LEGISLATIVE COUNCIL

Thursday 13 April 2000

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

TAB AND LOTTERIES COMMISSION

Petitions signed by 3 084, 1 455 and 112 residents of South Australia respectively concerning the Totalizator Agency Board and the Lotteries Commission of South Australia, and praying that this Council will ensure that the Totalizator Agency Board and the Lotteries Commission of South Australia remain Government owned, were presented by the Hons Carolyn Pickles, Sandra Kanck and G. Weatherill.

Petitions received.

PROSTITUTION

Petitions signed by 224 and 45 residents of South Australia respectively concerning prostitution, and praying that this Council will strengthen the present law and ban all prostitution related advertising to enable police to suppress the prostitution trade more effectively, were presented by the Hons Caroline Schaefer and R.D. Lawson.

Petitions received.

RADIOACTIVE WASTE

A petition signed by 355 residents of South Australia concerning the transport and storage of radioactive waste in South Australia, and praying that this Council will do all in its power to ensure that South Australia does not become the dumping ground for Australia's or the world's nuclear waste, was presented by the Hon. Sandra Kanck.

Petition received.

POKER MACHINES

A petition signed by 78 residents of South Australia concerning the proposed introduction of poker machines in the Maylands Hotel, and praying that this Council will review and amend the Gaming Machines Act 1992 to stop the further proliferation of gaming machines in South Australia, was presented by the Hon. Nick Xenophon.

Petition received.

PAPERS TABLED

By the Treasurer (Hon. R.I. Lucas)—

AustralAsia Railway Corporation—Report, 1998-99
Department of Education, Training and Employment—Report, 1999

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

South Australian Council on Reproductive Technology—Report, 1998-99.

QUESTION TIME

BUSES, PRIVATISATION

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Transport a question about bus privatisation.

Leave granted.

The Hon. CAROLYN PICKLES: Further to my question asked of the minister on 28 March and the minister's replies on 28 and 29 March, I am advised that, at present, 548 drivers are seeking redeployment. I am also advised that there is a 160 driver shortfall for Torrens Transit and Serco. My questions are:

1. Will the minister guarantee that all private operators will be ready for the handover on 23 April?

2. Have all drivers been adequately trained for their new routes to ensure that service delivery is adequate?

3. Will the minister guarantee that the so-called budget savings of $7 million per annum ($70 million plus over 10 years), as stated in the minister's press statement, will still be made by the government—

Members interjecting:

The PRESIDENT: Order!

The Hon. CAROLYN PICKLES: —in the light of the large numbers of drivers who are seeking redeployment which means that, essentially, those drivers will remain on the public payroll?

4. When the $7 million budget saving was costed, what was the assumed number of redeployees?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I did not prepare the whole of government costs or do the calculations, so I will have to make inquiries about the assumed number of redeployees. I will obtain that advice for the honourable member. All that work was undertaken across government, led by Treasury officials. That is the process that was adopted on the earlier occasions when rounds one and two of the competitive tendering process were undertaken some years ago.

Regarding whether bus drivers have been adequately trained, as the majority of them have been working with TransAdelaide for years and will make up the bulk of the new work force under the new operators, I think the honourable member can assume that they are adequately trained. As to whether they will all be ready, the companies are responsible for making sure that they are fit and able to undertake their contractual responsibilities. They have entered into contractual arrangements with the Passenger Transport Board, so one must expect that they are able to fulfil those contractual obligations.

It is important to remind the honourable member of two things. This was not a privatisation process; it was a competitive tendering process. TransAdelaide put in a bid, but it was not successful in its own right. We have not sold the buses, the O-Bahn track or the rail business. We provided TransAdelaide with an opportunity to participate. The fact that it was not successful but certainly able to put in an offer that it thought was the most competitive does not suggest for one minute that the government was selling the business. TransAdelaide put in an offer which simply was not accepted. Other offers were seen on price and performance to outshine TransAdelaide's.

Therefore, we now have a situation in terms of transition that must be managed. The honourable member knows that every TransAdelaide employee in the bus business was offered an enhanced TVSP to transfer out of the public sector. It was a generous package, and many opted to accept it. I think it is unwise for the honourable member to get overexcited about this, because this enhanced TVSP offer is available until 30 June.

I met with the union movement and accepted what the unionists said—that there is a large number of TransAdelaide employees (bus drivers) who are very concerned that, if we had cut the enhanced TVSP package at 23 April, they would have been two to four months outside gaining their long service leave. The union, on behalf of bus drivers, came to me and said that there would be people who were interested in—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: No, I am just saying that there are many factors that I think are worth listening to—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: These are the redeployees. These are the people about whom the union movement said, 'If we finish the TVSP at 23 April, there would be a number of people who would be just outside their long service leave. Could we go to 30 June?' In terms of the transitional arrangements, the government agreed to that. So, we know that amongst the redeployees there are a number of people who have not quite totted up their full seven years. We know, too, that there are a number of people—over 100—who are on the—

Members interjecting:

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: —pension scheme. They are older and they would not necessarily see it in their financial interests to retire. Those people have the option, because we do not support forced redundancy, to take redeployment. As I said to the honourable member previously, we will conduct training schemes. Members must recognise—and we will have to do some investigation into this—that amongst the redeployees there are a number of people who, I suspect, have been offered jobs and, for a variety of reasons, have not accepted them. If they choose redeployment they must go through the interview process and a range of things in terms of how they can be gainfully employed in the future.

We will be working through the number of redeployees, which we had always anticipated would arise from this process. I would think it most unwise for the honourable member to get over-excited in terms of speculating about numbers, because job offers are still being extended in terms of all the positions that are available.

CAMBRIDGE, Mr J.

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer, in his capacity as Minister for Industry and Trade, a question about Rose Park Cellars.

Leave granted.

The Hon. P. HOLLOWAY: Records reveal that Rose Park Cellars in Norwood is owned by Mr Stephen Yen, Managing Director of the Singapore based company New Toyo International, which has employed the Department of Industry and Trade's Chief Executive Officer, Mr John Cambridge, as a paid director since January 1997. Mr Cambridge admitted to the media in February this year, shortly after the Treasurer had been appointed Minister for Industry and Trade, that he had assisted Mr Yen to purchase a wine business in mid 1997.

It was claimed in the media that the Department of Industry and Trade has purchased thousands of dollars worth of liquor from Rose Park Cellars in the past three years; and Mr Cambridge himself purchased $195 worth of gifts from Rose Park Cellars on his government credit card in October 1997. My question is: what steps have been taken by the Treasurer to investigate the media claims that his department has purchased thousands of dollars worth of wine over the past three years from Rose Park Cellars, can he confirm those claims and, if so, what action has he taken?

The Hon. R.I. LUCAS (Treasurer): I am happy to take the detail of that question on notice and bring back a reply. I can indicate that my recollection of the advice provided to me was that a number of venues were used in terms of purchases of alcohol for the Department of Industry and Trade: that is, Rose Park Cellars was not the only venue used for purchases but there was a range of others. My recollection is that one other cellar was used for purchases of a significantly greater value than Rose Park Cellars, but I would need to check the detail of that.

The inference has been, in this campaign against Mr Cambridge, that in some way all the alcohol purchases through the Department of Industry and Trade have been channelled through Rose Park Cellars. That is the snide inference in the honourable member's question and, indeed, the other suggestions that have been made.

That snide inference from the Hon. Mr Holloway and others is not correct. The alcohol has been purchased from a variety of other sources. The various units within industry and trade, I am advised, are responsible for their own purchases and make their own decisions and, as a result, they have chosen a variety of different venues either with the best value or convenience to them or for other reasons. The other inference, snide or otherwise from the Hon. Mr Holloway, is that in some way John Cambridge and, I guess, senior executives are purchasing all this alcohol to drink in their little mini-bars in their office. Again, the snide inference has been made by the Hon. Mr Holloway—

An honourable member interjecting:

The Hon. R.I. LUCAS: Given the behaviour of some Labor members and ministers in the past, one can understand why they might impute that sort of motive to others. I am advised that there are two broad areas where alcohol is purchased in substantial value by the Department of Industry and Trade.

An honourable member interjecting:

The Hon. R.I. LUCAS: Very substantially South Australian wine. On most occasions South Australian wine gift packs are given to visiting trade and business dignitaries. That is indeed a shocking thing—that the Department of Industry and Trade should purchase South Australian wine instead of cufflinks or a variety of other things which the Australian Labor Party used to provide by way of gifts to visitors. We have been encouraging the giving of quality South Australian wine to business and industry representatives from overseas in particular as well as from other states. South Australia now exports something like 500 000 bottles of South Australian wine a day as part of an enormous revitalisation of our wine export industry.

I am disappointed that the Hon. Mr Holloway continues with the whingeing and whining that Mr Rann, Mr Foley and others within the Labor Party have been pursuing. The other major reason for the purchase of alcohol within the Department of Industry and Trade is that—

Members interjecting:

The PRESIDENT: Order, the Hon. Mr Redford!

The Hon. R.I. LUCAS: —the department conducts a number of business working group sessions and seminars for people from small business and medium size business where

information is provided by either representatives of the Department of Industry and Trade or experts in the particular industry cluster or group, and at some of those occasions—shock, horror!—the Department of Industry and Trade actually provides food and drink to those—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Holloway says there is no issue with that and there is no issue with gifts. The vast bulk of the alcohol that is being purchased is being purchased for those reasons. The Hon. Mr Holloway this week has had more reverse gears than forward gears every time he has asked a question and has had to back off quickly every time he has asked one: he is doing that again today. He is now acknowledging that he has no quibble, even though there was snide innuendo in the question and the campaign that has been conducted about alcohol purchases. He knows he has crafted his question in a snide fashion and that the inference is there that John Cambridge is just sitting in the corner drinking these thousands of bottles of wine happily himself, not worrying about public service. I reject that on behalf of Mr Cambridge. The Hon. Mr Holloway is at least now in reverse gear.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will come to order.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order! The Hon. Mr Cameron will come to order.

The Hon. R.I. LUCAS: The Hon. Mr Cameron is hitting the nail right on the head.

The Hon. P. Holloway interjecting:

The PRESIDENT: Order! The Hon. Paul Holloway has asked a question.

The Hon. R.I. LUCAS: Very sensitive. When the blow torch is on, the Hon. Mr Holloway is in reverse gear. The honourable member conceded that the reasons I have outlined for the purchase of alcohol, substantially by the Department of Industry and Trade, are reasons with which he does not disagree, but with the snide innuendo in his question and in the campaign which is being conducted he knows—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, I have already answered the first question. I said that there is no directive for industry and trade to purchase all the alcohol from one particular cellar—Rose Park Cellar or otherwise. I have said that I will check the detail. My recollection of the advice I have received is that there are a significant number of venues from which alcohol is purchased, that very largely they are decisions taken by the individual units within industry and trade and that my recollection—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, I will consider the request. My recollection is that there is at least one other venue where the annual purchases of alcohol are considerably greater than those in respect of Rose Park Cellars. The innuendo again in the honourable member's question—at the bidding of Mike Rann and others to try to shaft John Cambridge in relation to this issue—is that in some way Mr Cambridge has directed that all of the industry and trade alcohol purchases go through Rose Park Cellars.

The Hon. Mr Holloway should at least have the honesty to stand up and apologise for the innuendo in his question because, as I have indicated, that is not correct. The Hon. Mr Holloway is saying that, if I can demonstrate that there are alcohol purchases from venues other than Rose Park Cellars, he will stand up in this chamber and apologise for the innuendo in his question. I take him at his word by his interjection. I will consider his request and we will make a judgment about his integrity if and when I can provide that information to the honourable member.

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Industry and Trade a question about conflict of interest.

Leave granted.

The Hon. T.G. ROBERTS: I refer to an article in the *Australian* of 8 November last year headed 'Cambridge case turns to minister' by journalist Carol Altmann, who has a good reputation in this Council as an accurate reporter. The article states:

> South Australian Education Minister Malcolm Buckby will come under pressure in parliament this week to detail whether the state's most senior trade official declared his interest in a real estate development when he lobbied a committee of which he was a member to support the project.
>
> Industry and Trade chief executive John Cambridge was head of state development and a director of the Education Adelaide Committee when he put a submission to the committee last November seeking support for a student housing project in Adelaide. The project, in the former Taxation Department state headquarters, is being developed by China-based Zhong Huan Group (Australia).

The Minister for Industry and Trade will be aware of the allegations made in November last year concerning that conflict of interest involving the Chief Executive Officer of his department.

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: Well, we had a break for four months. What could we do then? Parliament was not available—

Members interjecting:

The Hon. T.G. ROBERTS: The longest break in history.

Members interjecting:

The PRESIDENT: Order! I am close to warning some members.

The Hon. T.G. ROBERTS: Mr Cambridge was director of the Education Adelaide Committee in November 1998 when he put a submission to the committee seeking support for a student housing project at the former Australian Taxation Office building in King William Street, Adelaide.

In September last year the Premier told the parliament that Mr Tu became a director of Cambridge's shelf company because he was told that he should belong to a South Australian based company. Mr Cambridge was a co-director of the company with Mr Tu, a Sydney based manager and shareholder in Zhong Huan Group—and therein lies the difficulty. They purchased the former Taxation Office for redevelopment as accommodation for overseas students. The education minister, Mr Buckby, has just advised the opposition that Mr Cambridge did not declare a conflict of interest or declare any personal interest to the board of Education Adelaide at the time. What action did the government take against Mr Cambridge when it became evident that he had failed to declare a conflict of interest during these proceedings?

The Hon. R.I. LUCAS (Treasurer): I am sure that the Hon. Mr Roberts will not be offended if I say that I will not automatically accept everything that has been written for him as being an accurate reflection of the circumstances that pertain to the issue he has raised.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I would need to take advice on that as well, as to whether or not the issue is sub judice.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: I'm not sure. There are certainly a number of legal actions on foot in relation to the *Australian* and a number of members of parliament and public profile figures. It is hard to keep up with all of them, so I would need to—

The Hon. Carolyn Pickles: There's one on your side.

The Hon. R.I. LUCAS: There's one on yours, too. A couple, are there?

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The federal executive is paying for yours, isn't it?

An honourable member interjecting:

The Hon. R.I. LUCAS: We had some very interesting revelations from the Hon. Mr Cameron last evening. I will need to refresh myself as to the detail of the particular version of events that Mr Rann's office has provided to the Hon. Mr Roberts. I am happy to have that matter considered and to bring back a considered reply for the honourable member.

NATIONAL ELECTRICITY MARKET

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Treasurer a question about the national electricity market.

Leave granted.

The Hon. T.G. Cameron: Something new for a change.

The Hon. L.H. DAVIS: That's right, but it is a subject that is always quite powerful.

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: Members will recall that before 1990 the electricity industry was entirely owned by the state and territory governments either through just one authority or a combination of authorities that had control over the three different elements of the electricity industry, namely, generation, transmission and distribution of electricity. The governments made decisions about investments in plant and also set prices.

Then, through the federal Labor government, following a series of Premiers' Conferences in the early 1990s, we had a move to a national electricity market, which in fact commenced on 13 December 1998. That electricity market provided, for the first time, that electricity could be traded between generators and customers initially in New South Wales, Victoria, the ACT and South Australia, with those state and territory grids being connected through so-called interconnectors, and with the provision that Queensland could join the national electricity market in 2001 and 2002, and then Tasmania could join the market through the Bass link interconnect that has been proposed between Victoria and Tasmania.

The national electricity market has created some problems for those states which have not privatised their electricity assets. As far back as November 1999 there are reports that five of the 10 New South Wales government electricity bodies for the year 1998-99 were exposed to losses of hundreds of millions of dollars.

There were massive hedging contract losses suffered by those state-owned electricity utilities in the period 1998-99 and then, of course, there was the Victorian Supreme Court ruling on Thursday against the New South Wales state-owned generator Pacific Power. We also had in early year 2000 indications from the Queensland Labor government, admitting that it may well sell and lease back its power station. The spokesman for mines and energy minister, Mr Tony McGrady, in January this year confirmed that there were increasing risks in the national market, and he said, when talking about the possible privatisation of power in that state:

> You can't rule out something forever. . . The Labor government has conceded the value of state-owned electricity assets is falling as competition from new and interstate participants cuts revenue and profits for government-owned generation and retail corporations.

Now that we are well into the 1999-2000 year, could the Treasurer provide an update on what the national electricity market has done for profitability in the electricity industry and on the increased risks that have been associated with the move to the national electricity market which, after all, was a major policy initiative of the Keating Labor government?

The Hon. R.I. LUCAS (Treasurer): I thank the honourable member for his question. I will need to take some further advice and bring back a further reply or perhaps correspond with the honourable member on some of the detail.

An honourable member interjecting:

The Hon. R.I. LUCAS: Or indeed see him for a cup of tea in the bar. Given the flavour of alcohol induced questions in question time today, I point out that it is a cup of tea, not a glass of beer.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Hon. Mr Redford is being mischievous at the moment, seeking to provoke response not only from me but from Labor members opposite, and I am sure the Labor members will behave themselves and not respond in anger to his provocations.

The Hon. A.J. Redford: Well, it's just empty in there.

The Hon. R.I. LUCAS: It is empty in there, I acknowledge that.

Members interjecting:

The PRESIDENT: Order! I think the Treasurer can answer the question himself.

The Hon. R.I. LUCAS: What I can say is that some of the recent commentary in relation to the New South Wales government, in particular, I think is important for those of us watching the national electricity market with some interest, and I refer to the issue that I have highlighted over the past 12 months. The great difficulty for any minister or for any government is in having competing government owned generators reporting to the one shareholder or to the one minister when in the national electricity market they are meant to be absolutely independent of each other, but nevertheless must report to the one shareholder, which is the appropriate minister in each jurisdiction.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Davis hits the nail on the head. I know from my experience here in South Australia of the whole notion of having three competing government owned generators, each with its own independent board, independent CEO and management and staff, meant to be competing with each other in a cut-throat national electricity market. I am not sure what the experience is in other states but, at the same time, I meet at least monthly with the chair and the CEO of each of the electricity businesses. There is a situation where they are reporting to you in confidential discussion and it might be an hour later that you are discussing with an independent chair and CEO of the competing business—

The Hon. L.H. Davis: You'd get attacked by Paul Holloway for having a conflict of interest.

The Hon. R.I. LUCAS: You probably would, from the Hon. Paul Holloway or the Hon. Terry Roberts, in terms of the definition of conflict of interest. But it is a conflict of interest inflicted on the particular shareholding minister by the government in each jurisdiction.

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: He has lost a bit of money, hasn't he? The dilemma is that it is just an impossible system of governance that is supported by the Labor Party, the Australian Democrats and the Hon. Mr Xenophon here in South Australia and in other states like New South Wales: to have a situation where you have a minister who is meant to be in control and the sole shareholder of three competing businesses in a national market. If you think of the private sector, it is something that the ACCC and anybody else who is concerned about trade practices issues would die with their legs in the air over, in terms of allowing that sort of governance arrangement for any industry sector, let alone one as important as the electricity sector. Yet that is the system of governance that the Labor Party, the Australian Democrats and the Hon. Mr Xenophon have supported and continue to support in terms of systems of governance.

It is no surprise that we are seeing already in New South Wales that model of governance being criticised roundly by that state's Auditor-General, who has said that he knows of no system of governance that can sensibly resolve the conflicts and pressures of that system of governance in the electricity industry. That is the comment of the independent Auditor-General in New South Wales. It is no surprise that he comments in that way and that equally the appropriate minister in New South Wales has lost literally tens, if not hundreds, of millions of dollars, when one looks at the future years and the results of those contracts, because of that system of governance and because of other issues as well. However, people continue to defend that system and continue to put their head in the sand while trying to ignore the unreality of trying to compete in a national market with a system of governance along those lines.

PARTNERSHIPS 21

The Hon. M.J. ELLIOTT: I seek leave to make an explanation before asking the Treasurer, representing the Minister for Education and Children's Services, a question about Partnerships 21 and equity for special needs groups.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to a lack of guarantees that funding allocated to special needs groups in South Australian public schools will be used for those groups under Partnerships 21. The cause for concern is the way in which global budgets will operate under the local school management scheme. By including state and federal grants that are allocated to specific purposes, along with general funding within the income category of the global budget, the intended outcomes for the specifically targeted groups may not be achieved.

