LEGISLATIVE COUNCIL

Thursday 29 June 2000

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

STANDING ORDERS SUSPENSION

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

CASINO (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 913.)

The Hon. P. HOLLOWAY: There are a number of measures in the bill that the opposition disagrees with, and we will be opposing them during the committee stage. However, because there are elements within this bill that are conscience votes, we will not oppose the second reading of the bill. I will state our position on the individual clauses as we proceed.

The Hon. NICK XENOPHON: I thank honourable members for their contribution and commend the bill to the Council.

Bill read a second time.

In committee.

Clause 1 passed.

Clause 2.

The Hon. NICK XENOPHON: I will be brief. I reiterate what I said in the context of my second reading contribution. This clause essentially seeks to provide a parameter for the Casino to operate in to ensure that one of its objects is to minimise the adverse effects of problem gambling on persons who gamble at the Casino and their families. It is simply intended to set parameters within which the Casino can operate. I am more than happy to take questions from members as to its import.

The Hon. R.I. LUCAS: One of the concerns that has been raised with me is whether there is any prospect that this amendment might assist persons who might want to bring a class action against the operators of casino facilities. If this is put into the legislation as an object of the Casino, based on the honourable member's legal expertise in this area, does he envisage that this would enable persons to take class actions or legal action individually against gambling facilities in relation to problems they might experience?

The Hon. NICK XENOPHON: The Treasurer's point is a good one and it ought to be addressed comprehensively. Those potential ramifications are not the intention of this clause: it is simply setting a framework for the Casino to operate within. It is qualifying in that it provides that the Casino should be operated and managed as far as practicable to minimise the adverse personal effects of gambling on individuals who gamble at the Casino. I do not profess to be an expert on class actions: the Treasurer is crediting me with a greater degree of legal expertise than I wish I had with respect to class actions. The current position at common law is that, if a gambling entity is behaving in such a way that could clearly cause harm and if there is perhaps deceptive or misleading conduct pursuant either to common law or to the Trade Practices Act, there could well be potential litigation. The aim of this clause is to set a framework for the Casino to operate within. In other words, when the Casino is marketing its gambling products and providing gambling products to the community and its patrons, it ought to be alert to its obligation not to cause undue levels of harm.

I understand that members on the other side are not necessarily sympathetic to this clause. We voted on this provision when I moved amendments in identical terms to the government's casino act, and it was defeated. I accept there are not the numbers for that at this stage. This concept of the management of a gambling entity, whether it be the Casino, a hotel, the TAB or the Lotteries Commission, may well be revisited down the track, as members such as the Hon. Angus Redford have indicated in the context of a broader authority that will look at the issues of gambling. It was put in there to place an onus on the Casino to look at issues of problem gambling. I understand that, if members have the same view that they had a few months ago, it will be defeated. I do not propose to call for a division on this clause, given the vote that occurred late last year.

The Hon. M.J. ELLIOTT: I personally support this provision, but I would see this sort of requirement in the objects of some form of gaming authority or gaming commission. There would be no question at that point that a gaming commission's responsibility would be to ensure that all bodies involved with gambling, whether the TAB, the Lotteries Commission, gaming machine operators or whatever else, should all have management approaches to ensure that this sort of thing occurs. Perhaps through licensing arrangements and in other ways it would be the responsibility of a commission to ensure that they behaved in that way. That would address issues being raised by other members in this place about the potential for class actions and so on—although, frankly, why we should preclude class action when someone behaves in a wrong manner associated with gaming and not preclude it in other areas I do not know. There is a duty of care for people in many situations and just because there is a potential for class action is not a reason to say it should not be included in this act.

The Hon. P. HOLLOWAY: Members of the Labor Party have a conscience vote concerning the objectives of the act. My personal view is that I will oppose the clause for the reason that, while it is an object of the act, we have seen cases where such objectives in an act can give rise to litigation. The fact is that, if we are placing requirements on a casino—which, after all, is a commercial institution: it is out there to attract gambling and we have decided to give it a licence—how that casino operates is certainly a matter for each member's conscience. We can pass various acts that control a casino and impose limitations on the games that might be played there and how it operates. Indeed, further clauses of the Hon. Nick Xenophon's bill refer to those restrictions, and we will be debating them.

This general object is inserted through a rather vague expression—that it must operate in a way that minimises harm. What exactly does that mean? In my view, it would be far better if we included specific clauses to regulate the behaviour of the Casino. If we wish it to restrict or minimise harm in some way, I think we need to specify to the Casino exactly what we expect of it. If we just include a vague clause in the objects that may give rise to litigation, then we are being more than a little unfair to an organisation which,

whether we like it or not, has been operating legitimately in this state for 20 years and has a licence to so act. That is why I will oppose the clause, even though one would certainly hope that this parliament would take upon itself to ensure that there is harm minimisation from gambling. It is our responsibility. We can expect the Casino to behave according to the rules that we set and we should certainly set appropriate rules, but to put in a vague object that we expect it to abide by is more than unfair, and for that reason I oppose this clause.

The Hon. R.R. ROBERTS: I rise to support the amendment proposed by the Hon. Nick Xenophon. I do not think the matter is quite as simple as the previous speaker said. You cannot look at this and say that this is a private entity which has been set up to be involved in gambling. You must look at the history of gambling and the expectations of the people of South Australia who gave some fairly strong instructions about the development of gambling and gambling opportunities in this state, particularly the Lotteries Commission.

For many years, people talked about running the lotteries, but they never attracted the support of a majority in either house of parliament to get the lotteries through. That happened only after this clear and explicit instruction from the people of South Australia that, if we wanted to have lotteries in South Australia, they ought to be run by the government for the benefit of the people of South Australia.

This is not simply a question of what is the commercial reality today. There was a lot of debate by many members about the operation of the Casino, its responsibilities, the fear of infiltration by the mafia and the triads, and the black market money laundering situations that could occur, but the expectation of the community was that we would act responsibly to ensure harm minimisation and that the Casino would be run in a fair and equitable way. This is why all these acts contain clauses providing oversight by the Liquor Licensing Commissioner and in respect of poker machines.

To cover all those situations, we have built in quality controls and ethic controls. The Casino is changing. The Hon. Nick Xenophon provides in the objects that there ought to be the expectation that it will act responsibly and cause the minimum amount of harm to people who partake of its services. The Hon. Paul Holloway says that those things should be provided in the act but, according to many of us who have been involved in these matters in the past, whenever there is a dispute about what the act means, whether outcomes are or are not being achieved and the matter goes to litigation, the first thing that the courts will do is go back to the objects of the act and say, 'What are you trying to achieve? What are your objects?'.

If you clearly state that the object of this act is to cause the minimum amount of harm to gamblers and their families, that is a clear, specific instruction. If you claim that one of the provisions of the act which is designed to achieve that outcome has not been met, there is a clear legal starting point for you to commence your deliberations on the specific matter that you allege.

