LEGISLATIVE COUNCIL

Thursday 1 June 2000

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

STANDING ORDERS SUSPENSION

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

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15 p.m.

Motion carried.

CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT) AMENDMENT BILL

In Committee.

Clauses 1 to 3 passed.

New clause 3A.

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

After clause 3 insert new clause as follows:

Amendment of s.269B—Distribution of judicial functions between judge and jury

3A. Section 269B of the principal act is amended by inserting after subsection (3) the following subsection:

(4) The defendant's right to elect to have an investigation under this part conducted by a judge sitting alone is not subject to any statutory qualification.[1.]

[1.]The intention is to ensure that the right to elect for trial by judge alone is unfettered by the statutory qualifications on that right imposed by the Juries Act 1927 (thus preserving the principle enunciated in R v T [1999] SASC 429 on this point).

The new clause amends section 269B of the act. As noted in the second reading explanation, and as will be discussed more generally later in committee, one of the purposes of this bill is to remove doubt about the general applicability of provisions of the Juries Act to the management and decisions of juries when they perform their functions under this set of provisions. Section 269B confers an absolute right on the defendant to elect trial by judge alone. In that respect it confers a greater right than that conferred by section 7 of the Juries Act, which qualifies the right to elect a trial by judge alone.

Current law states that the right in section 269B prevails over the qualifications in the Juries Act. That was decided in the case of the Queen v T 1999 SASC 429. The judges have expressed the wish that the current state of the law continue. This amendment is designed to achieve that end.

New clause inserted.

Clauses 4 to 14 passed.

Clause 15.

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

Page 7, after line 9—Insert subsection as follows:

(2) The prosecution and the defence are entitled to access to the report.

This amendment was foreshadowed in the second reading reply. It responds to the concerns of the Law Society that, where the court orders the examination of the defendant on its own initiative, there is no guarantee that the prosecution and defence will have equal access to the results of that examination. This amendment is designed to provide that reassurance.

Amendment carried; clause as amended passed.

Clause 16.

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

Page 7, line 19—Leave out ', or are not,'.

This amendment arises from consultation with the judges. It deals with the appeals provisions and in particular what is proposed to be section 269Y(4)(c). The judges submitted that the power to appeal against a finding that the objective elements of the offence are not established should be removed. The reason for this is that the defence will never use it and the prosecution should not use it because it would be tantamount to an appeal against an acquittal at trial. I agree that the subsection should be amended to remove that as a key decision, and this amendment achieves that objective.

The Hon. R.R. ROBERTS: I understand the Attorney-General's point that he has spoken with the judges in respect of this matter and that 'the elements of the offence are not established' should be removed. He says that the reasons are that this defence will never be used and the prosecution should not use it, and he has explained why the prosecution should not use it. I assume that this is not an unusual provision in these matters. If the key elements have been established, there is good reason for his amendment. It also provides 'they are or are not' and it provides that we will never use it. Why would this provision appear and, if it will hardly ever be used, why do we need to take it out? The judges want it tidy. If someone is trying to defend themselves and does not want to go to the next stage and they say the key elements are not established and therefore some relief is needed, it seems to me that that is not a bad thing, if it does no work. One assumes it is a principle often used. Why do we have to remove it other than for some academic reason that the judges think it is tidier?

The Hon. K.T. GRIFFIN: We will follow through the provisions in clause 16. Proposed subsection 3 provides that an appeal lies by leave of the court of trial—that is, the court in which the trial is actually occurring—or the appropriate appellate court—the Court of Criminal Appeal—against the key decision by the court of trial. So, there is a general right of appeal. Then we need to define a key decision, remembering that, while these decisions may in some cases be made by judge sitting alone, they are most likely to be made by juries, and remembering that this applies to both and not just to one or the other. A key decision is a decision that the defendant was or was not mentally competent to commit the office charged against the defendant. I do not think anyone could have a quarrel with that. That deals with the issue of mental competence.

We must remember that this process is likely to be divided into two parts. First, there is a determination of mental competence to commit the offence, which goes to the issue of intent. For criminal offences generally, you have to establish criminal intent, so the issue of whether or not the person is mentally competent is a key decision. The other area where the court must make a decision, mostly by juries, is covered by paragraph (c) dealing with the objective elements of the offence. Paragraph (b) provides that another key decision is that the defendant is or is not mentally unfit to stand trial. Again, that issue stands apart from the objective elements of the offence.

Paragraph (c) covers a decision that the objective elements of an offence are or are not established against the defendant. If they are not established against the defendant, that is, if the jury comes to the conclusion that one or more of those objective elements are not present, then the person is entitled to an acquittal by the jury. A defendant will not appeal

against an acquittal and that is why, if the objective elements of an offence are not established, it is superfluous to grant a right of appeal.

On the other hand, a decision that the objective elements are established against the defendant is something which the defendant is most likely to consider appealing against, because that is establishing that the person is guilty of the objective elements. So, if you delete the words 'or are not,' particularly in the context of a jury trial, that would mean the prosecution would have a right to appeal against what is essentially a jury acquittal. We have never wanted to push the appeal processes to that limit. This tidies up the drafting. What the judges have raised is really a drafting rather than a substantive issue, although in some respects it could be substantive in respect of the prosecution getting a right to appeal against a determination by a jury that the objective elements are present. So, in my view, the amendment is quite appropriate, tidying up on the one hand but also dealing with this substantive issue.

The Hon. R.R. ROBERTS: I was looking at it from a different point of view. Once the decision has been made, as I understand it, you would then proceed to the trial proper. If the defendant appeals they would appeal on the basis that they are not present, so what you are proposing does the job. The defendant would appeal on the decision that the objective elements are there, and the defence would be that they are not there. So they do have the right to appeal.

The Hon. K.T. GRIFFIN: It would involve a misdirection to the jury or a blatant miscarriage of justice, but the honourable member must recall that the jury is required to make two decisions, and they can be made in either order. Mental competence on the one hand can be the first decision and the objective elements of the offence can be the second. It would generally depend on the discretion of the trial judge.

Amendment carried; clause as amended passed.

Clause 17 passed.

Clause 18.

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

Page 7, lines 24 to 30—Leave out this clause.

I oppose the clause. The purpose of the amendment in the bill was to remove doubt about the general applicability of provisions in the Juries Act to the management and decisions of juries when they perform their functions under this set of provisions. As members would be aware, while the role and function of a jury is similar, when it functions under this part it is significantly different in many respects from that in the ordinary criminal trial.

The technical problem was that the split parts of the trial under the mental impairment provisions did not fit within the notion of criminal inquest, which is central to the operation of the provisions of the Juries Act, so this amendment was designed to remove that problem. It is still the intention of the government to solve that problem.

However, parliamentary counsel has decided that, since there is a bill amending the Juries Act, which we will be considering immediately after this one (that is, the Juries (Separation) Amendment Bill), it is more appropriate that the amendments necessary to achieve that end should be done by way of amendment to that bill. I understand those amendments are on file so, on the presumption that that issue will be resolved in the consideration of the next bill, it follows that this amendment has become redundant and should not be pursued.

Clause negatived.

Long title.

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

Leave out '; and to make a related amendment to the Juries Act 1927'.

I move this amendment in view of the decision that we have just taken to delete clause 18.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

JURIES (SEPARATION) AMENDMENT BILL

In committee.

Clause 1.

The Hon. K.T. GRIFFIN: During the debate on the Criminal Law Consolidation (Mental Impairment) Amendment Bill, the Hon. Terry Roberts raised the following questions. How many people have been called up for jury duty in the past financial year? How many have presented reasons for not wanting to go on jury duty, and how many at the end of the day have been chosen? I indicated that I would see whether I could obtain the information, and give the answer during this debate.

There are three jury districts in South Australia: Adelaide, Port Augusta and Mount Gambier. In the last financial year the following are the figures for Adelaide: 3 366 persons were summoned for jury service; 1 532 were excused upon their own applications; 241 were deferred to serve in the next year; and 1 593 jurors actually served. For the last financial year the figures for Port Augusta are: 806 persons were summoned for jury service; 468 were excused upon their own applications; 13 were deferred to serve in the next year; and 325 jurors served.

In respect of Mount Gambier, the following are the figures for the last financial year: 377 persons were summoned for jury duty; 218 were excused upon their own applications; 14 were deferred to serve in the next year; and 145 jurors served. That makes a state total of 4 549 persons summoned; 2 218 excused; 268 deferred; and 2 063 served.

I hope that information will adequately answer the issues raised by the Hon. Terry Roberts in that other debate. In respect of the bill before us, we were able to gather some further information about jury separations. In the past 10 years there have been a total of 31 juries detained overnight: 28 were detained for one night only; two were detained for three nights; and one was detained for seven nights. Hopefully, that is information that members will factor into their considerations.

The Hon. R.R. ROBERTS: The opposition supports most of this bill, and I seek the indulgence of members of the committee, as I have taken over this matter. This refers to a very important part of the legal justice system, and we have handled a number of bills in respect of juries. I understand that this is designed to give some flexibility and cost efficiency without reducing the effectiveness of the jury system.

I note that the Attorney has amendments on file that talk about the number of jurors to be empanelled, and it can be above the required 12, which gives some balance to the proposition. Initially, I was concerned when we were talking about decisions being reduced because of the number of jurors. Undoubtedly, there is a need for some cost effectiveness within the system, and there is a genuine attempt to do that within these arrangements. Because of the balance by way of amendment that the Attorney has indicated, we will be supporting most of his amendments. We have an amend-

ment on file under the name of the Hon. Paul Holloway, which it will be my intention to move at the appropriate time.

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

Page 3, line 2—Leave out "(Separation)" and insert:

The amendment is of a drafting nature and is consequential upon other amendments being passed; it simply changes the title of the bill to reflect its contents more accurately. It will now deal not only with separation but with other issues.

Amendment carried; clause as amended passed.

Clause 2.

The Hon. IAN GILFILLAN: How many trials are aborted because there are fewer than 10 jurors left? It may be difficult to give specific data, but I would appreciate the committee having some approximation. Secondly, does the Attorney believe that there is a risk that by passing this bill we will encourage jurors to drop out too readily? There would be that temptation if the trial dragged on for too long and 14 jurors still remained, therefore allowing the trial to continue. It is a human reaction and it is not clear how it could be handled in legislation. It is important to address this issue, because it may be a consequence of having more than the present limit of 12.

What is the need for new section 6A(3)(b), which allows a juror balloted out of the final 12 to later rejoin the jury to decide a different issue? In practice, it is most unlikely that there would be a need for this provision and it could be very confusing. One could ask how many drop outs there are likely to be during the deliberation process. Could the Attorney advise also whether there is a need to establish a link between section 56 (continuing the trial with less than the full number of jurors) and the proposed changes to section 55 (allowing jurors to separate)? This point was raised by the Law Society, and the Attorney may well have had a chance to think it through. The society pointed out that under the original bill the jury was not depleted in number merely because a juror separated. The concept of separation does not envisage that, if one juror separates, he or she is no longer part of the jury. Therefore, as long as the juror is separated, the jury cannot deliberate. The Attorney may need to take those questions on notice and provide answers later in committee.

The Hon. K.T. GRIFFIN: I do not have figures in relation to how many trials were aborted because the number of jurors fell below the minium number of 10. I will endeavour to ascertain that information for the honourable member. It may be that we can obtain some information from the Director of Public Prosecutions in respect of how many have occurred over the past two or three years. I do not think there are any statistical analyses of that, but there might be some records or recollections which will enable us to deal appropriately with that so that we can provide information for the honourable member.

The next question was whether the proposed amendments will encourage jurors to opt out. It has to be remembered that all of the decisions by jurors who wish to stand down for ill-health or some other reason are still subject to the ultimate discretion being exercised by the trial judge to enable that to occur. There is a very wide discretion on behalf of the trial judge in respect of that matter. I would think that there would be no greater likelihood that a juror would want to opt out because these provisions are enacted against a situation than if the provisions had not been enacted. That is my guess about what may be the outcome.

The next question relates to section 6A(3)(b). That is really there to deal with the criminal law mental impairment situation where you might have a jury determining mental competence and also determining the objective elements of the offence. That is really what that is directed to. In relation to the interrelation between sections 56 and 55, I did not quite catch the issue which the honourable member was seeking to raise. Perhaps he could restate it and I will endeavour to give a response.

The Hon. IAN GILFILLAN: I understand the Law Society did raise the same issue, and I am not sure whether the Attorney has its notes. The question is: is there a need to provide a link between section 56 (that is, continuing a trial with fewer than the full number of jurors) and the proposed changes to section 55 allowing jurors to separate? To a certain extent I think it hinges on a fuller understanding of what the potential of separation means as far as continuing a trial with fewer than the full number or whether the jury can deliberate under certain circumstances. It seems as if it is not clearly sorted out.

The Hon. K.T. GRIFFIN: A number of issues were raised by the Law Society. Maybe it would be helpful if I dealt with all of the Law Society issues now and, hopefully, put it all into perspective. That will necessarily deal with the Law Society's alternative model upon which we might further reflect when we get to the Hon. Mr Robert's proposed amendment. The Law Society raises a number of issues. It points to the dangers of separation of jurors.

The Hon. A.J. Redford: Did the Law Society identify the author of these reports?

The Hon. K.T. GRIFFIN: I do not know. The Law Society generally, when it writes, does it under the signature of the president on behalf of the whole society or, in some instances, it refers to the Law Society's Criminal Law Committee. In this case, it was the Law Society's Criminal Law Committee. The Law Society suggests that contamination may actually or apparently result. However, as the Hon. Ian Gilfillan pointed out in the second reading debate, the danger of contamination exists at any time during the course of the trial.

Currently, jurors routinely separate prior to deliberations, and contamination has not been seen to be a significant concern. Jurors generally take their duties very seriously and obey the instructions of the court. The bill enables the court to impose conditions on separation which would address these dangers in any case.

It should also be remembered that the courts, as evidenced by the many judgments cited in the Law Society's response, have demonstrated that they will intervene where there is even a hint of impropriety or the appearance of impropriety so as to prevent a miscarriage of justice. There is every reason to suppose that the courts will continue to do so. Thus, if there is contamination of which the court becomes aware, it is likely that the court will intervene.

Furthermore, the separation of jurors has been in place in both New South Wales and Victoria for a number of years now, and I am not aware that there have been any significant problems of jury contamination in either jurisdiction. The Law Society also raises the issue of the distinction between the periods before and after the commencement of final deliberations. The Law Society considers that there is an important distinction between the periods before and after the commencement of final deliberations which must be preserved and emphasised.

While it is agreed that there is a difference, the difference is not as great as the Law Society implies. In any case, the court will have regard to this in assessing whether there are

proper reasons to permit separation. In the Chief Justice's view, there is no reason to think that, under the original draft, the separation of jurors during deliberations would not be regarded as the exception rather than the rule. The terms of new section 55(2) sufficiently indicate that.

The next point made by the Law Society relates to the strict starts taken by the courts against actual or apparent jury contamination. The Law Society states, and it is agreed, that the courts have taken a strict stance against actual or apparent jury contamination. There is no reason to suppose that they will not continue to do so. Thus, if the courts are given a discretion to permit juries to separate during deliberations, the approach taken to jury contamination by the courts to date will provide a significant safeguard against the very concerns raised by the Law Society.

The Law Society also indicates that an important question of principle is involved. The society quotes from a string of unrelated cases without any summarising text. It is assumed that the important question of principle involved is the sanctity of the jury and its verdict. However, as already stated, it is expected that the courts will continue to take a strict stance against anything which threatens the integrity of the jury. Furthermore, it should be remembered that the separation of juries has occurred, as I have already indicated, for many years in New South Wales and Victoria.

The Law Society raises the problem of what to do with the balance of the panel when one juror is separated. This question has been raised with the Chief Justice in developing the bill. His Honour originally indicated that his preference was that the entire jury be separated, rather than merely one juror. The bill in its current form reflects this. As a result of the Law Society letter, the Chief Justice reassessed this position and acknowledged that there may be occasions where it would be appropriate for a juror to separate from the other jurors for a short time, for example, to attend a funeral or sit an exam. In those circumstances, he acknowledges that it may make sense to keep the balance of the jury present.

Consideration has been given to an amendment to allow one member of the jury to separate. The government has also discussed the matter with Parliamentary Counsel. On reflection, the government has decided that such an amendment is not necessary. It would be possible in the examples cited by the Chief Justice for the jury to be allowed to separate and for a condition to be imposed as provided for in the bill in new section 55(3) so that all jurors, bar the one who needs to be absent, stay within the confines of the court precinct, for example. Therefore, a similar practical result will be achieved whether one juror is allowed to separate or the whole jury as allowed to separate on conditions.

The Law Society proposes an alternative model. Whilst I know that we are not yet debating that, it might be helpful if I were to put the government's position in relation to that, so that members can take that into consideration when considering that amendment. I have no doubt that we will again address that issue when we get to the amendment. The Chief Justice is of the view that the provision of the bill dealing with separation should be kept as simple as possible, and this is in response to the Law Society's suggested alternative model.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: It is in the amendment that is on file.

The Hon. A.J. Redford: That is the Labor Party amendment of the Law Society model?

The Hon. K.T. GRIFFIN: Yes. I interpose by saying that the Chief Justice has authorised me to use his letter in the debate, and at the appropriate time I will read that letter into *Hansard* for the purposes of the record. The Chief Justice is of the view that the provisions of the bill dealing with separation should be kept as simple as possible. He has indicated that he does not—and I repeat 'does not'—favour the Law Society model. The government also considers that the model is unacceptable for a number of reasons. First, in subclause (1) the society seeks to impose significant requirements on the court with respect to the orders and conditions it must make upon the separation of the jury, whether before or during deliberations.

There is no justification for the imposition of special requirements on the jury before deliberations. These are not currently required and there is nothing to suggest that this has not been working. Secondly, the Law Society proposes the test for separation during deliberations be 'special reasons'. The Chief Justice has indicated a preference that the term 'special reasons' not be used. His Honour suggests that experience has shown that the use of such terms in legislation can tend to generate relatively unproductive debate about what they mean—and I think he is right.

Thirdly, the Law Society model seeks to impose certain conditions that must be satisfied, beyond the proper reasons approach, before the court may permit a jury to separate during deliberations; and that is unnecessary. The court would take such factors into consideration in any event. The Chief Justice considers the criteria for the exercise of the discretion should be determined by the court in the usual way through the development of case law. In the Chief Justice's opinion, it would not be productive to attempt to state the criteria for the exercise of the discretion in the bill.

The Law Society's proposal serves only to complicate the procedure and to open up the possibility of appeals based on technical non-compliance, and that has happened, I am told, in Victoria in relation to the requirement that the jury re-swear the oath. While the right of a defendant to appeal a jury verdict based on a miscarriage of justice needs to be protected, it is not in the interests of justice to introduce new provisions which increase the chance of technical appeals.

Furthermore, the Law Society model introduces a number of new concepts which cause confusion. It would be undesirable to make the system so complicated that, in practice, it never happens. Further, the factors mentioned would be taken into account by an appellate court in determining whether the judge's discretion miscarried in any case. If it becomes clear that the courts are giving separation orders for inappropriate reasons, this issue can be revisited. However, on current and past practice, it is not anticipated that this will happen.

As to subsection (4) of the Law Society model, the Chief Justice advises that the matters referred to as relevant to the exercise of the discretion are matters that he would expect to be considered, in any event. He does not see any advantage in singling them out. He considers that it is preferable not to do so, although he does acknowledge that probably no harm would flow from doing so, as long as the drafter makes it clear that these matters are merely emphasised and are not the only matters to which the court should or may have regard.

Further, the Chief Justice sees no reason to require the court to consider submissions by the accused and by the prosecution. He cannot conceive that an order for separation would be made without doing that. He also considers that subparagraph (b) is expressed in terms that may cause problems. What if the issue is hardship to a person other than

the juror? For example, a juror might be willing not to attend a funeral but might take the view that the juror should be there to support a close family member. The approach adopted implies that an order for separation cannot be made unless it is made on the basis of undue hardship to a juror and, further, that that hardship outweighs the matter in paragraph (a).

