definition of 'business of primary production' for the purposes of exemption from land tax. 'Declared livestock' will be further defined to mean cattle, sheep, pigs or poultry; or any other kind of animal prescribed by the regulations for the purposes of this definition.

This amendment recognises the increasing importance of contractual agistment to the primary production sector in South Australia and will encourage the use of agistment by providing an equitable land tax treatment with that available to other forms of primary production across the State. The cost to revenue is minimal.

This measure has the strong support of the South Australian Farmers Federation.

I commend this Bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be taken to have come into operation at midnight on 30 June 1999, being the relevant time for the assessment of land tax for the 1999-2000 financial year (*see* section 4(3) of the Act).

Clause 3: Amendment of s. 2—Interpretation

The definition of 'business of primary production' is to be amended to make specific reference to the intensive agistment of 'declared livestock', being cattle, sheep, pigs or poultry, or any other kind of animal prescribed by the regulations.

The definition of 'business of primary production' is relevant to the definition of 'land used for primary production'. Land used for primary production is exempt from the imposition of land tax.

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

AUDITOR-GENERAL'S SUPPLEMENTARY REPORT

The House of Assembly transmitted the following resolution in which it requested the concurrence of the Legislative Council:

I. That, in the opinion of this House, a joint committee be appointed to provide a means by which any concerns of the Auditor-General in relation to the electricity businesses disposal process in South Australia can be expeditiously communicated to the parliament throughout the duration of the lease process;

2. That, in the event of the joint committee being appointed, the House of Assembly be represented thereon by two members, of whom one shall form a quorum of Assembly members necessary to be present at all sittings of the committee; and

3. That Joint Standing Order No. 6 be so far suspended as to enable the Chairman to vote on every question, but when the votes are equal the Chairman shall also have a casting vote.

ROAD TRAFFIC (MISCELLANEOUS NO. 2) AMENDMENT BILL

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

The Hon. DIANA LAIDLAW: I move:

That this bill be now read a second time.

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

Leave granted.

The primary purpose of this amendment is to address the concerns of emergency services personnel with regard to the speed at which vehicles travel past emergency incidents on our roads.

A government working party comprised of representatives from the Metropolitan Fire Service, Country Fire Service, State Emergency Service, SA Ambulance Service and St. John Ambulance and SA Police examined the operational needs of the emergency services with specific reference to the safety of their personnel.

It recommended amendments to the existing legislation that would improve the safety of emergency services personnel when working on or adjacent to the roadway. The recommendations have the support of all the emergency services, police and the South Australia State Disaster Coordinating Committee.

Many of the recommendations can be accommodated through the administrative provisions of the Australian Road Rules. However, the imposition of a speed limit past a stationary emergency vehicle displaying a red or blue flashing light is not included within the Australian Road Rules.

South Australia is the only jurisdiction to proceed with this measure. The approach was not adopted by the Australian Road Rules group because the Australian Road Rules is essentially a sign based system. However, the circumstances in which this provision will apply do not readily lend themselves to the display of signs. There is insufficient space on the rear of many emergency vehicles to place a sign and the placement of the vehicle at an emergency scene may not make the sign readily apparent to an approaching motorist. The flashing lights are a clear and visible expression that a reduced speed is required.

While it is possible to pursue this issue and to continue to seek amendment of the Road Rules at some later time to deal with this matter, the safety and welfare of our emergency services personnel is far too important to delay taking action. Consequently, it is considered fitting that the Road Traffic Act be amended at this time and to seek amendment to the Australian Road Rules in the future.

Notwithstanding that there is a duty upon all drivers to drive with care and consideration for other road users, there is currently no specific legislative obligation upon a driver to slow down when passing an emergency incident on or near a road.

Unfortunately, too many drivers do not seem to accept that a person working at the scene of a motor vehicle crash, fighting a fire near a road, or removing a dangerous obstacle from the roadway, is also a road user to whom that duty of care is owed. Their thoughtless actions are placing the lives of emergency services personnel at risk.

The proposed amendment will make it obligatory for a driver to slow down to a safe speed and, in any event, to a speed no greater than 40 kilometres per hour when passing a stationary emergency vehicle displaying a red or blue flashing light. It should be noted that "emergency vehicle" includes a police vehicle—police, of course, often attend emergency incidents and require the same protection.

The provision for a safe speed will apply in those situations where there is very limited road space available for vehicles to manoeuvre through an emergency site and a very low speed is justified. In other circumstances, a speed of up to 40 kilometres per hour can be travelled without compromising the safety of people working on or near the roadway.

The other purpose of the Bill is to amend section 176, the regulation making power of the Act. The amendment will allow regulations to be either of general or limited application, or to vary in their application according to times, circumstances or matters to which they apply. Similar provisions are included in many Acts, including the Motor Vehicles Act 1959, and they allow greater flexibility in the way matters can be dealt with by regulation.

I commend this Bill to Honourable Members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Insertion of s. 83

83. Speed while passing emergency vehicle with flashing lights

The proposed new section 83 creates a speed limit for vehicles passing an emergency vehicle that has stopped on a road and is displaying a flashing blue or red light. Under a general interpretation provision 'road' will include a road-related area. The speed limit is set at 40 kilometres per hour or, if a lesser speed is required in the circumstances to avoid endangering any person, that lesser speed. The speed restriction does not apply if the person is driving on a road divided by a median strip and the emergency vehicle is on the other side of the road beyond the median strip. 'Emergency vehicle' is defined to mean a vehicle used by a member of the police force or by a person who is an emergency worker as defined by the regulations for the purposes of the provision.

Clause 4: Amendment of s. 176—Regulations

The clause adds to the main regulation-making provision of the principal Act a standard provision that makes it clear that any regulations or rules under the Act may be of general application or vary in their application according to times, circumstances or matters in relation to which they are expressed to apply.

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

HERITAGE (DELEGATION BY MINISTER) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 November. Page 456.)

The Hon. M.J. ELLIOTT: The Democrats support the second reading of this bill. As I understand it, the government

is seeking to carry out delegations that have been occurring. There has been some question as to whether or not they are legal delegations, and the government is seeking to rectify that situation. As the government put to us, it is trying to maintain the status quo, or the understanding of what the status quo is. It appears to me that the delegation powers enable much broader delegation than that which currently takes place. I would invite the minister to indicate why, indeed, that has turned out to be the case. But, subject to a response on that, the Democrats are satisfied with the bill.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I have spoken to the Hon. Terry Cameron and the Hon. Trevor Crothers, who have indicated that they did not wish to participate in the debate but that they support this bill. I am not sure in specific terms what the Hon. Mike Elliott is talking about in terms of the broadening of delegations. I have been told that the powers will be delegated from the minister to a person or body having expertise and day-to-day responsibility for administering heritage matters, and therefore a person or body that has considerable experience built up over time on these matters.

One would want to ensure that delegated powers were devolved to such a responsible person or body of persons otherwise the minister, notwithstanding the time consuming exercise in which she is now involved in development applications, would not wish to devolve such powers. Of course, it is wider, because this bill specifically addresses a concern about a lot of matters which the minister herself must address at the present time and which are time consuming and do not necessarily advance the time taken to deal with these development applications. I may not necessarily have adequately addressed the honourable member's concerns because, as I said at the outset, I find it difficult—

The Hon. M.J. Elliott: Delegations go well beyond just the heritage section to which she was not delegating. Theoretically, she could delegate, for instance, to local government.

The Hon. DIANA LAIDLAW: That is true, but it would be very unwise for any minister to delegate broadly, because it is in the minister's name and the minister is ultimately accountable, so one does handle these things with extreme care. When I became minister, I withdrew a whole lot of delegations in relation to planning until I understood initially what was happening and gained the confidence of the officers who would be representing me; I also gained more confidence in what was involved in the area, because I was not going to have people acting on my behalf without understanding my concerns or the way in which I would handle a situation. I am quite sure that any minister associated with heritage matters, knowing the sensitivities of these matters in the electorate, would act with equal caution, even though the delegation power is as broad as the honourable member states.

If the honourable member needs assurance, I also add that, in order that the exercise of this power is transparent, the amendment to the act will require the minister to keep a register of delegations available for inspection by members of the public; also, where a delegation is made to a person who is not an employee within the meaning of Public Service Management Act, that person must disclose in writing to the minister any personal or pecuniary interest they may have in any matter they are called upon to handle, and such disclosures must also be kept in the public register. I think those cautions that are provided in the act may also ease the concerns of the honourable member.

Bill read a second time and taken through its remaining stages.

GAMBLING INDUSTRY REGULATION BILL

Adjourned debate on second reading.

(Continued from 17 November. Page 510.)

The Hon. P. HOLLOWAY: As I debate the Hon. Nick Xenophon's bill I will indicate the opposition's position in relation to it. When gambling legislation has been introduced into the parliament the Labor Party has exercised a full conscience vote on it.

The Hon. L.H. Davis interjecting:

The Hon. P. HOLLOWAY: Well, I was a member of the government at the time and I can say that there was no pressure on me and I was quite happy to support it. So, I cannot comment on the issues raised by the Hon. Legh Davis. When legislation relating to gambling has been introduced into the parliament the Labor Party has allowed a conscience vote. However, once those gambling bills have passed and the gambling industries associated with them—the TAB, poker machines and so on—have been established then the issue of administration applies. Clearly the issues are different once these industries have been established.

The Labor Party has traditionally adopted the position that, where clauses either extend or reduce the extent of gambling, those issues are conscience votes and are declared to be so by the Leader; and other matters are administrative and it is for the caucus, as is consistent with all other issues, to take a position with all members putting a view and adopting a common position.

The matters in the bill that relate either to the extension or reduction of gambling will be treated by the Labor Party as a conscience issue. Because interactive gambling is a new form of gambling which has not been previously available in this state, clearly it is a conscience issue for members of the Australian Labor Party. In relation to my position on that, currently a select committee of the parliament is looking into such issues and, as I am a member of it, I am restricted in what I can say in relation to the evidence received by it.

The commonsense position in relation to interactive gambling is that we should wait until the report of the select committee comes down before we decide our position on it. There are many things I would like to say. Because of the evidence that I have heard so far my views are forming in one particular way, but it would be inappropriate of me to discuss that until the committee produces its report. Clearly, that is a conscience issue because it relates to the extension of gambling.

There are provisions in the Hon. Nick Xenophon's bill that relate to the removal of gaming machines from hotels within five years (I think it is clause 37). Clearly, that is a conscience issue, and members of the ALP will exercise their own vote on that. I indicate at this point that I will not support that provision, which is consistent with my past position. Unlike the Hon. Legh Davis who has changed his view, I have had a consistent view on this matter throughout this debate.

The Hon. L.H. Davis: I haven't changed my view.

The Hon. P. HOLLOWAY: Well, that was my understanding.

The Hon. L.H. Davis: I put down a position that there is not a place in the world that has got rid of them. Is there, Ron? Tell me about it.

The PRESIDENT: Order, the Hon. Mr Davis!

Members interjecting:

The PRESIDENT: Order the Hon. Mr Davis and the Hon. Mr Roberts! You can go out into the lobby if you want to sort something out.

The Hon. P. HOLLOWAY: As we can see, Mr President, these are matters about which members of this parliament have differing views. They are clearly conscience issues, and it is rather a pity that these views cannot be placed on record. But as far as I am concerned my views on this matter have been consistent. There are also some clauses in this bill that relate to gambling machines that allow high stakes or rapid betting (clause 48). Again, this matter, because it involves an extension of gambling, will be considered to be a conscience vote as far as members on this side of the Council are concerned. So there are a few clauses; there may be one other which I have omitted. I think there was a similar amendment to the Casino Act that prohibited gaming machines that allow high stakes or rapid betting.

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: Yes, there is, clause 33; that also would be a conscience vote as far as members on this side of the Council are concerned. However, most of the other matters in this bill relate to administrative matters. If we look through some of the clauses here we see clauses that relate to the revocation or suspension of licences, objections, certain applications requiring advertisement, EFTPOS or ATM machines, and so on. Those matters are to do with the administration of the act, and on those matters the Labor Party has taken a particular position. I must say that in most cases in relation to this bill the Labor Party will be opposing those clauses. However, there are a handful of amendments in this bill which our party may support. For example, there is the provision that relates to the placing of clocks in gaming establishments. We supporting that provision.

Members interjecting:

The Hon. P. HOLLOWAY: There are some other matters as well.

Members interjecting:

The ACTING PRESIDENT (Hon. T. Crothers): Order!

The Hon. P. HOLLOWAY: Let me state here that I was trying in a serious way to explain the way in which the Labor Party had reached its position on this matter. This is the position: the Australian Labor Party—

The Hon. A.J. Redford interjecting:

The ACTING PRESIDENT: Order, the Hon. Mr Redford! Let the speaker be heard. I will not be asking again.