I think this is sensible. This is the sort of object that most people would take as being automatic. However, the law does not always appear, to me at least, to operate on the basis of commonsense and logic. If this basic platform, this well established precedent in the law, is included in the act, the proponent will make every effort to ensure that any harm which will be suffered by people who may be affected by either their own weakness or the inducements offered by the establishment will be minimised. I think it is a sensible object and I support the amendment.

The Hon. A.J. REDFORD: I am at a bit of a disadvantage because this bill has been around for so long that I cannot recall having spoken on it. If what I am about to say is totally the opposite to what I have said before—

An honourable member interjecting:

The Hon. A.J. REDFORD: The honourable member listens to the debate with interest.

The Hon. R.I. Lucas interjecting:

The Hon. A.J. REDFORD: Sometimes true believers can change. That started with the founder of your denomination, St Paul. When one looks at this—

The Hon. L.H. Davis interjecting:

The Hon. A.J. REDFORD: Out of the mouths of babes. Looking at this clause, it seems to be perfectly innocuous. I recall many debates about the objects of acts where members opposite wanted to include some lofty ideal—we do that with just about every single bill that comes into this place—and if one considers the attitude of the media and the public to gambling at the moment, we should seriously consider it.

I stand to be corrected by the Attorney, but I cannot see how this clause will found any legal action at all. At the end of the day, the act of gambling in a Casino is legal, and courts still say to individuals that, to some extent, it is their individual responsibility. Provided the Casino offers a service which, under the Casino Act, is permitted by legislation, I cannot see how it will found any additional legal action against the Casino.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: The Hon. Terry Cameron interjects about smoking. The reality is that there has not been a successful class action dealing with smoking in this country and I doubt if there ever will be, because it is a legal activity. Smoking is permitted, and until such time as it is not permitted and provided the consumer is warned—as a smoker, I say that it is a bit difficult to miss those warnings; that is probably one of the reasons I have decided not to become pregnant—

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: Well, that's not the warning. If you listen to some media commentators, having a Liberal government causes all sorts of problems. That astounds me also. Where this clause will need some work is in relation to section 47 of the act, which provides:

> (1) The authority may, by written notice, give directions to the licensee about the management, supervision and control of any aspect of the operation of the Casino.
>
> (2) The licensee must ensure that all directions given under this section are diligently observed and carried out.

One would imagine that there are occasions where the authority will give directions to the operator of a casino, directions which the licensee must carry out. One would also imagine that, if those directions are onerous or inconsistent with the act, or if natural justice has not been afforded to the licensee, or if the direction is unfair or illegal, that licensee will have ample opportunity to challenge that direction in court. What is wrong with the casino management authority, when considering what directions it might or might not make, taking into account the admirable objects set out in this bill, which are to minimise as far as practicable—that is a big proviso—the adverse personal effect of gambling on persons who gamble at the Casino and their families?

If you look at this amendment in its context, first, this parliament has permitted the setting up of the Casino, so this clause does not undermine the permissive aspect of the operation of the Casino. Secondly, this clause says, 'to

minimise as far as practicable'. Any person who walks into the Casino with an IQ in double figures would know that there is a real chance of losing their money. In fact, you are more likely to lose your money than win on the odds—everyone knows that—but it is a recreational pastime.

However, then to ensure that the Casino operates in a fashion that does not enhance or compound some of the gaming problems that obviously exist in the community is, in my view, an abrogation of the responsibility of not only this parliament but also the authority. What is wrong with the authority giving certain directions to minimise problem gambling that might arise from time to time? At the end of the day, when one considers the gambling industry, it is a fashion industry. I do not need to remind members of the extraordinary demand for scratchie tickets when they came out. The fashion changed and people moved on to other forms of gambling, and that happens from time to time.

Every time a problem comes up are we expected to sit here as members of parliament and deal with those fashion problems, as and when they arise? Why cannot the authority use its powers under section 47 to provide a direction to a licensee to overcome what might be a short-term problem? Why cannot the authority—and we have seen appalling examples of children being locked in cars on weekends—direct the Casino, if it happens to be in the middle of an aggressive marketing campaign or has a head-in-the-sand approach towards gaming, that one cannot have children locked in cars or that there must be some form of walk through of a car park to ensure that kids and the like are not locked in cars, if that happens to be a short-term human behaviour characteristic? Why should we have to wait—

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: The honourable member interjects and says, 'That's right'. At the end of the day the authority can react in consultation with the Casino in dealing with this issue, but it cannot do that without some sort of general direction. If one looks at the act, it does not talk about harm minimisation; and the furthest extent the act takes harm minimisation is in specific clauses of the act. I will quickly summarise them: there is the provision which bans children; the provision which prohibits gambling on credit; and the general power of exclusion. Again, we might see some directions in that regard consistent with this object.

If we allow this object to go into the legislation, it will send a clear message to those who administer and run the business that this is an important issue. If we do not put it in, that is fine, because we all know that there are two schools of thought in the community. There are those involved in the industry—and I will put the hotels to one side, because they go a long way and do more than anyone else in terms of gambling minimisation and problem gaming—who seem to ignore these problems. There is this general power, and that is the only protection; that is the only real provision that relates to gambling minimisation.

So what is wrong with this? I think, quite frankly, and I speak as a lawyer, that this issue of 'you might sue the Casino' is a furphy. There are far more important, significant issues associated with this object than lawyers entering class actions or anything like that, and one that I have identified is that the authority can take that into account in giving directions to the Casino.

The Hon. T.G. Cameron interjecting:

The Hon. A.J. REDFORD: Quite frankly, no.

The Hon. P. HOLLOWAY: I am not a lawyer, either, and I defer to the Hon. Angus Redford's knowledge of the law. All I can say is that another act I am familiar with, the Fisheries Act, I think in section 20, has objects. There are many lawyers in this town who will be getting very rich on the advice they are taking as to whether or not some allocation of fisheries is equitable, which is covered under a particular section of the act, the object of the act.

The Hon. T.G. Cameron interjecting:

The Hon. P. HOLLOWAY: The Hon. Terry Cameron says that that is not a good analogy. There is an object in that act that the distribution of the resource must be fair, or words to that effect—and I do not know how much of it makes it to the courts—and a lot of lawyers will be getting rich on interpreting that objective of the Fisheries Act. That is really my concern here.

Again I make the point that we should by all means specify to the Casino how it should behave. We should put strict requirements on how it operates to achieve the objective of minimising the adverse impact on people who gamble. But to put a fairly general objective in the legislation, I think, could open the way for legal action. I am aware of cases where, in the nine years I have been in the parliament, a number of groups have argued that they want specific objectives in legislation because they believe that it will open the way for them to take some legal action against the body that is being controlled.

All I can say is that, whereas I defer to the Hon. Angus Redford's knowledge of the law, my experience in this place is that objectives, while they might not be central to legislation, do have some impact, and I would be concerned as to what impact this might have in that area.