When schools are in competition to attract a large proportion of finite and available resources by attracting additional students, there will always be the temptation to provide the appearance of a school to impress the majority of clients rather than spending it on the needs of specific groups of students. The P21 scheme encourages competition between schools to accumulate resources rather than encouraging equity and participation principles that allocate resources according to need.

There is a great risk that some schools, including isolated rural schools, and some students, including those with special needs, will find it difficult to lobby for and access resources, even though they may need a greater share. The recent abolition of the equity standards branch within the Department of Education, Training and Employment has given further cause for concern. While the majority of school councils have a long history of responsible governance, there is still a need for audit accountability as competitive pressures in schools increase.

I have been concerned to hear reports that already there have been examples of schools not using funds in the manner in which they were intended. I will give a couple of examples. I have been informed of a school in Port Adelaide with a large Aboriginal student population that has not used all the funding allocated to Aboriginal students on specific Aboriginal programs, including the appointment of specialist Aboriginal teachers.

I have also received correspondence from teachers working in the field of English as a second language indicating that there is evidence that some P21 schools' budget lines are not being diverted to specialist fields but to general revenue. In these instances, of the total amount of funding allocated to ESL students, only a small proportion is being spent on ESL support and ESL teachers. I ask the minister: what will be done in the absence of the equity branch, now that it has been disbanded, and what assurances and mechanisms will be used to ensure that money is allocated for special needs groups and that it will be used for that purpose?

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

BUSES, PRIVATISATION

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Transport a question about changes to bus services.

Leave granted.

The Hon. J.F. STEFANI: Following the competitive tendering process, I understand that sections of Adelaide's bus services will be subjected to some operational changes. My question is: what changes are anticipated to bus services, and what impact will these proposed changes have on patrons?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): These matters were of some concern to the Hon. Carolyn Pickles when she asked a question about service improvements arising from the competitive tendering process. I think the honourable member inquired about these matters last week, but I suspect that she will not want to follow that up further because the improvements are so positive.

I was able to announce today that, under the new contractors, the through running of services, an issue which members (particularly the Hon. Terry Cameron) have raised from time to time, will be restored. That has been made possible following amendments to the Passenger Transport Act made in this place in late 1998 to delete the provision that each contract area must have only 100 buses. From 23 April, under the new services, we will see a return to the through running of services, so that, for example, a student who lives on Main North Road will be able to travel to Flinders University

without having to get off the bus in the city and find another bus to continue that journey.

This will have two positive outcomes. There will be 15 per cent fewer buses idling in the city, which has been a big issue in Victoria Square, Frome Road and King William Street and outside the Festival Centre. In turn, this will allow buses to be freed up to do what we have not been able to do for years—and we know this is what passengers want—that is, provide more frequent services.

In nine areas involving arterial roads (including Henley Beach Road, Port Road, Torrens Road, Unley Road, Goodwood Road, Norwood Parade, and other routes including the O-Bahn track) we will now be able to provide passengers with services where they can expect a bus within 15 minutes. In many of those now to be called 'go zones' buses will arrive every five minutes. This is a remarkable reform in the operation of public transport. I can also announce that from 23 April will begin new night and weekend services.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Yes. She's almost blushing, because all this news from the competitive tendering of services is so good. I think it is important that the Hon. Carolyn Pickles listens to this because she will recall that, in 1992, in order to make savings in the operating subsidies of public transport, Labor cut three-quarters of evening and night public transport services and services on public holidays.

Until now, it has been impossible to find the additional funds to begin returning to those services. We will be able to do this because the bus operators themselves are proposing, within their contract price, to begin a return to the services that Labor slashed and burnt years ago. That was the period during which we had our biggest fall in public transport patronage, and we have been endeavouring to recover ever since. All that is being offered within a fixed contract price. They are contractual undertakings from the new companies.

In addition, savings of up to $7 million, to which members made reference earlier in question time today, are enabling the government to undertake a variety of improved security provisions in terms of appointments of passenger service attendants to perform ticket barrier checks at Adelaide Railway Station, the Safer Station initiative, and roving teams of people on the trains during the day (after school hours on some lines is a particular problem); and at night we will have two people, in addition to the driver, on all train stations. These are initiatives which we know people want and which will help us to generate more patronage.

I know that, at least on this side, there is a genuine interest in ensuring that we undertake improvements to increase patronage. We are confident from customer surveys that we will also see repeat business as a result of the more frequent services that will be on offer. I highlight that these go zone areas will be marked by red signs. I am not deliberately wearing red today just to highlight the red signs, but they will be—

The Hon. A.J. Redford: It matches the chairs, though.

The Hon. DIANA LAIDLAW: Yes, I am getting lost in the carpet colour. These red signs will be sited across the metropolitan area in these nine go zones. They will indicate the expected bus arrival time and a map will show the direction for the bus. That is a long awaited reform. You can go to bus stops today and not have a clue when the next bus will arrive. I am thrilled to see this further positive change arising from competitive tendering of services.

BUS SHELTERS

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Transport a question about the provision of bus shelters in nursing homes.

Leave granted.

The Hon. CAROLYN PICKLES: According to an article in the local Messenger Press, elderly patients suffering with dementia and living in the Mitcham Resthaven are being provided with a bus shelter in the grounds. The bus shelter, provided by the state government, is said to provide benefits to people with dementia, relieving anxiety by providing a landmark that these people recognise from their earlier lives. Ms Sue Jarrad of the Alzheimer's Association said in the Messenger Press article that it was 'a beautiful idea'. Ms Jarrad further said:

> Resthaven is showing there are ways right outside the normal ways of responding. . . This is very positive, very creative and worthy.

The article also quotes Ms Virginia Matthews, Manager, Residential Care Services, who said:

> Mitcham Resthaven had acquired the bus shelter last week to relieve the anxiety of Ms Jones and Ms Potter [two women who were mentioned in the article].

Ms Matthews also said that it was very hard to tell someone who is suffering from Alzheimer's that their family is no longer there and that they have no home to go to. Resthaven's Public Relations Manager, Julie Johinke, said that some people in the community who may not understand the memory loss process may feel that a fake bus stop is a bit demeaning. However, Ms Johinke said that international studies had shown the benefits of nursing homes providing landmarks, such as bus shelters, telephone boxes and public toilets which people with dementia recognise from their previous lives.

The Marron Nursing Home in Porter Street, Salisbury, has been attempting, for the past six to eight months, also to acquire a bus shelter. The home currently has a bus stop but, I understand, it is just a pole. The patients have nowhere to sit and are not sheltered from the elements, as are the residents of the Mitcham nursing home. My question is: does the government intend to make bus shelters available to all nursing homes that request them?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): The honourable member should be aware that the government has not been involved in the provision of bus shelters other than on transit routes since Labor cut the subsidy for bus shelters back in 1992. We are spending a lot of time and energy recovering from Labor's administration of public transport in this state and, since that time, shelters other than on the transit routes have been the full responsibility of local government. That is why the honourable member would see the issues, if she took an interest in public transport, that are debated through the—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Yes, I would get excited as well if I had so little information, facts and knowledge. I can say to the honourable member, if she wants to listen, that that is why there is debate amongst local councils about whether they have the new bus stops with advertising to help them meet the costs of a particular area. I know people who live at—

The Hon. Carolyn Pickles interjecting:

The Hon. DIANA LAIDLAW: Well the honourable member has not even listened to the answer. I am happy for her to send the answer to them when I have given it. But it is very hard over the excitement—

The Hon. L.H. Davis: Have you on that side ever won a question time?

The PRESIDENT: Order! This is not Mr Davis' question time.

The Hon. DIANA LAIDLAW: In terms of the Office for the Status of Women and my responsibilities as Minister for the Status of Women, I am very interested in the fact that there is a greater proportion of older women in South Australia than across Australia. I know personally a number of those women in various states of health at Mitcham Resthaven. I visit one of those women regularly. I will certainly take a personal interest in the matters that have been raised by Resthaven, the Alzheimer's Association and the honourable member. If bus shelters and other matters can help from a health perspective and a personal perspective, I would be interested. I repeat, for the benefit of the honourable member, that the government is not generally involved in the purchase of bus shelters and has not been for some years since Labor got rid of the subsidy arrangements.

LOCAL GOVERNMENT, ACCOUNTABILITY

The Hon. A.J. REDFORD: I seek leave to make an explanation before asking the Minister for Transport—

The Hon. Carolyn Pickles interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: —representing the Minister for Local Government, a question about local government accountability.

Leave granted.

The Hon. A.J. REDFORD: Yesterday I raised a number of issues concerning local government accountability in respect of the City of Adelaide and its very glossy annual report. I pointed out that local government is not confronted with the same level of accountability as, say, a state government through parliamentary question time and media scrutiny. Since I raised these matters, a number of issues have been raised with me concerning the administration of the City of Adelaide. Indeed, I remind honourable members that yesterday I raised the issue of the $308 000 budget shortfall for the Sister Cities program, the City Marketing program, the Central Market and the Aquatic Centre. One would hope that questions are asked by elected representatives of the council before a new administration takes office after the forthcoming elections.

Indeed, further questions could be asked about the administration. For example, have all the figures, papers and correspondence relating to Education Adelaide and, in particular, student accommodation been available to elected members? Is there litigation on foot concerning Rundle Mall pavers? Who specifically approved them? Were the recommendations of the staff and consultants followed and, if not, why not? Did the provision of Rundle Mall pavers go to tender and, if not, why not? If there is any litigation concerning Rundle Mall pavers, why is it not referred to in the annual report and why is there no comment in the accounts in the annual report? There is little mention at all in the report of the Rundle Mall Committee; I could find only two lines describing it as a pre-eminent shopping precinct. In the light of that—

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: —my questions to the minister are:

1. What levels of accountability, by way of asking and answering questions, are available to elected members of council?

An honourable member interjecting:

The Hon. A.J. REDFORD: The honourable member has said—

An honourable member interjecting:

The Hon. A.J. REDFORD: I must say that I have had that experience.

The PRESIDENT: The Hon. Mr Redford should return to his question.

The Hon. A.J. REDFORD: I should not respond and I apologise to you, Mr President, for responding to the interjection.

The PRESIDENT: Order!

The Hon. A.J. REDFORD: Can the minister provide answers to the sample questions that I posed in that explanation and, given that there is only a tiny reference to Rundle Mall in the annual report, can the minister find out and explain how the new system—since our legislation was introduced the year before last—is operating in so far as Rundle Mall is concerned?

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.

HEROIN TREATMENT PROGRAMS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Human Services, questions about the drug naltrexone and heroin treatment programs.

Leave granted.

The Hon. T.G. CAMERON: Figures released by the National Drug and Alcohol Research Centre show that South Australia has recorded the biggest percentage increase in heroin overdose deaths of all Australian states during the past decade. The figures show that between 1988 and 1998 deaths from heroin overdose in South Australia jumped from 12 to 45, an increase of 275 per cent. The study found that there were four times as many male deaths as female deaths. The average age at death was 30 years, with the 25 to 34 age group being at highest risk. I understand that the Minister for Human Services recently put a proposal to the Australian National Council for Drugs, which advises the federal government, requesting that the heroin detoxification drug naltrexone be placed on the Pharmaceutical Benefits Scheme.

Naltrexone costs up to $300 a month for recovering addicts and tests have shown it to be very effective in helping heroin addicts kick their habit. The minister also requested federal funding to establish further drug treatment programs in South Australia plus other funds to operate and research some new schemes. It is estimated that there are about 5 500 heroin addicts in South Australia, but only about 2 000 of them are in treatment programs. My questions are:

1. Considering the rise in deaths due to heroin overdoses and the urgency of assisting addicts to kick their habit, will the minister give a report on the progress of getting naltrexone on the Pharmaceutical Benefits Scheme?

2. If federal funding for local drug treatment programs is not forthcoming, will the state government consider covering the shortfall?

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.

DAVID JONES BUILDING

In reply to **Hon. R.R. ROBERTS** (27 May).

The Hon. R.D. LAWSON:

1. No.

At no stage have the department's inspectors been told to 'lay off' the implementation of the asbestos removal plan and the inspection services at the David Jones Rundle Mall building.

2. Information provided to the Department for Administrative and Information Services by David Jones Ltd indicates that the company is aware of three ex-employees who have had asbestos related illness claims and are now deceased and a further four who have contracted asbestos related diseases.

On 30 June 1999, the Minister for Government Enterprises wrote to the Hon. Ron Roberts accepting his offer in the Legislative Council to make available to the minister a list of the people referred to in the honourable member's question. He replied to the Minister for Government Enterprises on 3 August 1999 refusing the request on the basis that he had not made contact with the families of the people to whom he referred.

Proceedings for offences against the *Occupational Health Safety and Welfare Act 1986* must be commenced within two years after the date on which the offence is alleged to have been committed. As the most recent employee ceased employment with David Jones in 1995, the date of alleged exposure to asbestos in the David Jones building must have been prior to that date. Accordingly, I am advised that no prosecution could now be brought pursuant to the Act. Moreover, I am advised that there is no evidence to establish that David Jones had breached its duty of care to provide a safe working environment.

In reply to **Hon. T. CROTHERS** (27 May).

The Hon. R.D. LAWSON: The information was also sought by the Hon. R Roberts MLC and answered today, viz, information provided to the Department for Administrative and Information Services by David Jones Ltd indicates that the company is aware of three ex-employees who have had asbestos related illness claims and are now deceased and a further four who have contracted asbestos related diseases.

CORA BARCLAY CENTRE

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Disability Services a question about the funding crisis faced by the Cora Barclay Centre for Children with Hearing Impairment.

Leave granted.

The Hon. CARMEL ZOLLO: The parents of a hearing impaired young student have been in contact with me expressing their distress that the Cora Barclay Centre is facing a future on a shoestring budget, as reported in the *Standard Messenger* of 22 March 2000. I understand that the centre has lost half of its government funding. The centre educates deaf and hearing impaired children and aims to teach them speech. Last year, the centre's enrolment rose from 100 children to 163. In the past, I understand the centre has received yearly funding of $400 000 from the Ministerial Advisory Committee. The centre is facing a funding loss of $210 000.

My constituents' child, who attends a private school, currently receives specialist support from the Cora Barclay visiting teacher. She assists their child with the subtleties of language, sentence structures, sequencing, idioms, auditory memory and oral comprehension. With the funding cuts, their child will receive only one session a week. This family rightly feels that their child is being denied the opportunity of being a normal child, of being part of a broader society and, more importantly, of reaching his goals and his potential. Can the minister outline what action he has taken to prevent funding cuts to this very important institution? Does the minister recognise the continuing importance of the centre? What action or liaison has the minister taken to try to ensure the centre's continued operation and funding?

The Hon. R.D. LAWSON (Minister for Disability Services): Last Saturday I was at the Cora Barclay Centre for the presentation of the Alexander Graham Bell award. This award is granted by the Alexander Graham Bell organisation in the United States and was received by the Cora Barclay Centre as a result of last year's program. I am well aware of the excellent work that is undertaken at the centre.

The way in which services to the hearing impaired are delivered has changed over the years, as has the way in which government funds to organisations of this kind are allocated. The funding for the Cora Barclay Centre is determined by the Ministerial Advisory Committee on the Education of Children with Disabilities. This commonwealth-state committee annually makes recommendations about the appropriate allocation of resources and was the independent committee that recommended this year's level of funding for Cora Barclay.

The ministerial advisory committee is obliged to take into account the level of disability and the distribution of disability funding throughout the community, and also to examine all programs that are available for meeting these needs. Traditionally, organisations such as Cora Barclay were allocated block funding and, at the end of each year, they would receive their block funding once again, together with the CPI adjustment. However, in recent years the method of allocating funding has changed. Organisations are not funded with block grants to the same extent: rather, funding is allocated to organisations on the basis of the particular needs of the clients of the organisation. Therefore, the number of children attending a centre such as the Cora Barclay Centre is of importance.

I remember last year visiting the Cora Barclay Centre for the first time. I saw a very active kindergarten group out in the garden playing, as you find at a kindergarten. I asked the director, 'How many of these children are hearing impaired?', because it was not immediately obvious that they were suffering from a disability of that kind. She said, 'Very few. We are now running the Cora Barclay Centre as a neighbourhood kindergarten because of falling numbers.'

The Cora Barclay Centre also runs an outreach program for Catholic and other independent schools, which I think has been a good innovation, as well as undertaking intensive therapy with children with cochlear implants—the so-called bionic ear—which requires a great deal of one-to-one therapy to ensure that the child with the cochlear implant learns to hear and speak. That is a new and wonderful development which has meant great change to the way in which children who have a hearing impairment and who are fortunate enough to have those cochlear implants are trained and educated.

I am keen to ensure that the Cora Barclay Centre remains as part of an education stream rather than a disability stream. I believe that it is important that children with disabilities have the same educational opportunities as other children in the community. One way of ensuring that is to make sure that the education system, through the ministerial advisory committee and other committees, receives that mainstream element of education.

The honourable member asked what steps I had specifically taken. I have spoken to the Minister for Education on a number of occasions about this issue. I have also spoken with the chair of the ministerial advisory committee about the

approaches to ensure that the Cora Barclay funding was adequate to meet the needs of the organisation. I was assured by the chair that the committee is committed to continuing discussions to examine ways in which the funding that can be allocated to Cora Barclay this year will be used in the most appropriate way.

YELLABINNA REGIONAL RESERVE

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement given today by the Minister for Environment, Hon. Iain Evans, on the review of the Yellabinna Regional Reserve. In tabling that ministerial statement, I also seek to table the report of the review.

Leave granted.

NULLARBOR REGIONAL RESERVE

The Hon. DIANA LAIDLAW: Yesterday when I tabled a ministerial statement by the Minister for Environment on the subject of the Nullarbor Regional Reserve the statement indicated that the report was attached. It was not, and I now seek leave to table the report of the review of the Nullarbor Regional Reserve.

Leave granted.

CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935; and to make a related amendment to the Juries Act 1927. 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.

In 1995, the Parliament enacted the *Criminal Law Consolidation (Mental Impairment) Amendment Act 1995*. It was proclaimed to come into effect on 2 March 1996. This Act inserted a new Part 8A into the *Criminal Law Consolidation Act 1935*. Part 8A contains a complete codification of the criminal law in relation to persons accused of crime who suffer from severe mental impairment. In particular, it deals with the law and procedure relevant to an accused person's fitness to stand trial and the 'defence' of mental impairment. The new law is, in a sense, revolutionary. It achieved two major aims.

First, it did away with the old law which provided that a person found to be unfit to stand trial, or sufficiently mentally impaired so as not to be criminally responsible, should receive an indeterminate sentence of detention. That rule (which had stood since the inception of what was known as the 'insanity defence') effectively meant that the defence and plea of insanity were only ever used in murder cases and, even then, rarely. That, in turn, meant that many people suffering from severe mental illness became part of the correctional system when they should have been taken in to the treatment system.

Second, the new law separated the trial of the question of whether the accused was mentally impaired from the trial of the question of whether the accused committed the offence. The previous law had dealt with those questions together. That had the capacity to confuse the jury particularly since, while the prosecution had to prove the accused's guilt beyond a reasonable doubt, the defence had only to prove the accused's mental impairment on the balance of probabilities.

This short account greatly oversimplifies both the old law and the new. The new legislation had to cope with questions of some legal and procedural complexity and , as it was intended to be a codification of this area of the law, had to do so comprehensively and thoroughly. The purpose of the Bill now placed before the House is to amend Part 8A of the *Criminal Law Consolidation Act 1935* to make a number of adjustments to the scheme to address the questions and doubts that have arisen in the application of the legislation during its operation.

Since the proposed amendments have no common theme, the general ideas the Bill seeks to implement, but not mere drafting changes, will be addressed.