The Hon. P. HOLLOWAY: The Australian Labor Party is the oldest political party in this country. It has been in existence for over 100 years. During this period the Labor Party has consistently had a conscience vote on matters relating to this.

Members interjecting:

The ACTING PRESIDENT: Order! I ask members on the government benches to exercise their consciences and allow members in this Council who wish to hear the speaker to be able to do so. The speaker should be allowed to be heard. I am sick of having to call members to order. Surely you are more sane and rational than that. I call members to order one last time.

The Hon. P. HOLLOWAY: I think it is rather regrettable that members opposite are treating this bill with such disrespect. The Labor Party has at least tried to take a serious viewpoint.

Members interjecting:

The Hon. P. HOLLOWAY: It is rather a pity that *Hansard* cannot record the derisive laughter of members opposite. I actually think that this is a serious matter. The Hon. Mr Xenophon has introduced a bill in relation to the gambling industry. I believe that the Hon. Nick Xenophon, even though I disagree fundamentally with his view on gambling in many respects, would get the thanks of the community for raising many of the matters that he has. The Hon. Nick Xenophon I believe has done a good job for the community in raising the problems that are associated with excessive gambling. I supported in this parliament the introduction of gaming machines. I do not resile from doing that, but I do accept, and I think every member who voted for those poker machines should accept, that there is a downside to it. I think 98 per cent of the people who use those machines get significant enjoyment out of them. However, there are some people for whom gaming machines are a problem. There are people who are addicted to gambling and the families of those people do suffer considerable harm.

I think we as a parliament have to address that problem. The Hon. Nick Xenophon was elected to this parliament on the basis of defending those people. I respect that. I think he has a right to defend those people who voted for him and to raise the issues which he has. I at least intend to take those matters seriously, even if members opposite do not. As I said, even though I disagree with many of the things that the Hon. Nick Xenophon has raised, I at least believe that he has done the community a service in focusing attention on the problems of that very small percentage of people who do have a gambling addiction.

Of course, the other side is that, while there is a small percentage of people who do have a problem with gambling addiction, the vast majority of people who use gaming machines enjoy the gambling. As the Hon. Legh Davis said the other night, it does create significant economic benefits and employment to the people of this state. It is certainly beneficial to the tourism industry. It has been essential for the survival of the hotel industry and, of course, these were some of the reasons why I supported their introduction back in 1992 or 1993.

So I think we should treat this matter seriously. The ALP has decided that, because there are some conscience issues involving the extension of gambling that are associated with this bill, we will allow this bill to pass to the second reading, and then on those issues related to the extension or reduction in gambling members on this side of the Council will be able to exercise their conscience in relation to such matters. Where there are issues that relate to the administration of the Gaming Machines Act that are not related to the extension or reduction of gambling then we will take a position. During the committee stage of the bill I, as will other members, will be putting the case of the opposition for and against those matters. But there are a few matters that we will be supporting the Hon. Nick Xenophon on in relation to this bill, apart from those issues where we will vote on conscience. One of those is, of course, the issue of gambling on credit. We will be supporting the Hon. Nick Xenophon—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: No, we will be supporting the Hon. Nick Xenophon's clause in relation to that, where we will prohibit the gambling on credit. I must say that most of the clauses that we will be supporting in the Hon. Nick

Xenophon's bill have already been accepted by the hotel and hospitality industry through their code of practice. I would like to compliment the hotel industry on the initiative that it has taken in this state in seriously trying to address the problem of people with a gambling addiction. I also think that the hotel industry should be given credit for the fact that it provides voluntarily a significant sum of money. I think it is about $1.5 million that goes to community groups that deal with the problem of the families and people who have a gambling addiction. I compliment the industry on that. In fact, the hotel industry, I must say, is the only part of the gambling sector that makes that contribution. I know the Hon. Nick Xenophon has a clause in his bill that seeks to extend that to other areas of the gambling sector. There are some problems with that, and I will cover those when we come to the committee stages of the bill.

I did not intend to speak for too long on this occasion. I just wanted to outline the basic Labor Party position as to why we will not oppose this bill, as it goes to the second reading, so that we can then put our position on each of the clauses within the bill. There are some clauses, a handful of clauses, which are conscience votes because they do relate to the extension or reduction of gambling. As to the other matters that relate to the administration of gambling, the vast majority of the clauses in his bill, unfortunately for the Hon. Nick Xenophon we in the opposition cannot support those, because we believe that, in seeking to deal with the problems associated with gambling addiction, the Hon. Nick Xenophon has spread the net so wide as to provide some solutions that verge, in my opinion, from the silly to being almost Stalinist in their approach.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I will let the Treasurer decide whether that is silly or Stalinist. Some of those measures are actually too wide. Our society should thank the Hon. Nick Xenophon for the role he has played, because the hotel industry has produced a code of practice. I believe that the Hon. Nick Xenophon deserves at least some of the credit for that: through his raising issues related to gambling conditions, the industry has responded. That is the way it should be.

We do not support the Hon. Nick Xenophon when he, in our view, goes much too far and proposes some of these amendments, which I think are quite impractical. They would be unnecessarily restrictive and we cannot support them. I will outline those for the benefit of the Hon. Angus Redford in committee. The Hon. Nick Xenophon at least deserves the credit for having put this matter on the agenda. For that he deserves some credit. However, while we agree that some attention needs to be focused onto those people in our community who have a gambling addiction—

The Hon. A.J. Redford interjecting:

The Hon. P. HOLLOWAY: The Hon. Angus Redford might not care about those people or their families. We on this side do care, and we believe—

Members interjecting:

The Hon. P. HOLLOWAY: Honourable members can laugh all they like. It think it is a pity that that derisive laughter from people such as the Hon. Angus Redford cannot be recorded in *Hansard*. I think those people who have some concerns in this area would be absolutely disgusted. If some of the people in his preselection college whom the Hon. Angus Redford will need so much if he is to have a winnable position on the ticket in the near future knew how derisive he was about these people, he might have some more problems. Anyway, that is his problem.

The Opposition will not oppose the second reading of this bill. As individuals, we will decide on those matters that relate to the extension or reduction of gambling. Regarding many of the other matters, the opposition will oppose some of the clauses in the Hon. Nick Xenophon's bill, but we will outline those in committee.

The Hon. M.J. ELLIOTT: I support the second reading. I support some of the notions contained in the bill but will not be supporting others. Underpinning this bill as a whole is the thrust that gambling overall is capable of causing problems: it does not just isolate poker machines as the root of all evil. Whilst I opposed the introduction of poker machines because I did anticipate that they would grow like Topsy, as they have, I recognised that the level of regulation within the gambling industry in South Australia has not been particularly good.

We introduced each gambling code for very good reasons. For instance, the TAB was instituted because there was already very active SP bookmaking in many hotels and through phone betting, and the government decided that it was better to take control of it and try to regulate it via the TAB than to allow SP bookmaking to continue with the many associated problems. We also introduced lotteries into South Australia on the basis that South Australians were buying large numbers of lottery tickets from Tattersalls and other interstate operators, and it was argued that, if people were going to gamble, they may as well be buying South Australian lottery tickets as interstate lottery tickets, and the revenue thus generated would stay within the state.

All of that was done for good reason. Whilst I opposed the introduction of poker machines, my big fear about their introduction was that, as with the other forms of gambling, while they might have been introduced for very good reasons, the government simply let them run rampant, recognising that, whilst many people who gamble do not have a problem, there is a significant minority who do have a problem. While they might add up to just a small percentage of gamblers overall, the impact extends more broadly than to just those who directly have a problem: it extends to their families and their employers, thus there is a far greater impact. I have a view that we should seek to minimise harm, not to ban gambling, because I do not happen to believe that you can successfully control behaviour in that way. But I do think it is reasonable to regulate, and the only debate then relates to the form that the regulation takes.

I have argued for a long time that we really should have a gambling commission. I guess to some extent the gambling impact authority proposed by the Hon. Nick Xenophon in this bill takes a similar track. There should be a body that oversights gambling in the state and then provides advice to government. I am not sure that I have picked up the minister responsible. It is not clear to me on reading this bill. It is my view that gambling is social behaviour. Yes, it does happen to generate wealth for the government, but in the first instance it is social behaviour and as such should be under the minister responsible for various forms of social services—the one who eventually has to pick up pieces, in some cases.

I would expect that, if you have such a body, it would be providing advice as to what we would do to help the victims of gambling. At this stage, I think the only code of gambling that is providing any money at all is poker machines. That is just blatantly a nonsense. The TAB, the Lotteries Commis-

sion and so on should all be making contributions towards funds which will help those who end up with a gambling problem. That case has been made by the hotels, and they are absolutely spot on in that regard. So, a gambling impact authority or a gambling commission, or whatever else in the first instance, could have oversight. It could provide advice in terms of a gambling impact fund and how moneys might be directed to assist those who have problems with gambling, and it might provide advice in other ways that me might seek to control harm.

I note that there are other behaviours which are legal but which we sometimes choose to regulate. Smoking tobacco is a classic example of that. Let people choose to do it by all means, but we certainly have chosen to regulate who can sell, and I suppose in many ways we are regulating gambling to the extent that there are licensed outlets. We also choose to regulate advertising. In relation to tobacco, there happens to be an outright ban. In relation to gambling, one might not seek to ban the gambling opportunity but would seek perhaps to control the forms of advertising which provide the wrong sorts of inducements in relation to it.

If we say we accept gambling, I think we are also saying that we would be seeking to encourage responsible gambling. Part of the encouragement of responsible gambling would be programs in schools. When I visited the Netherlands last year I found it very interesting. I was speaking to some education experts there on the issues of drugs and they got out a range of booklets they were using. They got out a booklet on cannabis, one on heroin and another on amphetamines, and the next one they pulled out was on gambling. In fact, the Dutch treat gambling in exactly the same way as they treat those other forms of behaviour and run education programs directed to young people at the same time. I guess they recognise that many people will use drugs and will not have a problem but that they must make sure that they have educated people about the dangers, the risks and so on, and that it should be the same with gambling.

People need to be aware that, whilst many people do not have a problem with gambling, some people do. They need to know what sorts of behaviours are problematic so that, if they know about it before they become involved, they might recognise it in their own behaviour. Many people who have a gambling problem are in absolute denial. I have one relative through marriage who in a very short number of years playing the poker machines has managed to lose two-thirds of the family farm, and the last third has almost gone. She does not have a problem, as far as she is concerned.

The Hon. Caroline Schaefer: They probably had a run of bad years.

The Hon. M.J. ELLIOTT: I can assure you it has been poker machines; there is no question about that whatsoever. The really unfortunate thing about that is that she uses only two outlets. Unfortunately, those two outlets have a channel running directly into their bank account. They encourage her and behave most irresponsibly. That is why I support the notion of having more than just a voluntary code of conduct.

As far as I am concerned, it is not unreasonable to have a code of conduct that is enforceable. We have a code of conduct which prohibits serving alcohol to minors or a drunk person, and that is enforceable. If you have a regular client you will know whether or not that person has a gambling problem, and I think it is possible to come up with appropriate reactions to problematic gamblers. Having a code of conduct suggesting that you might do something like that is not enough because in any business—it does not matter what it is—there are some people who are unscrupulous. Effectively, that is the reason why we end up having laws.

It could be argued that we could live by the 10 commandments if everybody behaved themselves, but the fact is that people do not, so we end up spending a lot of time making all sorts of laws in this place and trying to get people to treat each other decently. The notion of a code of practice being enforceable is something that I find attractive.

I do not intend to speak at any greater length. I have indicated that I find attractive the notion of a central gambling authority of some sort and have advocated it for a number of years. The idea of a fund I also find attractive, and I suggest that its source of income should not be just the poker machines but also the other forms of gambling. I frankly think the section on political donations will not work; Catch Tim proved that there are all sorts of ways of disguising moneys coming in, and that is the issue we need to tackle. As long as you know who the donors are you are in a position to expose what is driving the behaviour of individual politicians or parties, and I do not think this bill is the appropriate place to tackle that.

I have already said that I support the notion of regulation of the gambling industry, but I do not agree with a number of the regulations that are being proposed here. Frankly, a prohibition of interactive gambling simply will not work. However, I would seek to introduce codes of conduct for companies which are involved in interactive gambling. Certainly, before the government set about licensing or allowing such industries to operate in South Australia, I would like to see a gambling authority of some sort established within the state to provide oversight and to try to enforce codes of behaviour with those sorts of operations. We will have ample opportunity to address the detail during the committee stage. So, with those words I indicate support for the second reading.