The Hon. A.J. REDFORD: In response to the Hon. Paul Holloway, if the honourable member thinks that it would have no influence, that is certainly not what I was saying. It certainly will have an influence. When a court interprets another clause, as it did in the fisheries legislation, in fact, it was interpreting the regulations. It looked at the regulations. There was an ambiguity in the regulations, and it said, 'Parliament has given us this ambiguity; how do we resolve it?' So the court went back and looked at the objects of the act. I have to say that in many pieces of legislation we are prone to put directly contradictory objects in legislation, and the courts have to grapple with that.

The reality is here, and I go back to the core point: we should not be scared off by lawyers and potential legal action; that will happen anyway. With the greatest respect to the Hon. Nick Xenophon, he uses the courts from time to time to advance his cause. But there are other significant aspects, and they will, in particular, affect the gaming authority. The reality is, if I have any understanding of where the political wind is blowing, that there will be an authority in this state in the not too distant future that will have some responsibility overall for problem gambling.

At the end of the day, why is it that the hotel industry should be the sole repository of dealing with problem gaming? The Casino does nothing, the TAB does nothing, and the Lotteries Commission does nothing. Why is it that the hotel industry should be solely responsible for that burden? At the end of the day, I think we are being anti-small business by allowing these other oligopolies to continually shove the problem gaming issue on to the hotel industry. It is a shared responsibility, and this is a step forward in that direction.

The Hon. CARMEL ZOLLO: I have always believed that gambling without the necessary controls expected by our community and, more importantly, assistance to those who become addicted, is a very significant social problem. I think

the community does have the expectation of responsibility by gambling institutions and harm minimisation. For that reason I support the object of the act which will assist in defining further consumer protection and safeguards for our community in relation to gambling at the Adelaide Casino.

The Hon. T.G. CAMERON: I want to follow up on the comments that were made by the Hon. Angus Redford. If it is appropriate, I would like to put a question to the Hon. Nick Xenophon, the mover of this bill and a lawyer. Is it the Hon. Mr Xenophon's opinion that inserting this amendment into the objects of this act will in any way make it easier for people to sue the Casino? What is his legal opinion on this? It should go on the record because, if there is to be legal action at some later date, the courts will try to determine what was in his head and what he thought about this.

The Hon. NICK XENOPHON: Section 2A, the objects of the current act, provides that the object of the act is to provide for licensing supervision and control of the Adelaide Casino, and in particular to ensure that it is properly managed and operated; that those people involved in the management are suitable persons—probity issues, if you like, and that is not in issue; that the gambling in the Casino is conducted fairly and honestly; and the interests of the state in terms of taxation are properly protected.

This clause would expand that out to the extent that one of the issues that must be considered is the impact of problem gambling on individuals at the Casino as far as practicable, and that proviso means effectively, that it operates its games, activities and its promotions so that there is some degree of onus in terms of minimising the impact on individuals. The contribution of the Hon. Angus Redford is particularly useful in the context of the Gaming Supervisory Authority, because section 47 of that legislation provides:

> The authority may, by written notice, give directions to the licensee about the management, supervision and control of any aspect of the operation of the Casino.

If this clause is passed, I foresee that the most significant impact will be that the Gaming Supervisory Authority has to consider the impact on problem gamblers.

In terms of litigation, I cannot see that this will in any way open the floodgates if the Casino puts in place a strategy for harm minimisation, if it has appropriate warning signs and if it does those things that the supervisory authority thinks are practicable or go as far as is practicable, and that seems to be the effect of this legislation. I have had informal discussions with the new owners from Auckland, but I am not sure whether the deal has been finalised.

The Hon. R.I. Lucas: No.

The Hon. NICK XENOPHON: My understanding from the discussions that I have had with Evan Davies, the Chief Executive Officer of the entity that has purchased the Casino (subject to some conditions, but there has been no question as to the probity of those people), is that they were aware of my amendments and they did not raise any particular concerns but, in fairness to them, they should put their position on the record. From the discussions I have had with them and when I was in New Zealand recently, I believe that Sky City is aware of its obligations. It works with problem gambling agencies in New Zealand, despite some occasional tension between the Compulsive Gambling Society and the operators of the Auckland Casino. I would have thought this clause is not something that they would necessarily be too uncomfortable with, but that is something that the potential new owners of the Casino have to address. They have not approached me with any specific concerns.

The Hon. T.G. CAMERON: I take this opportunity to agree with the comments made by the Hon. Carmel Zollo, because I do not get many opportunities to agree with what she says in this place. I support the comments she made in relation to what society expects governments to do in relation to gambling. It is clear that there is a tolerance of gambling in society and that is evidenced by the number of people who seem to enjoy the pastime. Nevertheless, however much of an acceptance there is of gambling in our society, it is quite clear that society expects us to pass laws in relation to gambling to minimise the harm on problem gamblers, and I do not think that we should ever forget that. That leads me to two questions that I have to put to the Hon. Nick Xenophon. I understand that the clause he wishes to insert into the objects of the act is a mirror of the clause that binds Star City Holdings.

The Hon. Nick Xenophon: No.

The Hon. T.G. CAMERON: Is it very similar to it?

The Hon. Nick Xenophon: No.

The Hon. T.G. CAMERON: Then I am a bit confused, so the honourable member will have to clarify it for me.

The Hon. NICK XENOPHON: I apologise to the Hon. Terry Cameron if I was not clear on this issue. In the brief discussions that I have had with representatives of the Sky City Casino operation, who are the potential new owners of the Adelaide Casino, I am aware that it has responsible gambling programs at the Auckland casino and that it is seeking to further those programs in consultation with problem gambling organisations in New Zealand.

The Hon. A.J. Redford: It's a good idea.

The Hon. NICK XENOPHON: It is a good idea, but I am not aware that this clause is a mirror image of that. In terms of their host responsibility program, they go a long way in dealing with a number of issues arising out of problem gambling and they continue to consult. As I indicated, when I was in New Zealand just two or three weeks ago I spoke briefly to one of the group's executives who was about to have a meeting at the Compulsive Gambling Society's headquarters in Auckland. There is some ongoing dialogue that is a lot further from what is occurring with the current structure of the Casino.

The Hon. T.G. CAMERON: Do any other acts covering casinos in Australia have a similar clause to this? Will the Hon. Nick Xenophon clarify the situation for me and outline how the hoteliers are governed by a similar clause? If this was included in the Casino Act, would it bring the Casino more into line with what the hoteliers have to abide by? I am a bit confused there.

The Hon. NICK XENOPHON: The hotels have a voluntary code of practice in consultation with the Liquor and Gaming Commissioner that is not enshrined in statute or in regulation as such. In the context of acts relating to other casinos, in the next half hour I will undertake to get all the object clauses of those other acts because I want to be certain of that. If the Hon. Terry Cameron can wait in respect of that, that should deal with his concerns.