While also acknowledging that the inclusion of the Law Society subclause (5) may do no harm, the Chief Justice does not favour such an inclusion. The existing draft already confers the power to impose conditions. The rest of this subclause contains a matter that he would expect to be dealt with, in any event.

I have dealt with that at some length to give honourable members a complete picture of the issue and to try to put it all into context. There has been quite significant consultation with a variety of people, including, as I say, the Chief Justice, and the Chief Justice is certainly not enamoured of the proposals made by the Law Society, as I have already indicated, and is comfortable with the bill as proposed to be amended by the amendments which I have on file.

The Hon. A.J. REDFORD: I will make a couple of comments in a general sense, particularly in relation to this separation of the jury. I have already made some comments about this in my contribution at the second reading stage. First, might I say that as I understand it the clause moved by the Hon. Paul Holloway is in fact a reflection of what the Law Society has suggested ought to be the case. The first point I make is that it is overly prescriptive. The courts are there, they are dealing with a case at a particular point in time and there are occasions where you might need to make special submissions and occasions where a case is attracting a particular level of publicity. On the other hand, and this I might say occurs in the bulk of cases, there are situations where there is little publicity attached to the conduct of a criminal case.

It seems to me that counsel from the Director of Public Prosecutions and defence counsel are properly able to bring the judge's attention to the relevant matters and then allow the judge to conduct the trial in the circumstances in which the judge finds it. I must say again, and I will go on record, that I am disappointed with the Law Society. The Law Society seems to have this attitude that, if it is going to consult or send material to members of parliament, it be done on a limited basis. Again, I have not seen its submission, but that is not atypical of the Law Society.

The Hon. T.G. Cameron: You are a member; you should go and tell them.

The Hon. A.J. REDFORD: In fact, I am now no longer a member of the Law Society. I would have thought the honourable member would have noticed that when he saw my register of interests.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: I am not prepared to be a member of a society that wants to participate in captured consultation and not liaise with all of us equally as members of parliament, and indeed even with some of us who up until very recently were members. I have made this criticism of the Law Society on a number of occasions, but on a number of occasions it has fallen on deaf ears. I make this general comment about the attitude of the submission, as explained by the Attorney-General, of the committee of the Law Society. Some of these rules that we have developed in relation to juries have been in existence for over 100 years.

Some of these rules were designed to deal with jurors when the pool that we selected them from, first, were male and, secondly, they had to be property owners, and the vast bulk of the population was excluded from jury service. They were also designed at a time when the mass media was far more limited, and when the general understanding of the way the world operated was perhaps less extensive throughout the community. If one selected at random a group of 12 people 100 years ago, one would have expected that a reasonable percentage of those people could not read or write. In the twenty-first century we now have a well educated community that is pretty well informed.

We all know as members of parliament when we deal with general members of the community that they are better informed than sometimes we give them credit for. I think it is time that we started treating jurors as normal, intelligent human beings. Yes, they need advice, they need directions from judges, they need to be told that they are to decide a case on the facts before the court and not what gets published in the media. My judgment is that, essentially, jurors will do that if they are properly directed. It leads to another example that recently occurred and achieved quite significant publicity, and that was in relation to the internet site where people's previous convictions are published on that site, and a judgment from Justice Hampel of the Victorian Supreme Court was that, because the potential of a jury having access to that internet site was real, in that particular case before him he decided to stay the prosecution at that time.

I think that decision really begs some attention from us as members of parliament in the law making process associated with juries, because studies continuously, and the studies are getting better, are telling us that jurors are sick and tired of being treated like idiots. In fact, jurors are well able—and I endorse the comments of Kevin Borick—to sift what is pertinent and relevant and probative information from that which is merely prejudicial in their own right, provided they are properly directed. I think we need to revisit issues as to whether or not previous convictions ought to be disclosed. As Kevin Borick said on the media, he thinks it is an over-reaction.

If a particular juror decides contrary to a direction of a judge that he will visit an internet site and he finds out that the person before the court has a previous offence, as he said, what is that juror going to do? He is one out of 12. Will he go along and say to the other 11 jurors, 'Hey fellow jurors, I breached the undertaking in the oath and the direction of the judge and I accessed the internet site and the fellow before us has a previous conviction'? Will he really take the chance that one of the other 11 jurors will not inform the court that the juror has breached the rules and therefore has tainted the trial process? I think it really is time that those who are associated with the criminal justice system started to understand that some of these rules developed 100 years ago are perhaps not as important as they are today in an educated society.

I cite a further example. In some cases, jurors do not even get a piece of paper and a pencil to write notes and do not have access to the transcript to see what has been said. In our daily lives as members of parliament we have access to all these things. If we were in business, if we were school teachers or if we were going about our daily occupations we would have access to these things, but as soon as you become a juror and are put into a jury room you become someone quite different.

If a jury goes out, having sat through a trial and listened to the evidence, and happens to separate during its deliber-

ations and is told by the judge not to be influenced by the media, I am confident that jurors will follow that direction and that they will be influenced more by the evidence than any prejudice that the media might show. I think that it is time that more people speak to jurors and ask them for their impressions, because they have conveyed to me that they are sick of being treated like idiots. The Law Society's thrust that we must have all these strict rules and legalese is consistent with the attitude of some members of the legal profession that jurors cannot be trusted, that they will not abide by their oath, and that they will be more likely to make decisions based on their own prejudices than the facts.

My comments have strayed wider than this clause, but I am sure that someone from the Law Society will read my contribution. I think this is an important debate that should take place, not just in the parliament but also within the legal profession. Indeed, it will be interesting to see what the judges say about this because, as I said and as I emphasise, some of these rules are over 100 years old when 40 to 50 per cent of the population was illiterate. We now have a highly educated and informed public, and I think it is time that we started to treat them accordingly.

Clause passed.

New clauses 2A to 2D.

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

Page 3, after line 5—Insert new clauses as follows:

2A. The long title of the principal act is amended by striking out 'inquests' and substituting 'trials'.

2B. Section 3 of the principal act is amended by striking out from subsection (1) the definitions of 'civil inquest' and 'criminal inquest' and substituting the following definitions:

'civic trial' means the trial of an action, or any issue arising in or in relation to an action, before a court exercising civil jurisdiction;

'criminal trial' means the trial of an indictable offence or of an issue arising in or in relation to the trial of an indictable offence before a court exercising criminal jurisdiction;

2C. Sections 5 and 6 of the principal act are repealed and the following sections are substituted:

Civil proceedings not to be tried before a jury

5. No civil trial is to be held before a jury.

Criminal trial to be by jury

6. (1) A criminal trial in the Supreme Court or the District Court is, subject to this Act, to be by jury.

(2) The jury is, subject to this act, to consist of 12 persons qualified and liable to serve as jurors.

Additional jurors

6A. (1) If the court thinks there are good reasons for doing so, the court may order that an additional juror, or two or three additional jurors, be empanelled for a criminal trial.

(2) If an additional juror or additional jurors have been empanelled and, when the jury is about to retire to consider its verdict, the jury consists of more than 12 jurors, a ballot will be held to exclude from the jury sufficient jurors to reduce the number of the jury to 12.

(3) If a juror or jurors are excluded from the jury under subsection (2), the court will either—

(a) discharge them from further service as jurors for the trial; or

(b) if a number of separate issues are to be decided separately by the jury—direct that they rejoin the jury when the issue in relation to which they have been excluded from the jury has been decided.

(4) If a jury has chosen one of its members to speak on behalf of the jury as a whole, that juror is not subject to exclusion by ballot under subsection (2).

2D Section 7 of the principal act is amended by striking out 'inquest' wherever occurring and substituting, in each case, 'trial'.

These amendments insert a number of new clauses into the bill. New clauses 2A and 2B provide for the replacement of the word 'inquest' with the word 'trial'. This amendment was suggested by parliamentary counsel and is purely of a drafting nature. It is intended to revise outdated terminology by substituting definitions that are substantially the same but in more modern terms. The majority of the remaining amendments are consequential on these amendments.

New clause 2B also expands the definition of 'criminal trial' to include the hearing of an issue arising in or in relation to the trial of an indictable offence before a court exercising criminal jurisdiction. Such an issue might be the trial of whether or not a defendant is mentally competent to stand trial for an indictable offence.

New clause 6A provides for the empanelment of additional jurors. The purpose of this amendment is to reduce the risk of aborting trials, particularly long criminal trials, where three or more jurors become unable to sit as jurors. A jury in a criminal trial currently consists of 12 persons. If owing to death, serious illness or some other matter a juror is unable to continue, the trial can still proceed provided the jury continues to consist of at least 10 jurors.

However, with particularly long trials there is always the possibility that more than two jurors will become unable to continue to sit. This has the potential to cause the trial to abort after considerable time and money has been expended. An aborted trial also increases the stress for all concerned. This amendment will allow the court to empanel up to three additional jurors. It is not envisaged, however, that this will occur very often. If at the conclusion of the trial more than 12 jurors remain, a ballot will be held to reduce the jury to 12. To prevent inconvenience, the foreman of the jury will be excluded from the ballot.

New clauses inserted.

Clause 3 passed.

New clause 3A.

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

Page 3, after line 9—Insert new clause as follows:

3A. Section 16 of the principal act is amended by striking out from subsection (1) 'inquest' and substituting 'trial'.

This amendment is consequential on the previous amendments relating to the replacement of the word 'inquest' with the word 'trial'.

New clause inserted.

Clause 4.

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

Page 3—

Line 10—Leave out '28' and insert '25'.

Line 11—Leave out '28' and insert '25'.

These amendments correct a drafting error. Where the bill refers to section 28 of the principal act, it should have referred to section 25.

Amendments carried; clause as amended passed.

New clauses 4A to 4E.

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

Page 3, after line 13—Insert new clauses as follows:

4A. Section 29 of the principal act is amended by striking out 'inquests' wherever occurring and substituting, in each case, 'trials'.

4B. Section 31 of the principal act is amended by striking out from subsection (2) 'inquest' and substituting 'trial'.

4C. Section 42 of the principal act is amended by striking out 'inquest' wherever occurring and substituting, in each case, 'trial'.

4D. Section 46 of the principal act is amended by striking out 'inquest' and substituting 'trial'.

4E. Section 47 of the principal act is amended by striking out 'inquest' and substituting 'trial'.

New clauses inserted.

Clause 5.

The Hon. R.R. ROBERTS: I move:

Page 3, lines 16 to 27—Leave out proposed section 55 and insert:

Separation of jury

55.(1) The court may, subject to this section, permit the jury to separate.

(2) If the jury has not retired to consider its verdict—

(a) the court's permission may be granted for any proper reason; and

(b) when the court grants its permission, the court—

(i) must direct the jurors that they are prohibited from discussing the case with anyone (except another juror) during the separation; and

(ii) may impose other conditions to be complied with by the jurors.

(3) If the jury has retired to consider its verdict—

(a) the court must, before granting its permission, have regard to—

(i) the risk of contamination of the jury's deliberative process that would arise from separation of the jury; and

(ii) the importance of the expeditious administration of justice and extent to which this would be prejudiced by permitting the separation of the jury; and

(iii) any submissions on the question made on behalf of the prosecution or the defence; and

(b) the court's permission may only be granted if the court is satisfied that the permission is necessary to avoid substantial hardship to the jurors or one or more of them; and

(c) if the court grants its permission, the court—

(i) must direct the jurors that they are prohibited from discussing the case with anyone (including another juror) during the separation; and

(ii) may impose other conditions to be complied with by the jurors.

It is important to know, in the light of the discussion and the outline given by the Attorney-General, the current status of this clause. Both amendments seek to do the same thing. The Attorney's proposition seeks to allow the separation of a jury. New section 55 provides that, if it thinks there are proper reasons, a court may permit a jury to separate. That is reflected in the Labor Party's proposition. New section 55(2) provides:

Such a permission may be granted even though the jury has retired to consider its verdict.

That is also in the proposition moved by the Labor Party. New section 55(3) provides:

When the court permits a jury to separate, it may impose conditions to be complied with by the jurors.

It cites an example of some of the things that may be considered. Some of those conditions are as follows:

(a) a condition might be imposed requiring the jurors to reassemble at a specified time and place;

That would seem axiomatic in the circumstances. Further:

(b) A condition might be imposed prohibiting jurors from discussing the case with anyone (except another juror) during the separation.

It provides that a condition might be imposed. When confronted with that condition, my colleague Mr Michael Atkinson wrote to the Law Society seeking opinions in respect of those matters, and he received such. I heard in conversation during consideration of this matter that some people have not seen that information. I make only one comment: the Hon. Mr Atkinson wrote to the society and received a reply. If other people have not been given that information, I am sorry for them that that has not occurred.

The Hon. T.G. Cameron: I have not received it.

The Hon. R.R. ROBERTS: It was in response to correspondence from the Labor Party and it answered that correspondence. There has been a fair amount of debate and the Attorney has explained the position of the Chief Justice. One of the things he said that the Chief Justice said was that these provisions ought to be as simple as possible. I do not think that is necessarily the case. I can understand that viewpoint coming from the learned judges because it gives the court the maximum flexibility. It also gives them the maximum protection from an appeal, which protects reputation.

As the learned Attorney-General pointed out in a contribution on another bill in these areas a few days ago, the judges are very concerned that their decisions not be appealed. That is exactly what can happen. The effect of the amendments proposed by Mr Michael Atkinson on behalf of the Labor Party is that it actually states that, whereas the proposal of the Attorney states that it 'may' do it. The honoured members of the legal fraternity believe that there are problems, and we have to remember that the present state of the law provides that there must be 12 people present. It is my understanding that, in the past, if you could not get a full jury, you had the very costly exercise on many occasions of having to go to a retrial. Everyone has come to a position of accommodation whereby that expensive exercise can be overcome by provisions allowing the jury to separate.

The other distinction I make is between the view of the Law Society and the view of the judges. The Law Society is looking at defending its clients and giving those people the best possible chance of a reasonable result. It says that the court must instruct the jurors not to associate with other people during the separation, but the amendment provides that the judge must direct that. So there is no confusion. The judge may not forget and, if he does err and does not instruct the jury along those lines and the jurors go out to the local footy club and engage in conversation, rightly that ought to be the decision.

The Chief Justice also said that there should be the maximum amount of flexibility. The community does not agree with that. There are numerous reports that indicate that judges have too much flexibility and are giving the wrong decisions all the time. People are saying that those who go around stealing garden gnomes should be hanged, but the judges are giving them only fines and things of that nature. That is not what people are looking for by way of maximum flexibility. They are looking for a clear instruction.

The Hon. T.G. Cameron: Justice.

The Hon. R.R. ROBERTS: That is exactly what they are looking for. The amendment as drafted after consultation with the Law Society incorporates all the aspects that the Chief Justice and the Attorney want, but it does provide that, when the jury has retired to consider its verdict, there must be precise instructions as to responsibilities. It also states at the end—and this was another criticism of the Chief Justice—that it needs flexibility. In both parts of the amendment the following is provided:

(c) if the court grants its permission, the court—

(i) . . .

(ii) may impose other conditions to be complied with by the jurors.

There is flexibility, but in the key issues that may abort a trial and cause a costly retrial, it is specific that the judge must—not if he thinks fit—give warnings about not talking to other people or not associating with people who may influence them and not accessing a web site where there is information. We have seen one example where that occurred. It is a real case and not a theory. The amendment deals with the key areas of concern that are likely to cause an appeal.

The Chief Justice, I note from the Attorney's contribution, said that that may increase the chances of a technical appeal. If we do not want any appeals, we can leave the system the way it is and there will be no separation. We are trying to get a balance involving the desire for the well held and well loved theory of trial by jury: we want to maintain that. I note in a contribution the other day the Hon. Mr Cameron indicated his preference for trial by jury, but I am sure that even he can see that there have been situations where, because of the requirement to keep the 12 jurors together in the past, there is a good argument for some adjustment. What the Attorney is doing makes sense but not our giving no actual direction as to the conditions or rules. The judges in each case must give specific instructions in these very important areas, whilst being allowed to add other conditions that they deem necessary. That would not do anything to reduce the quality of the system. It would reinforce the rights of the people who, in many cases, are on trial not for their life in South Australia but for very large penalties.

If we are to maintain the jury trial, there are good grounds for flexibility but there are also some very good grounds for specific instructions for the protection of the whole system, including the cost of the system, to be put in place so we do not have embarrassing situations with retrials, which, in today's court system, are very expensive. One can think of the Snowtown murders trial, where 11 or 12 people may be sitting for 12 months. If we strike a retrial because a fundamental instruction had not been given, it would be a financial disaster and the courts system would look like an absolute joke.

The Hon. IAN GILFILLAN: I indicate support for the amendment and also observe that the Law Society, in our experience, has not imposed its opinion on general matters unless there is a particular issue upon which it feels it is obliged to lobby. It responds to direct request and I have frequently asked specifically for the Law Society to give an opinion. I do not believe that it takes that as—

The Hon. T.G. Cameron: I asked for an opinion once and it gave it to Pat Conlon.

The Hon. IAN GILFILLAN: Whatever problem the Hon. Terry Cameron has had, I am not making a gratuitous analysis of the Law Society or its advice in general terms, but it is and feels obliged to respond only to direct application for an opinion. Sometimes that opinion has taken a long time to come; in fact, at times we have been frustrated with that, but they are not obliged to do it. If members want the Law Society's opinion on a matter, it is up to them to ask for it specifically.

The reason I support this amendment is that I cannot see any reason why the opposite should not be the argument to support putting it in. As the argument is presented, subclause (1) provides that the court may, subject to this section, permit the jury to separate. There is no argument about that. If the jury has not retired to consider its verdict the court's permission may be granted for any proper reason. Is there anything wrong with that? When the court grants its permission, the court must direct the jurors that they are prohibited from discussing the case with anyone, except another juror, during the separation. Does it make any sense that the court must not direct the jurors that they are prohibited? The second point is that the court may impose other conditions to be complied with by the jurors. Are we opposed to that? Are we saying it must not impose other conditions?

The amendment further provides that, if the jury has retired to consider its verdict, the court must, before granting its permission, have regard to the risk of contamination of the jury's deliberative process that would arise from the separation of the jury. Are we to expect courts not to have regard for the risk of contamination? Are we to leave this out because we expect them not to take into consideration the risk of contamination? Secondly, the court should have regard to the importance of the expeditious administration of justice and the extent to which this would be prejudiced by permitting the separation of the jury. Are we to imply that it is not to consider that?

The Hon. K.T. Griffin: No.

The Hon. IAN GILFILLAN: If that is the case, what is wrong with having this facilitating amendment in the act? Thirdly, the court must have regard to any submissions on the question made on behalf of the prosecution or the defence. Is it not to take those into consideration? Is it to ignore them?

The Hon. T.G. Cameron interjecting:

The Hon. IAN GILFILLAN: Rather than muttered interjections from those who oppose this amendment, I would like to hear some lucid, logical reasons why the judges should not give these instructions. It goes on through the rest of the amendment, which provides that the court's permission may be granted only if the court is satisfied that the permission is necessary to avoid substantial hardship to the jurors or one or more of them. Is that condition to be ignored, or is it reasonable for it to be considered? If it is, why should it not be in the act so there is a clear discretion for the presiding judge? It also provides that, if the court grants its permission, the court must direct the jurors that they are prohibited from discussing the case with anyone, including another juror, during the separation. Should it not do that? Should it be left to chance? No; so why not have it as an amendment to the act? Finally, the amendment provides that the court may impose other conditions to be complied with by the jurors. That is an option; the court does not have to do it but it is there as an option.

The Hon. A.J. REDFORD: I want to make one comment in response to the Hon. Ian Gilfillan's contribution. In a sense, the way the court procedures are undertaken have essentially been a matter for the courts in so many areas. For instance, there is no statutory requirement that the prosecution goes first. That decision is made and controlled by the courts. The process of having examination in chief and cross examination again is a process entirely determined by the courts. Parliament has traditionally left a whole range of procedural issues to the courts.