The Hon. CARMEL ZOLLO: I made a lengthy contribution and spoke to individual clauses of a similar bill—the one that lapsed before the Council last July—so my comments will be brief. However, I think it appropriate to reiterate my intention to support the second reading of the bill. My colleague the Hon. Paul Holloway has already indicated that the opposition views some sections of the bill as administrative and some as a matter of conscience. At the time of my earlier contribution, I said that from the Hon. Nick Xenophon's point of view the most important part of the legislation was the removal of gaming machines from hotels within five years. That was the platform he was elected on. I indicated that I was unable to unable to support that section of the bill, for reasons concerning the employment opportunities offered by the industry. I think it is also important to note that we are talking about a legal industry.

Again I am happy to place on record that I did support the bill to freeze the number of gaming machines. I saw it as a good compromise. We have more than enough poker machines already in the state, and it would not have affected existing employment. I appreciate that a freeze does not in itself solve the problem of gambling addiction, but if it goes ahead again it might stop a few new ones. As I see it, we should now be concentrating on how both the industry and government can assist in the prevention of problem gambling and, for those who are already affected, provide assistance in the form of resources and funding.

I believe that we need a strong regulatory framework, with government playing an important role. Government needs to

play an important role, because it is a major beneficiary from the gambling industry and hence has a duty to the community because of addiction, not only towards individuals but also to their families and the wider community. It is also important to see a strong regulatory framework, because there is now ample evidence that poker machines are more addictive than other forms of gambling, even though we were submitted to encyclopaedic comparisons with other forms of gambling in a contribution by the Hon. Legh Davis last night.

I draw members' attention to the productivity commission's report which found that women now comprise 40 per cent of gamblers, compared with only 10 per cent in the 1970s. That is particularly disturbing. I am sure that none of us would draw any comfort from these statistics of approaching gender equality. I suspect that, of that percentage, many are elderly and lonely and are drawn in by the atmosphere and supposed companionship of the outing. Regrettably, for some it means a life of distress, because they become addicted. With our ageing population I think it will become even more of a problem. It is particularly distressing to read comments attributed to the AMA in its position paper released recently, which was reported in the *Advertiser* of 25 September as stating, in part:

> An elderly woman addicted to playing gaming machines had to eat cat food, the nation's peak medical group revealed yesterday in a stark warning about the health impact of the nation's gambling bug.
>
> And a young mother was unable to give her children breakfast or lunch on a school day because she had poured all of her money into the pokies. The examples are being used by the Australian Medical Association to show that problem gambling drives people to depression, malnutrition, white collar crime, domestic violence and suicide.

Some members of our community and this Council—the performance of members opposite is a good example—accuse the Hon. Nick Xenophon of being a wowser and someone who wishes to impose his values on others. So, I think it is important to hear from other people whom, hopefully, members opposite also respect. The article states further:

> . . . the AMA called on Governments to develop a national strategy and spend 2 per cent of gambling profits—$76 million—on gambling related health problems.

I again reiterate my support for the second reading of this bill so that some common ground can be found by the majority of members.

The Hon. R.R. ROBERTS: I support the second reading. My colleague the Deputy Leader of the Opposition has put the official position of the opposition in respect of this matter. Let me say as a person who voted for gaming machines—

The Hon. R.I. Lucas: You got rolled.

The Hon. R.R. ROBERTS: Unlike the Hon. Legh Davis I voted for gambling machines as did the Hon. Rob Lucas. They voted according to their conscience at that time—and they were perfectly entitled to do that. I want to concentrate a few remarks on the contributions of both the Hon. Mr Lucas and the Hon. Legh Davis. The contribution of the Hon. Legh Davis will need a little more time. I will not take as much time as the Hon. Legh Davis did and take members through the pages of the history books to the same extent as he did, but I will make a few remarks about his contribution.

The most remarkable thing about both those contributions is that the greater part of them had nothing to do with the bill. When they are under pressure, when they are being oppressed, when the whole of the Liberal Party is being pressured by one man, what do members do? They go for the character assassination. Rob Lucas spent half of his contribution talking about how brave he was and what he would like to say about the Hon. Nick Xenophon. He had had two goes at him. He was on a sure bet, because he lost on one occasion and he would have to lose the next time. He was on a sure winner, because the taxpayers were going to pick up his gambling debt. So, he has actually learnt something. He was not going to gamble on that again. So, he came in here, into the coward's castle, and did the character assassination under the cloak of parliamentary privilege knowing again that he was on another sure bet.

Members interjecting:

The PRESIDENT: Order! One at a time please.

The Hon. R.R. ROBERTS: The greater part of his contribution consisted of a character assassination of the Hon. Mr Xenophon. The Hon. Mr Lucas condemned—as did the Hon. Legh Davis—the Hon. Nick Xenophon for trying to enforce the platform on which he was elected. Given their record, their credibility and their reality, one can understand that. These people think that they can go to the people and promise them that they will not sell their assets, walk back into the Council and think that it is perfectly ethical to break their promise overnight.

On the other hand, the Hon. Nick Xenophon goes outside and says, 'I will fight to get rid of poker machines.' I think the Hon. Nick Xenophon is on a loser, but the difference between him and the government is that he made a promise, gave a commitment, that he would fight to get rid of poker machines or contain them. Unlike members opposite, I actually have a bit of an idea about politics. Politics is about the art of the possible. I do not think that we will get rid of poker machines, and I do not support such a proposal.

The Hon. J.S.L. Dawkins interjecting:

The Hon. R.R. ROBERTS: I will come to you in a minute, Mr Dawkins. Your contribution was very interesting. You would not have voted for them if you had been here, and you will not vote for anything that will control them either. So, I think you should keep your head down before you say something sensible. I will continue. Then, having Mr Lucas—

The Hon. T.G. Cameron interjecting:

The Hon. R.R. ROBERTS: We will listen to your valuable contribution later—two bob each way.

The Hon. T.G. Cameron: I'm coming next.

The Hon. R.R. ROBERTS: You want your money back later.

The Hon. L.H. Davis interjecting:

The Hon. R.R. ROBERTS: Wait a minute. You just wait, sonny boy, your turn is coming. The Hon. Mr Lucas used the parliament to attack the Hon. Nick Xenophon. His major criticism of the honourable member was that he wants to implement the promises he put to the people of South Australia.

The Hon. R.I. Lucas: What were those promises? Tell us one of those promises.

The Hon. R.R. ROBERTS: You spoke for two hours and you do not know anything about it. That goes to your credibility and reality. The Hon. Legh Davis claimed that we must have credibility and reliability. He then gave us a history lesson. He told us what D.D. Mann said in 1811. That was very pertinent to the one armed bandits. He progressed rapidly to 1894 and told us that Archdeacon Hales spoke of the widespread vices in the nation: gambling, impurity and drunkenness.

The Hon. P. Holloway: That's important.

The Hon. R.R. ROBERTS: Well, it sounds like the Liberal Party's annual convention. He moved quickly onto

1902. Then he referred to the royal commission which was conducted in 1933. He enlightened the Council, as a result of a very expensive survey, with some wonderful facts such as there were 590 known nit-keepers in 91 districts. That was of real help. There are no nit-keepers—

The Hon. L.H. Davis interjecting:

The Hon. R.R. ROBERTS: I will calm him down. There are no nit-keepers, because we have now made all those houses of iniquity legal. He then reverted to the good old Liberal Party philosophy: if you cannot win the argument, attack the person. Not only was he prepared to attack the Hon. Nick Xenophon, he took the opportunity to attack someone else who cannot defend himself in here and who has nothing to do with the bill whatsoever. I wonder whether he will support the right of reply of that person. I do not want to go over the disgraceful contribution that he made about a certain member of the community who is not here to defend himself. He relied on his version of the facts, which is a lie and a half for most of the time.

The Hon. L.H. Davis interjecting:

The Hon. R.R. ROBERTS: Let's not get too excited about your version of the facts. You made an unwarranted and unnecessary attack on someone who was not able to protect himself. This had nothing to do with the bill. When the Hon. Nick Xenophon walked into this Council—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. R.R. ROBERTS: These two members—the Hon. Rob Lucas and the Hon. Legh Davis—have been seen on occasions trying to woo the Hon. Nick Xenophon by buying him cups of coffee and attempting to seduce him to their way of thinking. They tried to talk to him and persuade him that breaking their promise to the people on ETSA was a good idea and he ought to come along. He was one of the most popular people in this place with the Liberals until he said, 'No: you do what I do. I make a promise: I want to keep it. And if I can't keep it, I'll go back and ask the people whether we ought to break it'. He asked them to do exactly the same thing. And when he would not break his promises, all of a sudden the seducers, like spurned lovers of all time, attacked. All of a sudden, Nick Xenophon is public enemy No. 1.

At least Legh Davis has had a bit of experience: he confined his remarks to this place. But the Treasurer decided to step out and overstep the mark.

Members interjecting:

The Hon. R.R. ROBERTS: Just see how much it costs. I would like to have my money on it. The Hon. Legh Davis did make some attempt to talk about the effect of poker machines, which I thought was a fairly good idea because that, after all, is what the bill was about. He trotted out a whole range of charts and intended to explain them. But he only explained part of them. He talked about the differences in gambling revenues, about the Lotteries Commission and about the tax take.

He noted, correctly, that in 1992 the tax take was $84 million for Lotteries and $85 million in 1999-2000. He talked about the Casino and noted that there was very little difference. He noted that the TAB had very little difference. But the one thing about which he did not go into any detail was that in 1994 we introduced gaming machines and the government's share of the first year's take was $54.6 million. Nor did he emphasise that this year it was $201.5 million: not a bad increase.

The honourable member did not point out that the result of all the gambling was that the racing industry, whose interests I have to protect, has hardly had any increase in the last 10 years, which has suppressed that industry. But the government's share of the overall take is now $366.2 million, over $1 million a day. This government is taking over $1 million a day out of the pockets of the gamblers of South Australia.

Members interjecting:

The Hon. R.R. ROBERTS: I do not know who gets the share but—

The Hon. R.I. Lucas: Schools, hospitals.

The Hon. R.R. ROBERTS: Surely you jest!

Members interjecting:

The Hon. R.R. ROBERTS: We were screaming for mercy when you were there for an hour and a half and never made a contribution. The honourable member said:

> It is worth putting on the record for the Hon. Ron Roberts, who is in association with another form of gambling—

I admit to that: I am a trotting fanatic—

> that none of the three codes of racing makes a contribution to the fund for gamblers.

That is true. But he holds that up as though it was some wonderful thing that occurred. Let us look at the history of why that happened. There was a very strong rumour at the time of introducing gaming machines and it was a widely held theory by all people discussing these matters that there ought to be some recognition that, because of history elsewhere and the pervasive nature of gaming machines, we ought to be a little bit prepared. People were saying that 5 per cent ought to be going in, or 6 per cent ought to be going in. So, the people in the gaming industry were very quick: they said, 'No, you don't need to do this. We'll make a voluntary donation.'

The honourable member was talking about the voluntary code of conduct, and I will tell him about that, because I wonder if the voluntary contribution has gone up in the same proportion from $54.6 million in 1994 to $201 million. But if we want to talk about what a good idea it is, let us make it mandatory.

The Hon. R.I. Lucas interjecting:

The Hon. R.R. ROBERTS: Labor is not going to do that. We are pointing out the reality and the credibility of the contribution made by the Hon. Mr Davis. Further in his contribution he said:

> It is worth putting on the record for the benefit of the Hon. Nick Xenophon, because it never comes up in discussions on the subject, that 17 of the 21 votes in the lower house for poker machines were garnered from the Labor Party and the vast majority of the votes in the Legislative Council for poker machines all came from the Labor Party.

That is true. That is exactly right. Then he goes on to refer to a letter that he received from Quorn. Using that letter, he explained all the wonderful things that the poker machines were doing, including the taxation, and much of what he said is actually right. He talked about them providing public entertainment venues in the area, providing EFTPOS machines—although most of them want you to cash the money so that you can put it in the poker machines. They provide poker machines, meals, accommodation, tourist information, and they employ people.

The honourable member says that that is wonderful, but I just point out the hypocrisy of his position and his credibility. That was exactly what was going to happen in 1992 when the honourable member voted against it. He said it was

terrible and we should not be doing this. Other members on the backbench who wanted to make a contribution have said, 'Well, I wasn't here but, if I was here, I wouldn't have voted for them.' One said that he would vote for them only in the clubs.

There have been gains with poker machines, but there are problems, and if anyone thinks that there are no problems out there as a consequence of poker machines, I am sorry, they are deluding themselves. They should go and talk to the gambling people who are trying to get lives back together, attend a couple of the public forums and listen to the stories of the victims. They should listen to the support people. There are problems, and here is a golden opportunity to address some of these problems.