The Hon. R.I. LUCAS: My advice is that the Victorian act does not contain a similar provision and the New South Wales act in relation to its casino does not include a similar provision. I am told that a public interest provision relates to the objects of the regulatory authority in Victoria, and that was the issue discussed by the Hon. Michael Elliott, that the Gaming Supervisory Authority or some sort of commission could have an object or a term of reference in relation to problem gambling. Obviously the issue under debate is

whether or not it should apply to a casino. My advice is that we are not aware of any other examples where such an object exists.

I want to make two or three points in opposition to the provision. Members and the reader of *Hansard* need to look at the honourable member's response to the Hon. Terry Cameron's question. The question was whether the inclusion of this provision would make it any easier for legal action to be taken, or words to that effect. The Hon. Mr Xenophon's response was a cleverly crafted legal response, which said that he did not envisage the floodgates being open.

The Hon. T.G. Cameron: He didn't really answer the question.

The Hon. R.I. LUCAS: Exactly. He did not envisage that the floodgates would open, but that is not what the Hon. Mr Cameron asked. To paraphrase the honourable member, he said that, if the Casino adopted an appropriate harm minimisation policy and a variety of other strategies, he did not think that the floodgates would open. That in essence is the summary of his answer. A reasonable interpretation of the honourable member's response is that he did not answer the question, and the inference could be made by reasonable people that he concedes that it is easier.

I ask the honourable member to respond to the following scenario. The Casino may not adopt an appropriate harm minimisation strategy—and I think that that is an interesting debating point in itself. For instance, the Hon. Mr Xenophon and others who take his view might not believe that it is a reasonable or appropriate strategy, that is, that it does not go far enough in its actions. There is a clear inference from what the honourable member said that, if it did not do those things, it might be easier for people to put a legal argument in relation to liability in these areas. I am not a lawyer: I am just listening to the Hon. Mr Xenophon's response to the question.

The Hon. Carmel Zollo: You sounded like a lawyer—

The Hon. R.I. LUCAS: I appreciate that. I would love to be paid at lawyers' rates: it would be delightful. It is important for the committee to hear the honourable member's response in relation to whether he believes it would be easier. At the moment, my understanding is that, whether or not there is a harm minimisation strategy, the objects of the act cannot be used by a lawyer because this does not exist as part of the argument in relation to the way the Casino has been operated. I think the Hon. Mr Cameron's question as to whether it would be easier was reasonable. Others might not agree, and whether it is successful is ultimately determined by a court.

My second question to the Hon. Mr Xenophon is, if this was passed, given that he advises in this area, would he rule out advising people to use this object as part of a case against the Casino in relation to problem gambling? I think it is important to know that, given that he wears a hat here but he also wears a hat providing legal advice to people who take action against big gambling providers.

An honourable member interjecting:

The Hon. R.I. LUCAS: I am not asking him to restrict in practice. However, I think it is useful to know, given that he is a principal adviser in these areas, whether he would rule out advising someone to use this provision in the act, should it be included, in terms of a legal action against the Casino in relation to problem gambling?

The Hon. NICK XENOPHON: I will deal with the last question first. When I advise people in relation to gambling litigation, I might have my legal hat on but I also have my MP's hat on, and that is why I am very careful to ensure that any work I do is on a strictly pro bono basis, in other words, that there is no charge for that work. In the Licensing Court, for instance, all my work for the Liquor and Gaming Commissioner has always been done on a strictly pro bono basis. It might shock the Treasurer to know that there are some lawyers who work for nothing.

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: The Hon. Angus Redford also does pro bono work. Ultimately, the prudent course to take in giving any advice would be to obtain independent advice from counsel who have expertise in this area. That is what I would do; I would say they ought to get some independent advice.

The Hon. R.I. Lucas: Would you rule out advising someone to use this provision to take legal action?

The Hon. NICK XENOPHON: I would say that the object of this provision is to do something about minimising the harm caused by problem gambling. In the context of this provision, I agree with the views of the Hon. Angus Redford that its principal effect will be to give the gaming supervising authority a greater role in the context of dealing with issues relating to problem gambling—things such as warning notices and the like—and I cannot see how that would lead to any additional litigation. What I would say about any legislation relating to gambling, if someone wants advice in the context of that, is that they ought to get some independent advice from a barrister who specialises in this field, so that in terms—

The Hon. R.I. Lucas: You are a specialist in this field.

The Hon. NICK XENOPHON: I am not. I am a mere suburban solicitor.

Members interjecting:

The Hon. NICK XENOPHON: Well, it's true. That is what I would do. But in terms of what the Treasurer is saying—

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: Well, I endorse—

Members interjecting:

The CHAIRMAN: Order!

The Hon. NICK XENOPHON: The intention of this clause is that there be some onus in the context of the Casino's operations to ensure that the harm of gambling is minimised. My view is the same—

The Hon. A.J. Redford interjecting:

The Hon. NICK XENOPHON: My view is at one with the Hon. Angus Redford, so I cannot see how that would—

Members interjecting:

The Hon. NICK XENOPHON: What I would say to someone, if this clause was passed, and that seems unlikely given what I understand the numbers are—

The Hon. R.I. Lucas: It's swinging in the balance.

The Hon. NICK XENOPHON: It's swinging in the balance. I think it is a legitimate question on the part of—

The Hon. T.G. Cameron interjecting:

The Hon. NICK XENOPHON: If someone approached me, on the basis of my understanding I would say that this does not advance their cause.

The Hon. R.I. Lucas: That is not my question. My question is: will you rule out advising someone to use this as part of their case against the Casino on problem gambling?

The Hon. NICK XENOPHON: What I would say to people is that they ought to get some independent advice, because I cannot see how this particular clause by itself—

The Hon. A.J. REDFORD: Perhaps if I could help by actually reversing the question and putting the following question to the Treasurer.

The Hon. R.I. Lucas: It is not my bill.

The Hon. A.J. REDFORD: If the Treasurer wants to duck and weave we can contrast who is the better at it. Section 2A of the act provides:

> The object of the act is to provide for the licensing, supervision and control of the Adelaide Casino and, in particular, to ensure—

and the Treasurer will being delighted to hear about this—

> (d) that the interests of the state in the taxation of gambling revenue arising from the operation of the Adelaide Casino is properly protected.

So, if the government makes a decision that might adversely impact upon the revenue of the state, does the Treasurer think that he might be liable to court action for taking a decision that might have an incidental effect of reducing gambling revenue? I suspect the answer from the Treasurer is, no, that is poppycock, just as the answer from the Hon. Nick Xenophon by itself would be, no, it is poppycock. To ask the Hon. Nick Xenophon whether he would give an undertaking that he will not do that is not fair on the honourable member, with the greatest of respect.