If you believe what the Hon. Ron Roberts says, suddenly we are saying that the courts cannot be trusted to come up with some sensible rules and regimes in an area where they are equipped to make those rules and where they are far more qualified to make those rules on a case by case basis, dependent upon the matters that are before them. If one looks at—

The Hon. R.R. Roberts: If we have not instructed them before, why have there been successful appeals because the judges have instructed them incorrectly? It happens all the time.

The Hon. A.J. REDFORD: The honourable member interjects too quickly and too often, although from a political point of view it is an advantage, because every time he does he shows his complete ignorance of how things operate. If the honourable member wants to talk to any lawyer he will find that, the more prescriptive you get in defining processes within the courts, the more likely you are to have appeals and difficulties that on occasions the courts have to perform

mental gymnastics to overcome. The reality is that you get far fewer appeals where you allow the courts to develop their own rules than you do when in this sort of environment parliament starts imposing rules from time to time. I will give the honourable member an example. Clause 55(3)(b)—

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: He does not have to answer it, and if it is too hard he will not. Clause 55(3)(b) provides that, if a jury has retired to consider its verdict, the court's permission may be granted only if the court is satisfied that the permission is necessary to avoid substantial hardship to the jurors or one or more of them. What is meant by 'substantial hardship'? If one of the juror's close friends or relatives has died and they must attend a funeral or make arrangements, is that a substantial hardship? Or, if a juror has a sick child, is that a substantial hardship? I would be most interested to know, given that the honourable member wants to be prescriptive of how the courts are to deal with this, how he would give the courts some hint about what is meant by the term 'substantial hardship'. If he and other members of the Labor Party want to be so helpful to the courts and so prescriptive, why not come out and say what is meant by the term 'substantial hardship'?

The reality is that you will still leave some discretionary decisions to the court. Why not leave a broad discretion to the court? Ultimately, if the process they adopt is one that causes unfairness to an accused person, that will ultimately be dealt with by an appellate court, whether it be the Court of Criminal Appeal or the High Court. One might have said that that was a risk a few years ago, but over the past decade the High Court has rarely failed to intervene where it sees cases of prejudice in the way a criminal trial is conducted. So, why not let the courts make the rules, instead of us?

The Hon. K.T. GRIFFIN: I oppose the amendment. I do not agree with the Hon. Ron Roberts and I do not agree with the Law Society. There are many occasions on which I do not agree with the Law Society, and there are occasions when I do. I always ensure that any bill I introduce goes to the Law Society for its consideration, but on this one I think it is being too pedantic and too hooked on technicalities. I prefer the approaches both in the bill and by the Chief Justice. The Hon. Angus Redford has dealt with issues which are raised by the drafting, particularly the issue of substantial hardship, how that is to be determined by the court and whether that might ultimately be the subject of challenge on an appeal by a defendant who may have been convicted but who wants to take every technical point with a view to having either the verdict thrown out and an acquittal substituted in its place or, more likely, a retrial, where the prospect of an acquittal might still be alive.

I did say earlier that I would read the Chief Justice's letter into *Hansard*. It is important that I do that, even though I have covered most of what he had to say in my earlier comments. The letter is dated 30 May, addressed to me as Attorney-General, and reads:

> I refer to your facsimile of 25 May 2000.
>
> I have no objection to this letter being shown to the Law Society, or to any other interested person.
>
> I agree that the provisions of the bill should be kept as simple as possible.
>
> Criteria for the exercise of the discretion should be determined by the court in the usual way, through the development of case law. It will not be productive, in my opinion, to attempt to state the criteria for the exercise of the discretion in the bill.
>
> Terms such as 'special reasons' and 'exceptional circumstances' should be avoided. Experience has shown that the use of these terms in legislation tends to generate relatively unproductive debate about what they mean.
>
> I have thought further about the question of one or more jurors being permitted to leave the remaining jurors temporarily. The difficulty with this is that, to my mind, the remaining jurors should then suspend deliberations on the case. Otherwise there is a risk of the jury deciding some important issue in the absence of the relevant juror or jurors. That being so, there seems little point in keeping the balance of the jury together, if they are to be told, as I would expect, that they should cease their deliberations until the departing jurors return.
>
> But I realise, on reflection, that there might be a case in which the issue is that of permitting a juror to separate from the other jurors for a short time, for example, to attend a funeral or to sit an exam. In those circumstances it might make sense to keep the balance of the jury present.
>
> I consider that it is not profitable to try to cater for all circumstances that might arise in the legislation. It will be best to deal with the issue of one or more jurors being permitted to separate, by providing for that under the general power to permit the jury to separate. In other words, proposed section 55(1) should make it clear that what the court can do is permit the jury as a whole to separate, or permit certain members of the jury to separate. I would favour leaving it at that, with everything else to be dealt with by the trial judge in light of the particular circumstances at the time.
>
> The precautions appropriate to the circumstances of the particular case can be dealt with by directions at the particular time. There is a risk that mistakes will be made, but I think that there is a greater risk in trying to cover all this in the legislation. In other places, I understand, the matter has been dealt with by a broad discretion.
>
> My view is that it is not necessary for jurors to be accompanied during the period of separation, but I see no reason why the proposed power to impose conditions would not cover a condition that the juror be accompanied by a sheriff's officer during the period of the separation. Whether such a condition was imposed would depend upon the circumstances.
>
> I do not favour the Law Society's model. Juries routinely separate during the course of a trial, and are always told early in the piece that they should not discuss the case with anyone, other than another juror, during the separation. There is simply no need to put that requirement in the legislation, and doing that in the terms proposed might simply give rise to technical arguments based on it.
>
> I do not favour the reference to 'special reasons' in subsection (3). As to subsection (4), the matters referred to as relevant to the exercise of the discretion are matters that I would expect to be considered in any event. I do not see any advantage in singling them out. It is preferable not to do so, although probably no harm would flow from doing so as long as the drafter makes it clear that these matters are merely emphasised, and are not the only matters to which the court should or may have regard.
>
> I see no need at all to require the court to consider submissions by the accused and by the prosecution. I cannot conceive that an order for separation would be made without doing that. Subparagraph (b) is expressed in terms that may cause problems. What if the issue is hardship to a person other than the juror? For example, a juror might be willing not to attend a funeral, but might take the view that the juror should be there to support a close family member.
>
> The approach adopted implies that an order for separation cannot be made unless it is made on the basis of undue hardship to a juror and, further, that hardship outweighs the matter in subparagraph (a).
>
> I do not favour subclause (5). The existing draft already confers the power to impose conditions. The rest of this subclause contains a matter that I would expect to be dealt with in any event. However, once again, I suppose that no harm would result from including this provision.
>
> In my view, there is no reason to think that, under the original draft, the separation of jurors during deliberations would not be regarded as the exception rather than the rule. The terms of proposed section 55(2) sufficiently indicate that.

The Hon. T.G. CAMERON: I have not had the advantage of reading the Law Society's opinion, nor has it made me aware of it. However, I understand that it was in response to a letter from Michael Atkinson, the shadow attorney-general. I have not had any discussions with him on the later part of his amendments. Before I respond, I have a question for the Attorney in relation to the difference between the Labor Party's amendments to section 55 and his original bill.

If the Labor Party's amendment was supported, does that in any way restrict the judge as to what he can take into consideration? Once you become prescriptive, does it in any way restrict the judge or can he take any other matter into consideration as well?

The Hon. K.T. GRIFFIN: I would expect that it would take into account other factors than those specifically referred to. The difficulty with the opposition amendment is that it begins to be proscriptive, and that opens the way for technical challenge. We deal with the issue of hardship, and I have referred to that from the Chief Justice's letter as well. Proposed subsection (3)(b) provides, in the event that the jury has retired to consider its verdict:

> (b) the court's permission may only be granted if the court is satisfied that the permission is necessary to avoid substantial hardship to the jurors or one or more of them;

What immediately comes to mind is: what is substantial hardship? Is there to be an inquiry by the judge into the basis upon which the juror asserts that there is substantial hardship? Is it then open to allow the accused on an appeal to argue that the judge took into account the wrong matters and gave undue weight to the matters that were raised by the juror, and that the hardship might have been hardship but it was not substantial hardship?

As the Chief Justice says, there might be a funeral. The juror might say, 'I don't really need to go for myself, but I really feel that I need to be there to support my mother or my brother, because they are taking this particularly hard.' The bill as drafted does not seem to allow that sort of hardship to be taken into consideration.

It is always possible, of course, to argue, as the Hon. Terry Cameron has indicated, that once the statute in fairly tightly drafted terms sets out what a court must have regard to, it immediately raises the question: can it have regard to other things and, if it does, in those circumstances can that be a proper exercise of the court's discretion? The beauty of the provision in the bill is that in new section 55 the court has to consider only whether or not there are proper reasons to do so.

The Hon. R.R. Roberts: What is a proper reason?

The Hon. K.T. GRIFFIN: I will come to that in a minute. And the court may impose conditions. There is no one situation the same as any other: there is no one trial.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Well, that's fine but don't come in here and start to argue the law and order debate about judges' flexibility and whether they should impose tougher penalties. With respect, that has nothing to do with this issue. This is about the exercise of discretion in the conduct of a case: it is not about sentencing. It covers, in the course of the conduct of a case—it may be a case that will go for three months and the jury is empanelled for three months—the sorts of issues that can arise which might affect the private lives of a juror. All the government is saying—and the Chief Justice agrees—is that in those sort of circumstances it is important to allow the court a wide discretion and maximum flexibility. In those circumstances, it seems to me perfectly reasonable to proceed with what is in the bill and not with what is in the opposition amendments.

The Hon. R.R. ROBERTS: There are two things to which I need to respond. The Hon. Angus Redford talks about other people's ignorance. Most of the time he is like a yoyo as he comes in and out the chamber. He said he wanted maximum flexibility and then he suggested to me that I ought to prescribe what 'substantial' is. He really does not know whether he is arguing for maximum flexibility or maximum prescription. I do not know whether he and the Attorney-General are suggesting to me that the judges and the court system do not deal with substantial hardship or substantial anything else. It is a principle, and it is part of the law; it is used every day.

This amendment does not reduce the flexibility of the judge to do a whole range of things. What it does say is that there are minimum standards which must be prescribed and adhered to, and they are there for good and cogent reasons. The judge has a great deal of flexibility where it says 'any other reasons'. So, rather than restrict a judge's flexibility, it gives him or her exactly the same flexibility but it ensures that the minimum standards are met and the maximum standards are reasonably open-ended. The argument that this amendment reduces the flexibility is false.

The Hon. K.T. GRIFFIN: With respect, that is just not correct. The honourable member misses the point. The point is that it is not about saying that the judge has to be satisfied that there is substantial hardship. It is a question of 'what does that mean?'. I know the honourable member said, 'Look, there has been a discussion about that in the law and the courts.' The same argument applies to that, in some respects, as applies to his interjection about what is proper reason. There is more law about what are proper reasons than what might be substantial hardship.

My point about being prescriptive is that it immediately opens up questions about what 'substantial hardship' means in the circumstances in which the decision has been made about that particular juror in that particular trial at that particular time in the course of that trial. It is those sorts of things which, once you put them into a statute, open the way for appeals on technical grounds to the High Court of Australia. At present in most cases they would not get there but they would get to the court of criminal appeal. In my view, there is no reason for that.

The Hon. T.G. CAMERON: I have listened carefully to the arguments outlined in relation to this bill. At the end of the day, despite the fact that the Hon. Ron Roberts had me there at one stage, I do have to take note of what the Chief Justice is saying. I have listened to what the Attorney-General has said as well as the contribution made by the Hon. Angus Redford and, in the absence of a persuasive legal argument to the contrary, I am persuaded that the amendment moved by the Australian Labor Party would be too prescriptive and may be perceived as being overly bureaucratic. It could be inflexible. In the absence of an argument to the contrary I am, on balance, persuaded that the amendment moved by the Australian Labor Party may lead to further technical appeals at some later date.

If one has a look at the difference between what the government is proposing and the amendments put forward, one sees that it is a little bit of a case of knit-picking. However, I do not adopt the view that our judges are dills. They are usually highly educated people, certainly far more than I, with long experience in their profession, which is the Law. I am not sure that we send the judiciary a very good message if we say to them, 'You do not possess enough common sense, education or experience to consider for yourself what conditions you may impose.' The bill sets out a couple of examples.

I do not accept the argument put forward by the Hon. Ian Gilfillan that, just because the judges may impose these conditions, or just because the conditions that are being put forward in the amendment appear to be okay, we must

include them so that the judges will take note of them. To me, that implies that we do not trust the judiciary to sort out matters which, at the end of the day, have a lot more to do with the administration than the procedural processing of a case and technical or high points of law.

There is just one final point. This is not a matter of huge consequence and, if it can be demonstrated down the track that the provision proposed by the Attorney-General is not working, that the judges are stuffing it up so that we do need to be overly prescriptive, we can amend the legislation at a later date. I will support the government's bill.

Amendment negatived; clause passed.

New clauses 5A to 5G.

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

Page 3, after line 27—Insert new clauses as follows:

Amendment of s. 56—Continuation of trial with less than full number of jurors

5A. Section 56 of the principal Act is amended by striking out 'inquest' wherever occurring and substituting, in each case, 'trial'.

Amendment of s. 59—Fresh proceedings may be taken

5B. Section 59 of the principal Act is amended by striking out from subsection (1) 'inquest' and substituting 'trial'.

Amendment of s. 60—Court may order another trial

5C. Section 60 of the principal Act is amended by striking out 'inquest' wherever occurring and substituting, in each case, 'trial'.

Amendment of s. 60A—Jury may consist of men or women only

5D. Section 60A of the principal Act is amended by striking out from subsection (2) 'inquest' and substituting 'trial'.

Substitution of s. 61

5E. Section 61 of the principal Act is repealed and the following section is substituted:

Challenge

61. (1) In all criminal trials by jury, each party (including the prosecution) may challenge three jurors peremptorily.

(2) The number of peremptory challenges is not increased by an order that additional jurors be empanelled.

Amendment of s. 63—Peremptory challenges in excess of permitted number

5F. Section 63 of the principal Act is amended by striking out 'inquest' and substituting 'trial'.

Amendment of s. 69—Power to summon further jurors

5G. Section 69 of the principal Act is amended by striking out 'inquest' wherever occurring and substituting, in each case, 'trial'.

New clauses inserted.

Clause 6 passed.

New clauses 6A to 6C.

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

Page 3, after line 31—Insert new clauses as follows:

Amendment of s.88—View during trial

6A. Section 88 of the principal act is amended by striking out 'inquest' and substituting 'trial'.

Amendment of Sched.5—Summons to juror

6B. Schedule 5 of the principal act is amended—

(a) by striking out 'an inquest' and substituting 'a trial';

(b) by striking out 'the inquest' and substituting 'the trial'.

Amendment of Sched.6—Oath of Affirmation

6C. Schedule 6 of the principal act is amended by striking out 'inquest' and substituting 'trial'.

These new clauses are consequential on previous amendments relating to the replacement of the word 'inquest' with the word 'trial'.

New clauses inserted.

Title passed.

Bill read a third time and passed.

[Sitting suspended from 12.53 to 2.15 p.m.]

TAB AND LOTTERIES COMMISSION

A petition signed by 32 residents of South Australia concerning the Totalizator Agency Board and the Lotteries Commission of South Australia, praying that the Council will ensure that the Totalizator Agency Board and the Lotteries Commission of South Australia remain government owned, was presented by the Hon. Caroline Schaefer.

Petition received.

POKER MACHINES

A petition signed by 92 residents of South Australia concerning the proposed introduction of poker machines at the Mount Remarkable Hotel, praying that the Council will—

1. Support legislation that will prohibit any more gaming machine licences being granted.

2. Support the passage of legislation that will give local communities, through their local councils, the power to restrict the operation and availability of poker machines at venues, was presented by the Hon. N. Xenophon.

Petition received.

NARACOORTE CAVES CONSERVATION PARK

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement given today by the Hon. Iain Evans regarding the Naracoorte Caves Conservation Park.

Leave granted.

WHYALLA AIRLINES

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement on the Whyalla aircraft crash made this day by the Deputy Premier.

Leave granted.

QUESTION TIME

ELECTRICITY SUPPLY

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question about electricity prices.

Leave granted.

The Hon. P. HOLLOWAY: It was reported in the *Advertiser* of 27 May that the government has approved an electricity price rise of more than 12 per cent for next year. This will cost average South Australians $77 extra for their annual power bill. In contrast, it was reported in this morning's *Age* that the Regulator General in that state has recommended that power prices fall by between 15 and 20 per cent. When the Premier announced that he planned to privatise our electricity assets (*Hansard* of 17 February 1998), he said:

An independent regulator will be appointed to ensure that power is delivered at the best possible cost to the consumer—and I would take this opportunity to say that our research indicates that the fierce competition between private suppliers always results in prices dropping. . .

My question to the Treasurer is: what has happened to the Premier's promise of lower power prices after privatisation, and precisely how much of the price rise is due to the goods and services tax?

The Hon. R.I. LUCAS (Treasurer): I am disappointed at the intellectual dishonesty of the shadow minister for finance in this sham of a question that he has just doled out as the lead question in question time. If that is the best that the honourable member can dish up in terms of coming back to haunt us, it is as scary as Casper the ghost. The honourable member has left himself wide open to criticism regarding the operations of the Regulator General—and I will refer to that in a moment—but let me respond to the first part of his question.

The government has not had a proposal come to it relating to electricity prices. Indeed, under the new arrangements, the government will not have to approve electricity prices on an annual basis. It is untrue and dishonest of the deputy leader (the shadow minister for finance) to say that the government has just given approval in the same way as it has approved hundreds of other fee and charge increases relating to electricity. The deputy leader knows that that is not true—it has been explained to him before—and it is dishonest of him to mislead the chamber by suggesting that the government has just considered and approved a position in relation to power pricing.

As the honourable member knows, the government has mapped out an electricity pricing order, which he was able to discuss, debate and comment on (both for or against) in this chamber in terms of prices leading to full contestability for retail customers in 2003. That commitment from the government is clear and explicit: for households it can increase no higher than the CPI with the obvious exception of the GST implications of the commonwealth government. In his dishonest question—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —the honourable member knew that the overwhelming proportion of the 12 per cent or so increase is as a result of the GST. Yet, in the framing of his question he did not refer to the GST, except for one slippery little bit at the end where he asked what component was the GST. He knows the answer to that: it is on the web site and it has been publicised. The overwhelming proportion—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I didn't say that.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, now you're changing the story.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Hold on! First, you accuse me of making a statement; then, you say it wasn't me but some other minister.

The Hon. P. Holloway interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Well, take that criticism up with the other representative of the government if you wish, but do not accuse me of saying that you should not believe the ACCC. The honourable member's story changes with every interjection in respect of his question, which was obviously either prepared or written for him. The government's commitment has been that by legislation the increases in electricity prices for retail and household customers can be no higher than the CPI. The component of the total charge, which will be an issue ultimately for AGL in terms of being the major retailer in South Australia, for household customers will comprise of the order of 2.8 per cent (the CPI), and the rest of the increase, which will be just under 10 per cent (something like 9.3 per cent or 9.4 per cent), is as a result of the GST impact. The overwhelming percentage of the 12 per cent increase in the price of electricity is as a result of the introduction of the GST.

The honourable member, in an intellectually dishonest way, tried to say that this was a negation of the commitment the Premier had given and, through his explanation, sought to dishonestly twist the statement of the Premier on the 12 per cent increase in electricity prices. In an intellectually dishonest way he tried to indicate that the Premier had not maintained his commitment or his word. Frankly, I am disappointed that the deputy leader would again stoop to such levels in the framing of his questions in question time.

In the second part of the honourable member's question the deputy leader leaves himself and his party wide open as he is now saying, 'Look across the road into Victoria where the regulator there has reduced prices by 20 per cent.' He has again in an intellectually dishonest way misinterpreted the front page of the *Age* because the reduction—

Members interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Roberts should not indicate support for the Hon. Mr Holloway too much because he too will be exposed in terms of his ignorance of what has been announced in Victoria. The announcement in Victoria does not relate to a delivered price to retail customers but it is the distribution component of the final charge. It is quite a different matter to the final price being delivered to customers. We have a situation where the Deputy Leader of the Opposition tries to compare a delivered cost of tariff to a retail household customer in South Australia with a component of a delivered cost charge in Victoria—the distribution component—which does not take into account the energy component, the retail margin or all the other parts of the delivered price. That is the first part of the dishonesty of the question.