But we know what the honourable member's position is. He ridicules the Hon. Mr Holloway when he talks about what our position will be on some of these bills, but we know that he is not going to give him anything. All the wowsers who would not support poker machines—and I can say that, because I did—now have turned around because they are addicted to the income from the gambling machines. They have forgotten all about the high morality that they were spouting on about in 1992.

Members interjecting:

The Hon. R.R. ROBERTS: No, I'm excluding him; I'm talking about all the wowsers. He's not a wowser.

Members interjecting:

The Hon. R.R. ROBERTS: And the honourable member would not have voted for them. He has already put his case on the record: he would not have voted for them because they were terrible. But now he will not do anything to minimise the damage: he is a hypocrite. At least I am a self confessed gambler. I do not play poker machines but I do not tell people over 18 that they cannot. But at least I am consistent about it. Members opposite in 1992 were saying, 'It's terrible: we can't have it.' But here in the year 2000, after we have the addiction, they have now become addicted to poker machines.

The credibility arguments and the reality arguments being called for by the Hon. Legh Davis are a fallacy. They are about as useful and believable as the contribution that I read today in the *Australian*, which said:

> Gamblers fake problems, say pokie makers.

The addicted gamblers are faking their problems! Well, I would like to know how they are faking those suicides. How are these addicted gamblers faking—

Members interjecting:

The Hon. R.R. ROBERTS: The total numbers may have fallen, but the question is, not the total number, but how many are attributed to the effects of poker machines. That is the pertinent question. I do not know, but I do not say stupid things like the poker machine manufacturers who, of course, would not be biased—according to people like the Hon. Legh Davis, who is prepared to collect moneys from them and say that problem gamblers are faking the problems.

It is about as believable as the fact that the Hon. Legh Davis in 1992 believed that gaming machines were terrible things and he would never support them. In fact, he had a shot at the Labor Party for supporting them, yet today he talks about credibility and shows absolute hypocrisy. Now he is a born again gambler, one is led to believe, and through his vitriol and the fact that he was not able to break down the resolve and the honesty of the Hon. Nick Xenophon, to get him to vote for his dishonest policy after promising the people of South Australia, and as soon as that happened he mounted an attack on his credibility. In fact, he is not happy just to do that, because he has to attack his associates who do not have the same facility as the Hon. Nick Xenophon to get up and answer him. I wonder whether the Hon. Legh Davis would support the opportunity for Mr Moran to come before the parliament and take him on on even terms. I am sure that is one bet that the Hon. Legh Davis would not take on.

The Hon. T.G. Cameron interjecting:

The Hon. R.R. ROBERTS: Oh sure bet, Terry. He will make a contribution in a minute but members should not read too much into his comments because he will probably change his mind halfway through and go over to the other side. When he starts I will take the opportunity to have a cup of coffee because I will choke on the hypocrisy. I commend the Hon. Nick Xenophon for showing the fortitude and the courage to go on with this bill. I am certain that Mr Xenophon is the biggest realist in this place, and I am sure that he does not expect wowsers such as those on the other side to come all the way and implement these things. I just ask members opposite and those members on this side to think about it, talk to people from local government, social workers and gambling rehabilitation people—have a decent talk to them—to see what we can take out of this bill from the Hon. Nick Xenophon that will at least at this stage reduce the effects of poker machines.

Poker machines are not the only problem in our community. I am the first to admit that they have provided some good, but it is a fallacy to think they have not provided some bad. The Hon. Caroline Schaefer (who would not have voted for poker machines) will now have the opportunity to go to the clubs and pubs and say, 'I thought it was a good idea to have them only in clubs, but now I have been whipped into line by the rest of my colleagues, so I will have them everywhere.' Unfortunately, the Hon. Carolyn Schaefer, like Legh Davis, the Hon. Mr Dawkins and Angus Redford, is a born again gambler. It is sad that they could not have some born again honesty, some born again credibility and some born again reality. I support the bill being read a second time.

The Hon. R.R. Roberts interjecting:

The Hon. T.G. CAMERON: No, I have one page here which he gave me and which I requested of him.

The Hon. R.R. Roberts interjecting:

The Hon. T.G. CAMERON: Have you been talking to the bishop again? I support the second reading of the bill. It is not my intention—because I am sure members do not want me to talk until midnight—to go through the bill chapter and verse. It is my wish to see the bill pass the second reading so that this chamber is provided with the opportunity to examine its various clauses. I think one of the things—

Members interjecting:

The Hon. T.G. CAMERON: I do hope this bill goes beyond the second reading because I believe that there needs to be a proper examination of the agenda that has been set out in the bill. I listened very carefully to the Hon. Robert Lucas in his contribution and, while I agreed with some parts of it, I disagreed with other parts and, at the end of the day, I felt that the Treasurer in his contribution got it slightly wrong. But I do agree with him when he says:

> I think that is an argument in support of allowing it [referring to the bill] to progress beyond the second reading.

The Hon. Robert Lucas also made a number of other comments in relation to the bill and indicated that he would probably oppose almost all of it. I do agree with his senti-

ments when he said that this bill was the raison d'être for the Hon. Nick Xenophon's being elected to this place. He was elected at the last election, and I would urge all members opposite to take heed of what the Hon. Robert Lucas said. He outlined a case, and I believe he was showing leadership to the members of his own party by indicating to them that they should also support the second reading. Mind you, that was about the only thing, apart from the clocks in the bill, that the Treasurer was able to support.

I should say one thing at the outset. Unlike other members of this chamber and another place who have come into parliament since poker machines were introduced, I really do not know what I would have done had I been here when that legislation was debated. While I am not a big fan of poker machines, I am a civil libertarian and I suspect that, at the end of the day, I would have supported poker machines. Notwithstanding whichever way I or any other new member of this place would have voted in relation to the introduction of poker machines, we are not now dealing with that issue. That is not the issue before us, as the Hon. Legh Davis pointed out in his contribution.

What we have to deal with now is the reality. I believe that, as far as parliamentary speeches are concerned, we have had three real beauties during this debate; and the speeches to which I am referring are those made by the Hon. Nick Xenophon, the Treasurer, and the well researched speech of the Hon. Legh Davis—although it went off the topic occasionally. I listened to his contribution and I have read his speech, and I think it will stand there as a speech which will be read by many a person in the years to come. I found it quite interesting and useful in rounding out my knowledge of gambling—

The Hon. T.G. Roberts interjecting:

The Hon. T.G. CAMERON: Well, the three speeches to which I have referred are in sharp contrast to some other more perverse and puerile contributions that I have heard. The topic changes, but the speeches, the rhetoric, the cliches, the bombast and, quite frankly, the bullshit are all exactly the same. It is almost like putting a new label on a cassette without changing the music. I will not mention any member's name; I do not want to personalise this. I will leave it to the intelligence of the members of this place to work out who that was.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. CAMERON: The Hon. Robert Lucas interjects and says, 'He knows.' It could be a she, but I suspect that he is on the right track. They were three excellent contributions. I want to deal briefly with the contributions of the Hon. Nick Xenophon and the Treasurer, but I shall leave the contribution of the Hon. Legh Davis alone this evening: time does not permit me to deal adequately with his speech.

One of the disappointing features of the debate so far is how little of it has been centred on the real problem. Anyone here who knows me—and the Hon. Trevor Crothers, I guess, knows me the best—would know that I am no wowser. I have a drink; I go into hotels; I will have a smoke; and, heavens above, I even have been known to gamble. Heaven forbid, I even have put a few dollars through the poker machines. As I have said, I am a civil libertarian and I will not be arguing for the removal of poker machines from hotels if all it is about is placing them somewhere else—in clubs.

I was provided with a document by the Hon. Legh Davis in relation to the clubs' position on poker machines, and I thank him for it, because it is quite enlightening. Would you believe that the clubs actually support poker machines being removed from hotels? Funny, that. They also support the policy of removing them within five years. They have another policy whereby they want to reduce the number of machines from 40 to 10.

An honourable member interjecting:

The Hon. T.G. CAMERON: Yes, from hotels. However, when you look at some of the other things that they want—and I point these out to the Hon. Nick Xenophon, because he may need to address them—you see they would like 200 gaming machines on the premises of each licensed club. They would like support for exclusive club and charity access to eyes-down bingo and an amendment to allow eyes-down bingo jackpots. They would like the removal or reduction of gaming machines in privately owned gaming venues—well, I can understand that one. They also want rejection of the proposal that external signage for licensed clubs be restricted, and rejection of the amendment to prohibit the use of EFTPOS or ATM facilities on licensed premises. Well, I must say that I find the position of the licensed clubs somewhat hypocritical when they are prepared to advocate those measures yet, at the same time, advocate that poker machines should be removed from hotels.

I find that there is an intrinsic contradiction in the general thrust of the bill that has been put forward by the Hon. Nick Xenophon. I appreciate the reason for the reduction in the number of poker machines, but you cannot shift them from one spot to another and argue that fewer people will play them. Let us address the argument about the difference between hotels and licensed clubs. The argument that was put forward is that it is okay to have poker machines in clubs because that money goes back into the local community. One should look at how much money has been poured back into the local community by some of the clubs in New South Wales: I can assure you that it is not 100¢ in the dollar.

That proposition on its own will do nothing to address the central problem we have to deal with—the small percentage of people who cannot control their addictive behaviour. That is what we should be focusing on, not hurling abuse at each other across the chamber, not trying to score political points off each other, and not pathetically arguing what we would have done if we had been here. What we should be focusing our attention on is how we deal with the problem of compulsive gambling and, in particular, addictive gambling. As the Hon. Nick Xenophon has correctly pointed out on numerous occasions, the debate should not be restricted to poker machines: we should be looking at gambling in an holistic manner rather than singling out one form of gambling and concentrating the attacks on that.

In his contribution the Hon. Nick Xenophon correctly pointed out the growth in gambling that has taken place in South Australia since the introduction of poker machines. I do not believe that there is any need for me to go through his speech: it is there for everybody to see. The figures are incontestable. I looked at them and I went through them to see whether I could find the odd flaw, but I do not believe there are any flaws. In his contribution the Treasurer argued—and I had his comment and, if I can recall it—

The Hon. T.G. Roberts interjecting:

The Hon. T.G. CAMERON: No, he made the point that poker machines have now plateaued. It was an attempt to argue: 'I think we have seen the last of the real growth in poker machines. It's now plateaued, so that's really not a problem.' However, he did acknowledge the need to deal with the small percentage of people who are addicted or compulsive gamblers.

However, if one examines the statistics contained in the Hon. Nick Xenophon's speech, one can see that that is not the case. I ask the Treasurer, because I think it might sharpen up his focus on the issue, to go back and look at the revenue that was raised in 1996-97, 1997-98 and 1998-99, and then look at the number of machines in place. Whilst you can mount a bit of an argument that the dramatic exponential increases that we saw in the earlier years are now plateauing out, please do not forget that in 1996-97 the revenue was $364 million, that it rose to $394 million in 1997-98 and that it rose to $442 million in 1998-99.

One of the most disappointing features of this debate is that we have not been focusing our attention and trying to come up with meaningful solutions for those people who have difficulty in controlling their behaviour—that 2 per cent of people who play poker machines. I have not heard anyone in this Council advocate that, because some people cannot control their gambling addiction, we should ban gambling. Certainly no-one is arguing that because a large percentage of our society enjoy a drink—and I would be the first to confess that I love a glass of red with a meal—or because 1 per cent or so of people end up as alcoholics—

The Hon. Carolyn Pickles: It's a bigger percentage.

The Hon. T.G. CAMERON: If you can help me out with that I would appreciate it. I said 1 per cent. What is it?

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: I thank the honourable member for her interjection: it is 2.5 per cent. That still leaves 97.5 per cent of the population who imbibe and who would be regarded as responsible drinkers. Nobody is arguing that we should ban alcohol and go back to an American style prohibition. You only have to read the Hon. Trevor Crothers' contribution to see where that led us—to the institutionalisation of organised criminal activity in America on a large scale, and provided people with the financial means to legitimise themselves into an ordinary industry.

I urge members to have a look at the speech made by the Hon. Nick Xenophon, and I do think that South Australians owe him a debt of gratitude for keeping a spotlight on the problem of addicted gamblers. I have indicated to the Hon. Nick Xenophon that I will be supporting the second reading, but I have also indicated to him that I will not be supporting a proposition which will see all of the poker machines taken out of hotels and recited somewhere else, because at the end of the day I do not believe that that will do a great deal to help these addicted gamblers who have a problem. I point out to the Hon. Nick Xenophon that even when there were no poker machines in South Australia the buses crammed full of people headed off up to Mildura, I think it was, every weekend. There were hundreds of South Australians, so why, if people are prepared to jump in a bus and go all the way to Mildura to play the pokies, would you expect them not to be able to find these poker machines that were repositioned in our clubs. And what if that proposal was accepted? I would say to the licensed clubs that you would never get me supporting a proposition which sets up large community clubs along the lines of those that they have in New South Wales, with hundreds and hundreds of poker machines in them.