The clear position is that this clause by itself will not found a legal action, but in conjunction with the other clauses and the behaviour of the Casino there is a potential of that. But what will lead to the legal action is a failure on the part of the Casino to fulfil its responsibilities under another section in the act or under some other responsibility that it might have. That is all—it can't by itself. I invite the Treasurer to trawl through the statute book and find all the lofty objects in things like native vegetation legislation and things like the environmental protection act, and we have not exactly seen a surfeit of legal action in those particular areas simply because parliament has chosen to put a lofty and admirable idea in the objects.

I think, quite frankly, the debate has been quite distracting and churlish. By itself it cannot found a legal action. In conjunction with a failure on the part of the Casino to fulfil its responsibility under another provision in the act, or under some regulation or, if it was a licensing act, under a code of conduct, it might. But you need more than just an object.

The Hon. R.I. LUCAS: I am happy to respond to my colleague's question. I refer my honourable colleague to Part 5 of the act which includes within the act specific references to the duty arrangements and others which are required to be paid in other sections of the act as well, which come back into the Treasury in terms of the operation of the Casino. So we have other provisions within the act which require clearly the payment of taxation, duty revenue, to Consolidated Account as a result of that. So the object of the act then cross-references to other sections of the act, which levy duties on the operators of the Casino.

But I am pleased at the Hon. Mr Redford's acknowledgment, because we are getting closer to a response now from our legal advice, and that is that the Hon. Mr Redford now acknowledges that if this object is included, together with other provisions in the legislation, it could lay the grounds for legal action. Indeed, that was the import of the question from the Hon. Terry Cameron. The Hon. Terry Cameron's question was not whether this object in itself would bring about legal action; his question was very cleverly crafted, and what he asked was: will the addition of this provision make it easier for a legal action? My question went on from that and basically said that, given that the Hon. Mr Xenophon does advise a variety of people in this area—

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: At the moment, but I assume that should he not continue in his representation of people in the parliament he will continue in legal practice, with some undoubted expertise gathered over years of pro bono work in this area. He would be undoubtedly the state's expert on gambling legislation and problem gambling legislation. So it is a reasonable request, given that he is seeking to incorporate it into the act, to respond to the question from the Hon. Mr Cameron as to whether this would make it easier for a legal practitioner, whether it be himself or others that he might work with, to take action, arguing that this would add to the package of information that might be available already within the Casino Act to take action on problem gambling. My question is simple. I do not expect an answer. I cannot demand an answer from the Hon. Mr Xenophon. I accept that, having two goes at it, he is unwilling to offer anything more.

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: I think, Mr Chairman, any reasonable reader of *Hansard* will accept that the Hon. Mr Xenophon is not going to respond directly to the question: that is, will he rule out providing advice to someone who wants to take an action against the Casino—not in itself, but as part of a total action? As part of a total action you can now argue that the objects of the Casino are that it has to now, or in the future, manage and operate, as follows:

> . . . so as to minimise, as far as practicable, the adverse personal effects of gambling on persons who gamble at the Casino and their families;

As I indicated, I do not think I will get a satisfactory response, and I am sure the Hon. Mr Xenophon would indicate that he does not get satisfactory responses from me on occasions during Question Time, or indeed in other procedures. So I know I cannot demand responses. I just indicate on the basis of this debate that we have had that I think that clearly—

The Hon. T.G. Cameron: You could set an example of leadership on this issue.

The Hon. R.I. LUCAS: No—following the Hon. Mr Xenophon's guidance. I think that, clearly, should it be included in the legislation we would have to accept that there is at least some prospect, based on what we heard, that it would be, in response to Mr Cameron's question, easier—

The Hon. A.J. Redford: What's wrong with that?

The Hon. R.I. LUCAS: I am not arguing that there is anything wrong with other people having that viewpoint. If that is the import of this, they should be aware of that when they vote for it. It is my intention not to support it. The Hon. Mr Redford interjects and says, 'What's wrong with that?' That is really a judgment for individual members to make. However, they should be aware that that is a prospect, and that is the view that I have raised. I did not hear all of the Hon. Mr Holloway's contribution. Other honourable members have raised this issue as well.

The Hon. NICK XENOPHON: For the Treasurer's information, my course of action, in similar cases, when people have approached me in relation to credit, is to approach the Liquor and Gaming Commission's office. For instance, in relation to credit betting, if it appears that it will involve litigation and cost issues are involved, I refer those people to a solicitor for independent advice and suggest they

obtain independent counsel's advice as well. I have done that in relation to two or three cases in the past few months.

The Hon. R.I. Lucas: These are some of the people who work with you and provide assistance to people who might want to take action.

The Hon. NICK XENOPHON: Yes, but I make it clear that my firm is not involved. I think it is inappropriate that my firm be involved in a case where there is a cost order and the solicitors are paid. The cases I am involved in—through my role as a member of parliament and as a legal practitioner—are cases before the Liquor and Gaming Commission where there are no cost orders and, indeed, any appeals to the Licensing Court in relation to gaming machine applications, which also do not attract cost orders. I am taking a very cautious approach to that. The Hon. Angus Redford made the point, 'Well, what's wrong with that?' in relation to potential litigation further down the track. That is not the intention. The principal work for this clause is to give the—

An honourable member interjecting:

The Hon. NICK XENOPHON: Yes; section 47 of the act. It gives the Gaming Supervisory Authority an increased role to play in relation to problem gambling. When we look at the big picture in the context of the harm it causes to an increasing number of South Australians and their families, to paraphrase the Hon. Angus Redford 'What's wrong with that?' It has to be a positive step in dealing with those individuals who are hurt.

The Hon. T.G. CAMERON: I make the observation that, after hearing the debate, I am not sure that I am all that wiser. If any future litigation does arise in relation to this section, one wonders whether or not they would be assisted by reading *Hansard*. I doubt it.

The Hon. K.T. GRIFFIN: I have some sympathy with the sentiments of the amendment, but I think it is going about it the wrong way. I think the way in which it is framed is likely to be an aid to those who may wish to sue the Casino in respect of its operation. That is the context in which I see it. However, I do not believe that that is the real issue. The real issue is about the way in which a casino conducts its gambling affairs. Before I deal with that, though, I remind honourable members that in the Liquor Licensing Bill, which is before us at the moment, and in respect of which we will be making some decisions this afternoon, the opposition and the Australian Democrats raised the same sort of question about an amendment to section 125 of the Liquor Licensing Act, that is, the power to bar.

Honourable members might remember that one of the additional grounds that I am seeking to insert by which a licensee can bar a person is where the licensee or responsible person is satisfied that the welfare of the person, or the welfare of the person residing with the person, is seriously at risk as a result of the consumption of alcohol by the person. The opposition and the Australian Democrats asked whether that would add to the likely risk of litigation. We did some work on it and, as a result, I will move an amendment this afternoon that will put that issue beyond doubt. It seeks to provide a legislative bar to action based upon the provision we are seeking to insert in the bill.