The second bit is that the Deputy Leader of the Opposition is a member of a party led my Mr Rann and Mr Foley, who have been saying for two years that we have no risks in terms of the earnings of the distribution business of ETSA Utilities in South Australia.

The Hon. L.H. Davis: What happened in New South Wales?

The Hon. R.I. LUCAS: Hold on! We have been earning $300 million a year from these businesses, and the risks might be in generation and retail, but there are no risks at all in terms of the dividend flow to the budget from distribution. We have been warning all along about something called 'regulatory risk'. In other words, when you establish an independent regulator, as we have done, modelled on the Victorian model, and when you give that person the power to reduce the monopoly charges they can apply to the marketplace, for the first time ever you leave yourself in a position where the income that those businesses earn and the flow of that money into the budget can be significantly reduced.

What do we have in Victoria now? According to the front page of the *Age* and the deputy leader who are now saying, 'Look at what is happening in Victoria', we have a 20 per cent reduction in the revenue flowing into those distributors in Victoria. That is exactly the same situation that potentially faces the operators of our distribution business here in South Australia when they come to rate reset. This is the party, this is the man, this is the deputy leader who are saying to us, 'We are getting $300 million; it is not at risk; you will never lose that money.' The leader and deputy leader of the Democrats say the same thing; they say, 'You have a guaranteed income;

there is no risk in these businesses. You will continue to get this sort of money flowing into your budget.' We have tried to explain to them, but they are not prepared to accept that there is regulatory risk and that, when you have an independent regulator, it can do exactly what is on the front page of the *Age*.

And, lo and behold, leading with his glass jaw, the deputy leader comes in thinking, 'I've got a terrific question here; look at Victoria. The prices will go down by 20 per cent. This is wonderful in Victoria, terrible in South Australia.' But he fails to remember what he has been saying for the past two years. That is the problem with the deputy leader, Mr Rann and Mr Foley. They cannot remember what they have said over the past two years. They see a headline and want to come in here and ask a question—

The Hon. P. Holloway interjecting:

The PRESIDENT: Order, the Hon. Paul Holloway!

The Hon. R.I. LUCAS: —and they blow out of the water their whole argument for the past two years. In that one question today the deputy leader has blown right out of the water the whole argument of his leader and shadow treasurer about the value of the privatisation of ETSA. We on this side will remain forever indebted regarding the question that the deputy leader has trotted out today, and we would welcome follow-up questions along those lines.

ELECTRICITY, PRIVATISATION

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question about ETSA dividends.

Leave granted.

The Hon. P. HOLLOWAY: In last year's budget the Treasurer estimated that the total expected dividends from electricity generation entities—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Excuse me; would you mind being quiet for a moment? In last year's budget the Treasurer estimated that the total expected dividends from electricity generation entities would be just $5.2 million. So, in last year's budget we expected just $5.2 million. In this year's budget we are told that the actual distribution for these entities for 1999-2000 will be $74.5 million. Other dividends paid to the government this year are estimated to be $53.7 million from ElectraNet, which includes tax equivalents, and $42.2 million from ETSA Utilities prior to its lease on 12 December last. This adds up to a total distribution from ETSA Utilities for 1999-2000 of $170.4 million. Adjusting for a full year contribution from ETSA Utilities, this total distribution would have been in excess of $215 million. On page 210 of the budget statement in relation to the ETSA disposal it is stated:

> The estimated interest saving for 2000-01 is $210 million. The estimated loss of dividends and tax equivalents from the entities sold in the same year is $101 million. The net benefit from the disposal process is $109 million.

My questions are:

1. How does the Treasurer justify the calculated loss of dividends from the ETSA disposal of only $101 million, given that actual dividends in 1999-2000 after the sale of a large portion of them are over $170 million, and over $215 million if adjusted for the full year operation?

2. Will the Treasurer also confirm that almost $1 billion of state debt was assigned to ETSA entities and internally funded within ETSA at a cost of approximately $70 million per year prior to the dividend payments to the government?

The Hon. R.I. LUCAS (Treasurer): The sad reality for the deputy leader is that he has his two questions sorted out and, after his second question is demolished by the answer to the first, he still has to trot out the second question. That is the point that I have just made. This whole argument from the deputy leader, Mike Rann and Kevin Foley has been just blown out of the water by the deputy leader's first question. He has stood here in the chamber and argued that we need to look at what is occurring in Victoria—a 20 per cent reduction in the profits of the distribution company, or some $900 million (if it is followed through) spread across five companies.

If you averaged that, it would be about $200 million each. There would not be perfectly even distribution, because some are bigger than others, but on average it would mean about $200 million a year being written off the books by the decision of an independent regulator, which is exactly what this government has established here in South Australia. What we have is a deputy leader who blows his, his leader's and the shadow attorney's whole argument about electricity out of the water.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: I am intrigued: the deputy leader spends 10 minutes interjecting and when the Hon. Angus Redford said one word he took great offence and said, 'Would you please be quiet.' There seems to be one rule for the deputy leader and one for the Hon. Mr Redford. I am quite relaxed about the deputy leader—

Members interjecting:

The PRESIDENT: Order! Let us start with a clean slate.

The Hon. R.I. LUCAS: I am quite relaxed, but I want to say to the deputy leader that his own first question has destroyed the credibility of his second question and, indeed, their whole argument as a party for the past two years. Frankly, any question from now on from Mr Rann, Mr Foley or the Hon. Mr Holloway in relation to the issue of the benefits to the government from privatisation have been blown out of the water and can be laughed away by all independent commentators.

The Hon. P. Holloway: You won't answer the question.

The Hon. R.I. LUCAS: We have answered the question. I spent 10 minutes answering the first question. It has frankly just blown away his whole argument about the benefit. What the honourable member acknowledged in his first question is that ETSA Utilities faces exactly the same position as occurred in Victoria: that a regulator in a few years at the stroke of a pen, can take 20 per cent off the earnings of a company, contrary to the wishes of the company, and therefore the government's budget would suffer the 20 per cent reduction, or whatever that reduction is, in the regulator's income.

As I indicated some two or three months ago, the independent regulator in the UK wrote off, in the original draft decision, I think 29 per cent of the monopoly income of the distribution companies in the UK, and on review reduced it to about 22 or 23 per cent. The deputy leader has been pooh-poohing this model for the past two years, saying that it is not structured to reduce prices to South Australian customers. He (together with the Hon. Mr Xenophon) is critical of the structure that we have established and is now lauding the virtues of exactly the same model in relation to the independent regulator—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: That is because we have just started the system. The independent regulator there has come to the end of a five year review. That will happen here in South Australia. I cannot prejudge the decision of the independent regulator.

What I have said to the honourable member, and what he was unwilling to listen to because it destroyed his whole argument about privatisation and the impact on the budget, is that, if we maintained the old situation when we were the monopoly operators, whoever owned and operated the business faced the risk that the regulated income would be significantly reduced by an independent regulator. And I thank the honourable member for his first question.

The Hon. P. HOLLOWAY: Will the Treasurer advise on what basis the figure of $101 million was calculated? Can he provide details as to what assumptions were made in arriving at that figure?

The Hon. R.I. LUCAS: The budget papers make it quite clear as to how that calculation was made. If there is any further information in big bold block capital letters that might be understood by the Deputy Leader of the Opposition, I might be able provide it.

SHOP TRADING HOURS

The Hon. J.S.L. DAWKINS: I seek leave to ask the Minister for Workplace Relations a question about shop trading hours.

Leave granted.

The Hon. J.S.L. DAWKINS: Some honourable members would be aware of the recent application by the Berri-Barmera council to have shop trading hours deregulated in the Berri and Cobdogla shopping districts. My questions to the minister are:

1. Has he made a decision on the application from the Berri-Barmera council?

2. What processes were undertaken by the council before making its application to the minister?

The Hon. R.D. LAWSON (Minister for Workplace Relations): As all honourable members would know, the honourable member is very interested in the affairs of the Riverland and very diligent in pursuing the interests of the Riverland. Today, the government approved an application by the Berri-Barmera council to have the Berri and Cobdogla shopping districts abolished. Those districts include the towns of Berri, Barmera, Monash, Glossop, Winkie, Cobdogla and Loveday. The application was made earlier this year by the Berri-Barmera council following a unanimous resolution of the council, and following a survey of residents conducted by the council which showed that an overwhelming number of residents who responded to the survey were in favour of the abolition of the shopping districts.

As the act requires, the survey included that the views of shop owners and shop employees should be taken into account, and it is true that the majority of shop owners and employees were not in favour of the abolition of shopping districts. However, when taken overall, the substantial preponderance of respondents to the survey favoured deregulation. Shopping hours in the Riverland has been an issue for quite some time. A number of stores have been opening on Sundays, for example, but it has been found that some of them exceeded by a few square metres the floor area which would enable them to be classified as 'exempt shops'.

It is worth remembering that in this state some 70 per cent to 80 per cent of all businesses and shops are exempt from the application of shop trading hours and can trade 365 days a year, 24 hours a day. However, there are some shops that do not sell what might be termed 'partially exempt goods' that are controlled by the Shop Trading Hours Act.

A number of South Australian regional centres have, in recent years, had their shop trading hours abolished, for example, Kadina in 1996, Murray Bridge in 1997 and Penola in 1998. Other centres such as Port Pirie—as the Hon. Ron Roberts would know—have, for many years, operated in a completely deregulated environment. Victor Harbor is another centre, well known to many people here, which has unrestricted trading hours and has had them for some years.

There was a certain amount of opposition in the Riverland to the decision of the Berri-Barmera council: for example, the Loxton-Waikerie council took the view that the Riverland should be considered as one region and Berri-Barmera should not seek to deregulate without having Loxton-Waikerie and Renmark-Paringa joining in the application. However, the shop trading hours provision does divide the state into shopping districts, and those districts are under the control of particular local government authorities. It is up to local councils that represent local communities to make decisions on issues such as this which affect local people. Ultimately, of course, consumers will decide whether or not there is demand in the Riverland for further removal of restrictions on shop trading hours.

The Competition Commission has been active in criticising this state for our Shop Trading Hours Act. The Premier has made it clear, and I make it clear today, that we take the view that shop trading hours is a matter for the South Australian Parliament, which is to decide what is to occur in this state. It is not for regulators or deregulators such as the Competition Commission to dictate precisely what happens here. The most recent publication of the Competition Commission stated that, for example in Victoria, where shop trading hours have been deregulated, there has been a significant rise in employment in the retail industry.

I think the experience in other places indicates that deregulation does not necessarily lead to results that do not benefit the community. But, as I say, the parliament ultimately lays down the Shop Trading Hours Act. We amended the act two years ago, and it came into effect in June last year. So, we have had one year's trading under the current arrangements, and I believe the amendments the parliament made last year have proven to be satisfactory. They extended shopping hours by about one hour in the suburbs each evening. Supermarkets now trade until 7 p.m. They gave retailers in the city the opportunity to trade until 9 o'clock on each weeknight, but not many of them have taken up that opportunity.

I think that the parliament, on the last occasion, had to balance the interests of consumers, traders (both large and small) and employees in the retailing industry. The parliament has struck that balance, and I think it is an appropriate balance. I am glad that the Berri-Barmera council has exercised its democratic right to make a decision in relation to its area.

The PRESIDENT: I accept the view that the Hon. Paul Holloway's third question was supplementary.

TRANSADELAIDE EMPLOYEES

The Hon. T.G. ROBERTS: I seek leave to give a brief explanation before asking the Minister for Transport a question about skilled labour management.

Leave granted.

The Hon. T.G. ROBERTS: The annual report of the Office of the Employee Ombudsman for 1998-99 contains a reference clause to a problem that is ever-increasing, that is, the use of contractors and outsourcing in areas where permanent employees had security of employment. As a permanent employee, there is nothing more frustrating than to have a contractor tap you on the shoulder and ask you for directions to where your daily work is. The article on page 3 states:

> An increasing proportion of the complaints coming from the government sector appear to relate to outsourcing, particularly the various private companies that have taken over much of the work performed by the agency itself. Some may argue that these complaints should be listed under the private sector but I believe that they should remain listed under 'government' because the government still has an obligation to ensure the proper treatment of its ex-employees carrying out its work.

It goes on to say, in another sense:

> Other organisations featuring strongly in the complaints received by this office include those in labour hire, hospitality and service industries.

With those complaints from the Ombudsman's report fresh in mind, the opinion of the employees at Transport SA is that while they are on the redeployee list there are contractors doing work that they could be doing.

The Hon. Diana Laidlaw: Is this Transport SA or TransAdelaide? You said Transport SA.

The Hon. T.G. ROBERTS: Transport SA is using contract firms. I am also advised that there are repeated irregularities in payment of the redeployees and other issues that led many redeployees to believe that they are being pressured to accept separation packages. My questions are:

1. Can the minister explain why the government is using electrical labour hire contractors, who are being paid taxpayers' money, to provide maintenance and other services to government departments while redeployees from the privatisation of the train and bus maintenance services are qualified to do this work?

2. What is the extra cost of using these labour hire contractors rather than the redeployees who are already being paid by the government?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): It appears to me that the honourable member is asking a question that ranges across government departments and contracting and particularly in relation to electrical trade work, and he is stating that there are some bus and train, and possibly tram, employees, still being paid for by TransAdelaide, possibly by Transport SA, who are redeployees. I cannot confirm that that is so but I will seek some answers and make inquiries. I can say to the honourable member at this time that generally I am heartened by the way in which other government departments, and also the private sector, are recognising the skills of TransAdelaide's work force, in terms of the number of people who are redeployees at this time. So if there are some people amongst that number with electrical skills this is certainly in their interest and in the government's interest—and I appreciate the honourable member's genuine interest in this matter. I will seek to bring to the attention of other government departments that we have a skill base among TransAdelaide employees and it may well extend to the electrical trades.

PUBLIC SECTOR TRAINEESHIPS

The Hon. M.J. ELLIOTT: I seek leave to give a brief explanation before asking the Treasurer, representing the Minister for Employment and Training, a question about cuts to public sector traineeships.

Leave granted.

The Hon. M.J. ELLIOTT: The state government public sector youth traineeship program has provided over 8 000 young South Australians with employment since 1993. In 1998-99 this program provided 1 200 places to young South Australians aged between 17 and 24 years to gain skills and sustainable employment in the future. It has been estimated that the success rate of this program has been around 70 per cent, that is, almost 850 young South Australians gaining permanent employment after completing their traineeship in 1999 alone.

The key to the success of this program has been a link between the traineeships and the needs of the public and private sectors. Although based in the public sector the program does not guarantee public service employment. Trainees may apply for public service vacancies but they are encouraged to pursue private sector jobs when they reach the last quarter of the year. The program has been described as innovative, and it has been heralded by the managing director of Morgan and Banks in the *Business Review Weekly* as an 'initiative that helps close the gap between school and workplace'.

There was some surprise when Mr Brindal in the other place described this public sector youth traineeship scheme as: 'no less than a misallocation of resources and a missed opportunity for young unemployed South Australians'. Mr Brindal said earlier this week that the state government aims to reduce funding to public sector traineeships, effectively cutting them from 1 200 to only 500. Mr Brindal claimed that this blow will be softened by increasing funds which the government believes may result in 5 550 more private sector traineeships. However, certain aspects of Mr Brindal's claim need some clarification, and that is what I will be asking the questions about.

It is not clear whether the state government expects these new places to be created through the federal and state governments' user choice scheme. This scheme reimburses employers with $1 250 of federal money for every trainee employed, which in itself is not a bad thing. However, there has been some public concern, and I have had quite a few reports of this, that employers are reclassifying existing workers or existing positions as trainees to gain subsidies. In effect, the net result is no creation of new positions for young unemployed South Australians. Further, because the state government no longer reports apprenticeship and traineeship numbers separately when referring to funding, it is becoming increasingly difficult to ascertain how much state government funding is going to subsidising traineeships. It is important to note that the Victorian government may suspend the user choice program, as I understand, and that there are serious concerns in Queensland over possible rorting of the system. My questions to the minister are:

1. Of the 29 230 traineeships and apprentices at the end of 1999, which the minister refers to in his budget press release, how many of these places were traineeships?

2. What evidence does the state government have of the use of the user choice scheme to reclassify existing employees or existing positions as trainees to gain subsidies?

3. If the state government does not intend to suspend the user choice program in South Australia, how does it propose to prevent employers from reclassifying existing employees as trainees to gain subsidies?

4. Given that the state government has promised that the new funding arrangement will result in more places and a higher take-up rate, how many additional employment outcomes will the state government guarantee by the end of 2001?

The Hon. R.I. LUCAS (Treasurer): I am happy to refer the honourable member's questions to the minister and bring back a reply. If the honourable member is correct that some employers are redesignating existing employees, I indicate that one of the decisions that the minister and the government have taken will mitigate against the possibility of doing that. I refer to the traineeship scheme pay-roll tax rebate which targets trainees under the age of 25 years.

So, if the honourable member is correct that employers are redesignating employees aged 27, 30 or 40 years as trainees to gather the subsidy, one of the decisions that has been taken to positively discriminate in favour of young people in terms of targeting this program to under 25s will, in itself, act against the capacity of employers to do that. I am sure that the honourable member will be pleased to hear of that action that the government has taken in respect of what he indicates to be potential abuse by employers of the existing scheme. I am happy to refer the remainder of the honourable member's questions to the minister and bring back a reply.

SOUTH-EAST RAIL NETWORK

The Hon. A.J. REDFORD: Will the Minister for Transport outline the recent developments and the prospects for the future use of the South-East rail network, in particular, the rail lines from Wolseley to Mount Gambier and from Millicent to the Victorian border?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I am pleased to advise members that on Saturday advertisements will be placed in the national media (including the *Advertiser* and the local print media in the South-East) advising that the government is formally requesting expressions of interest from private sector rail and transport operators for the commercial operation of the rail lines in the South-East.

Members may recall the chequered history of these lines over the past 15 years. Under the ownership of AN, first passenger and later all freight services ceased. When AN was sold in 1997, the federal government did not sell the South-East rail lines in South Australia—the only part of AN's intrastate network that it did not sell—and the state government at the time leased those lines to Australian Southern Rail (ASR).

As part of that lease arrangement, two years was provided for ASR to determine whether it wished to continue to own and operate a viable freight service. At the end of that two year period, ASR advised the government that it could not do so. Recently, it formally surrendered the line back to state ownership—so, we again own the line. We are now keen to ascertain the potential amongst the private sector for possible ownership or certainly a lease arrangement. Although ASR does not own the line, it might be interested in operating it, as are others. This is important in terms of the huge potential for the South-East to generate more economic development for the benefit of the whole state. Transport services will be critical in getting products to market.

We would not normally wish to see all of that on the roads in terms of heavy vehicles and the wear and tear on our roads. I am confident that rail has the potential to again play a strong role in the freight and possibly the passenger business to the South-East. To get a demonstration of that interest and confidence on my part, we are now calling for expressions of interest from Saturday. It is my understanding from Transport SA that the process of calling for expressions of interest and the assessment of all interests would mean that we would know whether there is a possibility of reopening the operation of these lines for freight and/or passenger trade by the end of this year.

POLICE, NAME BADGES

The Hon. T. CROTHERS: I seek leave to make a precied statement prior to asking the Attorney-General, representing the Minister for Police, Correctional Services and Emergency Services, a question on police name badges.

Leave granted.

The Hon. T. CROTHERS: I refer to the *Police Journal* editorial of May 2000.

The Hon. T.G. Roberts interjecting:

The Hon. T. CROTHERS: I supported the trade union movement—did you? According to the editorial, in its haste to force a name badge concept upon uniformed police officers, SAPOL senior executives have ignored many employees' strongly felt concerns and thus name badges will be forced on all uniform employees for wearing at all times whilst on duty. The editorial states that this decree followed a February examination of findings from a six month evaluation—that is, from August 1999 to January 2000—in respect of name badge use. But according to the editorial, the evaluation was at best grossly flawed, which made the findings wholly unreliable.