The Hon. L.H. Davis interjecting:

The Hon. T.G. CAMERON: I thank the Hon. Legh Davis for his quick mathematics, but I can assure him that the Hon. Nick Xenophon's proposition has a cap of 5 000, I think.

The Hon. Nick Xenophon: It is not to have an increase in machines.

The Hon. T.G. CAMERON: So your proposition is to keep a cap at the current level. That is what I thought. I guess that exposes the fallacy of the interjection by the Hon. Mr Davis.

The Hon. L.H. Davis: No; it exposes the fallacy of the club's proposition.

The Hon. T.G. CAMERON: I do believe that it is a bit of a nonsense to argue that we are going to help problem gamblers by repositioning the poker machines elsewhere. I am sorry I am jumping around a bit, but I guess that raises the question of what are we doing about problem gamblers and it raises the question of whether we are doing enough to help these people who are unable to control their behaviour? Quite simply and quite frankly, I do not believe we are doing enough to help these people. I, like other speakers, note the GRF, I think it is called, the fund which has been set up by the hotel industry. The industry needs to be congratulated on that. I think to date I have attended all of the AHA's functions that have been run on gambling. I hasten to add that I do not do that because I am a huge supporter of poker machines; I do that because I want to keep myself informed on what is going on.

But getting back to this question of whether we are doing enough as a community—and I think the Hon. Robert Lucas in his contribution agrees with the fact that we are not doing enough, when he says, and I quote:

> I do have a great deal of sympathy for the view that as a community we need through our government to provide more funding for those agencies that work with problem gamblers.

So I do not think there is too much disagreement in this chamber that we do need to focus more attention on these problem gamblers. But the Treasurer then went on, and I think we saw the real truth of the statement that he was making when he said:

> . . . and it will be considered as part of the budget preparations next year.

He then went on to talk about it and said:

> I have an enormous degree of sympathy with the argument that we need to provide additional funding.

I am sorry, Mr Treasurer, but I take on face value what you say when you say that you have an enormous degree of sympathy: 'I have a great degree of sympathy; we need through our government to provide more funding.' I note all of those comments, but I think the error in your contribution is when you then go on to say:

> . . . and it will be considered as part of the budget preparations next year.

When do you intend to hand down the budget next year?

The Hon. R.I. Lucas: July.

The Hon. T.G. CAMERON: That means we have another six or seven months to go, in which you accept that there is a problem; you have sympathy for them, but this government, which you are the Treasurer of, is not prepared to do anything about it until next year.

The Hon. T. Crothers: What are we going to do about people who are addicted gamblers in respect to harness racing and horse racing? Are we going to help them, too, because they are gambling addicts no less than the poker machine gamblers?

The Hon. T.G. CAMERON: I will respond to that interjection by the Hon. Trevor Crothers. Long before poker machines were introduced into South Australia, and I am sure the people who work with gamblers would agree with me, we had addicted gamblers here in South Australia. People were

addicted to horse racing. I know people who are addicted to playing cards. Heavens above, I can remember as a young lad of 19 or 20, through to about 22 I think it was, until I woke up to myself that you can't win at gambling and that if you want to conserve your money you had better give it away, that I used to play cards three, four or five nights a week. I suppose back in those days I would have fallen into the category of being an addicted gambler.

The Hon. A.J. Redford: What sort of games?

The Hon. T.G. CAMERON: We used to play blind poker and it used to cost you $50 for cards; so it was a pretty heavy game.

The Hon. A.J. Redford: Is that where you learned how to make ALP policy?

The Hon. T.G. CAMERON: No, I didn't learn how to make ALP policy that way.

The Hon. T. Crothers interjecting:

The Hon. T.G. CAMERON: Kevin Tinson wasn't there either; I didn't know Kevin Tinson back in those days. But I do not want to be diverted from the principal argument that I want to put here. While the Treasurer delivered an extremely clever speech—and I not only listened to it almost in awe but I went back and read it a couple of times—if the Treasurer is going to be consistent here and he is going to live up to his admission that not only does he have a great deal of sympathy but he recognises that we need to do more, then get off your backside and do more now. There is a simple old Australian colloquialism: it is time to put your money where your mouth is.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. CAMERON: I don't think you are going to have much trouble leasing the assets, now that the Auditor-General has agreed that the process should go ahead. But I think, Treasurer, you are playing semantic games with me here. I think you know better than anybody what a little bit more assistance in this area would do in relation to problem gambling. The Hon. Trevor Crothers interjected and said, 'What about all the other forms of gambling?', and it should be noted that, to the best of my knowledge, no other form of gambling contributes to any fund for the rehabilitation of problem gamblers.

The only industry, as I understand, that does that is the hotel industry. Whilst I recognise what it has done, I am also aware that not only have poker machines significantly lifted the profitability of hotels and created a critical mass for the government in relation to the other forms of entertainment that are provided but it has also significantly increased the capital value of the assets, that is, the hotels or the hotel leases that it was sitting on. So I would also call upon the hotel industry to look at what the Treasurer has said and continue to work on him to get him to contribute more towards this area, but I would ask the hotel industry to look at it as well. At 11 o'clock I will seek leave to continue my remarks later as I will not be finished.

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: I understand that is the case but, as I understood it, we are all entitled to have our say, and I have more of my contribution that I want to make, so at 11 o'clock I will seek leave to continue my remarks later.

The Hon. Carolyn Pickles interjecting:

The Hon. T.G. CAMERON: I understand that. But how will we deal with this other business? You give me the solution and I am happy to go along with it.

The Hon. Carmel Zollo interjecting:

The Hon. T.G. CAMERON: As I understand it, if I finish my speech, we will not be able to deal with other bills.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. CAMERON: I guess that will depend on the interjections. I have at least another 15 minutes. There are a few things I want to put down. Anyway, I will continue. I want to talk a little about the hotel industry. As I have indicated previously, I am one of these sinners who does go into a hotel for a meal and a drink and, if I can find an area where smoking is permitted, I will have a smoke with a cup of coffee afterwards. I rarely play the poker machines. I guess that is the Scot in me: I prefer to hang onto my money rather than give it to the government and the hotel industry.

But quite clearly, despite our views about them, poker machines salvaged the hotel industry in this state. It was in diabolical trouble. Hoteliers, in particular the smaller publicans who had only one or two pubs at the most, were in real trouble. It was my view that, had poker machines not been introduced, up to 25 per cent of our hotels in this state would have disappeared and many publicans would have gone broke in the process. I do not have a problem with hotels. It is my view that, if we are going to have poker machines in hotels, we should hold the AHA to what it says they are all about, and that is that they provide entertainment and that they are part of the entertainment industry.

The Hon. T. Crothers: Not all hotels are members of the AHA. You have to understand that, too.

The Hon. T.G. CAMERON: I understand that that is the case, but I also accept that over 90 per cent of them are members of the AHA. In fact, I think it is only a handful that do not belong to it. I do not have a problem with a big hotel that has a bar and poker machine area, that provides meals and restaurant facilities, etc. I want to mention one hotel that I dare to go into on occasions, and that is the Lakes Resort Hotel down at West Lakes. I have enjoyed many a fine meal at that hotel, both in the private banquet rooms with Clyde Cameron and my late father, as well as in the bistro. I have enjoyed a beer there and watched television and, heavens above, I have often spent a Saturday afternoon or a couple of hours on a Sunday afternoon having a meal, having a drink, enjoying a cup of coffee and, as I said, they will get about $5 out of me on the poker machines. I will continue to enjoy the free coffee all afternoon.

I often go to the Lakes Resort Hotel with a friend of mine. She is not a big gambler, but she thoroughly enjoys the afternoon out. I am under no delusion that part and parcel of her entertainment value for the afternoon is her opportunity to put $10 or $15 through the poker machines. I do not think there is anyone here who takes issue with responsible gambling. But the problem that we ought to be turning our attention to is problem gamblers. I have referred to the Lakes Resort Hotel. I should also add that I am pleased to note that the hotel is expanding and is offering additional accommodation.

I would also place on the record, so there is no doubt, that I can recall on one occasion meeting the owner. He rang me today to have a chat with me. I must confess I did tease him for a few moments by telling him that his hotel would feature in my speech this evening, although I can assure him that I have not changed it in any way whatsoever. It is a well run hotel, and I am pleased to see that it is expanding, because it will provide more jobs in the industry.

But what I take issue with are these pokie parlours that I see around the place. I do not intend to mention any names in particular, but they comprise a room about the size of this

chamber, with 20 poker machines sitting in the corner, a little bar in one corner, a little coffee machine in the other corner and, quite frankly, they offer no entertainment value whatsoever other than the poker machines. I do not support that kind of establishment and I think that both the government and the industry ought to work towards removing those kinds of establishments so that the hotel industry can live up to what it says it is on about, and that is providing entertainment for South Australians. I was going to refer to the disgraceful comment made by the manufacturers, Aristocrat I think it was, in a submission to the Productivity Commission, but the Hon. Ron Roberts has already referred to that.

I turn now to what I consider has been a flaw in the entire debate on this issue. I believe that the only speaker who has referred to it to date, apart from the Hon. Nick Xenophon in his contribution, was the Hon. Mike Elliott. His contribution did not surprise me. He would be surprised to know that I have been looking at his speeches for many a year. The Hon. Mike Elliott has always been on about 'prevention is better than cure; and let us look at the causes of errant human behaviour, irrespective of what it is, and let us try to eliminate those'. I think he ought to be congratulated for focusing this debate back on an issue that was missed by all speakers up to that point except the Hon. Nick Xenophon—and that is the need for training and education.

It is no good trying to get hold of an 18 year old lad and saying to him, 'Stop smoking,' when he has been at it since he was 14. If you want to try to correct that type of behaviour, you must get to people in their early teens. We are talking about compulsive or addictive behaviour or behaviour that some people in our society are not capable of controlling. I am sure that the gambling people would agree with me. If you have an addictive behavioural problem in one area, there is a very positive correlation with the fact that you are likely to have it in another area as well. That is what I believe was the flaw in the Hon. Robert Lucas's argument. I read his speech a couple of times and he made no mention whatsoever of the need for training and education.

This should not be an argument now about how we get rid of poker machines. The thought of removing 12 227 poker machines from hotels and having to worry about the compensation bill we would inevitably end up paying horrifies me. We should be looking at what is the real problem, namely, addictive gamblers. Enough has been said about the need to put more effort into helping these people with their problems, but I submit to the Treasurer that the solution is not the one he is putting forward. The Treasurer's solution is, 'We have a problem; yes, we need to do more about it.' But it is almost as if the Treasurer is arguing, 'We can deal with the problem of addictive gamblers: we can give them more money. All we need is more poker machines to pay for it.' If that is what the Treasurer is on about, it is a flawed argument.

The real flaw in the Treasurer's argument was that there was no mention of the need for training and education. The industry, the government and everyone concerned with this issue ought to look at how we can apply the question of addictive or compulsive human behaviour in relation to gambling to cigarette smoking, drinking and various other forms of addictive behaviour. We should take that into both the public and private school systems so that we can educate our teenage children at the age when we must get hold of them. It is no good waiting until someone is 21 before saying, 'Let's do something about their addictive behaviour,' let alone waiting for someone who has been gambling for 20 odd years and believing that you will do something about it. We all know that the people who work with gamblers will tell you how quickly people will go back to their form of behaviour.

I call upon the government and the Treasurer, if he is fair dinkum—and I am not sure that he is—to consider an effective training and education strategy. By that, I am not talking about hanging a big sign over a poker machine that says, 'You will lose if you put money in this machine.' That is a bit like the approach with cigarette smokers. I do not believe the warning signs that we put on cigarette packets have stopped one person from smoking cigarettes. The real answer to problems such as that is to get into the education system and to work with families and also through the churches. It is a family education responsibility. It is something we can do at our schools as well.

I will make one reference to a comment of the Hon. Caroline Schaefer. I think it was an unfair comment, and on reflection she will probably regret making it. The honourable member asked, 'What does Mr Xenophon's hatred of the industry stem from?' I probably know the Hon. Nick Xenophon as well as anyone in this chamber, and I say to the Hon. Caroline Schaefer that I am not sure whether he has ever hated anyone or any thing, and I am not sure—

The Hon. R.I. Lucas: The Treasurer.