The way in which this is framed—which is very wide, I might say—is likely to provide encouragement to a person who wishes to sue the Casino in respect of its affect on them or their family as a result of their gambling. Of course, a couple of interesting questions arise from that. What are 'adverse personal affects' and what comes within the description of 'family'? Notwithstanding that, I think the sentiment is an appropriate one that whoever engages in either the conduct of a Casino or other gambling enterprises has to undertake those activities in an environment that is responsible and seeks to minimise harm.

That brings me to the objects of the Liquor Licensing Act. The Liquor Licensing Act has, among its objects, encouragement of responsible attitudes towards the promotion, sale, supply, consumption and use of liquor to develop and implement principles directed towards that end (these are called the responsible service and consumption principles) and minimise the harm associated with the consumption of liquor. What underpins the Liquor Licensing Act is the very basic principle of responsible service of alcohol and consumption, and the minimisation of harm.

The Liquor Licensing Act also provides for a code of practice or conduct to be prescribed, and that then becomes one of the many conditions attached to the relevant liquor licence. If the conditions are breached, it is a breach of the licence. What I would much prefer to see in relation to this is not to enact this amendment to the objects, because I believe it is not sufficiently clear as to what, ultimately, will be the environment in which it applies. Instead, I would prefer something along the lines of what is in the Liquor Licensing Act in relation to the responsible service of alcohol and the minimisation of harm. I think a code of practice is the appropriate way to go.

So, while I am sympathetic to the provision which is before us in clause 2, I do not believe that it will achieve the objective as appropriately and fairly as it should. Alternative drafting which focuses upon responsible service, responsible gambling and codes of practice is the more appropriate way to go.

The Hon. T. CROTHERS: Like the Attorney, who spoke before me, but for somewhat different reasons, I have some problems with this clause in the bill. I understand the principle that the Hon. Mr Xenophon is seeking to advance, which I suppose is a principle similar to that contained in the structure that we now know as Alcoholics Anonymous. The Attorney-General in his erudition spoke in relation to the licensing bill, but I point out that there is an element in the licensing bill which absolves the licensee, the publican or the person in charge from the responsibility for people having consumed too much alcohol. I suspect that was when the AHA wandered in after a case in New South Wales a year or two ago, where a person who occupied the licensed premises was held responsible for the inebriated state of a patron who had gone into a hotel and drunk himself into a stupor as a consequence of which I think he was involved in a fatal accident.

While I suspect that the principle of the Hon. Mr Xenophon's bill is okay, he is obviously not talking from hands-on experience at the coal face of the industry. If he were, he would understand how difficult it is to (in his words) 'manage and operate so as to minimise as far as practicable the adverse personal effects of gambling on persons'. Anyone who has been at that casino at peak times would understand what a task he is setting whoever is charged with the responsibility of giving impact to the contents of that clause; it is simply not possible. Indeed, I am aware from my experience in the Liquor Trades Union of an incident to which I have often referred in this place and which occurred in the old Richmond Hotel in Rundle Street. It was much frequented by Adelaide university students, as the Attorney and obviously the Treasurer would know. This was before the refectory bar at the university was opened.

The Hon. T.G. Cameron: They used to go there drinking together, didn't they?

The Hon. T. CROTHERS: No; the Attorney was there trying to sign up members for the Liberal Club at the university. I recall a barman there—who is dead now, so I can name him: Harold Chisolm—who was a very conscientious man. Those of us who knew the first floor dining room of the Richmond Hotel know that it was two lengths longer than the straight at Flemington, and the bar was hooked around a corner so that the barman did not have vision to the people who were in the dining room. On one occasion a young chap rolled up who was obviously over 18 at the time, asked for a jug of beer and two glasses, and took them down to his mate, who was 17: they proceeded to imbibe, and Chisolm was charged. We had to try to defend him, but we could not get him off.

If the Casino is half wise, it will take on board that case in New South Wales concerning the inebriated patron. It is not a far step from that position to someone suing the Casino. There are many lawyers about who are not supportive of gambling, so it is not a very far step from the case in New South Wales where the hotel keeper was found guilty of having been the cause of the inebriation of the patron. Likewise, there is some considerable potential here; as this society becomes more and more litigious, like our American cousins, there is a very strong chance that the Casino could well be charged by some family who has suffered at the hands of the husband or the wife, and their children have been deprived because of their excessive gambling habits. So, the Casino would be well advised to give more than scant attention to that situation.

However, having embraced the thrust of the principle in the Hon. Mr Xenophon's clause 2, I cannot support it. My conscience would not let me support it, because I understand the practical, pragmatic difficulties of enforcement. I can understand it at a time when the casinos or hotels are not busy, but when they are busy they are hanging from the rafters down there. The only other thing I might mention at this stage is that, as I understand it, the Casino does not contribute a cent towards the fund—the gambling anonymous fund—to assist people who have a fetish for gambling.

It does not matter what you do or how well meaning you are about gambling in this society; as strongly against gambling as you were, you will never stop it. When this state existed under the Playford regime and there was no gambling here, there were more illegal SP bookies and old railway tunnels that were being used for poker machines than you could poke a stick at.

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: Absolutely; card schools—name them what you like, or the Hellenic clubs or the Irish club.

Members interjecting:

The Hon. T. CROTHERS: I wish we could close you down.

Honourable members: Hear, hear!

An honourable member interjecting:

The Hon. T. CROTHERS: That's true; you haven't. If the Volstead act and its failure taught us anything, it taught us that, where you drag a human activity underground, you reap a whirlwind of sorrow. It is my view and has clearly been shown in the United States that, if you try to outlaw gambling to achieve the Hon. Mr Xenophon's ultimate goal of abolishing it, you will drive it underground. It will be a greater evil, because it will then be controlled by organised crime, as is now happening with marijuana. I heard the Hon. Mr Elliott talking about that the other day, and I support what he and the Hon. Mr Cameron said.

Thus, this bill that is currently in front of us is no different in principle from marijuana not being decriminalised or from the impact of the Volstead act in the United States in the 1920s and 1930s. It is no different at all, when you endeavour to pass regulations that will outlaw a human activity. It is simply an invitation, as the Hons Mr Cameron and Mr Elliott said yesterday with regard to controlled substances (and I could not agree with them more), for organised crime to come in.

Having touched on the generalities of the bill, I will now return to the specifics of clause 2 and why I am opposed to it. The intention and the principle are well meaning. Given the case I mentioned of the hotel in New South Wales, the Casino would be well advised to look to itself before it gets litigation imposed it as well. The tobacco companies thought they were so wealthy that they were immune from litigation, and the Casino people had better not think that here, because the track record is that the tobacco companies have lost out, and have lost out badly; and it looks as if the gun lobbies in the USA are the next cab off the rank. I will have something to say about the amendments the Attorney has before us regarding licensing; I will have considerable questions to ask him, because I do not think parts of that bill have been thought through. If the union was not consulted I think that is a shame because, if it had been, the points I will raise would probably have been brought to the Attorney's committee by the union responsible for the hospitality industry.