Order of proceedings and defences

Under Part 8A, it is possible to try first either the issue of a defendant's mental competence or the issue of whether the defendant committed the crime. In each case, the trial judge will make the decision about which issue to try first. There are two reasons for providing such an option. The first is that there is no (and there never has been) general agreement among legal practitioners and the judiciary about which issue should be initially decided. It depends each time on the facts of the particular case and what the parties want to litigate. Second, in the interests of efficiency, it is desirable to make it possible for the parties and the trial judge to agree, before the trial, which issues are really in contention and to provide for the litigation of those issues only.

It would appear, however, that the alternative methods of proceeding could lead to different results. The reasoning for this conclusion is as follows:

- If the court tries the issue of mental competence first, section 269FA(3) provides that, if there is a finding that the defendant was mentally competent to commit the offence, the trial relating to the offence is to proceed in the normal way. This means the defendant can then argue normal defences 'in the normal way'—for example, self defence, duress, necessity, and the like. Where, however, there is a finding that the defendant was mentally incompetent to commit the offence, the court must proceed to determine whether the 'objective elements' of the offence are established. If those elements are established beyond reasonable doubt, the defendant is not guilty of the offence but is liable to supervision under Part 8A. The question of defences does not then arise. (If the objective elements are not established, the defendant must be found not guilty and must be discharged.)
- If the court tries the issue of the objective elements of an offence first and finds they are established beyond reasonable doubt, the question of the defendant's mental competence to commit the offence will then be tried. If the defendant is found to be mentally competent to commit the offence, section 269GB(4) provides that the court must then proceed to consider whether the 'subjective elements' of the offence are established. If they are established beyond reasonable doubt, the defendant is guilty of the offence. There is no explicit provision for the consideration of defences at the point of liability.

Thus, on the face of it there appears to be an inconsistency, depending on which issue is tried first, that appears during the trial at the time when the defendant is found to be mentally competent. The Court of Criminal Appeal has, however, intervened. It stated, in the decision in *Question of Law Reserved No. 1 of 1997* ((1997) 195 LSJS 382), that defences are 'subjective elements' (or, to be precise, in that particular case, self defence is a subjective element) and hence can be taken into account under section 269GB(4). This finding means that in the trial of a defendant where the defendant is found to be mentally competent, regardless of which issue is tried first, there will be no inconsistency.

It is better by far, however, to have the drafting of the law amended so that procedural and substantive distortions are impossible. The most obvious starting point is to ensure that the wording of each of the ways in which a trial may proceed will lead to the same result regardless of the way chosen. That is one of the purposes for a number of the amendments proposed in the Bill—in particular, those to sections 269F, 269G, 269M and 269N.

In addition, the question of defences needs to be specifically addressed. The current scheme of the legislation is, that if an inquiry concludes that a defendant was mentally incompetent at the time of the offence or mentally incompetent to stand trial, the inquiry should then only inquire as to whether the defendant committed the act constituting the offence. The question of defences should only ever arise if the defendant is found to be mentally competent in either sense. It does not comport with common sense to inquire about the beliefs of the defendant in relation to such matters as provocation,

duress or self defence if the defendant is suffering from a severe mental illness. In order to remove any doubt, therefore, the amendments make it clear that an inquiry into the objective elements of the offence does not include an inquiry into any defences.

Alternative verdicts

It has been argued that the provisions of Part 8A that refer to the acquittal of a defendant on the merits of the case after the whole procedure is performed and the accused is found to be mentally competent are too categorical and do not make it clear that the jury should also give consideration to alternative verdicts. This is the sort of problem that may arise when trying to codify any law. In the interests of being safe and comprehensive, clause 4 of the Bill inserts new section 269BA to make it clear that a jury can convict on an alternative verdict if that is the correct course of action.

Application of Part 8A to minor charges

The common law rules relating to unfitness to stand trial and (what was then called) the defence of 'insanity' were available in relation to all offences, including minor offences, from the beginning. This has been recently confirmed by the English Court of Queens Bench in *ex parte K* ([1996] 3 All ER 719). In practice, of course, it was not an issue in any but the most serious of crimes because of the 'penalty' of indeterminate detention. However, once the invariable consequence of indeterminate detention was abolished and replaced with proportionate disposition, the disincentives to use evidence of mental illness in all matters, including summary matters, disappeared and the true influence of mental illness on offending, including summary offending, has become apparent.

The reporting requirements of Part 8A are quite onerous. This is necessary given the contentious issues that may arise in very serious trials. There must be psychiatric evidence on the substantive question of mental impairment or fitness to stand trial, there must be a '30 day report' submitted by the Minister responsible for the administration of the *Mental Health Act 1993* (*see section 269Q*) and, as well, a court cannot release a defendant (including fail to retain) unless there are three additional expert reports on the condition of the defendant (*see section 269T(2)(a)*). The reporting requirements apply to all offences including, to take a recent example, the prosecution of the offence of making a false report to police by a person found unfit to stand trial.

The problem involves both financial and justice considerations. It is best illustrated by example. Suppose a person is charged with criminal damage the essence of which is breaking a shop window. The person is found unfit to stand trial. He is a social nuisance but nothing more. He may, or may not, be legally represented. The court is presented with a defendant who is, quite clearly, not in his right mind. Part 8A provides that he can only be detained if he would have been imprisoned and, for such an offence, he would not have been. The court may even have sufficient information before it to conclude that the defendant would respond well to medication as an outpatient at a suitable facility. Yet, before the defendant can be released, either on conditions or not, the court must receive three independent reports at a minimum cost of $300 each. The defendant has insufficient funds or maintains that he has none. What is the court to do? The Magistrates Court solves the problem by imposing a court order for the reports and charges the cost of the reports to the Courts Administration Authority. This has become a considerable drain on the resources of the Authority.

In response to this problem, it is proposed in the Bill that the stringent requirement of obtaining three reports should not apply with such rigour to summary offences. The court is empowered to act on one or two reports in summary matters if the court is satisfied that it has sufficient expert guidance by which to resolve the issues before it.

Consequences of breach of licence condition

A question has been raised about the proper interpretation of section 269U(1) which provides as follows:

> *A court that released a defendant on licence under this Division may, on application by the Crown, cancel the release if satisfied that the defendant has contravened, or is likely to contravene, a condition of the licence.*

It has been pointed out that this subsection makes no provision for what is to happen when the licence is cancelled. It seems to assume that there is in existence a default order—that either the defendant has been released on licence from a current detention order or the licence was part of the conditions on which an order of detention was suspended. However, there are cases where that is not so, in which case, there will be no default and no consequences as none have been provided for. The Bill replaces section 269U with a more detailed provision designed to deal with all contingencies.

In addition, the Bill adds a new section 269VA to cater for the position where a person, subject to a detention order, is released on licence and then sentenced to imprisonment while the detention order is still current. The operation of the detention order in such a case is suspended automatically.

Jury disagreement

As previously mentioned, one of principal objects of the legislation was to separate the question of the mental competence of the defendant from the question of whether or not the defendant committed the offence. The part of the legislation which deals with whether the defendant committed the offence is designed to ensure that a defendant cannot be found liable to supervision when there is insufficient evidence that he or she is actually the culprit. Under the common law, if, for example, the defendant was found to be unfit to plead, he or she would be detained indefinitely even if there was no real evidence at all that he or she had actually done the act which constituted the charge. Part 8A provides that, if the court is not satisfied that the defendant committed the objective elements of the offence, the court must find the defendant not guilty of the offence and discharge the defendant.

A problem has emerged where the jury cannot agree on the issue of whether or not it is satisfied beyond reasonable doubt that the objective elements of the offence are established. In that case, there should be a retrial and not a verdict of acquittal. Section 59(1) of the *Juries Act 1927* provides as follows:

> *If a jury is discharged from giving a verdict, fresh proceedings may be taken as if there had been no inquest before the jury so discharged.*

Section 60 of that Act provides that, in such a case, the court can order another inquest to be commenced. Part 8A is unclear on the issue of whether the defendant must be acquitted if there is not a positive jury finding (and hence if the jury disagrees).

There was no intention when enacting Part 8A to interfere with the normal rules applying to juries and criminal inquests. The Bill amends Part 8A to make that clear. The intention is that the *Juries Act 1927* will apply on its own terms so that, for example, the provisions in relation to majority and unanimous verdicts will apply. In this respect, it is intended to confirm the decision of Mr Justice Bleby in the Supreme Court in *W-B* ((1999) 73 SASR 45).

Pre-trial matters

Modern criminal procedure, particularly under the influence of case flow management, places a premium on efficiencies to be gained by resolving as much of the case as possible before the trial and reserving costly judicial and court resources for only those matters which are genuinely in dispute for the trial. The Bill contains two amendments designed to reflect that philosophy in this set of procedures.

Section 269W is amended to make it clear that counsel's independent discretion to act in the best interests of his or her client when that client is mentally incompetent extends not only to matters during the trial but also to all matters in the criminal proceedings, including pre-trial matters (such as the committal hearing, whether to elect for trial by judge alone, and so on).

New section 269WA is to be enacted so as to supplement the existing power of the court to order the defendant to undergo an independent examination by a psychiatrist or other appropriate expert. The court may order this during the pre-trial proceedings if it thinks that this action might expedite the trial of the defendant.

Conclusion

Five years of working with the new codified provisions have shown that, while the policy and spirit of the new law have been widely accepted and strong efforts have been made to make the complex new law work, some refining and procedural changes are necessary. This Bill is designed to make things easer and more consistent.

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. 269A—Interpretation

It is proposed to insert an explanation that a defence exists if, even though the objective elements of an offence are found to exist, the defendant is entitled to the benefit of an exclusion, limitation or reduction of criminal liability at common law or by statute.

Clause 4: Insertion of s. 269BA

269BA. Charges on which alternative verdicts are possible

New section 269BA provides that a person charged with an offence is taken, for the purposes of Part 8A, to be charged in the alternative with any lesser offence for which a conviction is

possible on that charge, so that it follows that a trial of a charge on which an alternative verdict for a lesser offence is possible is taken to be a trial of a charge of each of the offences for which a conviction is possible.

Clause 5: Amendment of s. 269F—What happens if trial judge decides to proceed first with trial of defendant's mental competence to commit offence

The amendments provide that the court must, at the conclusion of the trial of the defendant's mental competence, decide whether it has been established on the balance of probabilities that the defendant was mentally incompetent at the time of the alleged offence to commit the offence. If the court is so satisfied, it must record a finding to that effect. If it is not so satisfied, it must record a finding that the presumption of mental competence has not been displaced and proceed with the trial in the normal way.

New section 269FB(3) provides that the court is, on the trial of the objective elements of an offence, to exclude from consideration any question of whether the defendant's conduct is defensible.

Clause 6: Amendment of s. 269G—What happens if trial judge decides to proceed first with trial of objective elements of offence

The amendments proposed to section 269G mirror those proposed to section 269F.

Clause 7: Amendment of s. 269M—What happens if trial judge decides to proceed first with trial of defendant's mental fitness to stand trial

The amendments provide that the court must, at the conclusion of the trial of the defendant's mental fitness to stand trial, decide whether it has been established, on the balance of probabilities, that the defendant is mentally unfit to stand trial. If the court so finds, it must record a finding to that effect; if it does not so find, it must proceed with the trial in the normal way.

New section 269MB(2) provides that if the court is satisfied beyond reasonable doubt that the objective elements of the offence are established, the court must record a finding to that effect and declare the defendant to be liable to supervision under this Part; but otherwise the court must find the defendant not guilty of the offence and discharge the defendant.

New section 269MB(3) provides that, on the trial of the objective elements of an offence under section 269M, the court is to exclude from consideration any question of whether the defendant's conduct is defensible. This reflects the amendments proposed to section 269F (*see clause 5*).

Clause 8: Amendment of s. 269N—What happens if trial judge decides to proceed first with trial of objective elements of offence

The proposed amendments mirror those amendments proposed to section 269M.

Clause 9: Amendment of s. 269Q—Report on mental condition of the defendant

This amendment corrects an obsolete reference.

Clause 10: Amendment of s. 269T—Matters to which court is to have regard

The proposed amendment inserting new subsection (2a) provides that the court may, in spite of subsection (2), act on the basis of only one or two expert reports if the court is satisfied that, in the particular circumstances, the reports would adequately cover the matters on which the court needs expert advice.

Clause 11: Substitution of s. 269U

Current section 269U relies on the fact that there is a default detention order in place for a person who is released under Part 8A on licence. However, that may not be the case. Substituted section 269U provides that if a person who has been released on licence contravenes or is likely to contravene a condition of the licence, the court by which the supervision order was made may, on application by the Crown, review the supervision order.

After allowing the Crown and the person subject to the order a reasonable opportunity to be heard on the application for review, the court may—

- confirm the present terms of the supervision order; or
- amend the order so that it ceases to provide for release on licence and provides instead for detention; or
- amend the order by varying the conditions of the licence,

and make any further order or direction that may be appropriate in the circumstances.

When an application for review of a supervision order is made, the court may issue a warrant to have the person subject to the order arrested and brought before the court and may, if appropriate, make orders for detention of that person until the application is determined.

Clause 12: Amendment of s. 269V—Custody, supervision and care

This amendment corrects an obsolete reference.

Clause 13: Insertion of s. 269VA

269VA. Effect of supervening imprisonment

New section 269VA provides if a person who has been released on licence commits an offence while subject to the licence and is sentenced to imprisonment for the offence, the supervision order is suspended for the period the person is in prison serving the term of imprisonment.

Clause 14: Amendment of s. 269W—Counsel to have independent discretion

A new subsection is proposed to the current section. New subsection (2) provides that if counsel for the defendant in criminal proceedings (apart from proceedings under Part 8A) has reason to believe that the defendant is unable, because of mental impairment, to give rational instructions on questions relevant to the proceedings, counsel may act, in the exercise of an independent discretion, in what counsel genuinely believes to be the defendant's best interests. This amendment makes it clear that the independent discretion of counsel extends to the committal of the defendant and would also allow, for example, counsel to elect for the defendant to be tried by judge alone under the *Juries Act 1927*.

Clause 15: Insertion of s. 269WA

269WA. Power to order examination, etc., in pre-trial proceedings

New section 269WA allows for the court to order the examination of the defendant by a psychiatrist or other appropriate expert during pre-trial proceedings if the court thinks that such a report might expedite the trial of the defendant.

Clause 16: Amendment of s. 269Y—Appeals

The proposed amendments make it clear that an appeal lies, by leave, against a key decision by the court of trial. A key decision is a decision that—

- the defendant was, or was not, mentally competent to commit the offence charged against the defendant; or
- the defendant is, or is not, mentally unfit to stand trial; or
- the objective elements of an offence are, or are not, established against the defendant.

Clause 17: Amendment of s. 269Z—Counselling of next of kin and victims

This amendment corrects an obsolete reference.

Clause 18: Amendment of Juries Act 1927

This amendment amends the definition of criminal inquest for the purpose of jury trials so that it includes a trial of an issue that is, under Part 8A of the *Criminal Law Consolidation Act 1935*, to be tried by jury.

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

STATUTES AMENDMENT (CONSUMER AFFAIRS—PORTFOLIO) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Fair Trading Act 1987, the Land and Business (Sale and Conveyancing) Act 1994, the Prices Act 1948 and the Trade Standards Act 1979. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

This Bill proposes amendments to four statutes in the Consumer Affairs portfolio.

The Office of Consumer And Business Affairs (OCBA) recently examined legislation dealing with the following matters:

Commencement of prosecutions

The complex nature of recent investigations into breaches of the pyramid selling provisions under the *Fair Trading Act 1987* has revealed that the twelve month period allowed to instigate a prosecution under that Act is too short.

This Bill proposes amendments to the *Fair Trading Act 1987*, the *Land and Business (Sale and Conveyancing) Act 1994*, the *Prices Act 1948* and the *Trade Standards Act 1979* that are intended to help standardise the time limits for the instigation of prosecutions across the portfolio (and to bring those limits more into line with those

applying to offences generally). In the case of most offences under those Acts, a prosecution will now have to be commenced within two years of the date of the offence or, with the authority of the relevant Minister, within five years of that date.

Charging of a fee for the supply of information by the Department for Environment and Heritage to vendors of land

Under the *Land and Business (Sale and Conveyancing) Act 1994* vendors of land are required to provide prospective purchasers with information held by Government agencies concerning interests in the subject property. Most of that information is provided to the vendor by the Department for Environment and Heritage which collates the information under the Land Information System (or LOTS) system.

This Bill empowers the Governor to fix the fees by regulation for the provision of that information by the Department.

Trade Standards Advisory Council

The Trade Standards Advisory Council is established under the *Trade Standards Act 1979*. The function of the Council is to advise and counsel the Minister on matters connected with the administration of the *Trade Standards Act*, the prescription of standards, the declaration of goods to be dangerous goods or the declaration of services to be dangerous.

Members of the Council are appointed by the Governor from nominations drawn from sources representing the wide range of interests affected by the Act. There are a number of ways in which nominations are made. In some cases, the Minister responsible for the administration of a particular Act nominates a member. In other cases, appointment is made from a panel of three nominees of either an association that the Minister considers represents a particular interest, or a specified body, such as the Chamber of Commerce and Industry and the Standards Association of Australia.

In recent times, there have been difficulties in obtaining nominations for the Council. For example, the Standards Association of Australia now only has a sales branch in South Australia, and therefore advised that it was unable to provide a nomination. Other organisations have had difficulty in providing the three nominations required by the Act. As a result, it has been difficult to constitute the Council.

To overcome this difficulty and to allow for the ongoing representation of the wide range of interests affected by the *Trades Standards Act*, as was envisaged when the Act was introduced, this Bill re-designates the composition of the Council by eliminating the naming of specific organisations and allowing for greater flexibility in the nomination process.

I commend this bill to honourable members.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clause 3: Interpretation

These clauses are formal.

PART 2
AMENDMENT OF FAIR TRADING ACT 1987

Clause 4: Amendment of s. 75—Offences against this Part

This clause amends section 75 of the *Fair Trading Act 1987*. That section currently provides that offences against Part 10 of that Act (other than against section 56 or 57) are minor indictable offences and fixes a penalty of $100 000 in the case of a body corporate and $20 000 in any other case. This amendment removes the requirement that these offences be regarded as minor indictable offences and leaves them to be dealt with as summary offences (as would normally be the case with offences that carry such a penalty).

Clause 5: Substitution of s. 87

This clause amends section 87 of the *Fair Trading Act 1987*. Section 87 currently requires that proceedings for any offence against the Act must be commenced within 12 months after the date of the offence. This amendment provides that in the case of summary offences against the Act for which an expiation fee is specified, proceedings must be commenced within the period required by the *Summary Procedures Act 1921* (which is 6 months from the date of the offence or, if an expiation notice is issued, 6 months from the expiry of the expiation period specified in the notice). In the case of summary offences against the Act for which no expiation fee is specified, the proceedings must be commenced within 2 years of the offence or, with the authorisation of the Minister, within 5 years of that date. In the case of indictable or minor indictable offences, no limitation is imposed.

Clause 6: Statute law revision amendments

This clause and Schedule 1 of the Bill make further amendments to the *Fair Trading Act 1987* of a statute law revision nature.

PART 3
AMENDMENT OF LAND AND BUSINESS (SALE AND CONVEYANCING) ACT 1994

Clause 7: Amendment of s. 12—Councils, statutory authorities and prescribed bodies to provide information

This clause amends section 12 of the *Land and Business (Sale and Conveyancing) Act 1994*. Section 12 currently requires councils and statutory authorities to provide certain information within 8 business days after receiving a request under this section for that information. (The information is relevant to the preparation of vendors' statements for the purposes of the sale of land or a small business.) Section 12 also provides for fees to be fixed by regulation for the provision of that information. This amendment extends these provisions to bodies prescribed by regulation for the purposes of the section.