The Hon. T.G. CAMERON: No, I think the reverse might be true.

The Hon. R.I. Lucas: I love Nick.

The Hon. T.G. CAMERON: Any perusal of your speech would have found the affection you have for him hard to find. One of the disappointing features of the speeches of the Treasurer and the Hon. Legh Davis—as much as I enjoyed them and as much as I thought they were brilliant speeches—was that they were more about point scoring and having a crack at the Hon. Nick Xenophon than concentrating on what we need to do here, that is, provide more assistance to problem gamblers and all recognise that we must work harder to try to educate people in relation to compulsive behaviour. In discussions that I have had with hoteliers and the AHA, they echo similar sentiments.

However, I find it extremely difficult to believe that individuals can go into hotels and lose large sums of money. I had in my office one chap who lost $140 000 at two hotels. It does begger the imagination to believe that someone at that hotel or the publican—I will not blame the publican—did not become aware that someone there had an addictive problem. We have all heard the old saying that you can lead a horse to water but you cannot necessarily make it drink.

I want to say something that refers to all kinds of addictive behaviour, and I make specific reference to one of the matters that the Hon. Nick Xenophon refers to in this bill where he calls for the government to compensate gamblers for their losses. I know that is a simplistic—

The Hon. Nick Xenophon interjecting:

The Hon. T.G. CAMERON: To compensate the victims of gambling. I cannot support that at all, because I believe that that walks entirely away from something we should all be arguing, and that is a degree of personal responsibility. We all have to accept some responsibility for our own actions in life. I do not believe that we can walk away from that. I smoke a few cigarettes. I know they are not good for me, but somehow or other would that give me the right to then turn around and sue the government or the cigarette manufacturers? If I go into a hotel and get drunk and smash my car on the way home, is that the fault of the publican for giving me an extra drink? I believe it is much more my fault than it

would be the publican's. However, I cannot believe that the behaviour of some of these problem gamblers who have lost hundreds of thousands of dollars was not noticed and recognised, and a blind eye not turned to it by the staff, management or the owner of the hotel.

I am thoroughly looking forward to the passage of this legislation beyond the second reading, because I am looking forward to a spirited debate, at times with the Hon. Nick Xenophon, about some of the individual items he has included in his bill. Unlike some of the members of the government, you will not find me coming into this place and attacking the Hon. Nick Xenophon in relation to his integrity or his honesty or in relation to his commitment. There is the old saying that he might honestly believe what he says, but he is still wrong. I do not say that in relation to the Hon. Nick Xenophon.

The Hon. T.G. Roberts: You just made it up.

The Hon. T.G. CAMERON: No; I got it wrong but I will remember it later. I want to wind up, so stop goading me, otherwise I will keep going. That is the best way to keep me quiet. I am looking forward to the debate after the second reading. I call upon all members of the government to follow the leadership displayed by the Treasurer and support the second reading of this bill. The appropriate place to have a debate on the individual items of this bill is in committee. I cannot recall ever having opposed a second reading stage. I lost my membership of the Australian Labor Party for supporting the view that we should go beyond the second reading stage to discuss the ETSA dispute. I say to the members of the government that, if they oppose this matter going beyond the second reading, it may well influence my attitude in the future in relation to second readings. They should be prepared to allow this matter to go beyond the second reading and allow the Hon. Nick Xenophon to pursue his democratic right—which was the very argument that the Treasurer outlined when he said that, when he was elected to this place, there were people who voted for him and he ought to have the right to proceed with this bill.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: You might argue that. The Hon. Angus Redford interjects and says that is the case. If that is his view, I look forward to the next time you introduce an industrial relations bill or half a dozen other bills that I could refer to. I know the Hon. Angus Redford will oppose the second reading of this bill, but I am not sure that in the near future I will have to worry about the Hon. Angus Redford introducing bills other than private members' bills into this place, so I will not worry about him. Ministers, do not sit there and oppose the second reading of this bill on whatever basis and come back to me in three or six months time and ask, 'Will you support the second reading because I just want some of these arguments debated in Committee?'

The Hon. A.J. Redford: Don't threaten, Terry.

The Hon. T.G. CAMERON: The Hon. Angus Redford says, 'Don't threaten.' I am disappointed about that.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: Well, I would like to see a bit of consistency. If I am so wrong in always supporting the second reading, I will be the first one to stand up in this place and admit it. I will admit I am wrong and will then feel quite comfortable and free to follow your lead, and that is to oppose.

The Hon. A.J. Redford interjecting:

The Hon. T.G. CAMERON: Well, you keep interjecting on me. You said that I am threatening the government. I am not threatening the government at all. I do not know that I would ever—

The Hon. A.J. Redford: You threatened me.

The Hon. T.G. CAMERON: I was not even referring to you. I do not know why you took it personally. This bill deserves to go beyond the second reading for all the thousands of people who have lost hundreds of millions of dollars in all forms of gambling. For that reason alone it deserves to go forward. I want it to go forward to see whether the two issues that really need to be addressed in this area, that is, how to help problem gamblers more effectively and to give them more money and, secondly, and most importantly, how we employ education and training strategies along the lines as suggested by the Hon. Mike Elliott, can be addressed so that we can actually start to minimise the level of gambling in our society.

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

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. K.T. GRIFFIN: I replied at some length to the issues raised by members, but there are several issues that I think need to be canvassed in more detail. First, there is the Law Society's claim that the government's amendments do not go far enough to minimise exposure to the fund. Determining what types of losses should or should not be indemnified by the guarantee fund is a difficult matter, one which requires a balance. The debate on this bill has shown that the members of this parliament are reluctant to accept amendments that may have the effect of simply reducing consumer protection.

Before proposing to entrench the distinction between legal practice and mortgage financing, this government considered many factors. The difficulties faced in other Australian jurisdictions with respect to legal practitioners participating in mortgage financing in South Australia's own experience with conveyancers carrying on the business of mortgage financing was an influencing factor. Interstate jurisdictions have taken steps to protect solicitors' fidelity funds from mortgage financing related losses. Similar steps were taken in South Australia to minimise the exposure of the Conveyancers Indemnity Fund. However, in each of these cases the restrictions on claims related to mortgage financing rather than more general broking activities.

Another factor in the government's decision to make this amendment was the Australian Securities and Investment Commission's recent policy change with respect to mortgage investment schemes. As I indicated during the second reading debate, legal practitioners carrying on the business of mortgage financing will be required to comply with stringent regulations if their activities fall within the scope of the corporations law. To some extent, this will increase consumer protection in this area.

As I have said, it is a matter of balance. I have received other proposals to further restrict the ambit of claims that may be indemnified by the guarantee fund, but this time I am not convinced there is justification for restricting claims from being made against the guarantee fund any further than the extent proposed in this bill.

The other matter which the Hon. Carolyn Pickles raised but to which I did not respond as far as I can recollect, was the Law Society's concern about the use of the words 'dishonest conduct' in section 66. How does a judge determine dishonest conduct? As I indicated during the second reading debate in response to concerns raised by the Hon. Angus Redford, all claimants for compensation against the guarantee fund, including legal practitioners, must comply with section 60 of the act.

Section 60 dictates that the person must have suffered the pecuniary loss as a result of a fiduciary or professional default. Therefore, the loss must have arisen from a defalcation, misappropriation or misapplication of trust money received in the course of legal practice by the legal practitioner or from any wrongful or negligent act or omission occurring in the course of the practice of the legal practitioner.

Where the claimant is a legal practitioner who has suffered loss because of the fiduciary or professional default of his or her partner, clerk or employee, the claimant must first be able to establish the requirements for a claim under section 60. Then, when determining whether the claim is valid and compensation should be paid, regard must also be had to section 66 of the act. In accordance with new section 66, once the legal practitioner has shown that he or she has suffered actual pecuniary loss due to the fiduciary or professional default of his or her partner, he or she must also show that the default consisted of a defalcation, misappropriation or misapplication of trust money or dishonest conduct.

Insofar as the words 'dishonest conduct' are concerned, the provision will operate so that if the legal practitioner can show that he or she suffered loss because his or her partner committed a wrongful or negligent act or omission, the claim will not be a valid claim unless the act or omission is dishonest. Basically, the claim will not be valid if the act or omission is negligent. I am satisfied that the words 'dishonest conduct' will not cause difficulties in section 66.

Clause passed.

Clause 2 passed.

Clause 3.

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

Page 1, lines 20 to 22—Leave out this definition and insert the following definition:

'mortgage financing' means facilitating a loan secured by mortgage by—

(a) acting as an intermediary to match a prospective lender and borrower; and

(b) subsequently arranging the loan; and

(c) receiving or dealing with payments for the purposes of, or under, the loan,

but does not include the provision of legal advice or the preparation of an instrument;

This amendment replaces the current definition of 'mortgage financing' with a definition that is more appropriate by specifically identifying that the practitioner is acting as an intermediary to match a prospective lender and borrower. As I indicated in the second reading debate, the government intends to exclude from the guarantee fund losses arising from activities associated with facilitating a secured loan by means of matching the lender and arranging the loan and dealing with payments made under the loan. These activities are not legal services and, according to the Law Society's professional conduct rule, such business activity must be carried on as a separate and distinct business.

However, during the second reading debate the Hon. Angus Redford identified that the definition in the bill may inadvertently cover mortgage related negotiations and activities performed by legal practitioners incidentally to the provision of legal services. It was never the government's intention to exclude from the guarantee funds coverage losses associated with activities that a legal practitioner performs when providing a legal service. The new proposed definition of mortgage financing is more specific as to the conduct it constitutes mortgage financing. To constitute mortgage financing the practitioner will have facilitated the loan secured by mortgage by acting as an intermediary to match a prospective lender and borrower, arranging the loan and receiving and dealing with payments for the purposes of the loan. The new proposed definition will also expressly provide that mortgage financing does not include the provision of legal advice or the preparation of an instrument.

The Hon. A.J. REDFORD: I will make a comment about the amendment and I will ask whether the Attorney can confirm my understanding. The proposed amendment provides that mortgage financing means facilitating a loan secured by mortgage by acting as an intermediary to match a prospective lender and borrower and subsequently arranging the loan and receiving or dealing with payments for the purposes of or under the loan, but it does not include the provision of legal advice or the preparation of an instrument. Will the Attorney confirm that the three placita (a), (b) and (c) all need to be satisfied before one falls within the category of mortgage financing?

The Hon. K.T. GRIFFIN: Yes.

The Hon. A.J. REDFORD: Clause 3(c) provides that the definition of 'trust money' does not include money received by a practitioner in the course of mortgage financing. Will the Attorney explain to us what then is done to ensure that there is a proper accounting of moneys that are received by a practitioner in the course of mortgage financing and what protections exist? Could the Attorney also advise whether or not other legislation applies to legal practitioners who engage in mortgage financing and, if so, what legislation applies in so far as the receipt and payment of moneys?

The Hon. K.T. GRIFFIN: My understanding is that this will put legal practitioners who are mortgage financiers in the same position as any other mortgage financier where there is no law, as I understand it, which specifically deals with the keeping of appropriate records and trust accounts, except that part of the law which is the managed investments legislation in respect of which the Australian Securities and Investments Commission has recently made some determinations. They set the bar higher in relation to the ability of persons to carry on this sort of business activity.

The Hon. A.J. REDFORD: I am sorry that I have not raised this issue earlier, but I understand that there is substantial commonwealth legislation dealing with issues of trading, securities, managed investment legislation and the like. There are examples where legislation of that nature does not apply to legal practitioners because there is an assumption on the part of the commonwealth or on the part of other legislation that the provisions of legislation such as the Legal Practitioners Act will provide sufficient protection. Will the Attorney give us an assurance that legal practitioners will not fall within a completely unregulated gap?

The Hon. K.T. GRIFFIN: As far as I am aware, the Australian Securities and Investments Commission will be regulating legal practitioners in so far as they are mortgage financiers in exactly the same way as mortgage financiers who do not happen to be legal practitioners. That is my understanding.

The Hon. A.J. REDFORD: I do not want to sound as if I am cross-examining the Attorney, but I am not sure what is meant by 'understanding'.

The Hon. K.T. GRIFFIN: What is meant by 'understanding' is that that is my understanding of the law. I cannot give the honourable member a categorical answer unless I go back and check it all out, and at this hour of the night I cannot do that.

The Hon. A.J. REDFORD: I appreciate that he cannot do it at this hour of the night, but I would hope that the Attorney might advise us of any inquiries before we come back tomorrow or before this bill is finalised in this parliament.

Members interjecting:

The ACTING CHAIRMAN (Hon. J.S.L DAWKINS): The Hon. Mr Redford should adjust his microphone.

The Hon. T.G. Cameron: We can't hear you.