When the name tags were first being trialled, police officers raised concerns that they could be immediately identified at violent crime scenes or domestic altercations. An example was given of one officer with an unusual Italian surname who was in fear that his father, an elderly pensioner living alone, could be targeted by offenders because he is the only other person of that name in the telephone book. Uniformed police officers involved in drug busts could also be placed at risk of being identified and then dealt with by drug lords or terrorists groups. In light of the above, my questions are:

1. What reason, if indeed any, can the minister provide for the mandatory wearing of name badges, given the strongly felt concerns of many individual police officers?

2. Does the minister acknowledge that the name tags could place police officers at even greater peril due to the fact that it is easier for them to be identified?

3. What reasons can the minister supply for not allowing police officers to wear name tags on a voluntary basis, such as is the case in New South Wales?

4. What are the reasons for police numbers on collars not being regarded as sufficient and more efficient?

5. Finally, but not exhaustively, does the minister concede that name tags can needlessly complicate matters for the public in the event of a complaint, a commendation or any such similar matter because, unlike police numbers, more than one officer can share the same name, such as Bill Smith, John Brown, James Black or perhaps even Trevor Griffiths, and so on?

The Hon. K.T. GRIFFIN (Attorney-General): I am surprised that after so long the honourable member should get my surname wrong.

The Hon. T. Crothers: I meant Trevor Griffin.

The Hon. K.T. GRIFFIN: Correction accepted. The issue of name badges was raised in the public arena several months ago. I understand that the commissioner did clarify the situation in relation to name badges. I recollect that some element of choice is involved, but—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Well, the *Police Journal* might not have caught up with the issues and it might have missed something. In any case, I will refer the questions to my colleague in another place and bring back a reply.

RURAL HEALTH

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, a question about rural health.

Leave granted.

The Hon. R.R. ROBERTS: Late last year and early this year I did some surveying in the Mid North about the problems that were affecting people there. The clear indication was that the most important issue facing people living in those country areas was health. After visiting at least seven—

The Hon. L.H. Davis: What sort of research did you do?

The Hon. R.R. ROBERTS: Just listen and learn and loosen that tie a bit; it is not doing you any good.

Members interjecting:

The PRESIDENT: Order! Let the honourable member ask his question.

The Hon. R.R. ROBERTS: Having visited seven health services in the Mid North—those at Riverton, Clare, Snowtown, Crystal Brook, Laura, Port Pirie and Port Broughton—and having had discussions with the councils and health professionals, I found that the problems became clear. They were confirmed some weeks later by a visit from the Social Development Committee presided over by the Hon. Caroline Schaefer, who I think on a fair assessment has found the same thing to be a problem.

Those people working in the mental health area in regional and remote South Australia are under enormous stress. Of great help to them has been the Emergency Triage and Liaison Service, which has been operational since December 1996: it offers 24 hour, 7 day a week emergency distance consultation, liaison and referral to consumers, carers, GPs, nursing staff, community mental teams, allied health professionals, the RFDS, and ambulance and police personnel, as well as a broad range of other service providers from other social welfare agencies. It has firmly established itself as an important and integral facet of the communications process between regional service providers and central services. It could easily be said that this is a very helpful process in a very thin on the ground mental health service in country South Australia.

I am delighted that, in the last tranche of legislation that has come through, the government has seen fit to address itself to some of the people who are facing mental health problems. It has been rumoured strongly in country areas that the Emergency Triage and Liaison Service will merge with the Assessment and Crisis Intervention Service. A merger will mean that when country people ring 131 465—the crisis and emergency number—instead of getting assistance from a sister from a rural and remote area, they will speak to a sister from acute care, in a metropolitan service. Despite their good intentions, they have no knowledge of rural situations, whereas others have contact with people on the ground and, because of their intimate involvement with most of them, have built up a great deal of information.

My constituents are very concerned with respect to these matters, and they are causing a great deal of concern to those health professionals operating in rural South Australia. My questions are:

1. Are there any plans to merge and downgrade the crisis and emergency services currently available to people via the 24 hour 131 465 number?

2. Has a merger of the Emergency Triage and Liaison Service and the Assessment and Crisis Intervention Service been proposed, and by whom?

3. If it is to take place, will community consultation occur; what is the timetable for those consultations and changes; and what will be the cost savings?

It is very fortuitous that the Hon. Angus Redford has moved to the city—

The PRESIDENT: Order! The honourable member will resume his seat.

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

Members interjecting:

The PRESIDENT: Order! There is a member on his feet. Pay some respect to your colleagues.

GAMING MACHINES

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Treasurer a question about gaming machine licences.

Leave granted.

The Hon. NICK XENOPHON: On 18 November 1998 I asked the Treasurer a question about the number of gaming machines in non-live venues and gaming machines approved but not live in live venues. I further asked whether the government had a policy as to whether those machines ought to be installed within a particular time frame, or did it consider that the matter rested entirely at the discretion of the Liquor and Gaming Commissioner?

In response on 9 February 1999 the Treasurer stated that 725 gaming machines as at 30 September 1998 were approved but not on-line in venues and advised that the timing of the installation of the machines was to be a matter to be determined by the Liquor and Gaming Commissioner. He further advised that the commissioner had written to all licensees who had either not installed gaming machines or who had installed significantly fewer than the approved number, advising that he intends either to impose a condition on the licence that the machines be installed at a particular date or to proceed with action to have the licence revoked. My questions to the Treasurer are:

1. As of today's date, how many gaming machines have been approved in non-live venues and, of those licences, when were the approvals granted for those machines and what conditions have been imposed by the commissioner?

2. As of today's date, how many gaming machines have been approved in live venues but not installed, when were approvals granted for those and what conditions have been imposed by the commissioner in that case?

3. In respect of the 725 machines referred to in the Treasurer's detailed response of 9 February 1999, have any—and which—of those machines not been installed and, if so, why were such machine licences not revoked?

4. With respect to the notices of revocation and conditions referred to in the Treasurer's response of 9 February 1999, will the Treasurer undertake to release the documents referred to in that answer?

The Hon. R.I. LUCAS (Treasurer): I will take advice on that and bring back a reply.

BURROWS, Mr D.

In reply to **Hon. SANDRA KANCK** (30 March).

The Hon. R.D. LAWSON: In addition to the answer given on 30 March 2000, the following information is provided in response to the honourable member on the basis of information provided by the Department for Administrative and Information Services (DAIS):

1. The chief executive of DAIS terminated Mr Burrows' contract with effect from 3 December 1999. This action was taken as a consequence of a range of management behaviours demonstrated by Mr Burrows and deemed inappropriate by the department's chief executive. None of these behaviours amounts to commitment of any unlawful act.

2. Mr Burrows used his departmental credit card for purposes relating to his employment in the department. The appropriateness and extent of use of this card was an issue of concern to the chief executive and examined as part of the departmental review of credit card use in DAIS which the chief executive initiated.

3. Yes. Mr Burrows did sign a conditions of use statement. His usage of the card did comply with the conditions of use statement, that is for business purposes. However, the way in which he used the credit card, on occasions, did not accord with departmental expectations and, in some cases, reflected the exercise of poor judgement.

4. Mr Burrows himself did not use the personal credit cards of other departmental employees. As the director of the unit he did, however, ask subordinate officers with procurement responsibilities to use their departmental cards to make authorised purchases relevant to the operations and activities of Supply SA.

Departmental credit cards are issued to individual officers in the department by name, such as purchasing officers, to be used for business purposes associated with their position.

Expenditure limits are set and purchasing monitored by the department. Purchasing officers might be asked by appropriately authorised and senior officers to purchase business related items for the work unit on their individual cards as part of usual business operations (office supplies, for example).

5. In the course of the investigation conducted under the Whistleblowers Act 1993, allegations were made that Mr Burrows had instructed purchases to be made against the departmental credit cards issued to individual employees without the knowledge of the card-holders who were his subordinates. When interviewed by the government investigators, Mr Burrows denied that he had engaged in such a practice and the investigation did not find conclusively on this matter. Even so, Mr Burrows, as director of the unit, did not require the permission of subordinates to direct them to use their departmental cards for business purposes. However, Mr Burrows' approach in this regard was described as 'intimidating' by some staff in their interviews with the government investigators.

6. Mr Burrows' use of departmental credit cards (without the permission of the relevant employees) was not in breach of the Public Sector Management Act 1995.

Inappropriate credit card usage was one of several allegations made in the course of the government investigation concerning Mr Burrows' conduct. It was his behaviour in 'its totality' which the investigators recommended '. . . should be assessed when determining an outcome.' In particular, the investigation found that '. . . his style of management is unsatisfactory and unacceptable to many of his staff. . . and 'has adversely impacted upon them . . .'.

On the basis of the investigation's findings and other information before him, the chief executive concluded that Mr Burrows had conducted himself in a manner that did not reflect the standards of behaviour expected of a senior manager. As a result, the chief executive set processes in train which led to the termination of Mr Burrows' contract.

7. In August 1999, the chief executive advised all DAIS senior executive staff of a review of the current practices relating to the use of departmental credit cards. This review was initiated to ensure that departmental policy addressed, for example, who should be card-holders to meet DAIS business requirements and that appropriate approval/verification processes were in place for expenditure incurred through the use of credit cards. Also in August 1999, the deputy chief executive personally advised Mr Burrows that the department was reviewing expenditure levels on his departmental credit card.

8. The deputy chief executive of DAIS informed the Minister on or about 19 October 1999 that the review on expenditure levels on Mr Burrows' departmental credit card had become the subject of a complaint made under the Whistleblowers' Act 1993. The minister was informed that, in the view of the Crown Solicitor, the complaint warranted further investigation. The minister was informed that, if required, appropriate action would be taken at the conclusion of the investigation and after Mr Burrows had been given an opportunity to respond to the allegations made against him.

9. No. There was no breach of the Public Sector Management Act 1995 in regard to the conduct of an inquiry. The decision to terminate Mr Burrows' contract was taken by the chief executive after Mr Burrows' conduct had been the subject of considered scrutiny by the department. Mr Burrows was advised on several occasions of the inappropriateness of his behaviour and given the opportunity to ameliorate those behaviours.

In regard to use of the departmental credit card, Mr Burrows was first advised of the conditions of use of the card when issued with the card in August 1997. In early 1998, the director business services, DAIS, outlined departmental standards and requirements to Mr Burrows In November/December 1998, discussions were held with members of the Supply SA management team on departmental standards and expectations of credit card use. In February 1999, the deputy chief executive sought a comprehensive report on Mr Burrows' credit card expenditure patterns from the department's Business Services unit.

Following monitoring of expenditure levels by the department's business services unit, in the context of the departmental review initiated by the chief executive, the deputy chief executive advised Mr Burrows of the review of his credit card use in August 1999. This review was underway at the time the complaint was made to the government investigators.

10. Not that the department or myself are aware of.

11. Recruitment agencies are commonly used to assist public sector agencies recruit to executive level positions, particularly where specialist appointments are to be made. In this case, an experienced and well-respected local consulting service was engaged by DAIS and conducted pre-employment checks on all candidates for the position of director, Supply SA, including Mr Burrows. As part of these checks the consultants spoke with six former colleagues of Mr Burrows, including three to whom Mr Burrows reported directly. These former management supervisors of Mr Burrows were senior directors from large public and private sector organisations where Mr Burrows was previously employed in key roles.

All referees contacted highlighted the significant strengths Mr Burrows would bring to the role of director, Supply SA, namely his extensive knowledge and procurement expertise, and capability in strategic purchasing and contracting. These are all core requirements for the position and areas where there are skill shortfalls in the SA public sector.

OCCUPATIONAL HEALTH AND SAFETY

In reply to **Hon. T.G. ROBERTS** (4 April).

The Hon. R.D. LAWSON: The Minister for Government Enterprises and I advise that:

1. The government is concerned with the occupational health and safety record of every employer in every industry in South Australia. Our strong support of initiatives such as WorkCover's Safer Industries Program, which is an industry based approach aimed at raising the level of occupational health and safety performance in high risk industries, is testimony to this fact.

While the T&R claims rate (total claims per million dollars of employee remuneration) is higher (17.1 vs 14.5) than the average claims rate for the South Australian meat industry, it is to some extent a product of their circumstances. The operation has only recently commenced at a new site with an entirely new workforce (some of whom are young and have no previous experience in the meat industry). Unfortunately a higher claims rate is not unusual during the initial start-up phase in this industry.

To address this issue a number of hazard and OH&S management systems audits were undertaken by both WorkCover and Workplace Services, Department of Administrative Services (DAIS) during the opening weeks of the operation to minimise the impact of start-up on T&R's OH&S performance. As a result of these audits, 13 improvement notices were issued by an inspector from workplace services. In addition, WorkCover Corporation recently commenced a hazard management program with T&R. The program includes the facilitation of a site based hazard management team consisting of employee and management representation, which identifies hazards, assesses their risks and develops action plans for their control.

2. Training at T&R's Murray Bridge abattoirs is managed by a senior meat industry workplace trainer from Regency TAFE and consists of a number of competency based training modules which have been developed by MINTRAC (Meat Industry National Training Advisory Council Ltd) and endorsed by ANTA (Australian National Training Authority). All levels include basic OH&S components, and all employees at this site are required to undergo this training. In addition, all employees recruited at startup received one full day's induction training prior to the commencement of operations at the site, in which OH&S and hygiene were the predominant focus.

3. Training is a condition of employment of every employee. The suggestion that New Zealand employees at T&R's Murray Bridge operations may be subject to a standard of OH&S training that is different to the other employees is without basis.

In conclusion, T&R are a member of the SA meat industry OH&S committee through WorkCover's Safer Industries Program, and have actively sought to improve their OH&S performance through their support of all WorkCover and DAIS OH&S initiatives. All available evidence indicates that their OH&S performance and OH&S practices (training & other) are consistent with accepted state and national meat industry standards.

T&R Murray Bridge Pty Ltd, with support from the Government, has taken and is continuing to take fair and reasonable measures to stabilise and continually improve their OH&S performance since commencement of their operations. Notwithstanding this, the appropriate regulatory bodies will continue to monitor the situation and act accordingly as the circumstances require.

EMERGENCY HOUSING

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Urban Planning, representing the Minister for Human Services, a question about emergency housing in Gawler.

Leave granted.

The Hon. SANDRA KANCK: The Gawler and Barossa Youth Services (GABYS) has for 10 years provided housing for homeless young men in the Gawler and Barossa region, each year providing emergency accommodation for up to 50 men ranging in age between 16 and 35 years. The service is run entirely by volunteers and operates on donations from other charities.

Unable to obtain government grants in Australia, GABYS was successful in obtaining $20 000 from the Paul Newman Foundation in the United States. Although that amount was intended for one year of operation, GABYS has very frugally made it last for three years. But this money has all but dried up. Some of the volunteers are almost burnt out.

For instance, one volunteer has for five years been working up to 50 hours per week voluntarily and is on call 24 hours a day. He does all the maintenance himself, as the cost for the Housing Trust to do it is prohibitive. Without immediate funding assistance, GABYS will close its two emergency accommodation houses at the end of June. However, at this time of the year, as the temperature drops to near freezing, the demand for this service is great and GABYS can turn away up to five young men per night during such cold weather.

For four years GABYS has been asking the government for help. It is only now, as it faces closure, that people are taking notice. On hearing that it may close, a representative of Family and Youth Services (FAYS) phoned GABYS to ask where it would now send homeless youth in this region who need urgent accommodation. Ironically, FAYS regularly refers people to GABYS and relies on this service because it is the only one of its kind between Gawler and Enfield. This occurs despite the fact that the Department of Human Services has failed to provide financial support. My questions to the minister are:

1. Is he aware of the crisis situation that has developed in relation to emergency housing in the Gawler area?

2. Will he advise whether his department is willing to provide funding to the Gawler and Barossa Youth Services?

3. If not, where does the Department for Family and Youth Services intend sending its homeless clients when this service is no longer available?

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

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement given today by the Hon. Dean Brown, Minister for Human Services, on the subject of emergency housing.

Leave granted.

The Hon. DIANA LAIDLAW: Can I make a comment on the Hon. Dean Brown's ministerial statement?

The PRESIDENT: You have had leave to table the statement. I do not think it gives you room to comment on it unless it is your statement.

The Hon. DIANA LAIDLAW: In that case, Mr President, I seek leave to make a statement on the subject of emergency housing.

Leave granted.

The Hon. DIANA LAIDLAW: I think it is important, following the Hon. Sandra Kanck's question about emergency housing, that the statement I table today does note that, in the past 12 months, the Housing Trust provided 11 additional properties for community organisations assisting homeless people in the southern area alone. This brings to 89 the number of properties the trust currently leases to these organisations through the SAAP program.

I will obtain further information in terms of the northern suburbs. However, the honourable member's concerns can hardly be related to the fact that the Housing Trust is not adding to the number of properties that it provides for community organisations assisting the homeless.

WINGFIELD WASTE DEPOT

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement on the subject of the Wingfield Waste Depot made today by the Hon. Iain Evans.

Leave granted.

ELECTRONIC MESSAGING SERVICE

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Administrative and Information Services a question about the wide area network upgrade.

Leave granted.

The Hon. CARMEL ZOLLO: I reference the Capital Investment Statement, budget paper 5, dealing with 'Works in Progress', page 28. Major projects include the South

Australian Government Electronic Messaging Service (SAGEMS) wide area network upgrade, which is to be completed by June 2002. I understand that it will provide for implementation of a single whole of government messaging service to enable significant work force reform within government. I ask the minister to provide details of this upgrade, including the applications that will be affected and the significant work force reforms within government that will follow as a result of this project.

The Hon. R.D. LAWSON (Minister for Administrative and Information Services): The honourable member's question relates to one initiative that the South Australian government has undertaken—the so-called SAGEMS program, of which we have reason to be proud. It has been the case for some considerable time that communications between government departments and agencies—and also communications between different sites within South Australia and various agencies—have been wanting.

A decision was taken by government that we would have a single electronic messaging service that would enable departments to communicate not only within themselves but also between various government departments and agencies. I do not have to hand precisely the number of users of the scheme at the moment. However, it is an ever-increasing number.

The implementation of SAGEMS is seen as one of the important initiatives that the government has made to harness some of the information technology advances that have been made. My colleague, the Hon. Michael Armitage, as Minister for Information Economy, has taken a particular personal interest in the development of SAGEMS across the whole of government, and I will seek further information from him and bring back a more detailed reply in relation to some of the specific landmarks that have been reached in the projects and also some of the target elements as to the number of users into the future.

I think it is worth saying, though, that the benefits you obtain from a wide area network upgrade of this kind cannot be fully harnessed until you have maximum use of the messaging service which will do away with other forms of message transmission, reduce the flow of paper and enable our public servants to get on with doing what they are supposed to be doing, namely, serving the community rather than spending inordinate amounts of time writing paper dockets between each other.

PETROLEUM BILL

Adjourned debate on second reading.

(Continued from 30 May. Page 1171.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their expression of support for the second reading of the bill. In doing so I wish to respond to the questions raised by the Hon. Sandra Kanck. I intend to make the committee consideration of the bill an order of the day for the next day of sitting to give members an opportunity to consider the responses that I make, but also in the expectation that anyone who has amendments will make sure they are made available during the break so that they can be considered.

In relation to the inclusion of a general requirement for rehabilitation of land, I need to stress that, fundamental to achieving the object of the act, clause 3(d) and the object of part 12, clause 94, is the need to rehabilitate any land impacted on by the activities carried out under the relevant licence. Due to the uniqueness of the types of impacts, depending on the type of activity, the type of land system within which the activity is carried out and the specific stakeholder concerns of such impacts, it is difficult to encapsulate such variables in any general rehabilitation requirement clause.