Clause 8: Amendment of s. 40—Prosecutions

This clause amends section 40 of the *Land and Business (Sale and Conveyancing) Act 1994*. Section 40 currently requires proceedings for any offence against the Act to be commenced within 2 years after the date of the offence or, with the authorisation of the Minister, within 5 years after that date. This amendment provides that in the case of summary offences for which an expiation fee is specified, proceedings must be commenced within the period required by the *Summary Procedure Act 1921* (which is 6 months from the date of the offence or, if an expiation notice is issued, 6 months from the end of the expiation period specified in the notice). In the case of a summary offence for which no expiation fee is specified, the proceedings must be commenced (as at present) within 2 years of the offence or, with the authorisation of the Minister, within 5 years of that date. In the case of indictable or minor indictable offences, no limitation is imposed.

Clause 9: Statute law revision amendments

This clause and Schedule 2 of the Bill make further amendments to the *Land and Business (Sale and Conveyancing) Act 1994* of a statute law revision nature.

PART 4
AMENDMENT OF PRICES ACT 1948

Clause 10: Substitution of s. 50A

This clause repeals section 50A of the *Prices Act 1948* and substitutes new section 50A. Section 50A currently provides that proceedings for an offence against the Act must be commenced within 12 months after the date of the offence. Proceedings cannot be commenced except by the Commissioner, a public service employee appointed by the Minister as an authorised officer for the purposes of the Act or a person authorised by the Minister to commence such proceedings. The Minister can, for the purpose of legal proceedings, provide certificates as to authorisations granted.

The new section 50A is to similar effect except in relation to the time limit for proceedings. In the case of summary offences for which an expiation fee is specified, proceedings must be commenced within the period specified by the *Summary Procedure Act 1921* (6 months from the date of the offence or, if an expiation notice has been issued, 6 months from the end of the expiation period specified in the notice). In the case of all other summary offences against the Act the period is 2 years from the date of the offence or, with the authorisation of the Minister, 5 years. In the case of indictable or minor indictable offences, no limitation is imposed.

Clause 11: Statute law revision amendments

This clause and Schedule 3 of the Bill make further amendments to the *Prices Act 1948* of a statute law revision nature.

PART 5
AMENDMENT OF TRADE STANDARDS ACT 1979

Clause 12: Amendment of s. 8—Establishment of Council

This clause amends section 8 of the *Trade Standards Act 1979*. Section 8 establishes the Trade Standards Advisory Council, providing that it is to consist of 6 members appointed by the Governor. Of these, 3 are appointed by the Governor from panels of 3 persons nominated by various organisations: one from a panel nominated by the Chamber of Commerce and Industry, South Australia, Incorporated, one from a panel nominated by associations that (in the opinion of the Minister) represent the interests of suppliers of goods, and one from a panel nominated by the Standards Association of Australia, South Australia Branch. (If no panel is provided, the Minister can nominate to fill the gap.) The amendment replaces the members nominated in this way with persons nominated by the Minister: one person who in the opinion of the Minister is an

appropriate person to represent the interests of employers in commerce and industry, one who in the opinion of the Minister is an appropriate person to represent the interests of suppliers of goods and one who in the opinion of the Minister has appropriate experience in the determination of standards of safety or quality in relation to the manufacture of goods or the supply of goods or services.

Clause 13: Substitution of s. 43

This clause repeals section 43 of the *Trade Standards Act 1979* and substitutes new section 43. Section 43 currently provides that proceedings for an offence against the Act cannot be commenced except by a public service employee who has been appointed as a standards officer under the Act by the Minister, or by the Minister. Proceedings must be commenced within 3 years of the date of the offence, or within 1 year of the day on which the offence came to the knowledge of the complainant or any standards officer, whichever period first expires. The new section 43 has similar restrictions on who can commence proceedings but changes the period within which proceedings may commence in the same way as for the 3 other Acts amended by this Bill. In the case of summary offences for which an expiation fee is specified, proceedings must be commenced within the period specified in the *Summary Procedure Act 1921* (6 months from the date of the offence or, if an expiation notice has been issued, 6 months from the end of the expiation period specified in the notice). In the case of all other summary offences against the Act, the period is 2 years from the date of the offence or, with the authorisation of the Minister, 5 years. In the case of indictable or minor indictable offences, no limitation is imposed. The Minister can, for the purposes of legal proceedings, provide certificates as to authorisations that have been granted.

Clause 14: Statute law revision amendments

This clause and Schedule 4 of the Bill make further amendments to the *Trade Standards Act 1979* of a statute law revision nature.

New section 35(2)*(f)* provides for the making of regulations to impose penalties of up to $1 250 for the breach of regulations designed to prevent deceptive packaging made under that section. This mirrors the provision in section 33(2)*(f)*, which authorises regulations imposing penalties for breach of regulations designed to prevent misleading information that are made under that section.

New section 45(4) imposes what is now a standard requirement that if a code is referred to or incorporated in the regulations under the Act, a copy of the code must be made available for inspection by the public without charge and during normal office hours. It also empowers the Minister to certify true copies of the code for the purposes of legal proceedings.

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

JURIES (SEPARATION) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Juries Act 1927. 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 incorporated in *Hansard* without my reading it.

Leave granted.

In their 1998 report, the judges of the Supreme Court recommended an amendment to the *Juries Act 1927* to enable juries to be separated at any time, including after they have retired to consider their verdict.

Historically, once a jury had been empanelled, the jury was required to remain in the court until the trial was over. This involved keeping the jurors confined in the court, separated from all others, 'without nourishment and fire for their physical comfort'. The underlying purpose of the rule was to ensure the integrity of the jury's verdict and to do this by separating them from 'those who might choose to tamper with jurors and from those who might, consciously or otherwise, influence their verdict'.

Some relaxation of this rule has occurred over time. All States have introduced provisions providing for the supply of refreshment and heating to jurors. It is also now extremely rare for jurors to be kept together from the commencement of a trial until after the verdict.

Currently, however, the *Juries Act 1927* only makes allowance for separation prior to deliberations.

It was noted in the Victorian Court of Criminal Appeal case of *R v Chaouk* that the rule at common law remains that there must be no communication or risk of communication between jurors and outsiders once they have entered into their deliberations concerning their verdict. However, in New South Wales and Victoria, legislation has been enacted to provide judges with a discretion to permit juries to separate during deliberations.

While maintaining confidentiality and impartiality in jury deliberations is important, it is foreseeable that there may be circumstances where, on balance, it would be appropriate for the jurors to be permitted to separate during deliberations, for example, if a juror's child is taken ill. This Bill would enable the court to permit jurors to separate at any time, including after they have retired to consider their verdict, if the court considered that there were proper reasons to do so. The Bill would also enable the court to impose conditions on such a separation, for example, a condition that the jurors not discuss the case with other people.

I commend this Bill to the House.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 15—Verdict cannot be challenged on ground of disqualification or ineligibility of juror except in certain cases

This minor drafting amendment substitutes the word 'challenged' for the archaic word 'impeached' in relation to the verdict of a jury.

Clause 4: Amendment of s. 28—Questionnaire to be completed and returned by prospective jurors

This amendment is of a drafting nature and relates to the penalty provision for an offence against subsection (2) of section 25 (*ie* failing, without reasonable excuse, to fill in and return the questionnaire required for the preparation of the annual jury list, or providing information in the questionnaire that is false or deliberately misleading). The current penalty is a division 8 fine ($1 000). The new penalty provision is drafted in the current style and upgrades the maximum penalty for an offence against the subsection to a fine of $1 250.

Clause 5: Substitution of s. 55

55. Separation of jury

New section 55 provides that the court may, if it thinks there are proper reasons to do so, permit the jury to separate, even after the jury has retired to consider its verdict.

When the court permits a jury to separate, it may impose conditions (such as, requiring the jurors to reassemble at a specified time and place, or prohibiting the jurors from discussing the case with anyone, except another juror, during the separation) to be complied with by the jurors.

Clause 6: Amendment of s. 78—Offence by jurors

This amendment is of a drafting nature and relates to the penalty provision for an offence against subsection (1) of section 78. The current penalty is a division 8 fine ($1 000). The new penalty provision is drafted in the current style and upgrades the maximum penalty for an offence against the subsection to a fine of $1 250.

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

CRIMINAL LAW CONSOLIDATION (SEXUAL SERVITUDE) AMENDMENT BILL

In committee.

Clause 1.

The Hon. CAROLYN PICKLES: I move:

That progress be reported and the committee have leave to sit again.

We had an undertaking and an understanding that we would not proceed with this bill at this stage. We advised the Attorney-General that we did not wish to proceed with this.

The Hon. K.T. Griffin: That is not correct. Who did you get the undertaking from?

The Hon. CAROLYN PICKLES: This morning there was a briefing by the Hon. Robert Brokenshire.

The CHAIRMAN: Order! I have been advised that, on a procedural motion such as this, there is no debate and no discussion. You simply put the motion.

The Hon. CAROLYN PICKLES: I have moved it.

The committee divided on the motion:

AYES (9)

Crothers, T.	Elliott, M. J.
Holloway, P.	Kanck, S. M.
Pickles, C. A.(teller)	Roberts, R. R.
Roberts, T. G.	Weatherill, G.
Zollo, C.	

NOES (8)

Davis, L. H.	Griffin, K. T.(teller)
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Redford, A. J.
Stefani, J. F.	Xenophon, N.

PAIR(S)

Cameron, T. G.	Dawkins, J. S. L.
Gilfillan, I.	Schaefer, C. V.

Majority of 1 for the ayes.

Motion thus carried.

SOUTH AUSTRALIAN HEALTH COMMISSION (DIRECTION OF HOSPITALS AND HEALTH CENTRES) AMENDMENT BILL

In committee.

(Continued from 4 April. Page 760.)

Clauses 1 and 2 passed.

Clause 3.

The Hon. SANDRA KANCK: I move:

Page 1, line 20—Leave out 'An' and insert 'Subject to this section, an'.

As I said during the second reading debate, there is concern in the health community about the powers to be given to the minister under this legislation. Proposed section 29C provides that 'an incorporated hospital is subject to direction by the minister.' Under my amendment, section 29C will provide 'subject to this section, an incorporated hospital is subject to direction by the minister.'

This section places some limits on the minister. Subsection (2) provides two circumstances under which the minister will not be able to give a direction. The Democrats believe that it is important that it be made clear up front that the powers of the minister are not absolute. My amendment makes clear that subsection (2) (that is, the circumstances in which the minister will not be able to direct a hospital) is not a subsidiary idea.

The Hon. P. HOLLOWAY: The opposition will use this amendment as a test case for later amendments to clause 3 which the Hon. Sandra Kanck will move. We do not support the amendment for reasons that I will explain. It is the position of the Labor Party that, in this day and age, in this post State Bank environment (as I stated in my second reading speech), it believes that the minister should have the right to govern and that the arms of government should be responsible to a minister. The minister must have the right to direct parts of the public service—we do not dispute that—but we also believe that the minister must be held accountable for those actions.

During the debate in another place, the opposition moved some amendments that sought to ensure that any directions which the minister might give to health units and hospitals are recorded. We will support the amendment to be moved later by the Hon. Sandra Kanck in relation to publishing those orders in the *Gazette*. However, we do not believe that we should fetter the right of the minister to direct health units in this way.

I will cite an example where the opposition believes it might be necessary for the minister to give directions to health units. For instance, a hospital might conduct an unusually large number of medical procedures. There have been allegations in this state that some hospitals conduct a high number of caesareans, hysterectomies or tonsillectomies, etc. in comparison with those conducted in similar communities. If that is the case, there may well be good reasons why the minister—after the matter has been investigated by the Health Commission—should have the power to direct that health unit to change its practices.

That is why we do not wish to see removed the minister's right to make decisions affecting the care or treatment provided by a hospital. We would not countenance under any circumstances a situation where a minister could direct a hospital regarding any clinical treatment provided to an individual. However, in the overall scheme of things, regarding the actual types of services that might be carried out in hospitals and health units, we can see instances where it might be in the public interest that the minister have this power. The minister might misuse that power, but the government would be held accountable.

In our view, the minister must have the capacity to make decisions if clearly there is a situation in the public interest where he must act in relation to the health system. Fettering the minister's power too much in that regard would not be a positive step. For that reason, the opposition will not support the amendment. I accept that the Hon. Sandra Kanck is doing her best to try to prevent this government from taking action which could be detrimental to the health system but the opposition believes that in trying to do that there is the danger that we could also fetter the capacity of the minister to make decisions that might be necessary in the public interest. That will always be a dilemma.

We believe the minister should have the right to preside over the health system but that the minister must be accountable. That is the important point from the opposition's point of view. We will ensure that any directions the minister gives are accountable. If the minister makes a decision for cost cutting reasons, that must be judged in the political arena, but we believe that, in the first place, the minister must have the right to make such a decision. For that reason, we will use this amendment as a test case. We do not support the honourable member's amendments to clause 3 with the exception of the publishing of directions in the *Gazette*.

The Hon. DIANA LAIDLAW: The government also opposes the amendment. It is designed to facilitate the major amendment to clause 3, page 1, lines 22 to 23, but I will speak to this clause in the manner in which Mr Holloway did also. In relation to paragraph (a), the bill currently prevents the minister from giving a direction so as to affect clinical decisions relating to the treatment of any particular patient. This is entirely appropriate. However, the Hon. Ms Kanck, with her amendments, seeks to extend that to clinical decisions relating to care or treatment provided by a hospital.

The honourable member is effectively saying that if clinicians decide that a particular form of treatment should be provided by a hospital, for example, some expensive high technology form of treatment, then the minister, who is ultimately responsible for the budget, should have no power

to step in and say that the expenditure of taxpayers' funds cannot be justified when considered against other demands for treatment which will benefit a larger number of people. It may be that a particular clinician has skills in a specific area and is carrying out a very large number of a particular procedure when that hospital may have a considerable waiting list for more fundamental surgical procedures.

A minister in those circumstances can seek the cooperation of a hospital to reduce a particular type of marginal procedure but, if the hospital refuses, how does a minister protect the use of public funds for the larger public good? There is also the very important issue of protection of the public. Consider, for example, a situation where a small country hospital may try to set itself up to carry out complex cardiac surgery. Clearly, there is a need to ensure that the public is protected against potentially unsound clinical practice.

To take another example, the Coroner may hand down a report that indicates that a specific procedure ought not to be carried out at a particular hospital or without a particular category of medical specialist present. In the interests of protecting the public, there must be a mechanism for the recommendations of the Coroner to be progressed. The Hon. Ms Kanck talks about accountability. However, I am advised that her amendments are designed to have the minister abrogate his responsibilities, particularly budgetary responsibility, and hand them over to others. I will debate the major amendment relating to ministerial responsibility later.

The ACTING CHAIRMAN (Hon. T. Crothers): It seems to me that the chair and the table staff have had an indication from the minister and the Deputy Leader of the Opposition in respect of some of the Hon. Ms Kanck's amendments. The Deputy Leader of the Opposition has indicated that he will support the Hon. Ms Kanck's amendment, which makes it mandatory for the matter to be published in the *Gazette*. I take it that the minister has said that she is in a like mode about the honourable member's amendments to clause 3—that she is in opposition.

The Hon. SANDRA KANCK: We have not reached the gazetted amendments.

The ACTING CHAIRMAN: I am trying to clarify matters.

The Hon. DIANA LAIDLAW: The government and the opposition both agree that there should be ministerial responsibility so we do not support those provisions, but we will support the amendments in terms of the *Gazette*, and they relate to clause 3, page 2, line 1 and clause 4, page 2, line 14.

The Hon. SANDRA KANCK: I am disappointed, particularly in the opposition's stance. I will go ahead and move the amendments. I would have preferred that this not be the test clause. Because it has become the test clause I will still move the amendment that follows this one, because I believe it is important that it be on the public record. I really do express my disappointment in the opposition. The opposition made noises when the bill was before the House of Assembly, which made it seem that it would be sticking up for the hospitals and the health centres. When it came to the crunch and the opposition suggested that there would be amendments moved here, in the Legislative Council, they did not appear. In the end only the Democrats did the work.

It appears to me that we have a political party in this opposition that is looking to form government and looking at what will make life easier for it in government rather than what will produce the best outcome in terms of the uses of our health system.

The Hon. P. HOLLOWAY: For the record, the opposition did move amendments in the House of Assembly. Those amendments required a minister to be accountable for any decisions. We did not move amendments, nor would we move amendments, that would restrict the minister's right to make decisions. As I say, we are now in a post State Bank environment. If we are going to hold ministers accountable and responsible—and we will do that in this parliament: we expect ministers to take responsibility for what happens in their department—it is a little unfair to do that if we fetter the minister's powers to control their department.

That has never been an issue for the Labor Party. If one looks at the Public Corporations Act that we introduced back in 1992 or 1993, one can see that, as far as the opposition is concerned, it has always been clear that the minister should have powers of direction for his or her department. But the minister must be accountable; those are the amendments that we moved in the House and we support those provisions in this place.

Amendment negatived.

The Hon. SANDRA KANCK: I move:

Page 1, lines 22 and 23—Leave out paragraph (a) and insert:

(a) so as to affect clinical decisions relating to care or treatment provided by a hospital; or

(ab) so as to reduce a hospital's capacity to meet its health service delivery objectives under its constitution; or

(ac) with respect to the take over by any other body of functions of a hospital or the transfer of the undertaking of a hospital to another body or the dissolution of a hospital; or

(ad) with respect to the alteration of the constitution of a hospital; or

I am aware that both the government and the opposition have already indicated that they will not be supporting this amendment. Nevertheless, I believe that it is important for people who are involved in running our hospitals and health centres to see that an attempt was made, because at the heart of these amendments is a real concern in rural communities in this state about the potential removal of their assets.

Amendment negatived.

The Hon. DIANA LAIDLAW: I move:

Page 1, line 24—Leave out 'or any other asset' and insert—
, buildings or equipment

This amendment seeks to insert into the bill a similar provision to one which exists in the Public Sector Management Act. As members may be aware, that act precludes the minister from giving a direction to a chief executive relating to the appointment, assignment, transfer, remuneration, discipline or termination of a particular person. This amendment adds a similar provision to the list of areas in clause 3 on which the minister may not give a direction to an incorporated hospital. By inserting similar provisions into the South Australian Health Commission Act, there will be consistent provisions for all employees in the portfolio, whether they are employed under the Public Sector Management Act or the Health Commission Act.

The Hon. P. HOLLOWAY: This amendment is identical to one moved by the opposition in the lower house, so we will be supporting it.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 1, line 25—Leave out 'Crown' and insert—
Crown; or

(c) relating to the employment of a particular person or the assignment, transfer, remuneration,discipline or termination of a particular employee.

This amendment requires the minister to table a copy of any direction he or she gives within 12 sitting days after the giving of that direction. The government is prepared to increase the transparency and accountability in this way beyond the requirement already in clause 3 for publication of any direction in the hospital's annual report.

The Hon. P. HOLLOWAY: The Hon. Sandra Kanck has an amendment that is an alternative to this government amendment. During the debate in another place the opposition raised the question of accountability and we moved an amendment that was similar to that of the Hon. Sandra Kanck, that is, that any direction a minister gives should be published in the *Gazette*.

The government has come up with an alternative and it is certainly a great improvement on the absence of any provision that we had before that says that the direction must be in writing and be tabled in both houses of parliament within 12 sitting days. The concern of the opposition is that, if we follow the government amendment, if we had a situation like we just had with a 4 month plus break of parliament, and then another 12 sitting days—

The ACTING CHAIRMAN: Did the honourable member say that the Hon. Ms Kanck has a similar amendment on file?

The Hon. P. HOLLOWAY: Yes, that is correct.

The ACTING CHAIRMAN: We do not appear to have it here. Perhaps it is an amendment to clause 4.

The Hon. P. HOLLOWAY: This is clause 3, page—

The ACTING CHAIRMAN: Yes, I understand that. If the honourable member is saying that there is an amendment standing in the name of the Hon. Ms Kanck to the very same clause, it has not been received by the chair.

The Hon. P. HOLLOWAY: I will continue with my remarks while that is sorted out. The position of the government is certainly an improvement and it certainly would provide accountability. The only problem is that if we did have a particularly long break in parliament then that, plus the 12 sitting day provision, would mean that there would potentially be many months of delay before the direction was ultimately made available. For that reason the opposition prefers the amendment of the Hon. Sandra Kanck, which is similar to the amendment that we moved in another place. So we will be opposing the government's amendment and supporting the amendment in the name of the Hon. Sandra Kanck.