The ACTING CHAIRMAN: The chair is having difficulty hearing you.

The Hon. A.J. REDFORD: All right, Mr Acting Chairman: you have made your point.

The ACTING CHAIRMAN: I am just asking that you assist me and assist Hansard. Please continue.

The Hon. A.J. REDFORD: You have made your point: there are others who distracted me and that is why I paused.

The ACTING CHAIRMAN: We just could not hear.

The Hon. A.J. REDFORD: Mr Acting Chairman, that is now the fourth time you have told me you could not hear me earlier.

The ACTING CHAIRMAN: Please proceed.

The Hon. P. Holloway interjecting:

The Hon. A.J. REDFORD: I am dealing with a complex issue.

The Hon. P. Holloway interjecting:

The ACTING CHAIRMAN: The honourable member is on his feet. Please proceed.

The Hon. A.J. REDFORD: I am a little disturbed that, if this is going to be pushed through tonight and we discover on checking the legislation that, as a consequence, legal practitioners are not covered by relevant commonwealth legislation, we are creating a completely unregulated market. I would hope—

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: If it is not trust money, what supervision is there in relation to dealing with moneys that lawyers might receive in the course of mortgage financing?

The Hon. K.T. GRIFFIN: I do not have the facilities to check tonight, without notice, the precise provisions of the regulatory framework imposed by the Australian Securities and Investments Commission. What I do know is that it is only recently that the Australian Securities and Investments Commission determined to lift the bar higher in relation to both qualifications for carrying on mortgage financing business, on the one hand, and dealing with moneys from investors, on the other.

I do not have at my fingertips information in relation to the way in which those requirements operate. However, let me say that the Australian Securities and Investments Commission initiative arose very largely because of the difficulties which lawyers who were mortgage financiers experienced interstate. Outside South Australia, particularly in Victoria, New South Wales and Queensland, mortgage financing is quite a significant activity. It also arose out of some other mortgage financing failures in other jurisdictions and I suppose in South Australia in relation to conveyancers.

In relation to lawyers, we are now only doing that which was done to conveyancers back in 1993. When the Hon. Anne Levy was Minister for Consumer Affairs, she brought in legislation which was enacted but which did not come into operation prior to the 1993 state election. After that, we substantially revised the legislation relating to the licensing and regulation of conveyancers and real estate agents, but we carried forward the removal of the trust account requirements and the indemnity provided under the agents indemnity fund. That has been in place since 1993 and my understanding is that it is almost an identical provision relating to lawyers, similar to the way in which we deal with mortgage financing by conveyancers and real estate agents.

The Hon. A.J. REDFORD: What steps will either the Law Society or the government take to advise all existing and future clients of solicitors engaged in mortgage financing that, firstly, those moneys that are dealt with in the business of mortgage financing will not be trust moneys within the definition of the Legal Practitioners Act; secondly, that as a consequence they will not be the subject of audit supervision by the Law Society and in particular the random audit process that the Law Society adopts; and, thirdly, will not be covered by the guarantee fund?

The Hon. K.T. GRIFFIN: This does not extend to removing the protection which any person presently has where the instruction to engage in the mortgage financing was taken before the commencement of this bill. Everything that is in existence up to the present time is protected. All that I can say in relation to informing clients of the passing of this act is that there is no record of who is a mortgage financier. That is not on either the public record—

The Hon. T.G. Cameron: Should it be, though?

The Hon. K.T. GRIFFIN: Under the Corporations Law provisions—

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: The difficulty has been that all of this has been part of a legal practitioner's business and professional activity, and they have never been required to distinguish—

The Hon. A.J. Redford: But now, if this goes through, they will.

The Hon. K.T. GRIFFIN: Yes, they will be required to, but we are not putting in place a regime which says that legal practitioners have to identify to any central registry or to the Law Society that part of their practice or business that is mortgage financing, except that the professional conduct rules of the Law Society say that business activity must be carried on as a separate and distinct business. That will continue to be the case, but my understanding is that—and I can only say that it is an understanding because I cannot say categorically that this is the position—the rules of the Australian Securities and Investments Commission will require identification of this business activity. I cannot take it any further than that.

The Hon. A.J. REDFORD: I understand the Attorney's comments that if the mortgage financing occurred prior to this bill they are protected. I also understand, acknowledge and accept the Attorney's assertion that there is no record of who is engaged in mortgage financing and who is not. However, it does beg some questions. First, I have not seen or been engaged in mortgage financing myself, nor have I been associated in any firm of solicitors where that has occurred. However, I have had some cause to be involved, usually at the very end of a process, with mortgage financing that went wrong.

In particular, I remember the collapse of the Swan group of companies that led to a great deal of stress for many elderly people. They operated using a pooled fund effect and money was going backwards and forwards and being shifted around, being changed from mortgage to mortgage, and the like. Often, transactions took place without the specific knowledge of the investor. One would assume that that sort of practice might still occur from time to time under a power of attorney or some other arrangement.

It concerns me that if there is a reduction of protection those solicitors ought to write to each and every one of their existing clients saying that, 'If in future there is a transaction of this nature, this is the different state of the law that exists if something should go wrong.'

Secondly, I would not expect the government to sit down and identify who is in business, then who is the client of that particular business and then advise those clients. It is not uncommon for either the government or a body such as the Law Society to ask those people who are engaged in that type of business to notify their clients or, alternatively, run some sort of public campaign to advise those people. I wonder whether any thought has been addressed in relation to those issues.

The Hon. K.T. GRIFFIN: I must confess I have not given any thought to it, but I appreciate the point that the honourable member has made. I undertake to take this up with the Law Society. One of the ways in which this can be done may be by way of a professional conduct rule because the professional conduct rules already indicate that any mortgage financing business activity must be carried on as a separate and distinct business. It may be possible that a conduct rule could be made which requires those who do have such a separate business activity to notify existing clients of the change in the law. That is one way in which it could be done.

I must confess that I do not know and cannot remember what is in the Australian Securities and Investments Commission's provisions for the operation of these schemes. My recollection is that there is some requirement for notice, not of changing circumstances but of the obligations which are imposed upon those involved in mortgage financing activity, but, again, I do not have that at my fingertips.

The Hon. A.J. REDFORD: I note that the attorney is anxious to get the matter through today, and there are those matters that I have raised. Is there any urgency to get through this bill, or can we look at some of those issues over the break? If there is some urgency, I would be grateful to know what that urgency is.

The Hon. K.T. GRIFFIN: The reason why this was an essential bill and is now urgent is that the first time this was introduced in August it was directed towards dealing with a renegotiation of the professional indemnity master policy, and the new policy comes into effect on 1 January. It is important that this bill be in place to ensure that there is not a hiatus between the amended provisions of the master policy relating to professional indemnity which might expose the indemnity fund to even greater liability than it has at present. If we do not pass the bill, what it means is that for about three or four months there will be the hiatus where the guarantee fund is exposed to much greater liability, and I do not intend for that to happen.

The Hon. A.J. REDFORD: Is it fair, then, as I understand that answer, to conclude that what has happened is that the local profession has engaged in extending the insurance policy to cover defalcations arising from a legal practitioner, for example, slipping up with mortgage financing?

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: I note that the Attorney says that is the not the case. I am just not sure exactly how this affects the consumer, exactly how this effects, for example, the little old lady who has her lifetime's savings deposited with a solicitor who is engaged in mortgage financing and something goes wrong in March next year when someone runs off with the money. How is that little old lady's position different as a consequence of this legislation and the effect on the professional indemnity insurance cover?

The Hon. K.T. GRIFFIN: It will not be covered, because mortgage financing will no longer be protected under the indemnity fund.

The Hon. A.J. REDFORD: What rights does that little old lady have?

The Hon. K.T. GRIFFIN: She has plenty if she already has a secured mortgage.

Members interjecting:

The Hon. K.T. GRIFFIN: But Growdens did not occur under the management regime of the Australian Securities and Investments Commission, because that was before the new regime was put in place. There is a new regime in place, and those who engage in mortgage financing across the board, whether you are lawyers or conveyancers or out there in some other way, everybody who engages in mortgage financing or arranging mortgage financing will be covered by a level playing field, and that will be the level playing field under the Australian Securities and Investments Commission schemes.

The Hon. A.J. REDFORD: I must say, Attorney, I am a little concerned about my little old lady.

The Hon. K.T. Griffin: It is a pity that you did not raise it earlier.

The Hon. A.J. REDFORD: I apologise that I did not. If that little old lady is not covered that is fine, so long as she walks into that position with her eyes open, and does not wake up one day thinking that she has this coverage from the indemnity fund, that her lawyer is covered by professional indemnity insurance, and she finishes up not being covered at all because she simply does not know that we have changed the law here tonight. I acknowledge that I have not raised this earlier.

The Hon. K.T. GRIFFIN: I do not have the ASIC details here. It will take a day or so to bring it all together and assess it, I imagine. As I understand it, the whole object of the ASIC scheme is to put in place requirements for those who engage in mortgage financing activity. As to their practices, those practices will be with respect to the way in which the financing occurs and the way in which records are kept. It may cover (but I am not sure whether or not it does) the issue of notice about protections given by the financier—whether they are little old ladies, or anyone else. That is one issue that I just cannot answer tonight.

The Hon. A.J. REDFORD: The Law Society, with respect to other issues, is able to provide us with quite voluminous amounts of information, advice and submissions. But when it comes to something that affects it directly, it is disappointing that it has not sought to engage us, as members of parliament, to perhaps think through some of these issues. I just make that comment in passing.

The Hon. NICK XENOPHON: My concern in relation to this matter is that consumers of legal services who go to a solicitor who carries out mortgage broking work—mortgage

financing—will assume that they are in some way protected by way of the guarantee fund. But in this case, if there is a defalcation, they will not be protected by virtue of this amendment. I can understand the rationale behind the amendment, but I am not sure what the Attorney is proposing by way of a mandatory degree of notification to inform consumers that they will not be covered.

The Hon. K.T. GRIFFIN: The professional conduct rules of the Law Society already require that these particular activities—that is, facilitating a secured loan by means of matching the lender and borrower, arranging the loan and dealing with payments made under the loan—are not legal services and, as such, must be carried on as a separate and distinct business. So, that is the rule: carried on as a separate and distinct business. That has to be obvious. You cannot have a legal firm carrying on mortgage financing business if it is not obviously a distinct and separate business.

The Hon. A.J. Redford: It does not say 'distinct business' in the amendment.

The Hon. K.T. GRIFFIN: No, because I am talking about professional conduct rules, and they already provide for that. The Australian Securities and Investments Commission coverage deals with issues of managing this sort of business. If it is not legal work and it is covered by the Corporations Law or the managed investments legislation, you cannot cover it under both. It is simple: you cannot cover it under both; they are inconsistent. It is either covered by one law or another. What the member is seeming to suggest is that, because you are a lawyer, because you carry on a business which other people out in the community carry on but do not have to be lawyers, you should somehow get a different level of protection because you happen to be dealing with—

The Hon. Nick Xenophon interjecting:

The Hon. K.T. GRIFFIN: If you are going to an insurance broker, who is also involved in mortgage financing, what are the requirements there? Should the requirements on them, in relation to what they tell consumers, be any different from what either a legal practitioner or a conveyancer should tell, and keep in mind—

The Hon. A.J. Redford: The lawyer has higher standards than an insurance broker.

The Hon. K.T. GRIFFIN: Not in the public mind they don't. They are just a notch above politicians, and I can tell you where we are.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: I tell members that some of the behaviour of lawyers around Adelaide would not put them in too high a category of trustworthiness.

The Hon. T.G. Cameron: Name them.

The Hon. K.T. GRIFFIN: I will not name them: they are dealt with under the disciplinary provisions.

The Hon. T.G. Cameron: You don't even have the decency to say, 'Present company excluded.'

The Hon. K.T. GRIFFIN: That, of course, would be an unparliamentary remark if I was taken to be asserting that any member here fitted into that category. It is getting late; what was the question?

The Hon. NICK XENOPHON: A consumer of legal services attending a law firm, having a number of legal and mortgage services provided which, under the professional legal conduct rules are not legal services, would, to all intents and purposes, effectively be under the belief that if anything went wrong there would be cover under the indemnity fund. All I am saying is—

The Hon. K.T. Griffin interjecting:

The Hon. NICK XENOPHON: I have not finished my question.

The Hon. K.T. GRIFFIN: With respect, I do not agree with that.

The Hon. R.R. Roberts: Let him finish and then disagree with him.

The Hon. NICK XENOPHON: I do not have a problem with the intent of the amendment, but does the Attorney concede that there ought to be some method, whether it is by regulation or community education, to let consumers know that, as a result of this amendment being passed, there is an altered position for the consumer who attends a legal firm? That consumer is not necessarily receiving legal services because they do not come within the definition of the professional conduct rules, but that consumer may be under a misapprehension that they are covered by the society's guarantee fund.