Therefore, it is more appropriate to deal with the rehabilitation of land impacts on an activity and land system type basis through the statement of environmental objectives (which I will refer to as SEO) under clauses 98 and 99 rather than simply specifying a general rehabilitation requirement in the act. SEOs are required for all activities governed by this legislation and must specify the objectives to be achieved by the activity in relation to its environmental impacts, which includes land rehabilitation objectives if relevant to the activity undertaken. SEOs must also include the criteria against which the achievement of these objectives will be measured.

Compliance with an approved statement is a mandatory condition of every licence (referred to in clause 104), and each SEO will be publicly available. Also, under clauses 107 and 108 the minister has the power to direct a licensee to take any action required to ensure that land is appropriately rehabilitated in accordance with the requirements of the SEO.

Clause 88 adds another layer of protection in that the minister may order action prior to accepting the surrender of any license area. In relation to the questions pertaining to the environmental impact report (which I will describe here as EIR), an EIR is a report which like an environmental impact statement (which I will refer to as an EIS) details the actual and potential environmental impacts of a proposed activity and the actions to be taken to manage or avoid these impacts. The information required to be provided in an EIR will be detailed in the regulations, a draft of which was publicly released late last year with a revised version accommodating public comments due for release shortly. The EIR serves a number of purposes as follows:

(a) It provides the initial preliminary information to enable the minister to classify the proposed activity as being of either low, medium or high impact (under clause 97). Shortly I will elaborate further on this classification process. I must stress that this classification process is preceded by an informal process where the minister advises the licensee on the possible level of impact of the proposed activity so as to enable the licensee to prepare its EIR accordingly and, where necessary, to undertake its own public consultation in the preparation. This provides the licensee with greater certainty in what it should be expecting in terms of the extent to which it needs to address the various issues in the EIR prior to engaging in the formal process.

(b) The EIR submitted forms the basis of the information utilised in the consultation process relevant to the level of impact of the activity. In the case of medium and high impact activities, which undergo the public consultation requirements under clause 101 and 102 respectively, the EIR is subject to public review and amendment.

(c) In the case of low impact activities the EIR is used as the basis of the consultation process between PIRSA (Primary Industries and Resources South Australia) and other relevant agencies such as the Department of Environment and

Heritage and Planning SA, as required under clause 100 in the bill. May I add that the low impact activity consultation process will be administered through service agreements between PIRSA and these other agencies to ensure that the consultation process delivers optimal outcomes. The EIR will also be subject to amendment through this internal government consultation process.

(d) On the basis of the EIR and the outcome of the various levels of consultation, the statement of environmental objectives is prepared and approved by the minister.

(e) Despite there not being a requirement for the general public to be consulted for low impact activities, there are provisions in the bill which ensure that the public is kept informed on matters to do with all activities which include low impact activities. These include the provisions under clause 105 which make publicly available through the environmental register the following: all EIRs, all statements of environmental objectives, information which enables the public to review the minister's decisions in relation to the classifications of the level of environmental impact of activities, and, above all, the performance of all activities against the relevant statements of environmental objectives.

(f) Regardless of whether a proposed activity is likely to be low, medium or high impact, provisions are made in the regulations which require consultations to be undertaken by the licensee in preparing the EIR with relevant landowners, Aboriginal groups, and other parties with interests in the land over which the proposed activities will be undertaken. This will ensure that, as a first pass, the EIR will have addressed concerns raised by those directly affected by the activities.

(g) An EIR is not an end in itself but instead part of the assessment process which delivers the information used in the EIA processes, provided for under clauses 100, 101 and 102 to deliver that end.

Finally, I provide the following response to the honourable member's request on how an activity will be classified as either low, medium or high impact.

(a) Under clause (97)(2) the minister is required to classify the level of impact of an activity on the basis of a set of criteria to assess the impacts of the activity as outlined in the EIR.

(b) Clause 97(3) requires the minister to establish these criteria by notice in the *Government Gazette*. I point out that PIRSA has already developed these criteria through extensive consultation with industry, other state and commonwealth government agencies and a number of environmental interest groups. The criteria, incorporated into a guideline which outlines how they are applied, are available on the PIRSA Petroleum Group web page. I can make these available in hard copy to honourable members during committee for their perusal if they so wish, and earlier if honourable members do not want to go searching the web site—if they let my office know.

(c) These criteria do not seek to replace professional or value judgments, which are inherent in any assessment of environmental significance. Instead they provide a transparent framework outlining the issues that need to be considered when exercising such judgment. The degree of interpretation is confined within this framework and therefore constrains considerably any risk of exercising ungrounded discretion.

(d) These criteria consist basically of an assessment of the degree of certainty in the prediction of the various impacts of a proposed activity as outlined in the EIR and the extent to which the impacts can be managed, that is, whether they can be avoided or their duration, size and scope reduced to an acceptable level.

(e) The criteria also address the extent of stakeholder awareness and concern of the impacts. In many cases it is the stakeholder concerns alone that make an activity environmentally significant rather than the actual impacts themselves. Therefore, these criteria seek to ensure that any public outrage is identified and addressed.

(f) These criteria are consistent with those provided under the commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act 1999, used to assess whether a proposed activity will impact significantly on any matter of national environment significance. In fact, Environment Australia is very familiar with the PIRSA criteria, as the criteria were offered to the commonwealth for consideration to adopt them under the EPBC Act during the recent bilateral negotiations with the commonwealth.

(g) In closing, I point out that these criteria have been in use by the Petroleum Group within PIRSA for some time for assessing the level of environmental impact of seismic drilling and pipeline construction activities. I can make examples of such assessments available either in committee, or before, if honourable members wish me to do so, to enable them to give further consideration to the matters which have been referred to.

I hope that clarifies the issues raised by the Hon. Sandra Kanck. If, as I say, there are other issues which need clarification I will be pleased to endeavour to do so during the committee consideration of the bill.

Bill read a second time.

DAIRY INDUSTRY (DEREGULATION OF PRICES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 May. Page 1182.)

The Hon. IAN GILFILLAN: The relentless march to decimate rural regions in Australia presses on. This bill is yet another example of a crazy obsession with deregulation which is having extraordinary penalties and destructive impacts on our primary industries. The precedent is clearly identified in what has already happened to the egg industry. I refer to an article in the *News Weekly* of 20 May this year, headed 'How deregulation cracked the egg industry', which states:

> Seven years after it was deregulated, the Victorian egg market is delivering low returns to farmers and high prices to consumers. It represents a redistribution of wealth upwards from producers and customers to retailers and shareholders. Deregulation of the Victorian egg industry in 1993 has led to increased supermarket egg prices to consumers and reduced returns to farmers. According to one large volume Victorian egg producer, Philip Szeppe, in 1993 farmers were being paid $1.32 for a dozen 55 gram eggs which then retailed in the supermarkets for $1.91. Australian Egg Industry Association figures show that, in February this year, farmers were being paid 78.5¢ a dozen for eggs—

compare that with $1.32 in 1993—

that retailed for $3.31 a dozen on supermarket shelves in Victoria.

Compare that $3.31 with $1.91 under a controlled industry in 1993. The article continues:

> One egg producer near Bendigo, Robert Harrison, recently featured in the media after the payment he received for the delivery of 30 dozen eggs was one 45¢ stamp from his egg buyer. He is a low volume producer now being forced out of the industry. Mr Harrison told the *Weekly Times*, 'I don't have much faith in deregulation, and I think the same sort of thing might happen in the dairy industry.'

How cruelly prophetic! The situation is, however, that the egg industry in Western Australia and Tasmania remains regulated. Note this: Western Australia has the highest returns to farmers and the lowest prices for consumers in Australia. So, who is winning under deregulation?

I cited the egg industry because it has been deregulated for some years and it sets the pattern prophesied by the Democrats in previous years as to the likely effect of mindless deregulation. At this stage, it is important to reflect on the numbers that it is anticipated will leave the industry. This is not just scare mongering by some particular fanatical group or people with a vested interest. I quote—

The Hon. T.G. Roberts interjecting:

The Hon. IAN GILFILLAN: I am indebted to the supportive interjections from my colleague the Hon. Terry Roberts, who has the cause of the rural dweller at heart and proves that over and over again. I look forward to more supportive interjections as I continue my contribution.

My federal colleague Senator John Woodley chairs the Rural and Regional Affairs and Transport References Committee of the Senate. He said in federal parliament:

> The Democrats remain implacably opposed to deregulation. Let me give you the reasons for that. There will be a loss of farmers from rural Australia—according to ABARE, between 3 000 and 5 000 farmers.

Senator Woodley said further:

> I asked the Department of Agriculture, Fisheries and Forestry what their calculation was, and they admitted that there are probably 4 000 farmers who are 'vulnerable'—that was their word. 'Vulnerable' is a softer word than saying that 4 000 farmers are about to 'cop it in the neck', but 'vulnerable' was their word.

These are figures from independent entities indicating that the rich reward to the rural community for the deregulation of the dairy industry is predicted to be a loss of 4 000 operating dairy farmers. Senator Woodley said further:

> The second reason why I remain implacably opposed to the deregulation of the dairy industry is that deregulation means a loss of income for dairy farmers. I do not know if there are any exceptions. There may be one or two, but all of the indications, all the evidence we received and everything that we have been told—

and I remind members that this is evidence received by the federal committee chaired by Senator Woodley which came down with the unanimous position of opposition to deregulation of the dairy industry—

> indicates that there will be a loss of income for dairy farmers, but not for processors, not for manufacturers and not for supermarkets. In fact, all of the money which will be lost to dairy farmers will be transferred to the pockets of those who are in charge of processing, manufacturing and supermarkets. The evidence we were given was not denied at any point.

Senator Woodley also said:

> Let me give you what the explanatory memorandum says. This is what the government itself has written and it uses the ABARE figures. I know that there is some dispute about those figures, but I can only accept what the government itself puts in its own legislation. The ABARE figures say that the average restructure payment—

this is the restructure of the dairy industry—

> will be $118 192 over eight years. That equals an average payment to each farmer of $14 774 per year. But ABARE also calculates—and it is in the explanatory memorandum—that the average fall in income per year to each farmer will be $28 350. Even with the package and an average payment of some $14 000, to each farmer who receives that package there will be a loss of $28 000-odd. If you would like it in exact figures, it is a loss of $13 576 per year.
>
> Averages are deceptive, but let me give you some real examples. Dairy Farmers, which is one of the large cooperatives in Queensland, in the *Courier Mail* on 1 March 2000 announced that the increase in the price of milk at the retail outlets would be another 9¢ a litre. This follows an increase of 6¢ and 8¢ a litre in a little over 12 months—a total of 23¢ a litre increase in the retail price of milk since deregulating post-farm gate last year. That was on 1 March 2000. The next day, on 2 March 2000, a letter was sent to farmers in Queensland telling them the price they would be receiving on 1 July 2000 for their milk. Farmers in North Queensland—and that is the letter I have—were advised that the price per litre for market or liquid milk would drop on 1 July 2000 following deregulation to 41.5¢ per litre, a drop of around 17¢ a litre for market or liquid milk. So the next day after the processor was announcing there would be a further increase in the retail price, bringing the retail increases in a little over 12 months to 23¢ a litre, it was telling farmers that they are going to get a drop of 17¢ a litre in the price they get for their milk.

As the Senator said:

> That is outrageous. It is a scandal and there is no way I can endorse that kind of market power being used in a bullying way towards the people at the bottom of the heap.

I cannot put it any better. Suffice to say that the whole of this committee felt similarly that deregulation would not be good for the dairy industry. So, why do we have it? Why do we have this mindless imposition of deregulation as though it is some religious faith that cannot be denied or modified?

This morning's *Australian* identifies on page 4 a major reaction against this move, sadly somewhat belatedly. Its headline is 'Dairy farmers churn for change', showing the *Australian*'s particular turn to cute headlines. The essence of the story is:

> Dairy farmers facing financial ruin under deregulation yesterday called for a national dairy industry with a quota system that would cross state and territory borders. The newly formed Australian Milk Producers Association claimed new evidence showed the dairy industry in New South Wales and Queensland faced 'total destruction' when full national deregulation goes ahead on 1 July.

The article further states:

> The association, which represents 1 100 farmers, produced legal advice from two senior lawyers, David Jackson QC and Professor Michael Coper, Dean of Law at the Australian National University, which said their proposal for cross border quota sales satisfied free trade requirements. Resistance to deregulation has grown over the past fortnight after farmers in New South Wales and Queensland were quoted about half what they had previously received from milk producers—about 27¢ a litre from about 53¢ a litre.

The *Australian* takes this issue very seriously and has made it its lead and major story in the editorial. I will share with the chamber some of the inference of the editorial because it has a double reflection, which really outlines to my mind where non-rural regional Australia remains insensitive to the impact of, in this case, the deregulation and other impacts of the so-called free market—the economic rationalists policies in the Australian industry. I quote from the first paragraph of the editorial, as follows:

> The deregulation of the milk industry coming nationally on 1 July is supposed to provide immediate benefits for both producers and consumers—but, in the short term, it seems likely to do neither. The price of milk in supermarkets has spiralled in the past two years, rising more than 30 per cent (22¢ a litre) in New South Wales, for example, while the price paid by the big dairy companies and processors to dairy farmers not supported by quota schemes has slumped. On the New South Wales north coast the farm gate price of non-quota milk in the past week has been between 27¢ and 30¢ a litre—just over half the price of 54¢ a litre that farmers expect for drinking milk produced under the soon to be abandoned quota scheme, while in Western Australia the farm gate price has slumped to as low as 21¢ a litre.

It must beg the question: who gains; where is the win in this? Whether I find the quote in time I am not sure, but the reflection partly was that this would be to enhance our export capacity. Yet at the same time that this is being introduced Bonlac is signalling that it will reduce the quantity of its export product. We are on a lose, lose lose program, brilliant-

ly introduced by a government and not too vigorously opposed by the opposition on the basis that this philosophy is the needed therapy for rural regional Australia.

The final paragraph of the editorial reflects sadly the partially blind view of the impact on an ideological basis. To put a good spin on it, the last paragraph states:

> The supermarket price, however, should not increase as the national farm gate price of all milk is predicted to fall by up to 15¢ a litre. With deregulation Victorian farmers, who currently supply only 7 per cent of drinking milk, are expected to provide up to 64 per cent of the national milk market and put immediate pressure on their New South Wales and Queensland counterparts who, with quotas, enjoy about 33 per cent each of the national market. The dairy industry is labour intensive.

I emphasis that: the dairy industry is labour intensive. It provides jobs and keeps families in communities. It continues:

> The dairy industry is labour intensive and it employs more rural workers than any other, so the demise of hundreds of small dairy farms, particularly in New South Wales and Queensland, may have a significant social impact—

if it were not so tragic I would laugh—

on country regions where unemployment is already a problem.

But we do not take much notice of that. It concludes:

> But overall we should welcome deregulation—particularly if the end of the federal government's 11¢ per litre levy in eight years lowers the supermarket price of milk.

Now I know why we are here and why the thrust of politics and parliaments is orientated towards deregulation: so supermarkets may lower their price after eight years. In the meantime there is a levy on the price of milk that will fund the program, the adjustment package, which is partly what we are dealing with today in so far as the bill implements the stage, as far as South Australia goes, for South Australian producers to be recipients of part of the $1.63 billion of payment.

The other advantages add up to an optional exit payment of $45 000, which may or may not cover the debt level. Quite clearly it leaves these people in these situations with an anomalous calculation to make. Will they hang in in this industry, will they sell or attempt to diversify to another product and, having found that and got their own markets, how long will that market remain untampered with?

The Hon. T.G. Roberts: Will they go to blue gums?

The Hon. IAN GILFILLAN: If we are talking of my colleagues the dairy farmers, I hope they can find some means of continuing with dairying because for many it has been their life and they do it extremely well, and in the long run it would be very rewarding if the New South Wales or Queensland move to push for quotas is successful.

I do not know that there is much point in my putting in more detail. We are small players in the national dairy field, producing just 6 per cent of the national total, so it is hard to describe ourselves as a tail which has the potential to wag the dog. That still does not diminish the impact on those efficient and dedicated dairy farmers who have survived in South Australia, and this for many of them will be the final straw. Although the process appears to be irreversible, if we care about rural regional Australia the lesson we must learn is that deregulation is destructive. Deregulation is built on pie in the sky principles, and the sad fact is that many of our colleagues are deceived by the rhetoric, deceived by the ideology, and cannot see or are insensitive to the impact on the rural regional communities.

Sooner or later we must confront the fact that there is another parameter to our accepting the way rural and regional communities work. Below a critical level the numbers of people become an implosion to the point that they are no longer communities. If that is what we are prepared to see happen, without making efforts right across the board, and looking at ourselves as one nation and caring about those communities in those areas, that is the inevitable consequence and most of us would have enough imagination to realise how desertification of our rural communities would affect the rural regional areas of South Australia.

It is our intention to oppose the bill. It is not quite an open and shut case, because the bill itself is innocent in so far as it cannot reverse the nationwide trend at this point. It is important that our dairy farmers, who will benefit at least to a degree from the adjustment payments, are not hindered in getting that. I realise that the bill will pass the parliament and I hope that our vote will to a certain extent stand as the conscience of this parliament, indicating to the federal scene and to the rural and metropolitan populations of South Australia and Australia that the time has come to say 'No' to any further deregulation of rural and regional industries and, if possible, to repair the damage which has been done to the egg industry and which will now be inflicted on the dairy industry. I indicate that the Democrats will oppose the second reading of this bill.

The Hon. T. CROTHERS: I indicate that Independent Labour will be supporting the government's position on this bill. I do so fairly reluctantly. I was here when we abolished the potato and the barley boards. Since that time the quality of potatoes that are on sale locally has fallen markedly.

The Hon. P. Holloway: The beer's still okay from the barley, though.

The Hon. T. CROTHERS: I do not know, as I am not like you: I am a non-drinker now and have been since February 1993.

An honourable member interjecting:

The Hon. T. CROTHERS: I am a reformed alcoholic. I have noticed that; however, having said that, I am sure there is no-one in the Council who would know better than you, Mr President, the hardship experienced out there in regional Australia—in no small measure, I might add, due to the federal government and the Australian banking system.

You may recall, Sir, that on many occasions I have raised with the Attorney-General the question of law as it relates to computers and particularly those that are used to access international activity, you could say between all the states, except Western Australia and New South Wales and the federal government because of the proposed federal government 12 month moratorium through the use of the power it has over Telecom.

I listened with very considerable sympathy to what the Hon. Ian Gilfillan said but, at the end of the day, we must understand that one of our two major milk processors (whether it was Dairy Vale or Farmers Union) was several years ago taken over; my learned colleague the Hon. Terry Roberts says it was by National Foods. Since then an overseas company based in Italy has been trying to take over National Foods. I do not know what stage that takeover has reached. Having said that, I think this is the only hope at all for our dairy farmers here because of the size of our markets and because of the fact that, if all the other states deregulate, section 92 of the Constitution regarding free trade between the states would prevent South Australia and its legislators

from passing any law to protect themselves. I think it is an exercise in futility to oppose this; it disturbs me deeply that computerisation is having this impact on society, as I predicted many times here. It is only in recent times that people have been listening to me.

The Hon. M.J. Elliott: Are you blaming Bill Gates for this?

The Hon. T. CROTHERS: The gates have been closed now; that is the problem. Because you did not listen to me before when I warned you, the gates have been closed, Comrade Elliott.

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: Yes, Michael Elliott. It was the socialisation that the Democrats were proposing in the milk industry that led me to that Freudian slip. So, as I was saying, one of our two largest producers (I think it was Farmers Union) was taken over by an interstate company. I understand an offer has since been made by National Foods, and I do not know what stage that has reached, but I do know that, given that that producer is now at best in interstate hands and may be at worst in overseas hands, section 92 of the Constitution prevents our doing anything but passing legislation which mirrors that of the other states which have chosen or will choose to do so.

It is an unfortunate fact of life that export is a lifeline. I was reminded by my colleague the Hon. Mr Elliott the other day (and he is quite right) that dairying is the fastest growing rural industry in Australia and is growing at an even quicker rate than the wine industry in South Australia. I well recall when Britain entered the EEC, and I was one of the Cassandras—the prophet of doom. Members will recall that particularly in Tasmania many of our apple trees were ripped out, and what do we find? We find that we cannot supply the demand for Australian apples on today's world market. Likewise with the dairy industry, when most of its export products went to Britain there was an assured market there because of the preference that was given to commonwealth goods and services prior to Britain's joining the EEC.