The ACTING CHAIRMAN: I remind the committee that the amendment before the chair is the minister's amendment to clause 3, page 1, line 25.

The Hon. SANDRA KANCK: I indicate that I will not be supporting the government's amendment and, in the event that we vote on the government's amendment and it is defeated, I will move an alternative amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: Mr Acting Chairman, I indicate that I will not be proceeding with my amendment to clause 3, page 2, line 1.

The Hon. SANDRA KANCK: I move:

Page 2, line 1—After 'writing' insert—
and must be published in the *Gazette*

This is an issue of transparency and accountability. This amendment will ensure that there will not be delays in publishing the information, whereas the minister's amendment, which she did not move, would allow for long delays because it is dependent on parliament sitting before the information can be made publicly available.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 2, after line 3—Insert the following subsections:

(5) A direction may not be issued under this section unless the minister has—

(a) first given the hospital notice, in writing, of the proposed direction; and

(b) allowed at least 60 days from the giving of the notice for the hospital to respond to the proposed direction and consult with the minister; and

(c) given due consideration to any response to the proposed direction; and

(d) given the hospital notice of the results of the minister's consideration of the matter and any modification of the direction, and allowed a further period of 30 days to elapse from the giving of that notice for any further response from the hospital.

(6) A direction under this section will not take effect until 14 days have elapsed after the giving of the direction.

This amendment provides for a procedure to be followed when the minister gives a direction to an incorporated hospital. It requires the minister to notify the hospital in writing and provides 60 days for the hospital to respond. It also allows a further 30 days for the hospital to consider the minister's written reply.

The 60 day period takes account of the fact that members on a hospital board are often citizens who have other jobs and other responsibilities. They will not be able to snap to attention because the minister wants something done. It also means that, if the particular direction has wider community, social, medical or health ramifications, the members of the hospital board will be able to consult with people in their local community. It could be as a result of the feedback from the hospital that the minister will decide to alter the proposal. Of course, that could happen if the advice the minister used to come to his position about the direction was incorrect or flawed.

It will not stop the minister from issuing a direction. It is very important that we recognise that. It allows a hospital a little breathing space and the right to put its position to the minister. I had this amendment drafted as a response to the concerns raised with me by the Hospitals and Health Services Association. It does not go as far as its correspondence suggested that it ought to, but it is a very important part of the government being seen to consult.

The Hon. DIANA LAIDLAW: The government opposes the amendment: it is the antithesis of accountability. As my colleague the Minister for Human Services noted in another place when introducing the bill and, later, during the debate, the power of direction would not be exercised lightly: it would be contemplated only when all other attempts at persuasion had failed. If the situation deteriorates to that level, more than likely time would be of the essence. Yet the amendment seeks to build in over 100 more days during which an unacceptable situation could continue to exist. For that reason, the government opposes the amendment.

The Hon. P. HOLLOWAY: The opposition does not support the amendment. It would mean that, if a minister were to give a direction to a hospital or a health service, it would take over three months before any effect could be given to it. As I indicated earlier, the opposition is aware of a number of examples where it might be necessary for a minister to give a direction that has to have reasonably speedy effect if certain practices need to be addressed in a hospital.

Suppose, for example, that the Coroner were to make a recommendation about a practice occurring, as he has just done, incidentally, in relation to Modbury Hospital. We often find a situation where in small country hospitals it is difficult for the medical staff to receive updates in their training and so on. There are a number of cases where it may be necessary for a swift direction to be given.

We also need to make the point that there are many indirect ways under the existing act where the Health Commission has the power to give direction. All of us know that a bill is already on the *Notice Paper* where the functioning and role of the Health Commission are to be changed. Given that that bill is likely to come forward, we need to take into account the changed circumstances. Under the old Health Commission, from my memory of the act, it could give directions, anyway. What we are talking about is speed. Given that the minister can make a direction, will anything be gained from waiting 100 days for that direction to have effect? One can think of a number of cases where it might be in the public interest that that direction is given and given quickly. For that reason, we oppose the amendment.

The fact is that, if the government does give a direction to a hospital board with which the board is unhappy, most hospital boards I know are quite capable of making their protest felt. I am sure they could make life very difficult for any government that made a direction which was not justified. That is the ultimate protection that the taxpayers of this state have. Again, the opposition makes the point: ministers must have the right to govern. We have said that in government and we say it in opposition. Ministers must have the right to govern, but they must be held accountable. We would see this as not really adding much to the process; it will just cause delays, which in some cases may not be in the public interest, and that is why we oppose it.

The Hon. SANDRA KANCK: In relation to what Mr Holloway said, there are also some cases where that delay would be very important. I do not know exactly what he has in mind—

The Hon. P. Holloway interjecting:

The Hon. SANDRA KANCK: Well, that might be the only option that is left because, given that the opposition and the government have opposed my earlier amendments, there is an agreement between those two parties to give maximum power to the minister; there is no question of that. I predict that as a consequence of that agreement more small country hospitals will close in the next two to five years. Both the government and the opposition will be culpable in that regard.

Amendment negatived; clause as amended passed.

Clause 4.

The Hon. SANDRA KANCK: I move:

Page 2—
Line 8—Leave out 'An' and insert—
Subject to this section, an
Lines 10 and 11—Leave out paragraph (a) and insert:

(a) so as to affect clinical decisions relating to care or treatment provided by a health centre; or

(ab) so as to reduce a health centre's capacity to meet its health service delivery objectives under its constitution; or

(ac) with respect to the take over by any body of functions of a health centre or the transfer of the undertaking of a health centre to another body or the dissolution of a health centre; or

(ad) with respect to the alteration of the constitution of a health centre; or

Just as I had amendments in clause 3 relating to hospitals, these are identical amendments that relate to health centres. They widen the number of reasons for which the health minister is not able to direct a health centre. I recognise, of course, that they will be defeated but, nevertheless, it is important that it does go on record that somebody stood up for country hospitals and health centres.

The Hon. P. HOLLOWAY: Briefly, the amendments mirror those in clause 3, and our position on them will be identical to our approach to clause 3. We oppose the amendments.

The Hon. DIANA LAIDLAW: I also oppose the amendments.

Amendments negatived.

The Hon. DIANA LAIDLAW: I move:

Page 2, line 12—Leave out 'or any other asset' and insert:
, buildings or equipment

The Hon. P. HOLLOWAY: We support the amendment.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 2, line 13—Leave out 'Crown.' and insert—
Crown; or

(c) relating to the employment of a particular person or the assignment, transfer, remuneration, discipline or termination of a particular employee.

This is the same amendment that has just been passed for page 1, line 25. As the act provides for the incorporation of hospitals and health centres under separate sections, the amendment needs to be inserted in both places.

The Hon. P. HOLLOWAY: The opposition supports the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 2, line 14—After 'writing' insert—
'and must be published in the *Gazette*'

The Hon. P. HOLLOWAY: The opposition supports the amendment.

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 2, after line 16—Insert the following subsections:

(5) A direction may not be issued under this section unless the minister has—

(a) first given the health centre notice, in writing, of the proposed direction; and

(b) allowed at least 60 days from the giving of the notice for the health centre to respond to the proposed direction and consult with the minister; and

(c) given due consideration to any response to the proposed direction; and

(d) given the health centre notice of the results of the minister's consideration of the matter and any modification of the direction, and allowed a further period of 30 days to elapse from the giving of that notice for any further response from the health centre.

(6) A direction under this section will not take effect until 14 days have elapsed after the giving of the direction.

This is basically the same amendment that I had for clause 3. In that case it dealt with hospitals: in this case it deals with health centres.

The Hon. P. HOLLOWAY: The opposition will oppose it accordingly.

The Hon. DIANA LAIDLAW: It is equally opposed by us.

Amendment negatived; clause as amended passed.

Title passed.

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

That this bill be now read a third time.

Perhaps during the committee stage I should have responded to the Hon. Sandra Kanck's alarm that ministerial directions now provided for in the bill will see the closure of country hospitals. It is not surprising that this issue has been raised now or was raised earlier. I highlight that, when this matter has been raised with the Minister for Human Services in the past, he has replied in letter form to various parties in the following terms:

> Questions have been raised by some hospitals about the future role of community hospital boards in the light of the insertion of the power to direct. These hospital services which already have a ministerial power of discretion written within their constitutions would attest that it has made no difference. I have been and will continue to be a strong defender of community boards, as many of you would have heard when I have visited your hospitals and health services. They provide a very important link between the hospital and the community. I appreciate the enormous effort that those hospital boards make.

The minister would not have made that statement to all hospital boards if he or the government envisaged that there would be no hospital.

The Hon. SANDRA KANCK: I have noted what the minister has said and I will take it in good faith. I did say that I predicted that there would be a country hospital closed within two to five years as a result of the bill going through, but I am probably talking about a Labor government. Maybe the current Minister for Human Services will not—

The Hon. Diana Laidlaw: I did not envisage such a circumstance.

The Hon. SANDRA KANCK: I have to advise the minister that she may be living in a bit of a fantasy world because things are not looking particularly good for her government. I was not surprised to see the stance that the government took on it. It has been consistent with the way in which the health system has been run—and that has been a system where the government has moved to regionalisation but has still kept the power, and where it has said that it will consult and has not.

The fact that the bill was introduced by the government is indicative of its way of thinking. However, I had hoped that the opposition would act with a conscience and a sense of representing people in the country, but it has failed to do so.

The Hon. P. HOLLOWAY: The opposition is concerned with people in the country: we have demonstrated that concern on a number of occasions. It has not been Labor governments that have slashed services in country regions over the past four or five years at the state and federal levels. Just today we read in the local paper that more services are being cut: I think SA Water services on Eyre Peninsula are being cut and ETSA depots are closing at Millicent. Those are just two examples that I have seen in the newspaper in the past few days. The opposition does not accept that. Under this bill we have supported measures that will make the minister accountable for the operation of the health system, and the Labor Party will hold the minister accountable for the decisions that are made.

Bill read a third time and passed.

OFFSHORE MINERALS BILL

In committee.

(Continued from 6 April. Page 839.)

Clauses 3 to 43 passed.

Clause 44.

The Hon. SANDRA KANCK: I move:

Page 18, after line 7—Insert subclauses as follows:

(2) If a person carries out activities on coastal waters under a licence or special purpose consent and those activities interfere with an activity of a kind referred to in subsection (1) that someone else is lawfully carrying out, the person carrying out activities under the licence or consent is liable (whether or not he or she is guilty of an offence against subsection (1)) to compensate the other person in respect of the interference.

(3) The amount of compensation is to be determined by the Supreme Court.

The purpose of this amendment is that, where there is a conflict between activities, I believe there is a need for compensation for the other activity that has been affected. I believe also that such compensation ought to be payable by the proponent.

The Hon. K.T. GRIFFIN: The government opposes the amendment. I think we have to be clear in dealing with this bill that if we make significant changes it will then render it significantly inconsistent with the commonwealth act and we will have, for those who are exploring or mining or whatever offshore, a rather curious position that there will be one regime which applies beyond the three nautical mile limit and a state-based regime quite different in some respects applying from the baselines to that three nautical mile limit. I think that is an undesirable distinction to be made.

The whole purpose and objective of the Offshore Minerals Bill is to establish a regime covering minerals exploration and mining activity in coastal waters that is necessarily consistent, for the reasons I have indicated, around the entire Australian coastline and across the boundary that each state and territory has with the commonwealth. The aim is to mirror the commonwealth's Offshore Minerals Act of 1994. Quite obviously the honourable member's amendment will detract from that consistency between the two pieces of legislation.

The Hon. P. HOLLOWAY: During the second reading debate I made the following comments:

> Because it is model legislation this parliament cannot amend the first 420 or so clauses in the bill, not that, given the long gestation period required to get an agreement, up to 25 or 30 years or so, we would wish to hold it up any further. Whatever the deficiencies it is time we finally put this measure into place.

During that second reading speech I did indicate the long period that it has taken to reach some agreement and to get into legislation this question of control of the offshore resources of Australia. There is a great dilemma if we do amend those first 420 clauses. Perhaps I was incorrect in saying that we cannot amend it; we could do it, but to do so would be defeating the whole purpose of the legislation and putting ourselves in breach of the agreement.

I will just speak to the first clause, because the same comments apply to the rest of the clauses in the bill. While the amendments tabled by the Hon. Sandra Kanck deal in large part with the environmental protection of the offshore resource, and while the opposition's view that the intent of the amendments is entirely worthy, in our view the amendments would compromise the purpose of the bill, which is to mirror other states' and territories' offshore minerals legislation.

The purpose of the bill is to fulfil South Australia's commitment to the offshore constitutional settlement, which was reached way back in 1979, so it has taken us 21 years to get this far. That settlement established that a common offshore mining regime should exist and that legislation created to set up this regime should be mirror legislation as far as possible. Twenty years later that commitment is finally

being acted on. It is the opposition's view that the amendment by the Hon. Sandra Kanck would, if passed, create two regimes for environmental protection. We would have onshore and offshore regimes. This would create a serious departure from legislation in other states and would therefore go against the spirit of the agreement.

While the opposition supports the intent of the Democrats to provide measures to protect the environment, we understand that the government intends to enact environment protection provisions for this legislation by regulation. The opposition will certainly carefully examine those provisions when the regulations are proclaimed and we will be concerned to ensure that those provisions are adequate. In those circumstances, the opposition believes that it cannot support the amendments because they would compromise the intent of the whole offshore mining regime, which is to get similar legislation throughout the whole Australian continent.

The Hon. SANDRA KANCK: I just make the observation in relation to what the Hon. Paul Holloway has said, and also the Attorney-General, that we are agreeing to something that was agreed by a group of ministers a decade ago, basically. I find it extraordinary that the opposition in the year 2000 says that an agreement that was made almost 10 years ago is the one that we need to be going with at the present time. My view is that if this legislation is not as good as it could be we ought to make it better and then go back to the other states and to the federal government and say, 'Make it better.' We can take the lead. We do not have to just follow like lap-dogs all the time.

The Hon. K.T. GRIFFIN: I do not think anyone would suggest that we are being a lap-dog. The whole issue of the constitutional offshore settlement is a particularly complex agreement, and we know how difficult it is across Australia to get agreement on other areas of the law, and frequently that will take years. The Australia Requests Act, for example, took a number of years to put in place, and that, too, was a difficult constitutional settlement. I think we have to make incremental change. If we have a good base—and I would argue that what we have at the commonwealth level is a good base—then we ought to reflect that in our own legislation to try to achieve around Australia at least consistency of approach up to that point. If there are some further changes that need to be made in the future that is something we can build on, but if you do not get your base there is not much point spending another 10 years arguing about this change or that change, and not have the base in place.

The Hon. SANDRA KANCK: I ask a question of the Attorney-General about consultation. There is no doubt that the government cannot be faulted in this for not having consulted. A draft bill went out in 1997, so it is two and a half years since that bill went out. I am wondering what the purpose of the consultation was. It was sent to assorted groups, and the Attorney has put on record detail as to what those groups were. Might I say that it was obviously flawed because he indicated in answers to my questions that in fact the fishing industry had not been consulted, but that is another issue altogether. Given that the decision had been made in the early 1990s that there would be mirror legislation, and it is clear from what has happened now that there was no room for alteration, why was a document circulated in 1997? Why did the government ask for opinions?

The Hon. K.T. GRIFFIN: The difficulty that I have is that an officer involved in these things change over the years. The commonwealth legislation was enacted in 1994, and the state draft was circulated I am told more for information and any feedback with respect to implementation in the state more than on the substance of the legislation. I would suspect that, if there had been major disagreement with particular principles, that would have prompted the state to re-think its position. A lot of that consultation on the substantive issues occurred when the commonwealth legislation was being prepared. So it really is essentially for information, consultation about implementation and, as I understand it, consultation about whether or not there were any major issues that would affect the prospect of enactment and implementation in South Australia.

Amendment negatived; clause passed.

Clauses 45 to 53 passed.

Clause 54.

The Hon. SANDRA KANCK: I move:

Page 23, after line 3—Insert subparagraphs as follows:

(ia) the nature of the block and the aquatic habitat of, and above, the block; and

(ib) the likely impact of the activities referred to in subparagraph (i) on the block and the aquatic habitat of, and above, the block; and

The bulk of my amendments for those who have seen them revolve around environmental assessment. I have already put on record in my second reading contribution the concerns—

The Hon. K.T. Griffin: To which I responded in my second reading reply.

The Hon. SANDRA KANCK: Yes, I am certainly aware of that. Nevertheless, having heard the Attorney-General's reply, I did not find it satisfactory. In fact, I sent off copies of that reply to the Environmental Defenders Office. While the Attorney-General has argued that there will be adequate protections, I will read into the record what Mark Parnell of the Environmental Defenders Office had to say, as follows:

The government seems to think that environmental concerns can be dealt with administratively through licence conditions and internal environmental assessments. We were told that there may be regulations which set environmental standards. I was provided with a copy of the commonwealth's administrative procedures for applications dated September 1995, but this says very little about the environment, other than that environmental agencies should be 'given the opportunity to comment on the environmental conditions that should be observed'—

I have to observe that that sounds very similar to what has happened with this whole bill—an opportunity to comment that really does not seem to have any sort of status beyond the commenting—

He—

I think he means the Attorney-General—

says that this act be will be subject to the Environment Protection Act in the same way land-based exploration is covered. Good one, minister; land-based mineral exploration or extraction is not covered by the Environment Protection Act, provided you keep your mess within your licence or lease area.

Section 7(4) of the Environment Protection Act provides:

This act does not apply in relation to—

(a) petroleum exploration activity undertaken under the Petroleum Act 1940 or the Petroleum (Submerged Lands) Act 1982; or

(b) wastes produced in the course of an activity (not being a prescribed activity of environmental significance) authorised by a lease or licence under the Mining Act 1971, the Petroleum Act 1940 or the Roxby Downs (Indenture Ratification) Act 1982 when produced and disposed of to land and contained within the area of the lease or licence;

Presumably, if what we are dealing with is modelled on the Mining Act, effectively the Environment Protection Act will not cover this situation at all. Therefore, the amendment that I have moved becomes even more important.

The Hon. K.T. GRIFFIN: The same point that I made on the first amendment I would make in relation to this one. There is a desire on the part of the government to ensure that, as far as it is possible to do so, we maintain consistency with both the commonwealth legislation and the legislation which will ultimately be enacted in other jurisdictions. The last thing we want is to have one set of requirements in place on one side of the three nautical mile limit and another set on the other side. I did respond when I was replying at the second reading stage. I do not intend to repeat what I had to say then.

In respect of the new issue raised by the honourable member, my information is that, notwithstanding what she said, there will still be adequate environmental assessment of any proposed developments. As I understand it, that environmental assessment will occur under the Development Act, and it extends out to the three nautical mile limit.

The Hon. P. HOLLOWAY: As I indicated in respect of the previous amendment moved by the Hon. Sandra Kanck, we believe that this and all of the other amendments moved by her would compromise the whole purpose of the bill, which is to get a uniform regime for regulating the mining of offshore minerals throughout the country. Whatever merits the Hon. Sandra Kanck's amendments might have—and we are not really debating that—we believe that the principal argument against making changes to the bill is that it would compromise the integrity of the regime that we have to govern offshore mining. So, for that reason, we cannot support the amendments.

I understand that Queensland has already passed a bill that is almost identical to this. In a federation like Australia, I guess all of us as state legislators from time to time will be frustrated by the fact that there is a growing tendency to have mirror legislation, or there is a situation where state parliaments have less and less flexibility to make decisions affecting their state. In relation to matters such as offshore minerals, there are overwhelming advantages in having a regime that is constant throughout the country.

For that reason, we believe that those overwhelming advantages outweigh any problems that might be perceived with just individual parts of the package. So, that is the principal argument on which the opposition will be opposing this and all the other amendments of the Hon. Sandra Kanck.