The Hon. K.T. GRIFFIN: I indicated about a half an hour ago that it may be that a professional conduct rule might be developed to address that issue of notification. Under the law, as it will be, it will be a separate business anyhow, but maybe a professional conduct rule requiring communication of information might be the appropriate way to address that. I indicated that I am attracted to that and that I would be prepared to take that up with the Law Society.

The Hon. NICK XENOPHON: I thank the Attorney for his indication that he is prepared to take it up with the Law Society. I just ask the Attorney to be more certain. Will he give an undertaking that it will be taken up with the Law Society so that the issue is at least dealt with in due course?

The Hon. K.T. GRIFFIN: Yes.

The Hon. IAN GILFILLAN: Can I give some gratuitous advice to some of my less experienced colleagues: you do not lean on the Attorney to concede. That is a recipe for contradiction and, if we follow it through, is probably an oxymoron. I would like to make a few observations. I think the process of cross-examination has been very productive if somewhat exasperating. However, I do think it is important that I put into the committee stage the Democrats' view on aspects of this first half of this bill.

I want to thank the Attorney for sending another copy of a letter dated 19 October, which he sent in response to concerns raised by my colleague the Hon. Mike Elliott on 8 September and repeated by me in my second reading contribution to this bill on 9 November. I am not sure what happened to the first copy, but I thank him for that.

Unfortunately, the Attorney's answers fall short of addressing our real concerns about the bill. As others have identified already, this is a consumer protection issue. The Attorney says that clients of lawyers who suffer loss as a result of 'fiduciary or professional default' in relation to mortgage activities should not have any chance of compensation from the Solicitors' Guarantee Fund. This is because, so it is said, that clients of other mortgage brokers do not have similar protection. It is, in our view, a simple issue. Some consumers have protection: others do not. The government's response is to remove the protection from those who have it. The Democrats' response would be to provide protection for those who lack it. We cannot support taking away consumer protection from clients of lawyers unless and until there is a wider consumer protection regime in place for clients of mortgage brokers generally.

The Attorney says that this sort of protection will be provided by the commonwealth as part of the corporate law economic reform program. As I understand it, this common-

wealth bill as amended by the Democrats was passed by both houses of the federal parliament in October; however, it applies only to corporations. It does not and cannot cover the activities of mortgage brokers who are operating other than as companies under the Corporations Law. Therefore, the issue of consumer protection for clients of mortgage brokers who are not companies remains a valid concern.

The Attorney-General has not suggested that there is any requirement for lawyers who are operating mortgage broking activity to do so as a company. I expect that consumers who go to a lawyer for mortgage broking services would expect, and have a right to expect, that the services thus provided, even if they are not defined as legal services, are guaranteed by a lawyers' indemnity fund, because the person providing the services is a lawyer. I admit that the previous contribution in the committee stage has covered a lot of this. It has been a very penetrating and constructive degree of question and answer.

Even if the services are not so guaranteed because the lawyer has ensured that the conduct is separated from the legal practice in the way recommended by the Law Society, the mere expectation by a client would be one of the factors that might persuade a client to go to a solicitor rather than to any other mortgage broker. In fact, it is precisely in the cases where a lawyer has not separated the activities of mortgage broking and legal advice contrary to the rules of the Law Society—in other words, where a lawyer may be prepared to bend or break the rules of his or her profession—that a consumer is likely to be most in need of protection. It is this precise situation in which the bill seeks to remove consumer protection.

We asked how many claims of this nature had ever been made on the Solicitors' Guarantee Fund. The Attorney says he has been advised that there have been none. If that is the case, I cannot understand why the government wants to ensure with this bill that the first person to ever claim such compensation for such a default will be disappointed. Consequently, the Democrats will be opposing clauses 3, 5 and 6 of this bill, the clauses which remove consumer protection for lawyers' mortgage broking clients. However, we are happy to support clause 4, as it pertains to a different matter, and I addressed that matter in my second reading contribution on 9 November.

The Hon. K.T. GRIFFIN: The fact that there have been no claims, I would suggest, is not a particularly persuasive reason for voting against the clauses.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: Well, it is. You have to face up to the fact that in Victoria, for example, there was a recent case where I think the defalcation was $43 million. That sent the fund broke, and there had to be a very substantial levy made by the Victorian Attorney-General on all lawyers in Victoria. It was in the thousands of dollars per practice. I forget exactly how much, but it was a very substantial amount. There has been evidence of defalcation in other jurisdictions which prompted us to act in advance rather than to close the door after the horse has bolted.

This is what it is about: it is about being perceptive for the future and taking precautions based on the experience which has occurred in other jurisdictions. As I said in that letter to the Hon. Mr Elliott, while we are fortunate not to have the problems that have been encountered interstate, nevertheless, it is important to act. I say in the letter that some jurisdictions have already taken steps to ensure that the solicitors' fidelity funds will no longer be called on to indemnify losses resulting from mortgage investment practices. We can either sit on our hands, do nothing and wait for it all to occur and then, when something does happen, we will have to make a very significant call on the legal profession to meet any deficiency in the fund.

If I am Attorney-General at the time, I will write a letter saying that the parliament did not want to give you the protection at the time but wanted to expose it to liability notwithstanding that it knew from interstate experience that these sorts of cases may, and hopefully do not, occur. So far as the Government is concerned, we want to put in place, again, a framework in which—

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: There will be a level playing field. They will be removed from the state legal practitioners jurisdiction, as they have been for conveyancers. They have never been covered by insurance brokers and everybody else who run these sorts of schemes. In future, they will be dealt with under the Australian Securities and Investment Corporation.

The Hon. A.J. Redford: Fine. Why not tell them?

The Hon. K.T. GRIFFIN: I have already answered a question by the Hon. Mr Xenophon. I do not know how much more I have to say about what I am prepared to do to take that matter further. I have already given an undertaking about it.

The Hon. CAROLYN PICKLES: The opposition supports the amendment. The government has given various undertakings with which we are satisfied in relation to this clause.

Amendment carried; clause as amended passed.

Clause 4.

The Hon. NICK XENOPHON: I move:

Page 2, lines 27 and 28—Leave out paragraph (a).

I seek some guidance from you, Mr Chairman. Earlier today I gave a notice of motion that the issue of disqualified persons under the Legal Practitioners Act be referred to the Legislative Review Committee. Essentially, there are two scenarios. If clause 23AA is defeated in its entirety, the issue of the notice of motion that I gave for tomorrow becomes live. If it is not successful, these amendments need to be dealt with. I apologise for any confusion on this, but I just wanted your guidance, sir. If clause 23AA is not defeated, in a sense these amendments then come into play.

The Hon. K.T. Griffin: It would be good to be let in on what has been going on, so I know what I have to answer. Just get on with it.

The Hon. NICK XENOPHON: I can understand the thrust behind proposed section 23AA in clause 4 of this bill, and I am very sympathetic to that. My concern is that there may be a number of anomalous outcomes in relation to this clause, and I hasten to add that I support the government's aim that the protection of the public ought to be a primary consideration. That ought to be the main consideration, not the protection of any practitioner, and that should be at the very heart of the principles at stake here. The concerns I have are, for instance, in relation to the definition under subclause (5) where it provides that the person to be employed or engaged will not practise the profession of the law. What is the definition of that? If someone has been given permission to work as a law clerk, what can or can't they do? Can they draft rule 46.15 particulars, for instance? Are they in breach then? That is why as a fall back position I moved an amendment to delete that.

In discussions with a number of my parliamentary colleagues concerns have been raised that a number of anomalous outcomes and other issues that have not been canvassed in the context of this clause may arise out of this. For instance, a person who is not a legal practitioner, who is a person of clearly bad character and who is able to work as a law clerk in a firm would not be covered. So, my opposition to this clause—and it is not by any means vehement—arises from a concern that there may be a number of anomalous outcomes, and that is behind the notice of motion today that this be referred to the Legislative Review Committee. I would like to think that other members will raise their concerns in relation to this clause generally in the course of this committee stage.

The Hon. CAROLYN PICKLES: The opposition also has difficulties with this clause. We also had difficulties with the amendment moved by the Hon. Mr Xenophon, because we do not believe it goes far enough. I have to say that it is 10 minutes past 12, after we have had two late nights in a row, and we are dealing with legislation that is quite complex. I am not sure what the burning desire of the Attorney is to get this bill through tonight.

The Hon. K.T. Griffin: It is simply to facilitate deliberation in the House of Assembly tomorrow afternoon.

The Hon. CAROLYN PICKLES: That may well be so, but it seems to me—

The Hon. K.T. Griffin: We could have done it earlier, but several members were absent. I cannot help it. I do not want to be here at this hour of the night, either.

The Hon. CAROLYN PICKLES: No; and I do not think any of us want to be. I find it absolutely ludicrous that we are here at 10 minutes past midnight, dealing with a complex piece of legislation. Quite frankly, if this chamber had ever considered the recommendations of the women in parliament select committee we would not be here after 10.30 at night, and that would be a far more sensible way to deal with legislation. The opposition has a great deal of difficulty with this clause and does not believe that the Hon. Mr Xenophon's amendments go far enough, but we were sympathetic to his trying to remove it to the Legislative Review Committee where it could be explored in more depth.

The Hon. Nick Xenophon interjecting:

The Hon. CAROLYN PICKLES: Yes, I understand that, so I intend to defeat it. I have to continually put on the record my absolute abhorrence of sitting late at night trying to sensibly deal with legislation. We have been on our feet for hours and hours—

The Hon. L.H. Davis interjecting:

The Hon. CAROLYN PICKLES: I will continue to complain about dealing with anything at 12 o'clock at night when I have been awake since six o'clock this morning.

The Hon. L.H. Davis: This has been on the *Notice Paper* for a long time.

The Hon. CAROLYN PICKLES: I do not give a damn how long it has been on the *Notice Paper*—we are dealing with it now, in the early hours of the morning and it is stupid. Nobody should have to work the kind of hours we work and deal with it sensibly. I oppose this clause in its entirety. I have sympathy with the amendments moved by the Hon. Mr Xenophon, but they do not go far enough. I have much more sympathy with the proposal to send it to the Legislative Review Committee and to try to deal with the issues he has raised, and then bring it back to the Parliament when we are all awake.

The Hon. K.T. GRIFFIN: All that I have been trying to do is facilitate consideration of this bill and the issues that it raises so they can be dealt with before we get up before the Christmas-New Year recess.

The Hon. Carolyn Pickles: What is the rush?

The Hon. K.T. GRIFFIN: I have told you what the rush is. The rush is because the new master policy for professional indemnity comes into effect on 1 January and there are aspects of this bill that we need to have in place. I do not care if you all want to oppose the bill, but let us get on the record why you are doing it and who you are doing it for. This part of the bill has been in this place since August—3½ months—and the problem is that we cannot get members to consider government business. That is the problem. If members had done a bit of homework over the break, they would have been able to come to grips with this sort of issue and we would not have had this last minute problem, but as usually happens with government bills they are all left to the last minute because nobody is prepared to do the hard grinding work to deal with the issues. I will bet that when we return in four months members will not be ready to talk about all the bills the government has introduced this week to allow members to consider them during the break.

Let us play it fair and do the work we are paid to do, which includes legislating and not just put it off. If everybody is comfortable with putting it off until tomorrow, we can do that, but I will bet that we are no closer to resolution. It gives the Hon. Mr Xenophon his one day's notice that he has to give without suspending Standing Orders, so it can be referred to the Legislative Review Committee. The other thing is that I would have thought that members of this chamber were anxious to ensure that the law was upheld. When a legal practitioner is disqualified they are disqualified from legal practice. Some of them, on the information that we have, have been trying to get around that because they have been managing clerks, and effectively they have been practicing the profession of the law and thumbing their nose at the court.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: We will not prosecute them under the existing act but will say more effectively that they cannot practice if they have been disqualified. If you look at the provisions of section 21 of the Legal Practitioners Act, you will see that it sets out there what some of the areas of endeavour will be to identify what is practising the profession of the law. I am interested in keeping crooked lawyers out of practising the law and circumventing those provisions of the law imposed by the courts to stop them from the very practice that got their clients into trouble in the first place. That is what I am after.

I am surprised that there are members of this Council who want to put it off rather than face the reality of it. I am not in the business of protecting former lawyers who have been struck off. They deserve not to be able to practise, not even indirectly behind the scenes.

Progress reported; committee to sit again.

ADJOURNMENT

At 12.16 a.m. the Council adjourned until Friday 19 November at 2.15 p.m.