The dairy industry, as another member said, went down the gurgler and, because they could not sell their product, thousands of dairy farmers had no other option but to walk off their land. Since that time things have changed, and I am told it is largely due to the dairy farmer who is the president of the Australian dairy farmers organisation. I am led to believe by a very senior Canberra agriculture bureaucrat that this fellow is the smartest man in agrobusiness in the nation.

An honourable member: Agribusiness.

The Hon. T. CROTHERS: I was thinking of my Latin.

An honourable member interjecting:

The Hon. T. CROTHERS: Oh, forget it! You were never educated enough to learn that. 'Puer': the boy; 'pueri': juveniles. I am just remembering my Latin; I am not reflecting on anyone's character.

The Hon. T.G. Cameron: What are we talking about?

The Hon. T. CROTHERS: What are we talking about?

The Hon. T.G. Roberts interjecting:

The Hon. T. CROTHERS: Here we go; Farmer T. Roberts conjugating 'Agricola': the farmer.

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: Well, it depends how many interjections I get. I well recall it went down the gurgler at the time of the EEC, thanks to the presidency and the representation of this Queensland dairy farmer on their behalf—

Members interjecting:

The PRESIDENT: Order!

The Hon. T. CROTHERS: Sorry, Mr President; I got carried away. Thanks to the behaviour of this fellow and his representation, he has convinced the Queensland—

The Hon. T.G. Cameron: You're not going to take a point of order?

The Hon. T. CROTHERS: It is she who is out of place; that is the only reason. Thanks to the position he took, he has convinced the Queensland dairy farmers to agree to the deregulation of the milk industry. He himself is a dairy farmer. Queensland is in a parlous state, even though it has a larger base population for marketing domestic milk than we do.

The only lifeline we have, given the size of our population, the paucity of it in different areas and, indeed, the geographical size of the state, lies in the export market. If our dairy farmers are to survive at all in the long term, it will be because we have accessed the export market and accessed it at a competitive price that will enable it to join the ever increasing amount of milk and milk related products export position.

I am reluctant to support the matter, but I realise that the art of good governance does not lie in any bandaid, short-term political fixes for whatever purpose. Good governance lies in having a length and breadth of foresight that can see right to the end of the tunnel, instead of having us jammed half way down the tunnel, like the grand old Duke of York, marching neither up nor down any particular hill.

The Hon. M.J. Elliott interjecting:

The Hon. T. CROTHERS: Or through people's tunnel vision. With those brief remarks and that little bit of physical activity, for which I apologise, I indicate that Independent Labour is supporting the government's position.

The Hon. M.J. ELLIOTT: I want to make a very brief contribution to this debate. I was the Democrats rural spokesperson in earlier years and have watched the deregulation of a number of our primary industries. I have made the point on a number of occasions that regulation itself is not a problem, although it is always appropriate that we revisit our regulations to make sure that they are the best model for the times. I find it quite interesting to look at industries in Australia that have managed to survive change and those that have not.

In Australia two industries that have done amazingly well in the circumstances over the years have been the car industry and the dairy industry. The Labor government of some years ago—through John Button and his Button plan for cars and through John Kerin, who also had a plan for the dairy industry—showed that you could have regulation for an industry and regulation that allowed for change, which anticipated changes in tariffs and changes in all sorts of ways but being done in a very measured sense.

While so much of our secondary industry has been in trouble, the car industry, although it has never had it easy, has done remarkably well, certainly if you compare it with our whitegoods industry, etc. It did so because what the car industry had that no other secondary industry had was a plan. It was a plan not for deregulation but for constant assessment of regulations and long-term vision, and allowing for steady change. The dairy industry is the same.

Whilst it has not been particularly big in South Australia, nationally the dairy industry is huge. It is much bigger than the wine industry, at least three or four times the size of that industry, and its exports are significantly larger than those of the wine industry. In fact, right through the late 1980s and into the 1990s, when the wine industry was quite proudly

talking about its achievements in export growth, they were being matched in percentage terms by the dairy industry.

The dairy industry was achieving 10 per cent growth a year, compounding year after year, yet that was largely ignored. That was an industry that was regulated. No dairy farmers were doing it easy, because the rules were changing and the smaller dairy farmers were progressively leaving, but they were leaving in a very measured way. They were in a position whereby they could make decisions about their future, because they could see where things were heading.

The point I make is that, all along, this highly successful rural industry, probably the most stable of our rural industries after that hiccough of the EC, has been a regulated industry. Yet we have people telling us that industry will not succeed without deregulation. There is no doubt in my mind that things will get progressively and more rapidly tough for dairy farmers, in particular. If you want a harbinger of what is to come, just look in today's paper at what has happened in the fruit industry.

Two large operators in the fruit industry in South Australia have been taken over by what is essentially an overseas operation. One of those, Kangara, is a very large operation that employs between 60 and 300 people in the Riverland. I was quite familiar with that operation, having lived up there for some years. It is a huge operation, yet the owner said, 'It's too hard for us to deal with the supermarkets.'

If someone as big as Kangara was struggling with the monopolies that we have, Coles and Woolworths in particular, which have so much market share, what hope do dairy farmers have in a deregulated market against only two operators in the dairy industry? At the moment they have a fixed farm gate price. That is gone: the industry is deregulated. If Kangara cannot stand up to Woolworths and Coles, there is no way known that our dairy farmers—

Members interjecting:

The Hon. M.J. ELLIOTT: They have been deserted. This government and governments interstate, on the basis of rhetoric alone, have failed to see that regulated industry can succeed and have taken one of the successful regulated industries, one that should have been a model for other industry, and gutted it. That is what they have done. They have not gutted it today: it will take a couple of years. But you will see growth and productivity stall as a consequence. And we can thank economic rationalists, idiots—

Members interjecting:

The Hon. M.J. ELLIOTT: The honourable member has missed the point. Productivity has been growing dramatically right through the last couple of decades under regulation. As long as you constantly re-evaluate your regulation, that can always happen. It is absolute lunacy. The government is just finishing off one of the last stable industries in the state.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their contributions and thank those who have indicated support for the second reading. The Hon. Paul Holloway raised a number of issues in his speech, and I will come back to them shortly. Obviously, we are dealing with an issue of enormous importance to the dairy industry and to the communities and businesses dependent on dairy farming. It is, as the Hon. Paul Holloway pointed out, an industry with an impressive growth record over recent times.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: Australia has been settled for 200 years: recent times can be decades. Nationally, the dairy industry as a whole produces nearly $10 billion in domestic and export sales, with exports running at about $2 billion annually, about 13 per cent of total world trade. It is also an industry in which powerful forces for change are at play. The diminishing number of farmers and the dramatic rationalisation of the manufacturing sector in recent times is clear testament to that.

We all recognise that any mishandling of the issues facing the industry could result in significant economic harm to the industry and severe hardship to the farmers and others dependent on it. The Hon. Paul Holloway noted that 60 per cent of dairy production in Australia takes place in Victoria. Victoria is the dominant dairying state, and that state's dairy industry and government have been at the forefront of pushing for the deregulation reforms we are now considering.

Indeed, the Victorian industry has vowed to deregulate the industry regardless of whether or not a commonwealth structural adjustment package is negotiated. The commercial forces that Victoria will unleash when deregulation comes into effect will be enormous, and it is important that the South Australian industry is fully prepared when that happens. This bill will not only ensure that South Australian dairy farmers qualify for the commonwealth restructure payments but will also ensure that they are able to meet the competition from Victoria on equal terms.

I turn now to the issues raised by the Hon. Paul Holloway. The commonwealth has, in addition to the $1.63 billion dairy structural adjustment program for dairy farmers, set aside $45 million for regional assistance to help rural communities to adjust to dairy deregulation. I understand that the commonwealth will release the criteria for the dairy regional assistance program shortly.

As the honourable member mentioned, the agriculture ministers have agreed to monitor and evaluate the impact of deregulation in rural and regional communities, including the effects on dairy farmers, dairy industry workers, and on sectors dependent on the dairy industry. The ministers have formed a high level commonwealth-state task force to undertake this task. South Australia has a representative on the task force and will be in a position to provide information to the task force on the economic and social issues that need to be addressed as a result of the changes in the performance of the industry. This will ensure that the $45 million dairy regional assistance program is directed at regional communities most in need and that South Australia will access these funds to assist communities affected by dairy deregulation, such as in the South-East.

I understand that the Deputy Premier has already invited the Dairy Legislation Reference Committee—a body of people drawn from all sectors of the industry—to assist in advising him on legislative reform issues and to report to him on how government should work with industry to assist farmers to cope with deregulation. I recognise that other sectors of rural communities have a stake in this, and I will ask the Deputy Premier to consider ways by which the rural communities affected can be encouraged to seek this important avenue of assistance.

The state government gives its assurance that these amendments will not affect in any way the state's dairy food safety arrangements managed by the Dairy Authority of South Australia. In this connection, I wish to clarify the allegation made in the Hon. Paul Holloway's speech that dairy processors have improperly released information to the dairy authority that is handling the dairy structural adjustment program.

I stress to the Council that the commonwealth's dairy adjustment authority is the body charged with managing the scheme, and people should not mistakenly identify the Dairy Authority of South Australia as being involved in this alleged conduct. The Dairy Authority of South Australia has an impeccable record of integrity and professional service to the dairy industry, and to the wider South Australian community, particularly in relation to its handling of dairy food safety in this state. It has had nothing to do with the dairy industry restructure arrangements—

The Hon. P. Holloway: I was not suggesting that it did.

The Hon. K.T. GRIFFIN: The Hon. Paul Holloway interjects that he is not suggesting that it did and I acknowledge that. As I said, the Dairy Authority of South Australia has had nothing to do with the dairy industry restructure arrangements that we are discussing here.

On the matter of the government approaching the commonwealth with respect to the anomaly in restructure payments to South-East farmers supplying Victorian factories, it is past the time when the calculations for the payments can be altered. The formulas for calculating farmers' entitlements to restructure payments are embedded in the Dairy Industry Adjustment Act 2000 which passed through federal parliament in March.

It is also important to recognise that these formulas were put to the federal government and agreed by the industry at a national level. While I sympathise with farmers disadvantaged by the anomaly, it is simply not appropriate for the state government to talk to the commonwealth about having these provisions changed.

This bill brings into effect an agreement between the Australian dairy industry, the commonwealth government and the states to deregulate the Australian dairy industry in a coordinated and orderly manner. It has been requested by the diary industry itself at a national level and has the full support of the Dairy Industry Council, the Australian Dairy Farmers Federation and, at the state level, the South Australian Dairy Farmers Association, milk processors, vendors and milk haulers.

The dairy industry at all levels has been very concerned that deregulation through a piecemeal removal of price and supply controls across Australia could cause dislocation and hardship in the industry. The South Australian government has done all in its power to ensure that the changes that now need to be made will be implemented under the best possible conditions for the state's dairy farmers.

The industry now has an agreement with the states and the commonwealth that dairy farmers will be entitled to structural adjustment assistance over the next eight years. It will deliver to dairy farmers the opportunity to assess and restructure their businesses so that they can operate in a new deregulated market environment. The result of this adjustment will be that South Australia's dairy industry will be more competitive and will have its long-term future secured.

There are several other points that need to be made about the drivers of this deregulation. One, of course, is the commonwealth requirement to comply with the World Trade Organisation rules. That means dismantling federal domestic market support schemes. There are commercial pressures which will eventually overrun price and supply controls imposed by the states and, as I have already mentioned—

The Hon. T. Crothers: Is that section 92?

The Hon. K.T. GRIFFIN: I am not sure: I will have to ask. I have already referred to the express intention of the Victorian dairy industry, the Victorian Dairy Farmers and Processors, to deregulate and compete aggressively for milk markets nationally. In the face of that, we have no option but to go down the path of agreeing with the arrangements enshrined in this legislation, otherwise our industry will be left behind.

The Council divided on the second reading:

AYES (12)

Crothers, T.	Davis, L. H.
Dawkins, J. S. L.	Griffin, K. T. (teller)
Holloway, P.	Laidlaw, D. V.
Lucas, R. I.	Roberts, T. G.
Schaefer, C. V.	Stefani, J. F.
Weatherill, G.	Zollo, C.

NOES (4)

Elliott, M. J.	Gilfillan, I. (teller)
Kanck, S. M.	Xenophon, N.

PAIR(S)

Lawson, R. D.	Pickles, C. A.
Redford, A. J.	Roberts, R. R.

Majority of 8 for the Ayes.

Second reading thus carried.

In committee.

Clause 1.

The Hon. IAN GILFILLAN: Having lost the vote on the second reading, I indicate that the Democrats will not oppose any of the clauses in committee and will not be seeking to divide on the third reading.

The Hon. T. CROTHERS: Independent Labour, having won the vote on the second reading, likewise will not be calling for a division. I simply put that on the record as well.

Clause passed.

Remaining clauses (2 to 8) and title passed.

Bill read a third time and passed.

STATUTES AMENDMENT AND REPEAL (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 4 May. Page 1035.)

The Hon. P. HOLLOWAY: The opposition supports the second reading of the bill. I have filed two amendments regarding the application for compensation and payment of compensation by the Attorney-General, and I will address those in a moment. Given the nature of this bill I intend to proceed by briefly referring to all the acts intended for amendment. First, there is the Associations Incorporation Act. The opposition supports this amendment which simply makes reference to new chapter 5A of the Corporations Law.

Secondly, there is the Criminal Law (Sentencing) Act. The opposition supports the amendment which enables the conversion of property into money, given the state's powers to seize or sell property to pay a fine debt. Thirdly, there is the Crimes at Sea Act. The opposition supports the amendments which seek to make this legislation nationally consistent. Furthermore, this bill also amends legislation to prevent the commencement of the new provision until all other states' legislation is enacted, including that of Queensland and the Northern Territory.

Fourthly, there is the Criminal Law (Forensic Procedures) Act. The opposition supports this amendment which seeks to have forensic data kept when an offender is convicted of another offence resulting from an alternative verdict. Fifthly, there is the Election of Senators Act. The opposition supports this amendment which makes the state act governing this

matter consistent with the commonwealth's Electoral Act 1988.

Sixthly, there is the Evidence Act. The opposition supports this amendment which enables locally employed staff working in overseas Australian diplomatic offices to take affidavits. The current provision only empowers certain diplomatic and consular staff to do so. The opposition also supports the amendments of the following acts: the Expiation of Offences Act, the Magistrates Court Act, the Wills Acts and the repeal of the Australia Acts (Request) Act 1999.

My amendment, which I think is self-explanatory, seeks to address community concerns centred on a very public case where, during the course of committing a crime, the perpetrators of the crime were injured by the resident who was seeking to protect himself. In this case, the injured criminals were successfully compensated. I think there is a strong community expectation that perpetrators of crime should not be rewarded. I will have more to say on that amendment when we debate it during committee.

I also indicate the opposition's support for the amendment that has been filed by the Attorney. Finally, the opposition is currently awaiting advice about one aspect of the bill—clause 6—and we may or may not support it or move amendments to it at a later stage. We are happy for the bill to proceed to the second reading, and when debate on it continues when parliament resumes in several weeks we will have our position finalised.

The Hon. J.F. STEFANI secured the adjournment of the debate.

DEVELOPMENT (SYSTEM IMPROVEMENT PROGRAM) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 May. Page 1141.)

The Hon. M.J. ELLIOTT: I rise to support the second reading of the bill. The minister has pleaded that I make a second reading contribution today so that the government can digest some of the issues that I will raise during the four weeks that this chamber is not sitting. As a matter of course, I like to have my amendments in somewhere near final shape before I give my second reading contribution, and they are not where I want them to be just yet. Whilst they have been drafted, there is more to be included and a few things to be changed, so I will indicate only those areas that are of concern. As soon as I have the amendments in something approximating final form, I will distribute copies to the other parties.

I will say at the outset that the Development Act in South Australia for the most part is a good act and really was not needing substantial reform. There are always some people who I guess are not happy with anything, and I am afraid that there are some people in the development lobby who, if they cannot get 110 per cent of everything they ask for, think that the world has fallen apart because that is the way they expect it to be. Yet anybody who looks at the development system in South Australia and compares it with other states will find that, with the exception of major projects, there are very high approval rates.

I think there is a high degree of certainty as to what is allowed and what is not. When people run into trouble and they complain, it is when they apply for something which perhaps is not complying and then get rejected, and then they say that it is a dreadful system. That is pretty well the basis of a substantial number of the complains that come through. People ask for something that is not complying and when they do not get it they think the system is crook.

Other than that, the area which really does need addressing, and I have said it consistently in this place, is the major projects section. We have started to move in the right direction in that area—and I will come back to this later on—with the panels, which decide what level of assessment is necessary. But I think we have stopped short. Just when we were starting to get it right, we stopped short. But I will return to that in a moment.

These changes have largely been driven by a very small part of the development lobby, and in fact there is not a significant part of the community saying that there needs to be change. In fact, there are many what I would call successful and reasonable developers in this state who are quite outraged by the behaviour of some of their colleagues, some of the most successful developers in this state who believe in working by the rules and that the rules are important.

I have had a number of conversations with these people and they do not have complaints about the system as a whole. In fact if they have problems it is when governments tinker with the system or try to work around it, in a number of ways. So, I really do not believe that most of what is being done here is all terribly necessary to start off with. Having said that, I am prepared to treat the bill as it is and seek to make it work in a more reasonable fashion. A lot of my amendments will relate to public accountability and openness, and it should not surprise people that I will be seeking to move amendments along those lines.

I will indicate those areas where I have asked for amendments to be drawn up, and if I start off with section 3. I aim to have included in the objectives a reference to ecologically sustainable development. That is something that the government put in the Local Government Act 1999, and I think it sits quite reasonably in the objectives of this particular act as well. Surely, if we are going to have a development act one would hope and expect that one of the objectives would be ecologically sustainable development. So I would hope and expect that the government will not have a problem with that.

The next proposal is in relation to section 4(1). The definition of development, I argue, should also include fish farming in the coastal waters of the state. This is an issue that the Environment, Resources and Development Committee has looked at. I am referring to fish farming offshore. There is an argument about whether or not it constitutes development.

The Hon. Diana Laidlaw: You know that a separate aquaculture act is being developed.

The Hon. M.J. ELLIOTT: Well, that is not here; the Development Act is here and the aquaculture act is not here and has not passed through this parliament. So I am arguing, as I recall the ERD Committee argued, that, indeed, regardless of an aquaculture act it should still constitute development. I think it is gravely dangerous to try to take any sort of development and say that that development does not operate under the development rules. There should not be a set of rules just for one industry. There might be all sorts of reasons for having an aquaculture act to do a whole lot of things but it should not mean that that would justify aquaculture being outside the Development Act. I would argue that a lot of the mistakes that were made occurred when DAC delegated its authority to somebody else. It has taken that authority back; it recognised that it was a problem. The Native Vegetation

Council delegated its authority, and in fact the authority has not been used at all, it has been abused and the law has been broken. But to actually try to take it totally outside the system I would find unacceptable. I believe that aquaculture, like all development, should be clearly covered by the Development Act.

Clause 4 amends section 20, which deals with delegations. In view of some amendments that I will be proposing to later clauses to make development assessment panels and regional development assessment panels more publicly accountable, it is not appropriate that a council have the authority to bypass this accountability and delegate its functions under the Development Act to an unaccountable subsidiary under the Local Government Act 1999. Therefore, I believe that section 20(2)(a)(iii) should be deleted altogether.

In relation to clause 5(d) and proposed new paragraph (i) of section 24(1), this gives the minister a wide new power to prepare an amendment to a development plan having regard to issues surrounding a major development. Having indicated my concern about the way major developments are already being handled—mishandled, I would suggest, and not just by this government but also by the previous government—I will oppose this paragraph.