The Hon. K.T. GRIFFIN: The information I have is that the Development Act 1993 contains special provisions relating to mining. That extends out to the three nautical mile limit. So, in any event, requirements in relation to environmental impact statements or assessments apply under the provisions of the Development Act.

Amendment negatived; clause passed.

New clause 54A.

The Hon. SANDRA KANCK: I move:

Page 23, after line 19—Insert new clause as follows:

54A.(1) The minister must appoint a qualified person to provide the minister with a written assessment of the likely impact of the activities proposed in the application on the environment.

(2) An amount equivalent to the amount payable by the minister to the person appointed under subsection (1) for or in relation to the assessment is a debt due by the applicant to the minister.

It is fairly clear that all these amendments will be opposed. I want them to appear on the *Hansard* record to show that someone at least made an attempt because when, as I predict, things get really stuffed up in the waters off the coast of South Australia as a consequence of this legislation, people will be able to see that someone tried, and they might be able to pick up these amendments and have them inserted in the act at a later stage. From here on, I will simply move each amendment and not engage in further debate.

The Hon. K.T. GRIFFIN: The government will oppose these amendments. I will follow the course proposed by the Hon. Sandra Kanck but, of course, with the converse approach.

New clause negatived.

Clauses 55 to 62 passed.

Clause 63.

The Hon. SANDRA KANCK: I move:

Page 27—

Line 4—After 'the minister may' insert ', subject to subsection (2)'

Line 9—Insert subclause as follows:

(2) The minister must not grant an exploration licence if, in his or her opinion, the activities proposed in the application are likely to cause significant harm to the environment.

Amendments negatived; clause passed.

Clauses 64 to 76 passed.

Clause 77.

The Hon. SANDRA KANCK: I move:

Page 30, after line 21—Insert subparagraphs as follows:

(ai) the activities that the applicant intends to carry out on the reserved blocks; and

(bi) the nature of the reserved blocks and the aquatic habitat of, and above, the blocks; and

(ci) the likely impact of the activities referred to in subparagraph (ai) on the blocks and the aquatic habitat of, and above, the blocks; and

Amendment negatived; clause passed.

New clause 77A.

The Hon. SANDRA KANCK: I move:

Page 30, after line 31—Insert new clause as follows:

77A.(1) The minister must appoint a qualified person to provide the minister with a written assessment of the likely impact of the activities proposed in the application on the environment.

(2) An amount equivalent to the amount payable by the minister to the person appointed under subsection (1) for or in relation to the assessment is a debt due by the applicant to the minister.

New clause negatived.

Clauses 78 to 80 passed.

Clause 81.

The Hon. SANDRA KANCK: I move:

Page 31—

Line 18—Leave out 'The minister' and insert 'Subject to subsection (4), the minister

After line 24—Insert new subclause as follows:

(4) The minister must not grant an exploration licence if, in his or her opinion, the activities proposed in the application are likely to cause significant harm to the environment.

Amendments negatived; clause passed.

Clause 82 to 198 passed.

Clause 199.

The Hon. SANDRA KANCK: I move:

Page 74, after line 29—Insert subparagraphs as follows:

(ia) the nature of the block or blocks and the aquatic habitat of, and above, the block or blocks; and

(ib) the likely impact of the activities referred to in subparagraph (i) on the block or blocks and the aquatic habitat of, and above, the block or blocks; and

Amendment negatived; clause passed.

New clause 199A.

The Hon. SANDRA KANCK: I move:

Page 75, after line 10—Insert new clause as follows:

199A.(1) The minister must appoint a qualified person to provide the minister with a written assessment of the likely

impact of the activities proposed in the application on the environment.

(2) An amount equivalent to the amount payable by the minister to the person appointed under subsection (1) for or in relation to the assessment is a debt due by the applicant to the minister.

New clause negatived.

Clauses 200 to 205 passed.

Clause 206.

The Hon. SANDRA KANCK: I move:

Page 77—

Line 7—After 'the minister may' insert ', subject to subsection (2)

After line 12—Insert subclause as follows:

(2) The minister must not grant a mining licence if, in his or her opinion, the activities proposed in the application are likely to cause significant harm to the environment.

Amendments negatived; clause passed.

Clauses 207 to 220 passed.

Clause 221.

The Hon. SANDRA KANCK: I move:

Page 81, after line 18—Insert subparagraphs as follows:

(ai) the activities that the applicant intends to carry out on the reserved blocks; and

(bi) the nature of the reserved blocks and the aquatic habitat of, and above, the blocks; and

(ci) the likely impact of the activities referred to in subparagraph (ai) on the blocks and the aquatic habitat of, and above, the blocks; and

Amendment negatived; clause passed.

New clause 221A.

The Hon. SANDRA KANCK: I move:

Page 81, after line 28—Insert new clause as follows:

221A.(1) The minister must appoint a qualified person to provide the minister with a written assessment of the likely impact of the activities proposed in the application on the environment.

(2) An amount equivalent to the amount payable by the minister to the person appointed under subsection (1) for or in relation to the assessment is a debt due by the applicant to the minister.

New clause negatived.

Clauses 222 to 224 passed.

Clause 225.

The Hon. SANDRA KANCK: I move:

Page 82—

Line 15—Leave out 'The minister' and insert 'Subject to subsection (4), the minister'

After line 21—Insert subclause as follows:

(4) The minister must not grant a mining licence if, in his or her opinion, the activities proposed in the application are likely to cause significant harm to the environment.

Amendments negatived; clause passed.

Clauses 226 to 270 passed.

Clause 271.

The Hon. SANDRA KANCK: I move:

Page 98, after line 2—Insert paragraphs as follows:

(da) include details of the seabed and subsoil at the location of the proposed activities and the aquatic habitat of, and above, the seabed and subsoil at that location; and

(db) include details of the likely impact of the proposed activities on the seabed and subsoil and the aquatic habitat of, and above, the seabed and subsoil at that location; and

Amendment negatived; clause passed.

Clauses 272 to 331 passed.

Clause 332.

The Hon. SANDRA KANCK: I move:

Page 118, lines 7 and 8—Leave out 'if the person pays the fee prescribed by the regulations' and insert 'without payment of a fee.'

Amendment negatived; clause passed.

Remaining clauses (333 to 442), schedules (1 and 2) and title passed.

Bill read a third time and passed.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (PENALTIES) AMENDMENT BILL

In Committee.

Clauses 1 to 5 passed.

Clause 6.

The Hon. NICK XENOPHON: I move:

Page 3, line 2—Leave out 'subsection (7)' and insert: subsection (6) and (7)

In essence, this amendment removes the current exclusive jurisdiction of the inspectorate to bring a prosecution pursuant to the legislation. It would allow, for instance, an injured worker, a union or another interested party, such as a member of the injured worker's family, to bring a prosecution. It seeks to remedy what I consider to be a disgraceful situation in that, over the past few years, there have been only 11 prosecutions a year through the inspectorate, yet we are told by the WorkCover Corporation that the total number of claims reported in the 12 month period to the end of March 2000 was 30 900. Of those claims that resulted in income maintenance claims in the 12 month period to the end of March 2000 there were 5 544 claims.

This amendment simply allows an injured worker to be empowered to bring a prosecution to remedy a situation where the inspectorate does not appear to have been doing its job sufficiently either because it does not have the resources or for any other reason. It simply gives a right to an injured worker, in particular, to bring a prosecution. The concerns that have been expressed by some that this would somehow lead to vexatious prosecutions is an absolute nonsense, given that this is a costs jurisdiction. If an injured worker does not succeed in an action, that injured worker could be the subject of an adverse costs order.

There is a powerful built-in disincentive to ensure that a prosecution is not brought unless it is meritorious or unless it seems that, on the face of it, a prosecution can be successfully mounted. Ultimately, it is up to the court to decide whether there has been a breach of the legislation. I believe very strongly that this amendment will ensure that there is a mechanism of enforcement that does not presently exist; it will ensure that injured workers will be empowered to bring a prosecution; and it will further ensure that ultimately workplaces in this state will be safer. As a result of this amendment being passed, I believe that there will be fewer workplace injuries because it empowers individual workers to make employers accountable.

The Hon. M.J. ELLIOTT: I did not speak during the second reading stage so I will briefly cover the range of issues in committee. I begin by noting that I believe the inspectorate is doing the quality of work in occupational health and safety that the EPA has been doing in environment protection. Both organisations are very similar. They are both under-resourced. They both appear not to have the will to do the job that they really should be doing. In fact, they show, I believe, an undue bias and leniency towards people who are

not complying with the law. Consequently, I do not think that the level of occupational, health and safety in South Australian workplaces is as good as it should be. That is my starting position.

In those circumstances, at this stage, I am prepared to consider those amendments that relate to private prosecutions. I will not support some later amendments that relate to a damages claim to injured workers because, as I see it, rightly or wrongly, that is the role of the Workers Compensation Act. We can have an argument about whether or not levels of compensation are adequate under that act, but I do not believe that compensation itself should be found within this act, which is about occupational health and safety. There is no question that the use of the stick from time to time to ensure that employers comply is necessary, and I think that there is a pretty good case to be made that the stick has not been used as frequently as it might have been.

When just the number of workplace deaths exceeds the number of prosecutions, let alone the number of serious injuries (and, I suppose, minor injuries that could very easily have been serious injuries—the near misses), it is quite plain that there are unsafe workplaces, and in part that is because there is not sufficient pressure to make them safer.

That is why I indicate that I am prepared to support the amendments in relation to private prosecution, while noting that if indeed a person prosecutes and fails they will have costs awarded against them. The only reason I would not persist with that later is if the government shows that it is serious, if it gives a damn good reason why and can indicate that it will do something else instead.

Frankly, particularly in regard to the performance of the minister currently in charge of this area, I do not have a great deal of confidence in that occurring, particularly after observing the way the minister handled a committee inquiry into the Leigh Creek issue. Whether or not there was a problem there, that inquiry was absolutely incredible in its deficiency.

The Hon. T.G. ROBERTS: In my second reading contribution I noted the change of emphasis from the 1972 act to the 1986 act and the progression to where we are now where common law was traded for an emphasis on occupational health, safety and rehabilitation. Compromises all along the way lead us to a position where there are classifications or classified accident victims who do not receive the same opportunity for compensation for negligence as, perhaps, when there was common law.

The argument in respect of stakeholders is still in the marketplace, if you like, as to where we go from here for future occupational health, safety and compensation programs. I do not believe that the debate and where it finishes will be defined by this parliament: I think it will be defined by other parliaments. It is a gradual evolutionary process where there is a trade off of benefits against the level of payments that are made by employers to cover or insure their workers against injury. There is a constant trade off in the marketplace for results.

On the one hand you have very reliable and extremely good and careful management programs running in some premises and then, on the other hand, you have premises and industry systems like, I guess, the meat industry where, without being too harsh on any single employer, the industry itself is dangerous and dirty and brings about, by the sheer nature of the work, a lot of injuries to a lot of workers. Because of the casualisation and the loss of permanency in that industry, many workers take injuries away with them from their work for which they are either inadequately compensated or not compensated for at all. In a lot of cases workers then have to hide injuries to re-enter the work force. That does not augur well for either the employer or the employee.

As a result, we end up with a whole range of partially incapacitated workers wandering around in the market- place who just cannot get a start because of the actions of a few irresponsible employers who pay little or no regard to occupational health and safety on their premises. I have already indicated my disappointment in respect of the increase that has been applied to victims in relation to penalties that are levelled against them. That is a new classification or a new part of the act. It almost implies that workers go out and injure themselves directly or deliberately. We would argue that that is certainly not the case at all. We have indicated that, because there is a trade off one for another, we are prepared to support the bill as presented by the government. I am sure that when we are in government there will be a total revamp and a re-look at some aspects of the compensation system as it stands. Tinkering with the system has been going on for almost 20 years, so I suspect the tinkering will continue.

This is a further attempt to tinker with the act. In South Australia the general consensus is that, although this act is not perfect, it is probably as good as we will get under the current philosophy, that is, the trade-off of the loss of common law for the introduction of an emphasis on occupational health and safety programs, combined with education, prevention and rehabilitation—as long as that works, as long as rehabilitation is the key focus. But, of course, we all know that when there is a downturn in industry, rehabilitation is not a focus, so it shifts. The emphasis of the trade-offs is weighted further against employees and, when the marketplace picks up, a lot of those employees who might have been pushed out of the work force in earlier times can re-enter the work force provided they are not permanently or partially incapacitated. That is the balancing act that we have to work with.

We have to trade off the deterioration of benefits against the lowering of premiums paid by employers for WorkCover insurance. Governments of both major parties will have to continue that balancing act. We as an opposition can only make our arguments clear behind the scenes during the drafting of the legislation. The government offers us a mechanism for that: the views of the Trades and Labor Council have been heard.

The standing committee could and should operate a lot better than it does, and I hope that the new minister for industrial relations will use his influence on the minister who presently has the responsibility for WorkCover to get a better balance on how industrial relations, WorkCover and occupational health and safety fit together, and perhaps play more of a leading role in this regard. I suspect that the new minister will have a different approach from the old minister. I do not want to suck up too much to the new minister: he might think I am buttering him up to get some concessions out of him. That is not the case at all. I just want a little more logic applied to some of the arguments and debates being carried on out in the workplace amongst what I would call good and responsible employers and good representative unions who have encouraged, assisted and been part of occupational health and safety programs with the key for prevention built into that in relation to working safely.

The opposition is supporting the government's propositions in relation to the bill, but we are also supporting the

amendments put forward by the Hon. Nick Xenophon in his motion for private prosecution. The opposition is supporting the clause in relation to compensation for individual members to prosecute in cases of negligence. There may be some discussions later. I am not sure how the government will handle it. It will go back to the lower house and there will be discussion. That is our position in relation to the progress of the bill in this place.

The Hon. R.D. LAWSON: The amendment currently under consideration relating to allowing persons other than the inspectorate or the minister to prosecute under this legislation, notwithstanding the somewhat disingenuous assurances of the Hon. Nick Xenophon, is an integral part of the compensation measures that the Hon. Nick Xenophon will move later in this bill. It is really an integral part of a scheme to restore a measure of common law damages into our workers compensation scheme. Let there be no doubt about that. We should resist the temptation of this rather seductive, simple amendment. We can view this at a number of levels. At the first level, the occupational health and safety legislation was introduced at the same time as the Workers Rehabilitation and Compensation Act in 1986. It followed the Matthews report in 1984—

The Hon. R.R. Roberts interjecting:

The Hon. R.D. LAWSON: There have been amendments. The legislation, when it was introduced, was as a result of a committee which represented all interests in the sector. One of the union representatives was Stephanie Key, who is now the member for Hanson and opposition spokesperson on industrial affairs. The unanimous recommendation of the Matthews committee, which specifically examined the question as to who should have the right to prosecute should there be damages, was that the right to prosecute should remain with the inspectorate or the minister and that it should not be extended. That was a wise view.

I commend to members the reasoning of the Matthews committee. The prosecution of offences under this act is a public responsibility. It is something which should be undertaken by someone who is a third party, who has no particular axe to grind in the relationship between employee and employer and who has no particular place in the workplace in question. That was the view of the Matthews committee. Members should remember that this bill was the result of a recommendation of a tripartite committee representing unions, employers and the government. There was no suggestion in the recommendation of that committee that we go down the route of private prosecution.

This is a proposal which emanates from the honourable member, who I am sure will not mind me mentioning to the committee that he is a one time President—and distinguished President—of the Plaintiff Lawyers Association. As a practising solicitor, and like a lot of plaintiff lawyers, he would like to see a resuscitation of common law rights of action in our workers compensation system. That is a very popular attitude amongst the legal profession. If the honourable member wanted to be toasted at every legal function, this amendment and the one that follows are the monuments that would ensure his fame. This is not, as he said, simply an amendment to give a worker or a union the right to delay prosecution.

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order! The Hon. Mr Crothers can make his point later.

The Hon. R.D. LAWSON: As the Hon. Terry Roberts said in his contribution, and as the Hon. Trevor Crothers is interjecting now, it was the case that when the Workers Rehabilitation and Compensation Act was introduced in 1986 there was a trade-off between common law rights and a compensation scheme designed to minimise the use of legal proceedings, litigation and damages claims. It was a system that was designed to minimise the intervention of the legal profession in this area.

The Hon. R.R. Roberts: It was gutted in 1994.

The Hon. R.D. LAWSON: It was not gutted. From a worker's point of view, the scheme remains if not the best certainly one of the best of any Australian state or territory. It is still a very good scheme. The honourable member who moved this amendment suggested that there would be no possibility of a vexatious claim, because if vexatious prosecutions are launched there is always the possibility of costs being awarded against the worker who launches a vexatious claim. Experience has shown that, in areas such as this where there is a possibility of compensation, actions are taken and very often taken almost as a matter of course.

I refer to the situation with respect to unfair dismissals. It is almost as of course that an application is made not necessarily in the expectation of receiving any particular benefit out of it, but by launching an application the employer or the employer's insurer knows that to make a small payment, perhaps $3 000, most of which will go to the lawyer, is a cheaper way of resolving the issue as opposed to contesting it. In this case, it is highly likely that the standard response in a workers compensation claim would be to institute or at least to threaten to institute a prosecution against the employer. The employer immediately knows that he is up for a couple of thousand dollars, maybe $5 000, in legal costs if it is contested. The employer thinks, 'Let's settle the thing quickly and pay the money to the worker's lawyer.'

Surprise, surprise, most of that money will be used up very appropriately, because the lawyer will have spent a lot of professional time obtaining expert reports and all the rest of it. The worker will be better off in consequence of the fact that he now has a bargaining tool, namely, the right to threaten prosecution without having any intervention by a third party umpire, an inspector or anybody who is quite divorced from the workplace to say whether or not it was an appropriate case to prosecute.

The Hon. Nick Xenophon mentioned the fact that, although there are about 30 000 work claims every year, there are only 11 prosecutions under the occupational health and safety legislation. WorkCover claims do not necessarily bespeak any breach of the occupational health and safety legislation. WorkCover claims include a vast range of injuries occurring without any breach of occupational health and safety. People have heart attacks at work. That does not bespeak or suggest any contravention of the act. People have journey accidents to which they are entitled to compensation or to make a claim but which do not indicate any wont of a safe workplace or inappropriate practices. The mentioning of 30 000 claims a year under WorkCover really has nothing to do with the extent of non compliance, if that is the suggestion, with this legislation. This is not a meritorious amendment.

I have received a number of communications from various employers groups expressing opposition. I do not expect those officers to necessarily take much notice of the views of the Employer's Chamber or indeed of the Engineering Employers Association or the Motor Trades Association.

Those employers are interested in the employment prospects in this state and view with great alarm the possibility of prosecutions being instituted by anybody.

The Hon. R.R. Roberts interjecting:

The Hon. R.D. LAWSON: The honourable member says that they have to be judged by an independent judge. That would be the case if the prosecution ran its course, but everybody knows that threats of prosecution under this legislation would be made—

The Hon. R.R. Roberts interjecting:

The Hon. R.D. LAWSON: The number of cases that would get to court would be very few. It would be said, 'If you pay us this amount for our claim we will forget about the prosecution.' Almost invariably that would be the way these cases would go. There is a need for prosecutions to be implemented on a consistent basis and for some policy.

One of the elements of our legislation as it now stands is that the inspectorate issues compliance notices, prohibition orders and other such things. They are a very important measure in the whole scheme of things. An employer can expect an inspector to police them and to recommend prosecution if they contravene the legislation. The legislation is not based upon the fact that it is absolutely necessary on every occasion to launch a prosecution.

The legislation seeks not so much to prosecute the guilty—that is but one element of it—but the most important element is to improve our occupational health and safety. I would regard as highly undesirable random prosecutions instituted by one group, one employee issuing a prosecution against another employee—because under this legislation an employee can commit an offence—or an employer prosecuting an employee. An employer could say, 'I think you have not looked after your own health and safety. You did not comply with my instructions. We are going to prosecute you.'

The Hon. R.R. Roberts: It's in the bill—a penalty in your bill: a part you wrote, not a part we wrote.