Having said that, on this occasion I find myself—if for somewhat different reasons—lining up on the side of the Attorney about having misgivings about clause 2 of the Hon. Mr Xenophon's private member's bill to amend the Casino Act. Because this is a conscience issue, I think all members should think long and carefully about this matter before they cast their vote. There is nothing that we do in this chamber that does not have ripples (either for good or for evil) that affect the South Australian community—and perhaps even farther afield than that.

The provisions of this clause are well meant, but the pragmatic effect of their implementation would be a nightmare and, if we agree to carry them, they will be a construction of wordsmithing, which looks well on paper but which, as Samuel Goldwyn Mayer observed about contracts, 'Ain't worth the paper they're written on.' Clause 2, despite the fact that it is well meant, reminds me very much of what Mayer was referring to.

The Hon. NICK XENOPHON: I am grateful for the contributions of the Attorney and the Hon. Trevor Crothers. As a result of those contributions, particularly the Attorney's comments, I propose to ask parliamentary counsel to draft another clause bearing in mind the objects of the Liquor Licensing Act. That may go some way towards satisfying the Attorney's concerns. I will circulate those amendments to members and, who knows, the Treasurer might even be sympathetic. I move:

That further consideration of this clause be postponed until after clause 9.

Motion carried.

Clause 3.

The Hon. NICK XENOPHON: This clause relates to approved licensing agreements. Events have overtaken us in respect of this clause. I do not propose to proceed with—

Members interjecting:

The CHAIRMAN: Order! The honourable member on his feet who has the call cannot be heard.

The Hon. NICK XENOPHON: As I indicated, clause 3 relates to the approved licensing agreement being approved by a resolution passed by both houses of parliament. The approved licensing agreement was tabled in parliament several months ago by the Treasurer. In the circumstances, there is no point in proceeding with this clause.

Clause negatived.

Clause 4.

The Hon. NICK XENOPHON: This clause relates to the approval of management systems for the Adelaide Casino. It is based on the New South Wales Casino legislation. Effectively, it requires that a copy of the rules of a particular game be made available for inspection by a casino patron, that a summary of those rules be provided to a casino patron at his or her request, that there be some information about gaming rules, payment of winning wagers and the odds of winning for each game prominently displayed in the Casino, and that a sign indicating permissible minimum and maximum wages for each game be prominently displayed at the table or location where the game is played and that, in terms of minimum wagers being increased at any time, there must be 20 minutes notice.

These clauses are based on the New South Wales Casino Control Act. They are very much in line with the views expressed in the Productivity Commission's report on Australia's gambling industry: that is, that there ought to be a level of informed consent for gamblers. Essentially, this is about providing a degree of consumer information for those who participate in gambling at the Casino. I do not think that this would be in any way onerous for the Casino. More importantly, it will give some degree of informed consent and go some way towards providing players or consumers of the Casino's gambling products with some degree of information which, currently, they do not have.

The Hon. R.I. LUCAS: I have a degree of sympathy for aspects of this clause. I have some questions for the Hon. Nick Xenophon, but, as I have indicated, I have some sympathy for potentially supporting the clause. As we will not conclude the discussion on this bill today—

The Hon. Nick Xenophon: Why not?

The Hon. R.I. LUCAS: I do not think so when we have spent 1½ hours on one clause. But you never know, perhaps when we get to the simpler issues, such as interactive gambling, we may speed up consideration of the issue. Even if the bill were to pass today, there is always the ability to recommit.

The Hon. Mr Xenophon may already have had discussions with the potential operators of the Casino—by the time we debate this matter next, the operators of the Casino may have been confirmed—as to whether they perceive any practical problems regarding the implementation of this clause. I support the notion of informed consent and providing more information for gamblers. The Productivity Commission and a number of learned unnamed research reports from around the world—the Hon. Nick Xenophon will want me to cite my sources—have indicated from their point of view—

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): Order! There is too much audible conversation in the chamber. I am having difficulty hearing the Treasurer.

The Hon. R.I. LUCAS: Those reports have indicated the desirability of informed consent or at least providing information to people who choose to gamble about, in particular, their prospects of winning. Speaking realistically, this sort of information will be utilised by a minority of gamblers. Nevertheless, that is not an argument against the provision of information. Some members will suggest that we have sought and provided information about the health aspects of smoking. Many intelligent people, some of whom we know, continue to engage in smoking as a habit or a pastime.

The question of providing information is not one to which, sensibly, most people could object. Between now and when we next debate the matter, if the Hon. Mr Xenophon has not received a definitive response from the prospective operators, I will seek a response from them as to whether they perceive any practical problems. I would be surprised if they have any general problem with the principle, but I would like to know whether they have any practical problems with the detail of it.

Out of an excess of caution, some of the questions that have been raised with me have been no problem in relation to providing copies of rules to those people who want them. The issue of requiring information about the odds of winning for each wager to be prominently displayed in the Casino has been raised with me in terms of detail. If that is interpreted in a commonsense way—that is, the odds of winning—I do not envisage a problem. However, what has been raised with me is that if may not be interpreted in a commonsense way. For example, there are many different potential outcomes from any one spin of any gaming machine. So, any one spin has potentially different odds.

I am not an expert in this area, but I am told that a full list would be long and probably not particularly informative for a gaming machine user. Again, I am not an expert in blackjack—some members of this chamber purport to be experts—but I am advised that, in terms of table games such as blackjack, the odds of winning lean in favour of the game and, in part, rely on the skill of the player. I am not sure what is envisaged in relation to blackjack tables at the Casino when one says that the odds of winning for each wager need to be prominently displayed. I am not expert enough to know whether or not, in practice, the odds can be prominently and sensibly displayed.

It may be that this provision or similar provisions are in other casinos. Perhaps it has been observed as a breach in relation to some games because it is just too difficult to do that, but in general it has been covered and no-one has raised questions about it. I think that we have the opportunity to get some information that we cannot get from the Hon. Mr Xenophon as to whether there are practical issues in relation to some of the games as regards the odds of winning for each wager and how prominently they would need to be displayed.

I raise those questions in the spirit of saying that I have no problem with sensible commonsense information being displayed in terms of one's odds or chances of winning. If it were to be interpreted unrealistically and nonsensically in terms of having to provide quite detailed information about every particular move and turn in a blackjack game or on a gaming machine, I would imagine that that is not what the Hon. Mr Xenophon wants, anyway. We have the capacity, between now and next week, if that is an issue, to have it explored.

I do not seek to hold up the debate on this today. If we do get to vote on it and if it is passed, we can still check it before we get to the end of the committee stage. We can always recommit it if a further amendment is needed to tidy up this area. The only other issue that I would like to get some

practical response on is new subsection (1a)(c), which provides:

(ii) if a minimum wager is to be increased at any time, a sign indicating the new minimum and the proposed time of change to be displayed at the table or location where the game is played at least 20 minutes before the increase becomes effective.