Proposed new section 25(16)—in clause 6 of the Bill—gives the minister very broad discretion to make a development plan change unilaterally without consultation with either the public or a council. I will be proposing to delete the words 'without altering the effect of an underlying policy reflected in the amendment' and to replace that with the words 'not involving a change of substance'.

While I am on section 25 I do have a question about subsection (6)(b)(v) which provides: 'satisfies the matters prescribed in the regulations'. What is not clear to me at this stage is whether or not this is referring to existing regulation making powers elsewhere in the act or whether this is a new power for making regulations—which I do not see has been justified in the context in which it currently appears. If it is to be a new regulating power then I would like to have a lot more detail about what precisely is envisaged, otherwise it would seem to be superfluous, in that elsewhere, if the regulation making powers are there, that should be sufficient.

In relation to existing section 28, this relates to a proposal that I am putting forward as an additional amendment and does not relate to what is currently here. The minister would be aware that I have expressed concern about interim development control and its use. I believe that in more recent times the minister has used interim effect in the way it was always intended. Interim effect was intended to come into effect immediately because something undesirable would happen if it was not brought in.

The Hon. Diana Laidlaw: Or there was a fear that it may.

The Hon. M.J. ELLIOTT: Or a fear that it may. It was certainly never intended that interim effect would be used to allow something to happen, because it would be nonsense then to allow the ERD Committee and then, after that, the parliament to be able to disallow it. It is a nonsense to give a power of disallowance but indeed to have empowered something else to have happened before it was actually exercised. For example, some years ago when the previous Labor government was in power it brought in an interim effect for a development plan for the Mount Lofty Ranges, but what they were trying to do was to stop a stampede of people applying for various forms of development, and block splitting etc., whilst the changes contained within the development plan were being considered. It could have been knocked out and the developments could have proceeded if the government had re-evaluated their position.

I compare that with another plan that had interim effect—Craigburn Farm at Blackwood, which is now called Blackwood Park. The government rezoned the land, rather dubiously using a power which covered land in more than one council area. As I recall, 98 per cent of the land was in one council area and 2 per cent in the other. Because a little bit of unimportant land was in Happy Valley—most of it was in Mitcham—the minister had the power to rezone it for housing, and that immediately gave it interim effect. Within an hour, the developer put in an application for a development on this rezoned land. It then became a nonsense as to whether the parliament thought it was a good or a bad thing to have had a disallowance. I believe that the minister has not used that power recently and is sympathetic to the view that interim effect—

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: Yes. I cannot remember a case—certainly not in recent memory. So, I think the minister believes that that is the right and proper way for the application of interim effect, and I seek to spell that out in the act.

It is worth noting that the ERD committee has never recommended that the parliament knock back a development plan. On a number of occasions, it has written to ministers suggesting change and, for the most part, I think ministers have reacted favourably to that change. So, I think it will be a fairly rare event when the parliament does that. However, as I said, it is a nonsense for the parliament to have a power that can actually be avoided. That was not the intention of 'interim effect', and no reasonable person would ever say that it was. So, I will seek to have that inserted.

I refer now to clause 10 (amendment of section 29). As with section 25(16), I will seek to delete some words and insert others. New section 34(1)(b)(vi)(A) provides:

> in the minister's opinion the council, or a council for an area in relation to which the regional development assessment panel has been constituted (as the case may be), has demonstrated a potential conflict of interest. . .

This provision seeks to take powers away from councils when there is a conflict of interest. There are times when governments have a conflict of interest. The government might have a view that perhaps a council is not positive about something and declare that the council has a conflict of interest, ignoring the very conflict that the government itself might have, perhaps in relation to a major development. This is something that governments should acknowledge—that they also are capable of having conflicts of interest and may behave according to those conflicts.

I refer to clause 14 (amendment of section 34). There is a requirement that councils concur before an RDAP is set up, but what is not apparent is that, having concurred to become involved, can they get out again. The act is silent in this regard. One would assume that if it is intended that they can opt in, then they should be able to opt out also. I will move an amendment which will allow a council to make a decision not to continue to be involved in a regional development assessment panel. I think that makes sense: if you give one right, you should give the other right also.

Whilst talking about conflicts of interest, regarding new section 34(1)(b)(vi)(A), to which I just referred, I think it should be noted that, whilst it might be believed that a council has a conflict of interest because of a publicly stated position on a particular development, that deserves more attention. If a development does not comply, why is it unreasonable that,

at that point, there might be a political consideration which leads to a development being knocked back? There is no automatic right for something to happen if a development does not comply. If that is the case, if council feels that the majority of the community does not want something to happen, why is it unreasonable for the council to react to and state that view?

It is one matter if council behaves badly about a complying development and rejects a development that does comply, but if the development is not complying I would have thought that the views of the public should be taken into account, just as they were taken into account in producing the zoning and deciding what was complying in the first case. If they are going to flex outside that complying area, surely the council's having a view, which almost certainly would reflect the view of the community, would be reasonable.

I think it is a nonsense for a developer to say that it is outrageous that the council should have a view in relation to a non-complying development that, because the council has expressed its view, it is biased, and that, therefore, the matter has to be taken to someone else, who is not accountable and who will sit in judgment on a non-complying development and make a decision on behalf of the community about what they are going to get or not get. That hardly seems right. I argue that someone with a political view about a non-complying development would be preferable.

I refer to clause 14 (amendment of section 34) and clause 20 (proposed new section 56A). Regional development assessment panels and single council development assessment panels should both be required to hold meetings in public. Provisions for open meetings should be similar to those applying to councils or council committees under section 90 of the Local Government Act. The Local Government Act was passed recently. I believe there is no good reason why the same rules of openness that apply to local government should not relate to development assessment panels. Surely the public has a right to know on what basis a decision is made, what the arguments are and what is considered when a decision is made to allow something to occur or not.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: That would be transparency.

The Hon. T.G. Cameron: You couldn't have that.

The Hon. M.J. ELLIOTT: The government eventually accepted it or had it forced on it—I cannot remember now—under the Local Government Act. It would be blatantly inconsistent. These development assessment panels will not be elected by the public: they will be appointed and ultimately not answerable. If we do not know why they are doing things and what evidence they are taking on board, there is no accountability or responsibility. They could be making decisions about non-complying developments. That is outrageous!

The provisions contained in new section 56A which apply to single council development assessment panels should be replicated in section 34 in respect of regional development assessment panels. I refer specifically to the following:

1. Failure to declare a conflict of interest will constitute a ground for removing a member.

2. Accurate minutes must be kept.

3. Members of the public are entitled to reasonable access to agendas and minutes.

4. A council must review (annually) the extent to which its powers and functions are delegated to a regional development assessment panel.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: But it is interesting that under this bill the development assessment panels have those rules but the regional development assessment panels do not, yet they are more distant and remote from the people on whose behalf they are making decisions. I presume that is an oversight; there would be an inconsistency in the legislation otherwise.

Members of regional development assessment panels and DAPs should be subject to the same conflict of interest provisions applicable to councillors and council subsidiary members as provided in the Local Government Act. It might also be necessary for the Local Government Act to be amended in a complementary fashion. Section 34 and section 56A could then be amended to provide that the Local Government Act does not apply to panels other than in relation to these conflict of interest provisions.

I refer to clause 15 (amendment of section 35). It is not appropriate that non-complying development may be approved by the Development Assessment Commission without the concurrence of council merely because the development is 'of a prescribed kind'. It is quite possible that of 'a prescribed kind' was not something the council agreed to. Therefore, we should delete the reference in the subclause to section 34(1)(b)(ii) and, consistent with an earlier amendment, also move to delete reference to existing section 34(1)(b)(vi)(A).

Clause 17 inserts proposed new section 45A—a ministerial investigation of development assessment performance. This entire section is unnecessary given the power in the existing act for any person to seek enforcement or remedies for a breach under section 85. The Democrats will oppose this clause in its entirety.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: It is just not necessary. Local councils are ultimately answerable to their community. Clause 19 inserts new section 50B. I will not move any amendments but there is an issue worth considering here, namely, that we should consider an environment protection fund, a fund to protect the environment to operate in the some way as the car parking fund under new section 50A. I congratulate the minister—and she does not hear that too often—on new section 50A, which inserts a car parking fund. These car parking funds will apply in 'designated areas'. We must confront problems of urban consolidation. I have in this place advocated that we should be designating areas for high density development, development of the sort we are currently seeing in the eastern part of Adelaide, just south of Rundle Street. That sort of precinct is becoming increasingly attractive to many people and, as long as it is of sufficient quality, those areas can be attractive throughout Adelaide.

For instance, a precinct similar to that in the Glenelg area, perhaps near Burnside Village, possibly around the Mitcham railway station, as a couple of examples—areas where there are shopping precincts, education is close by and there is good public transport—is more desirable than having what we are seeing in Adelaide at the moment where blocks are being split into two or three and giving us the worst sort of urban consolidation because everybody is dependent on their motor car and services have to be upgraded throughout all suburbs at great expense to everybody and placing great strain on the transport infrastructure. If we can encourage all new growth in Adelaide to occur in high density nodes, that would be a good thing.

In the process we need to do things such as the government has done in recognising in new section 50A that we

have to address issues like car parking. It is not the only issue that needs to be addressed. We need a fund of more broad application which ensures that there are parks among this and that other infrastructure considerations may need to occur, including how it will be financed. It should all be paid for from a fund like the minister's car parking fund. A car parking fund is a great idea, but it should have had much broader application to allow us to do a lot of other infrastructure development, particularly around dense urban consolidation areas, which we should be encouraging. Perhaps the minister could entertain that possibility. There is a subclause here that seems to suggest that it could be used for some other purposes, but it does not spell it out.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: Putting in walkways or bikeways or various sorts of transport infrastructure are obvious things. I also suggest even small amounts of urban open space. If you want attractive dense development, there must be space within it, but how do you get it? It is no good saying that each developer must set aside 10 per cent of the land—that is hotch-potch stuff and does not work well. Even at this late stage the minister might look at the car parking fund and even call it a 'development fund', where car parking and other things are clearly spelt out as things the fund can be used for. That would be a real move forward. I have no amendments proposed at this stage, although I am considering it.

Existing section 70 provides that the building safety and fire safety provisions do not apply to any building owned or occupied by the crown. This is unjustifiable and should be deleted. If the government pleads that it cannot afford it, at the very least the government should be prepared to insert a sunset clause. There is no reason why government buildings should be treated in a fashion different from other buildings. Either something is safe or it is not, and they should all comply with the same sorts of standards.

In schedule 1, clause 2 inserts new section 17C of the ERD Court Act. This subclause has the potential to deter legitimate third party appeals by making appellants liable to pay the inflated real costs of a proponents' lawyers and not merely the relevant court scale. This clause will be opposed. If the community is to be involved in court cases, it will always be expensive for an individual and you should not be caught in a battle of the deepest pocket, which appears to be what is being set up here. I imagine that the development community and some lawyers will love it, but it is totally inappropriate.

In schedule 2, clause 4 inserts new section 29(17) of the Native Vegetation Act. That act is raided all the time. It provides:

> Delete the words 'subject to such modifications or exclusions as may be necessary for the purpose or may be prescribed'.

These words are productive of uncertainty and allow the Native Vegetation Act to be overridden by the executive. It is inappropriate to have somebody else meddling in the Native Vegetation Act, which is the effect of this schedule. It may not be the intent, but it is the effect.

The Hon. Diana Laidlaw: We are trying not to apply multiple times to different agencies.

The Hon. M.J. ELLIOTT: I understand the one stop shop, but on my reading it is more than a one stop shop. Sections 46B, 46C, 46D and 47 refer to major developments. Public submissions should be invited on the proponent's response to EISs, PERs and DRs. I indicated when I began that the one part of the principle act that needs review is in relation to major developments. The introduction of the panel, which decides what level of assessment is necessary and identifies the key issues, is a step forward. I have a view that the panels set up there should see the assessment process through from beginning to end. Having decided what are the questions, they should also be the ones who analyse the answers.

I have argued for a long time that the assessment process should be far more interactive. It should not be a matter of the public being in the dark, suddenly a draft EIS hits the table, you put in a response to that and that is the last public involvement. The next thing that happens is that the environment assessment report comes out and that is the end of it. I cannot see how you can have proper analysis of issues where the public, which includes many people who have qualifications that are as good as or in some cases better than the people within the departments involved in the assessment process, are shut out. The major development process has to be transparent, interactive and independent. I believe that the panels should be overseeing the whole process, not just the beginning.

I think the government would be pleasantly surprised at how well such a process worked. Such an interactive process would be very similar to what happened when the government set up a consultative process in relation to the development at Mount Lofty. Anyone who talked to David Wotton would say that he made only one mistake in the process, and that was to terminate it before the design stage got under way. He believed that it worked extremely effectively up to that point, but then he shut down the whole process. Frankly, I do not think we got the best result at Mount Lofty. It is too easy to say that people are anti development. It is worth noting that, when the development was opened, significant figures from the environment movement who had been opposed to the final form of the development attended the opening. They told me that they attended the opening because they wanted to show support for what David Wotton had attempted to do, and they thought it was important.

It was unfortunate that at that stage things had changed and John Olsen gave a speech in which he bagged environmentalists and said some quite outrageous things about how they had opposed the development. Clearly, Olsen did not know the full story and by then he had removed Wotton from his position. That was tragic, because David had done something for the government that was an absolute beacon for the way we can do things in South Australia. He acknowledged that he got it wrong towards the end; if anyone cares to ask him, I am sure he will say exactly that. It was done almost correctly the first time but it has not been tried again since, and that is a great shame. Nevertheless, I will move amendments to try to give some form to something that resembles what David Wotton set out to do.

I am also proposing a new section to provide that developments which require access to water in such quantities that they require a permit under the Water Resources Act should not be approved by any relevant authority until and unless the proponent has secured a sufficient water allocation under that act. Penultimately, schedule 1, clause 5 provides for the amendment of the Roads (Opening and Closing) Act, so that those who object to a road opening or closing as part of a major project have the opportunity to air their views at a public meeting. This will be denied them if the major projects panel chooses a DR method for assessing the project. Under

section 46(d) of the Development Act, there needs to be provision for a public meeting in these circumstances.

I want to raise one last issue with the minister. The minister would be aware that in just the past couple of days two things have happened in the hills face zone which are of great concern. The Environment, Resources and Development Court has given an interesting interpretation that a mobile phone tower is not a transmitting tower but a communications tower. It might do other things as well, but it does transmit, and I find it quite amazing that such an interpretation has been made. Something must be done about that as a matter of urgency. I would hope that the minister is listening to this, because the minister should use any interim powers she has in relation to mobile telephone towers in the hills face zone.

I am certainly prepared to move amendments when the bill returns to this place in four weeks, but I have a feeling that an awful lot of applications will roll in over the next four weeks, and waiting for legislation could be too much. Similarly, in relation to horticulture in the hills, I would hope the minister will act to ensure that horticulture cannot be carried on in the hills face zone. That would be totally inappropriate. The interpretation that was put on the olive development by the ERD Court again has taken everybody by absolute surprise. I hope the minister will use her powers at least to have development planned by way of interim effect, to tackle that issue. I think I have dealt with all the issues that will be covered by my amendments. I have indicated that, as soon as I am in a position to circulate those amendments to all parties and the Independents, I will do so.

The Hon. T.G. CAMERON secured the adjournment of the debate.

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

A quorum having been formed:

ESTIMATES COMMITTEES

A message was received from the House of Assembly requesting that the Legislative Council give permission to the Treasurer (Hon. R.I. Lucas), the Attorney-General (Hon. K. T. Griffin), the Minister for Transport and Urban Planning (Hon. Diana Laidlaw) and the Minister for Disability Services (Hon. R. D. Lawson), members of the Legislative Council, to attend and give evidence before the Estimates Committees of the House of Assembly on the Appropriation Bill.

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

That the Treasurer, the Attorney-General, the Minister for Transport and Urban Planning and the Minister for Disability Services have leave to attend and give evidence before the Estimates Committees of the House of Assembly on the Appropriation Bill, if they think fit.

Motion carried.

ROAD TRAFFIC (RED LIGHT CAMERA OFFENCES) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1 Long title—After 'Road Traffic Act 1961' insert:
and the Road Traffic (Miscellaneous) Amendment Act 1998

No. 2 Clause 3, page 3, line 17—Leave out '$2 500' and insert:
$2 000

No. 3 Clause 3, page 3, lines 19 to 31 and page 4, lines 1 to 7—Leave out paragraph (c) and insert:

(c) by inserting after subsection (2) the following subsection:

(2a) The expiation fee for an alleged offence against this section where the owner of the vehicle is a body corporate and the prescribed offence in which the vehicle appears to have been involved is a red light offence is an amount equal to the sum of the amount of the expiation fee for such an alleged offence where the owner is a natural person and $300.;

(ca) by striking out from subsection (4) 'A' and substituting 'Subject to subsection (4a), a';

(cb) by inserting after subsection (4) the following subsection:

(4a) Subsection (4) does not apply where the owner of the vehicle is a body corporate and the prescribed offence in which the vehicle appears to have been involved is a red light offence.;

No. 4 Clause 3, page 4, lines 14 to 29—Leave out paragraph (e).

No. 5 New clause, page 4, after line 29—Insert new clause as follows:

Amendment of Road Traffic (Miscellaneous) Amendment Act 1998

4. The Road Traffic (Miscellaneous) Amendment Act 1998 is amended by repealing sections 6 and 7.

Consideration in committee.

The Hon. DIANA LAIDLAW: All members have been given the schedule of amendments made by the House of Assembly. They were moved by the government on the understanding that they had the support of the Labor Party and the Independents in the other place. Members may recall that, since the bill left this place, some members of the Liberal Party, particularly, have highlighted concerns about the arrangements for an offence by a body corporate in terms of running red lights and being detected by a red light camera.

Following some discussions, I conceded that there was not a provision in the bill for bodies corporate to expiate the offence. There certainly is a provision for individuals to expiate the offence and, when we looked at interstate practice, we found that there is provision in the other states to expiate the offence. It was seen as reasonable on those grounds that the bill should be amended to provide such a provision. The bill returns to us with an expiation fee provision for body corporates.

My colleagues also discussed with me what the expiation fee should be for a body corporate. I discussed this matter with members of the Labor Party and the Independents in the other place, and it was seen that it should be higher than for individuals. The individual expiation fee is $199, which is a standard expiation fee for a road traffic offence for individuals. It should be higher on the basis that, regarding red light camera offences, the bill provides that there should be not only an expiation fee but also three demerit points. However, it is impossible to assign demerit points to a body corporate, and therefore it would have been wrong to provide that the expiation fee for an individual and a body corporate was exactly the same when the individual also has three demerit points deducted. Therefore, the provision before us sets the expiation fee for a body corporate at a higher level than for an individual—at $499, or $199 for the individual plus a further $300. Essentially, it is $100 for each demerit point that an individual would get for offending.

In addition, the amendments provide that, if the police see a standard of practice by a company in running a red light but that company pays off the offence by an expiation fee and is not seen to be developing within its business a practice that would identify the driver, then the police can choose to prosecute for that offence. In that instance, the maximum fine, as provided in the amendments, would be $2 000. This

is less than the original maximum fine of $2 500 as provided when the bill left this place.

That is the essence of the amendments which were made in the other place and which are now before us. As I say, they were developed with goodwill. The issues raised in the other place were not about the principal issue of whether there should or should not be demerit points for red light cameras, because that was agreed by all parties: it was about the detail in terms of penalty provisions for a body corporate.

I am pleased that there was unanimous support for this series of amendments in the other place, and I hope that they will gain support in this place, too. I spoke to the Hon. Sandra Kanck a few moments ago. She speaks for the Australian Democrats on transport matters, and she indicated to me that she will support the amendments made in the other place as detailed in the schedule before us.

The Hon. P. HOLLOWAY: The opposition will support the amendments.

Motion carried.

STATUTES AMENDMENT (LOTTERIES AND RACING—GST) BILL

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

GAMING MACHINES (MISCELLANEOUS) AMENDMENT BILL

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

ADJOURNMENT

At 5.50 p.m. the Council adjourned until Tuesday 27 June at 2.15 p.m.