The Hon. R.D. LAWSON: No, the part you wrote—the part that has always been in the act. It has always been an offence for a worker to act—

The Hon. R.R. Roberts interjecting:

The Hon. R.D. LAWSON: The Hon. Ron Roberts suggests that this is a new measure. It has always been an offence—

The Hon. R.R. Roberts interjecting:

The Hon. R.D. LAWSON: That's already in the legislation, and I will draw your attention to the section in a moment. The point I make is that it does give a right to an employer to threaten his workers with prosecution. The government does not believe that that is appropriate. There should be an inspector, an independent arbiter, who says, 'This is an appropriate case where there ought to be a prosecution', and prosecuting policies should be implemented for this consistently across the whole of government rather than on a random basis.

It was also pointed out to me—and I had not realised this, but I think it is a very good point made by the Employers Chamber—that, if a prosecution was unsuccessful because it was not handled appropriately, perhaps because the worker did not have the resources and wanted to undertake it himself or the union did not prosecute appropriately or was dilatory and failed to collect the right evidence, and the employer was acquitted, the central agency charged with the responsibility of enforcing the legislation would not be able to prosecute because somebody had jumped in early and not managed to secure a conviction.

The Hon. T. Crothers: It may well be that because of the prosecution the employer would have been forced to remove the hazard.

The Hon. R.D. LAWSON: The mere removal of a hazard would not prevent a prosecution going ahead.

The Hon. T. Crothers: No, but it would prevent some other poor sod getting injured.

The Hon. R.D. LAWSON: The honourable member is suggesting, by the tone of his remarks, that in some way the government is unsympathetic to workers who are injured as a consequence of a contravention of this legislation. The government has every sympathy with the point of view put by the honourable member, but we do not have sympathy for the idea of reintroducing, by a back-door means, a form of common law claim.

One other element about private prosecutions that I think should be mentioned is that there has been a collaborative approach taken from the time of the Matthews committee onwards between employer and employee groups, unions and employers, and government and the inspectorate to raise the standards of performance in workplaces. That has been a cooperative approach: it has been a big striving for education. The whole basis has been a collaborative approach.

That collaborative approach is undermined when you have a system of private prosecutions that could be taken over by one section or another. You could find that in one workplace a group of solicitors will adopt the practice of launching prosecutions, and the collaborative approach to occupational health and safety, which I think has been very well developed, would then be put in jeopardy.

The Hon. Mike Elliott mentioned workplace death. I think that workplace fatalities are a matter of great concern, as indeed are road deaths. When I examine the classifications relating to workplace fatalities, I find that many of them do not arise out of any contravention of occupational health and safety issues. There are classes of workplace fatalities—heart attacks or an accident which happens—

The Hon. M.J. Elliott: Falling into a silo.

The Hon. R.D. LAWSON: The honourable member mentions falling into a silo. There are also journey accidents. I do not doubt for a moment the fact that there have been a number of serious fatalities. Some of them, but not all of them, result from unsafe systems of work, and most of the prosecutions that have been launched have been in respect to those fatalities. One such case concerns the child who was killed at the Arndale Shopping Centre as a result of an unsafe practice.

It is a leap in logic for the honourable member to suggest that a more active prosecution policy and a policy of allowing private prosecutions would somehow or other eradicate those workplace fatalities. The range of measures that are required to ensure that you have an effective system concern the education of both employees and employers, of raising standards—

The Hon. T.G. Roberts: I agree with that, too; it works with good employers.

The Hon. R.D. LAWSON: There is an element of the stick as well as the carrot; that is why we are increasing the penalties. The government opposes the amendments.

The Hon. T. CROTHERS: I was not really going to say very much at all, but after having listened to what I can only describe as uneducated drivel for the past 10 minutes I feel that I must, as one who has worked at the coalface with respect to occupational health and safety, at least attempt to put some of the record straight.

I indicate that I will support the Xenophon amendments, but with respect to this amendment I must say a number of things. In 1986 I was on the executive of the Trades and Labor Council—a senior member of that body—when the workers were convinced to give up their right to civil litigation with respect to workers' compensation. At the time I supported that we should do that. What a sad mistake that was! During my time here I have had many young men and women come to me crying because they have been 40 per cent or 50 per cent disabled for life, they have three or four young children, they have had a payout claim with respect to workers' compensation where due negligence and lack of care have been shown by the employer, and they have $80 000 or $100 000, and a disability pension for the rest of their life.

Those are not the acts of a caring government. I believe that Mr Lawson is a very caring individual, but it has not been the act of members of the government collectively in this state that they have looked with a non-jaundiced eye at what are in the better interests of the community at large in this state. They have not. When I was a union secretary I was called into the marine storeyard at Port Adelaide. It was run by the Boy Scouts Movement. We had four or five members there. The surface of the floor of the yard was always flooded, and I can tell members that to see the four or five workers who were walking about it was as though one were watching people in a silent movie, in disjointed and stilted fashion, and it was because there were live wires lying everywhere. Every time they put their foot in a puddle of water and earthed themselves off they would go with rickety Chaplinesque movements. The toilet bowl was a disgrace. Mr Crapper, the plumber, first invented our particular cistern and this must have been one of the original bowls that he invented. It was not Edwardian; it was Victorian. It was disgusting. It had not been cleaned for God knows how long. Flies everywhere. If you went near the toilet there were flies sticking behind your ear like pencils. Now, that was a benevolent organisation, scouts—

The Hon. T.G. Roberts: What was the lunchroom like?

The Hon. T. CROTHERS: Well, the lunchroom was even worse; I will not get to that. It still makes me sick to this day if I even talk about it. But the electrical wiring was a major problem, and they were a pretty good organisation but they just did not give a damn because they did not understand. Two days before I went there one bloke was carted off to the Queen Elizabeth Hospital, absolutely unconscious. They could not work out why he had collapsed until they found out that the machine he was using was absolutely live. He was lucky he did not finish up like Frankenstein, because he had that much electricity pumped through him when he was operating that machine.

One of the things that convinced us in 1986, one of the matters that weighed the scales of balance in favour of the workers giving up the right—and that was a very narrow majority of workers to take that decision, in the Trades and Labor Council, by the way—was the fact that we found that legal fees were of the order of 20 per cent of the total claim in respect of compensation and payouts but we also found out that medical expenses were running at 10 per cent.

It is a very disingenuous argument that the minister uses when he trots forward again the old pony that was used in 1986, that that 20 per cent saved by not having lawyers will enable us to ensure that we have enough money in the pool so that we can put the benefits up accordingly. It never happened. You are not suggesting, minister, that one does not involve the medical people in respect of getting treatment relative to this industry? If the minister is not, I am surprised because that is what he is suggesting in a disingenuous way to bolster his argument for opposing the Xenophon amendment, that it will cost too much for the legal profession. What about the medical profession? If you have a problem in our society and you cannot resolve it face to face with your opponent then you go to litigation. That is the nature of the Westminster system, that is the nature of all Anglo-Saxon societies in the world today, you go to litigation. Some of us may not like that. There are other ways in which it can be handled. We can put in lay arbiters in respect of this. However, nobody has ever really been game to do that.

Let us take a look at the safety inspectorate in occupational health and safety. I do not know whether their numbers are up or not but they have an appalling record in the number of inspections they carry out. Let me further tell the Committee that it is not so long ago that they removed the cars from the inspectors so that they have to travel by their own pushbike or train or bus, or whatever. That is my understanding that the cars were taken away. That may not be so, but that is my understanding, and I have just been informed by a colleague of mine that that is so.

So the minister cannot stand up—and I excuse him because he has not been long in the job—and issue forth these platitudes that the government supports the workers. He may as an individual, and other members in the government may well do so as individuals, but the collective set of mind of this government, and his federal colleagues and colleagues in governments in other states, has not been one of being Mary Magdalene to injured workers. Let the record show, if any research is done, that that is the case, that workers more and more have their rights taken away, that the Reithian psychology and that of the ministers of labour before him has been to destroy the power of the unions to act and has been to sow the seeds of canker in the minds of the workers that unions are no longer needed in today's society.

You can tell a lawyer that the Law Society is no longer needed; you can tell a doctor that the Australian Medical Association is no longer needed; you can tell any of the colleges of surgeons, men and women who determine how many specialists are going to be in the medical profession each year, and then set their own wages, you can tell those people who are in the colleges of surgeons that unions are no longer necessary or that a collective of individuals acting together is stronger than individuals acting on their own, but the whole philosophy of the Liberal Party today is not that of Sir Robert Menzies. His philosophy was that of the Asquithian Liberals at the turn of the century in Britain, men who were acting for the benefit of all. Your philosophy today, unfortunately, minister, and it may not be all of you, has turned out to be the philosophy of the high Tories of the British Conservative Party, often referred to as the Anglican church at prayer.

I do not want to say too much more. Perhaps I may well feel another bit of aggrievement as I listen to this debate as it unfolds. I may well be unable to resist the opportunity. However, I understand that my colleague the Hon. Ron Roberts is following from me and I am sure what he will have to say will be difficult to top in respect of his support, which I think he has, for the Xenophon amendments. But please, minister, do not talk to me or to any of my colleagues who have been at the coalface of industry as though we are wet behind the ears. We have seen it all before. We have heard it all before. People have said to us, 'There are some sugar

coated almonds for you, son,' but when we have stripped the sugar off they have been as bitter as gall. I support the Xenophon amendments.

The Hon. R.R. ROBERTS: I rise to support the amendment moved by the Hon. Nick Xenophon and to take up a couple of points made by the Hon. Rob Lawson. He went back to 1986 with the Matthews report into the occupational health and safety arrangements and the WorkCover legislation that had both come into force. Those issues have been canvassed by other speakers. The central point made by the minister is that the Matthews report at that time was against the framework of the intended WorkCover legislation which introduced radical changes to the way we handled workers compensation.

The workers compensation legislation enacted at that time was a compassionate act which would handle the working conditions of injured workers and would manage that to the highest possible level of re-entry into the workplace; and the intention was at the level that they exited. Since 1986, there has been a whole raft of changes to the WorkCover legislation and to the occupational health and safety legislation. One thing that is consistent is the central point that the Hon. Rob Lawson made. He believes that there is a public responsibility on an independent inspectorate and the minister to launch a prosecution. I agree with him, and this amendment does not take that away.

If you look at the operation of the occupational health and safety legislation over the past few years, many commentators will tell you that the inspectorate has lacked the will to go out and do things. Some four or five years ago I was shown a leaked document which happened to be a copy of a contract for a chief executive officer. I never raised the matter in the parliament. In fact, I gave the document back to the person who showed it to me. It detailed the procedure by which the CEO was to be assessed. One of the main criteria was that he would be judged on the number of prosecutions that were made and the number of disallowance or improvement notices processed. That was for the chief executive officer. Everyone knows that, in a hierarchical system, it tends to filter down.

My argument is supported by the figures that have been quoted by other people about the number of workplace deaths, industrial accidents and prosecutions. Clearly the good intentions that are being expressed by the Hon. Mr Lawson about the right of the public through the inspectorate and the minister to prosecute have not been working in the way that was intended. What does this amendment do? Not only does it allow them to perform the tasks for which they have responsibility, and have had responsibility from 1986, but also it allows an injured worker, when the system fails him, when the minister fails him and when the inspectorate fails him, to launch a prosecution himself.

I will make one point about the lawyers, because that is the other major point raised by the minister. I am not really interested in the techniques he may have used to make his living before he entered parliament. If this parliament thinks that it will keep the lawyers out of these proceedings, I can only point out that better parliaments and better legal minds have tried to do that, without success. They will always be there. The important safeguard that overrides all of this is that, even if a worker launches a prosecution through his lawyer or representative, he still has to prove the case before the independent arbiter. So, there is no real diminishing of the rights of the minister or the inspectorate.

However, when that system fails, it gives the injured worker who does not receive the justice that he is entitled to the right to launch the prosecution. It really means that it only gives him the right to chance his arm and, if he loses, he loses badly, as explained by the Hon. Nick Xenophon. The red herrings are being trotted out by the minister and not by the proponent of the amendment. I urge the committee to support the amendment.

The Hon. T.G. CAMERON: I rise to support in general the amendments to the bill put forward by the Hon. Nick Xenophon. I listened carefully to the contributions of the Hon. Trevor Crothers and the Hon. Ron Roberts. I do not have any intention to try to top—

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: I will come to that if you want. Do you really want me to comment on your contribution?

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: We have those little speakers in our office, so we can still hear what is going on. I do not intend to try to top their contributions. I can recall one occasion in particular when I was an industrial advocate with the Australian Workers Union. We have heard of some of the difficulties that are occurring with the current Liberal government. However, I can recall approaching a Labor government and asking that it initiate a prosecution against Dee Hi Fodders for sacking about 30 of its employees because they dared put an industrial picket around the company. Despite many pleas by the union, we could not get the then Labor government to launch a prosecution against the employer. The prosecution had to be launched by the union. It was eventually successful, and the company was found guilty on all counts.

Clause 4, which amends section 21, provides:

(1) An employer must take reasonable care to protect the employee's own health and safety at work.

(1a) An employee must take reasonable care to avoid adversely affecting the health or safety of another person through an act or omission at work.

I note that there are fines that can be awarded against employees of up to $10 000. I have some concern about what doors we might be opening here in relation to subclauses (1) and (1a). I would like the Hon. Nick Xenophon to let me know how those two subclauses compare with provisions that are in any existing legislation.

The Hon. R.R. Roberts: That is the minister's legislation.

The Hon. T.G. CAMERON: My apologies to the Hon. Nick Xenophon. My problems in respect of clause 4 have just been answered. I will be opposing that clause. I will direct my question to the minister in relation to subclauses (1) and (1a). I wonder what doors those amendments will open. Does it mean that employers will be able to initiate prosecutions against their employees? I have a grave concern about how that might be used by an employer to intimidate recalcitrant employees into toeing the line.

In certain occupations, I imagine that there could be a lot of borderline situations, and I am quite reluctant to see a situation created where workers going about their job make a simple mistake and are then penalised. One wonders, for example, whether a prosecution could be launched against an employee because he lights up a cigarette at the workplace. Could a worker in that situation be liable to a fine of up to $10 000?

The Hon. R.D. LAWSON: To answer the Hon. Terry Cameron's question about section 21, he is quite right—and

he was not in the chamber when I mentioned this a little earlier—in identifying the fact that, under the amendment proposed by the Hon. Nick Xenophon, it will be possible for an employer to prosecute an employee. At the moment, an employer cannot prosecute an employee.

The Hon. T.G. Cameron: You are saying at the moment that an employer cannot launch a prosecution against a member of his work force?

The Hon. R.D. LAWSON: That is right. The inspectorate could. Section 21, which is the law now, has provided for a number of years that an employee shall take reasonable care to protect his own health and safety and, to avoid affecting others, the employee must use safety apparatus, etc. The employee can be fined or prosecuted for failing to do that.

Proposed new section 21 does not introduce a new notion; it divides up the employee's responsibilities and imposes different levels of fines. For example, subsection (1) provides that an employee must take reasonable care to look after his own health—and that carries a lower level of fine. Subsection (2) provides that an employee must take reasonable care to avoid adversely affecting the health or safety of any other person. The Hon. Terry Cameron correctly identifies that this is an issue. I believe that there are employers who, for vexatious and improper reasons, would prosecute—

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: As the honourable member says, there would be a few shoplifters prosecuted, just as there are unions who would adopt a rather more aggressive approach to prosecutions. That is why we believe it is best to leave the prosecution of offences to someone outside the workplace, someone who is not the boss or the worker but who actually belongs to the inspectorate. If you want to complain about how diligent the inspectorate has been or make any other representations about that, that is one issue, but I do not believe it is appropriate to say that, in the current circumstances, we ought to open up prosecutions to anyone.

In his contribution, the Hon. Trevor Crothers was not at all disingenuous. He acknowledged right from the beginning that the point of this amendment is to resuscitate common law damages or something similar for workers. He said that it was a mistake in 1986 to take them away and trade them off for the rights that were—

The Hon. T.G. Cameron interjecting:

The Hon. R.D. LAWSON: Unlike the Hon. Nick Xenophon, the Hon. Trevor Crothers acknowledged right from the beginning that the point about allowing prosecutions is that that is the step that you must take if you are going to get the lawyers back in and use prosecutions as a way of getting damages. Clearly, this is about the resuscitation of common law rights.

One other point, which I should have made and which arises from what the Hon. Terry Cameron says, is that, in many cases, a worker will have the right to prosecute his boss. Just as you might have a vexatious boss prosecuting a worker, you might have one worker prosecuting another—that would be allowed under this legislation (anyone can prosecute anyone else)—and some pressure is also being put on employees in those circumstances. If someone says, 'Why don't you institute a prosecution against your boss for failure to comply with the legislation?', you ought to be able to say to the inspectorate, 'You institute the prosecution; I, the worker, will be victimised, I will lose my job if I prosecute my employer.' That is not conducive to good relations between the worker and the employer.

The Hon. Trevor Crothers also alleges that there is an appalling record in the number of inspections conducted by the inspectorate at the moment. As far as I am aware, there has been absolutely no diminution in the number of inspections. The honourable member mentioned that cars have been taken away from the inspectorate. It is true that the fleet of cars has been reduced by 10 vehicles. However, every inspector has access to a vehicle. There is a substantial pool of 50 or 60 vehicles which they can use. The Hon. Ron Roberts also mentioned the failures of the inspectorate. If there are failures in the inspectorate, I am prepared to look at that and take appropriate measures.

Progress reported; committee to sit again.

The Hon. A.J. REDFORD: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

NATIONAL TAX REFORM (STATE PROVISIONS) BILL

Second Reading.

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

That this bill be now read a second time.

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

Leave granted.

The *National Tax Reform (State Provisions) Bill 2000* puts in place a number of financial reform measures as agreed by the Commonwealth and all States and Territories in June 1999.

The *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations* ('the Agreement') constitutes an essential component in the implementation of the Commonwealth's national tax reform package, the centrepiece of which is the introduction of a Goods and Services Tax ('the GST') at a 10 per cent rate from 1 July 2000.

Revenue raised from the GST will be distributed in full to the States and Territories. GST revenue will replace general purpose grants provided to the States by the Commonwealth and will enable Commonwealth wholesale sales tax and specific State taxes to be abolished. The introduction of the GST will also be associated with significant reductions in personal income tax.

Importantly for South Australia, the distribution of GST revenues between the States and Territories will be in accordance with the principles of fiscal equalisation which recognise differences between jurisdictions in relative service delivery costs and revenue raising abilities. The Agreement provides an explicit stipulation that fiscal equalisation will be used to distribute GST revenue which is a significant advance on the current situation where the use of fiscal equalisation has no legislative or formal basis even though the principle is observed in practice.

The GST will replace Commonwealth financial assistance (or general purpose) grants in addition to the grants which have been provided more recently by the Commonwealth as a replacement for the now abolished State franchise fees on petroleum, tobacco and liquor. The States and Territories have also agreed to abolish certain taxes under the Agreement, reduce gambling taxes as an offset to the impact of the GST on gambling operators, administer and fund a new First Home Owners Scheme as compensation for the impact of the GST on housing affordability. In addition, the Australian Taxation Office will be compensated for the costs of administering the GST.

Taking into account the net impact of all of these factors, the overall reform of Commonwealth-State financial relations as set out in the Agreement is expected to lead to revenue shortfalls in the short-term, but these will be addressed via guaranteed top-up grants and advances from the Commonwealth, calculated under an agreed formula. These top-up grants will ensure that, at a minimum, the reforms outlined in the Agreement are fiscally neutral for the States and Territories until such time as the GST revenue reaches a level which outweighs the financial impact of the other reform commitments. In the medium to long-term, South Australia will be better off under the new arrangements—on current estimates a net financial benefit to the South Australian Government is projected to accrue from 2006-07.

Beyond the transitional phase, the key feature of these reforms is that over the medium to longer term the States will benefit from having access to a growing source of revenue to fund the delivery of essential community services—rather than having a large proportion of their funding subject to the unilateral discretion of the Commonwealth Government of the day.

The Bill ratifies the Agreement and meets the State's commitment to ensure that the relevant State legislation complies with the requirements contained in the Agreement.

The Bill specifically abolishes financial institutions duty and stamp duty on quoted marketable security transactions from 1 July 2001. In addition, in order to clarify the interaction of the GST with existing tax bases, and ensure consistency of application, a number of consequential amendments are required to the *Pay-roll Tax Act 1971* and the *Stamp Duties Act 1923*.

In respect of pay-roll tax, activities performed as an employee are generally not considered as taxable supplies for GST, however, the trigger for pay-roll tax liability is the definition of 'wages'. Pursuant to the *Pay-roll Tax Act 1971*, certain payments to contractors are deemed to be 'wages'. These deemed 'wages' may be subject to GST. The Bill moves an amendment to the *Pay-roll Tax Act 1971* to ensure that the application of GST on these deemed wages does not increase the quantum of pay-roll tax paid by affected employers.

It is intended that stamp duty be applied to the value of transactions inclusive of GST in the same way that stamp duties currently are levied on wholesale sales tax inclusive values. For example, sales tax is directly included in the market value of new motor vehicles for stamp duty purposes. In the case of conveyances, sales tax is an embedded cost that increases the value of property, whether residential or business, which is subject to stamp duty when sold.

While it is arguable that the *Stamp Duties Act 1923* as currently drafted would require GST inclusive values to be used, to avoid any confusion this Bill proposes a number of amendments which seek to put this question beyond doubt.

GST-related effects will reduce the revenue raised from some stamp duties such as those levied on motor vehicle registrations and transfers, comprehensive car insurance and house contents insurance reflecting reductions in dutiable values as GST replaces higher wholesale sales tax rates. In other cases, such as stamp duty on property conveyances, dutiable values are expected to increase resulting in higher stamp duty receipts. On balance, these gains and losses are expected to yield a small net benefit of less than $10 million per annum. It is relevant to note that the Commonwealth will reduce funding to the States by about the same amount through a 'growth dividend' adjustment for GST-related growth in State tax revenues.

The Agreement also provides for the repeal, on 1 July 2000, of the Commonwealth safety net arrangements put in place in 1997 to compensate the States for the loss of their franchise fees on tobacco, fuel and liquor. This Bill also amends the *Petroleum Products Regulation Act 1995* to abolish the Off-Road Diesel Users Subsidy Scheme. This scheme had been introduced to offset the impact on off-road diesel users of an excise surcharge introduced as a source of funding for the States and Territories following the invalidation of their franchise fees. Off-road diesel use had previously been exempt from State fuel tax. Under GST-related reforms, off-road diesel subsidies will no longer be required since off-road diesel users will receive a 100 per cent rebate of Commonwealth excise inclusive of the surcharge. Expenditure savings from the abolition of the subsidy scheme are taken into account in determining the level of transitional grants needed to supplement GST revenue shares in order to achieve guaranteed minimum funding levels for the States and Territories.

Finally, clause 17 of the Agreement provides that the Commonwealth, States, Territories and local government and their statutory corporations and authorities will operate as if they were fully subject to the GST legislation. In order to ensure that State and local government bodies operate as if they were subject to the GST legislation in instances where a constitutional immunity applies to such bodies, the Bill provides for the Treasurer to direct that payments be made to the Commonwealth Commissioner of Taxation of amounts which would have been payable if an entity were liable to GST.

A number of other reform measures contained in the Agreement will be dealt with separately. These include:

· State application of the Commonwealth price monitoring legislation (assented to by His Excellency The Governor on 12 August 1999);

· legislation for first home owners assistance; and

· amendments to gambling tax arrangements to take account of the impact of the GST on gambling operators.

Explanation of Clauses

PART 1

PRELIMINARY

Clause 1: Short title

This clause is formal.

Clause 2: Interpretation

This clause contains definitions for the purposes of the measure.

PART 2

RATIFICATION OF INTERGOVERNMENTAL AGREEMENT

Clause 3: Ratification of Intergovernmental Agreement

This clause ratifies the Intergovernmental Agreement, the text of which is set out in the Schedule.

PART 3

EXEMPT ENTITIES

Clause 4: Exempt entities to pay GST equivalent

This clause requires exempt entities to pay to the Commonwealth Commissioner of Taxation amounts that would have been payable for GST if the entity were liable to GST.

An exempt entity is an entity to which the constitutional exemption applies. The constitutional exemption means an exemption from GST arising under section 114 of the Commonwealth Constitution or a provision of the GST law reflecting that constitutional provision.

The clause also requires exempt entities to keep records in a form required by the Treasurer (for 5 years) to enable auditing and to make the records available to the Treasurer.

PART 4

GOVERNMENT ACCOUNTS

Clause 5: GST component to be separately identified in government accounts

This clause requires government accounts to separately identify any GST component.

PART 5

AMENDMENT OF FINANCIAL INSTITUTIONS DUTY ACT 1983

Clause 6: Insertion of s. 6A

The new section provides that the Act does not apply to a receipt that occurs after 30 June 2001.

Clause 7: Amendment of s. 21—Registration of financial institutions

The new subsection provides that financial institutions will not be registered under section 21 after 30 June 2001.

Clause 8: Amendment of s. 22—Returns by financial institutions

Clause 9: Amendment of s. 27—Returns by registered short-term money market operators

The amendments provide that returns are not required in relation to July 2001 or a later month.

Clause 10: Amendment of s. 30—Financial institutions duty in respect of certain short-term dealings

The new subsection provides that the section does not apply in relation to a month commencing on 1 July 2001 or later.

Clause 11: Amendment of s. 37—Payments and returns by account holders

The amendment substitutes the definition of financial year in order to ensure that the last financial period for the purposes of the section will end on 30 June 2001.

Clause 12: Insertion of s. 78

The new section provides for the repeal of the Act by proclamation.

PART 6

AMENDMENT OF PAY-ROLL TAX ACT 1971

Clause 13: Amendment of s. 3—Interpretation

The amendment inserts definitions of "GST" and "GST law" and new subsection (1d) in the interpretation provision. The subsection ensures that the amount of pay-roll tax is not increased as a result of a contractor to whom taxable wages are paid being liable to GST on the supply of services for which the wages are paid.

PART 7

AMENDMENT OF PETROLEUM PRODUCTS REGULATION ACT 1995

Clause 14: Amendment of s. 4—Interpretation

Clause 15: Repeal of s. 4C

Clause 16: Amendment of s. 20—Entitlement to subsidy

Clause 17: Amendment of s. 23—Amounts recoverable by Commissioner

Clause 18: Repeal of ss. 23B and 23C

Clause 19: Amendment of s. 23F—Form of application for issue, renewal or variation of certificate

Clause 20: Amendment of s. 23I—Cancellation of certificate etc.
Clause 21: Amendment of s. 50—Register
The amendments in this Part remove all references in the Act relating to the off-road diesel users subsidy scheme and make consequential adjustments as necessary.

PART 8
AMENDMENT OF STAMP DUTIES ACT 1923

Clause 22: Amendment of s. 2—Interpretation
The amendment inserts definitions relating to the GST necessary for the purposes of the measure.
Clause 23: Substitution of s. 15A
Section 15A of the Act is altered in scope to make it clear that GST included in the cost of acquisition is to be taken into account in ascertaining the value of property by reference to an actual or notional cost of acquisition.
Clause 24: Amendment of s. 31F—Statement to be lodged by person registered or required to be registered
Section 31F is amended to require a statement lodged with the Commissioner under that section to include amounts received to reimburse, offset or defray the registered person's liability to GST on the services provided in and incidental to the registered person's business.
Clause 25: Amendment of s. 32—Interpretation
Section 32 contains definitions for the purposes of the provisions relating to annual licences for insurance businesses. The definition of "premium" is adjusted to include an amount charged to a policy holder to reimburse, offset or defray the insurer's liability for GST in respect of the assurance or insurance.
Clause 26: Amendment of s. 42A—Interpretation
Clause 27: Amendment of s. 42B—Duty on applications for motor vehicle registration or transfer of registration
These amendments include GST in relation to the price or value of a motor vehicle for the purposes of the provisions relating to applications for motor vehicle registrations.
Clause 28 Amendment of principal Act—Abolition of stamp duty on transfer of listed securities
Section 90D(3) is amended to provide that a return is not required in respect of an exempt transaction and section 90C(3) is amended to provide that records need not be kept by a dealer in respect of exempt transactions. An exempt transaction is defined in section 90A as a particular sale or purchase of a marketable security after 30 June 2001.

SCHEDULE
Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations
The Schedule contains the text of the agreement.

The Hon. CARMEL ZOLLO secured the adjournment of the debate.

ROAD TRAFFIC (RED LIGHT CAMERA OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 12 April. Page 920.)

The Hon. SANDRA KANCK: I indicate the Democrats' support for this legislation. I am a reasonably safe driver and I find it increasingly frustrating to see drivers running red lights. Although I know it is not within the power of this parliament to deal with the King William Street-North Terrace intersection, that, of course, is an extremely good example where a pedestrian can no longer take a chance of crossing the road, even though the walk light for pedestrians is solid, without first checking to see whether a car is coming through. As I say, it is unfortunate that we cannot apply the legislation to the traffic lights in the city of Adelaide.

The figures highlighted by the minister in her speech tell the story for everyone, and I will repeat them because they are so telling: there were 7 476 road crashes in 1998 at intersections with signals in metropolitan Adelaide in which eight people were killed and 172 suffered serious injuries. Those sorts of figures are not to be laughed at. I am aware that, in respect of red light cameras, there has been a view amongst some that this is simply a revenue raising measure. The fact that we are now moving to include this misdemeanour when photographed by a red light camera as part of those offences that will lead to demerit points demonstrates that it is not just a fund raising activity by the government. This issue was discussed in the Transport Safety Committee, another example of how the spokespeople for the three parties were able to work very cooperatively together.

We are bringing red light camera offences into the demerit point schedule. The other area about which it is often argued the government is attempting to use as a money raiser relates to speed cameras. I suggest to the minister that, if the government is serious about this issue, then it ought to also apply demerit points for people who are caught exceeding the speed limit by speed cameras. I repeated the figures that the minister gave in regard to the number of people who were killed and injured at intersections.

Will the minister provide figures of the impact of speeding on car crashes and resulting deaths and injuries so that the Council can have some sense of the relative merits of including red light camera offences under the demerit penalty schedule when we are not doing it for speed cameras? Apart from looking for that comparison, I indicate quite strong support for the second reading and for the bill.

The Hon. R.R. ROBERTS: Like the rest of my party, I support this bill. We did have some debate about this issue within the caucus. I accept the majority view of the caucus in that the Labor Party is supporting this bill, but I take the opportunity to mention a few issues that have been raised by many constituent drivers in general and, I suppose, country drivers in particular. The Hon. Sandra Kanck touched on some of the discussion that has taken place in terms of people believing that the government is obsessed with raising money at the expense of drivers. By and large there is a great temptation by this government in particular to top up diminishing coffers within the Treasury at the expense of drivers.

We have seen complaints by the RAA but I note that it is supporting this piece of legislation. The RAA has complained bitterly that drivers are being used as a cash cow, and I remember that those remarks were directed specifically towards the emergency services levy. In justifying these extra burdens and imposts on drivers, the proponents of these types of measures have a technique.

There is a belief by the government that people out there like speed cameras. I defy anybody in this Council to go to any pub, football match or any gathering of people and start talking about speed cameras and find somebody who says that they think that speed cameras are a good idea. What they will tell you is that they are a money making routine which the government uses to get more money. If it was not for the speed cameras and the pokie machines, this government would be broke.

However, the government has another technique. I can remember speaking with a former colleague of mine who told me, when he was the shadow minister of transport, that people like speed cameras because the polls had shown that. The technique involved in conducting such a poll is to first mention how many deaths there are on the roads and ask, 'Do you think the number of deaths on the roads is acceptable?' The response is, 'No, it's terrible'. The next question is, 'Do you think we ought to do anything about it?' The response is, 'Of course we should.' You then ask, 'Do you think speed cameras are a good idea?' Of course, the respondent is then

trapped because they have already agreed with you twice and they cannot say 'No'.

I see that the technique is being used here again. In her second reading explanation the minister said that there were 7476 road crashes at signalised intersections last year, and that is a worrying figure. There is an inbuilt assumption that we would have nowhere near that number of crashes if we had a red light camera at every intersection. People rarely run a red light at an intersection where a red light camera has been installed because of the disincentive in the form of a substantial fine. That is the disincentive for not running a red light.

If there were 7476 road crashes, those people would have received demerit points anyway—perhaps not for running a red light but for driving without due care or in a dangerous manner. It would surprise me if some of those infringements which occur at intersections with red light cameras were not unavoidable. You cannot always dictate when it is safe to cross an intersection. However, the red light camera will not discern whether you were trapped in the middle of the intersection when the lights changed—it will simply show the numberplate of a vehicle that passed through the intersection after the lights changed.

What happens then? We have to look a little further. We have to say, as has been pointed out, that we have a different standard for the speed camera than we have for the red light camera in that a speed infringement does attract demerit points. People are saying that the same situation should apply in respect of red light camera infringements. That attitude is premised on the assertion that it is a good idea to apply demerit points in respect of speed camera infringements because it is a deterrent. I point out that a fine of $186—and I have had one—is a pretty good deterrent. What we really need to do is ask: how many speed camera infringements were there last year? How much did they draw into the coffers of the government? With all those speed camera detections, how many accidents did occur? Then you start to see the strength of my argument that this is more about revenue raising than it is about saving lives.

It has been mentioned that there must be some form of deterrent to dissuade drivers from disobeying traffic signals. However, one cannot always avoid a situation where you are trapped in the middle of an intersection that is equipped with a red light camera. In her contribution, the Hon. Carolyn Pickles asked some very pertinent questions, as follows:

1. How many new red light cameras does the government intend to introduce?
2. At which signalised intersections are these cameras to be installed?
3. What will be the cost to the government of the installation of the new cameras?
4. What criteria has the government used to decide the most appropriate intersections at which the new cameras will be installed?

I will add another couple of questions because this proposal that we are considering today, given all the passionate arguments about the number of accidents—which, as we have pointed out would have been prosecuted anyhow—does not tell us how much revenue each of those new cameras will bring in. We do not have any assessment as to how many accidents will be avoided.

If one thinks about this for more than five minutes, one sees that there are advantages in having speed camera devices. I am not saying for one minute that we should take away the speed cameras, but why do we have to have double jeopardy, and why do we have to have a mandatory sentence? This is a classic case of mandatory sentencing legislation. The camera goes 'Click': automatically you are guilty. There is the reverse onus of proof. The camera says you are guilty and you then have to prove your innocence, which is not always easy. When you cannot prove it, you cannot say, 'Circumstances prevailed, so I ought not be fined that much.' The camera proves you were there, and you get the mandatory fine and the mandatory demerit points. Yesterday, during the second reading debate on this bill, the Hon. Di Laidlaw, responding by way of interjection, stated:

In my view it is the intersection of King William Street and North Terrace, and we would have to get the Adelaide City Council to agree to fund a red light camera [in that area]!

From time to time, I have had occasion to be at that crossing and I invite the minister to get in her car one day, drive down North Terrace and turn right into King William Street. The minister will need to wait for a break in the traffic; if her car is first in line to turn right, it will not be too bad, but the driver of the second car to turn right, even though it looks reasonably clear up ahead, will find that, once the lights become amber so that they can proceed, the other cars are coming so quickly that they cannot cross. The first car normally is stuck there when the light turns red. It is not a real problem. It is one of those situations that occur from time to time. The first car ducks around the corner but the driver of the second car cannot reverse: there is only one way to go and that is forward. If there is a speed camera there, as the honourable member suggests, drivers will have a mandatory fine together with mandatory demerit points.

That is one example, but there are many other examples. I would defy anybody who drives to say that, on at least one occasion when they have been driving, they have not been caught in that type of situation. Anyone who says that must have been driving where there was no traffic—perhaps in a supervised environment such as a driving school. The Labor Party has discussed this matter, I have put my point of view, and we are supporting the legislation. We will not move any amendments but I have taken the opportunity to raise issues that have been discussed with me from time to time. This seemed to be a reasonable opportunity to put on the record those concerns that have been expressed to me by my constituents. I accept that the legislation will pass. Both major parties and now the Democrats are supporting the legislation. I support the second reading of this bill.

The Hon. DIANA LAIDLAW: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

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

That Standing Orders be so far suspended as to enable the sitting of the Council to be extended beyond 6.30 p.m.

Motion carried.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank all members for their contributions to the debate on this bill and also for the discussions over some considerable time in respect of the content of the bill. I first advanced this measure as a proposal for all camera offences to be subject to demerit points. In 1992, as part of uniform demerit point measures, ministers of transport determined that there should be demerit points for all camera offences. That is the case in every state in respect of both red light cameras and speed cameras. There has been a lot of debate in this state about speed cameras generally, and some of those issues have been raised again tonight.

In terms of the debate about demerit points for speed camera offences, I indicate that the government was not and never has been interested in using speed camera offences for revenue raising purposes. We have always approached speed camera offences from the perspective of road safety. In my view, demerit points would reinforce that opinion. I accept the wisdom of my colleagues that it would not be appropriate to follow that course of action at this time because of the concerns about speed cameras in general in respect of the way in which they are utilised and deployed and about the whole issue of whether there should be signage, in what form and whether it should be before or after the camera. My colleagues, again in their wisdom, believe that those issues should be considered and resolved before this matter is advanced.

As we spoke about this issue through the forums of my party it was clear that there was a great deal of concern about people running red lights at intersections. It is a fearful experience to find somebody running a red light when you are in the firing line in terms of passing through the intersection legitimately using a green light or while completing a turning movement.

In terms of the Hon. Ron Roberts' contribution, I will get some information to address his concerns about speed cameras, but I reinforce my view that he does not have reason to be concerned about the application of red light cameras at the intersection of North Terrace and King William Street. In terms of that example, I assure the honourable member that as a vehicle enters the intersection the red light camera is not triggered while a turning movement is being finalised. The honourable member need not be concerned about that matter. That set of traffic lights is operated by the Adelaide City Council. It would be desirable for the city council to pay for the red light camera at that set of traffic lights. We will be speaking with the Adelaide City Council about the cost of installation and also about ongoing recurrent costs.

The Hon. Sandra Kanck asked questions about speeding and road safety in general, and I have some advice for The most recent research in the area entitled 'Travelling speed and the risk of crash involvement' by Kloden, McLean, Moore and Ponte for the federal Office of Road Safety in 1998 demonstrates that the risk of involvement in a casualty crash is twice as great at 65 km/h as it is at 60 km/h, and four times as great at 70 km/h. While this research was undertaken on urban roads, I am told that the researchers commented that it is reasonable to suggest that a similar trend would be experienced on rural roads and was of sufficient concern for them to recommend—and I think this is most sobering—and to justify the reduction or elimination of the enforcement tolerance that currently applies with regard to the enforcement of speed limits. So, those road safety people are arguing that, if you are driving at 60 km/h, that speed should be enforced with no tolerance up to 65 km/h or 68 km/h.her.

Other findings are also relevant. In 1982 in Victoria the speed limit was increased from 100 km/h to 110 km/h on high speed rural and outer metropolitan freeways, and a 25 per cent increase in the casualty crash rate was reported. Two years later the limit was reduced back to 100 km/h and the casualty rate returned close to its initial level. A second increase to 110 km/h on these roads in 1993 was again accompanied by a significant rise—by 20 per cent—in the casualty crash rate. I do not think I need to elaborate.

The Hon. Sandra Kanck interjecting:

The Hon. DIANA LAIDLAW: You do not want to have a higher speed than 100 km/h, either. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

SPORTS DRUG TESTING BILL

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

WATER RESOURCES (WATER ALLOCATIONS) AMENDMENT BILL

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

DEVELOPMENT (SIGNIFICANT TREES) AMENDMENT BILL

The House of Assembly agreed to the bill without any amendment.

ADJOURNMENT

At 6.40 p.m. the Council adjourned until Tuesday 2 May at 2.15 p.m.