I am not sure in practical terms how that impacts or does not impact on the Casino's operations, and whether or not 20 minutes is a reasonable time frame. I am not sure how quickly it changes minimum wagers and whether that would impact on its current operations in some way. Again, if the majority of the committee were to approve it at this stage, I would seek some advice from the Casino and, if need be, we could explore a specific further amendment should it be a practical issue.

I have general sympathy with the provision of additional information. I have some issues about the practicality of two aspects of the clause and, should it be passed today, I flag that I will have further discussions with the Hon. Mr Xenophon to see whether or not there is some way of making it a more reasonable provision in terms of providing information without unduly restricting what the Casino is there for, and that is to provide gambling for the majority of people who do not get themselves into trouble engaging in that past time.

The Hon. P. HOLLOWAY: The opposition supports this clause in principle. The Treasurer has raised the question of whether or not there are some practical problems in relation to it. If that does occur later in the debate, I guess the opposition would be prepared to look at it. At this stage we will support the clause, which is very sensible in principle, that more information should be provided to the patrons of the Casino. We support that principle fully.

The Hon. T.G. CAMERON: I rise to indicate SA First's support for clause 4. However, I have a couple of problems with new subsections (b) and (c)(ii). With regard to new subsection (a)(i), my understanding is that a copy of the rules of all the games that are played at the Casino are available for inspection by a patron. Can the Hon. Nick Xenophon confirm whether or not that is correct?

The Hon. Nick Xenophon: I'm not sure.

The Hon. A.J. REDFORD: Perhaps I can help: my understanding is that as you go into the Casino there is a pile of booklets containing all the rules. In fact, it contains at least a dozen pages marketing the Casino itself. I am sure that the Casino would be delighted to have some statutory endorsement of its existing policy.

The Hon. T.G. CAMERON: It is obvious that the Hon. Angus Redford has spent some time in the Casino. He is more up-to-date with what it does than I am.

The Hon. A.J. Redford: I am following your former colleagues.

The Hon. T.G. CAMERON: It has always been my impression that you can get a copy of the rules of all the games that are played at the Casino. If that is the case, why not put it into the award, if that is what it is currently doing?

The Hon. Nick Xenophon: Into the statute.

The Hon. T.G. CAMERON: Into the statute; sorry. It is my understanding that you can get summaries of the rules of some of the games, but I am not sure that it applies to all the games. But that would be a fairly simple request for the Casino to abide by. Let us face it, it is not unreasonable, if you are in there playing their machines and games, to be provided with clear-cut rules on what they mean. I do not have any problem with new subsections (1a)(a)(i) and (ii). I do have a bit of a problem with new subsection (1a)(b) and, like the Treasurer, I would like the Hon. Nick Xenophon to provide more detail. I am a bit concerned about the words 'and the odds of winning for each game'. I am not sure what form that would take. I see that time is getting on and I might speak to the Hon. Nick Xenophon about that later, but from my old days when I used to gamble I spent quite a bit of time—

The Hon. T.G. Roberts: You still gamble; you play the Stock Exchange.

The Hon. T.G. CAMERON: No; that's investing. I am an investor, not a speculator. When I had a look at the probability theory and conducted an analysis of all the games of chance, the first and only conclusion that any sensible person can come to is that the rules of each game are stacked against you. But I am not quite sure how the odds of winning for each game might impact, for example, on a poker machine. Is it the Hon. Nick Xenophon's intention to have a similar clause apply to hotels whereby they must display the odds of winning for each game for gaming machines in their hotels? I am not quite sure practically how that will work. I understand how it would work for two-up, Caribbean poker (I think they call it), baccarat, roulette wheels and so on, but I am a bit concerned that we might end up with a 50 page book on all the odds of winning on a gaming machine. I also have a concern about new subsection (c), which provides:

(ii) if a minimum wager is to be increased at any time, a sign indicating. . .

I do not have a problem with new subclause (c)(i), although I would not like to see the Casino with signs everywhere; it would be like walking through the streets of Unley council these days. The council has a sign on every street corner.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: I do not know whether the Hon. Mike Elliott is indicating that he supports visual pollution, but I suspect down there in the Unley council—thank God I do not live in that area—we are getting to the point where—

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: I would not like to see signs plastered all over the walls, but I guess the commission can have a look at that.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: A clock is all right. I wear a watch, so I am not worried about a clock being on the wall. I am a little concerned about the practicality of a new sign being put up every time they change the minimum.

The Hon. M.J. Elliott interjecting:

The Hon. T.G. CAMERON: I will get to you later, Mr Elliott. My understanding is that casinos vary the minimum betting rarely. I do not spend a lot of time in the Casino, but I do not think that I can recall seeing the minimum betting change. I would like some indication from the Hon. Nick Xenophon as to whether or not—

The Hon. Nick Xenophon interjecting:

The Hon. T.G. CAMERON: We might have to go over and have a look. I have offered to take the honourable member to the Casino before, but he would not come with me.

The Hon. Nick Xenophon interjecting:

The Hon. T.G. CAMERON: If that is a promise, we will do it.

Members interjecting:

The Hon. T.G. CAMERON: I do not want to take this too far.

The Hon. M.J. Elliott: What about the committee?

The Hon. T.G. CAMERON: The Social Development Committee looked at gambling, but the government did to that report what it seems to do to every other report that the Social Development Committee hands down—ignore it. As to the point about setting a time of 20 minutes before the increase becomes effective, I am just not sure that such a long time would be needed. Has the honourable member given any consideration as to how it would be implemented in practical terms? Some kind of a chess clock would have to be used so that anybody walking up to a table to gamble would not find out two minutes later that they were not allowed to.

The Hon. M.J. ELLIOTT: I support this clause. People are asking about how practical this is, yet we have been informed that this is essentially a copy of what exists in the casino act in New South Wales. Clearly it is already operating elsewhere. Questions of practicality are easily addressed, recognising that this is not breaking new ground but copying what is being done elsewhere.

The Hon. NICK XENOPHON: In response to the remarks by the Treasurer and the Hon. Terry Cameron, I undertake to write to the relevant casino control authority in New South Wales and also to the operators of the Sydney Star City Casino to get their feedback and I will circulate the response to members with respect to that. In relation to the concerns expressed by the Hon. Terry Cameron, I would like to get some feedback from those authorities, but my understanding is that, in relation to poker machines, it must be some reasonable price information as to the odds. That is the sort of thing about which we need to see what is occurring in New South Wales. I imagine that this would give the Gaming Supervisory Authority a role to play to ensure that the odds that are published provide meaningful price information.

In terms of paragraph (c)(ii) and the concerns expressed by the Treasurer and the Hon. Terry Cameron, in particular, with respect to the 20-minute advance notice, I would imagine that could easily be put into place so that, whilst games are being played, a sign could say that after 20 minutes the bets will be changed to a different level. I imagine that is how it would be put into effect at the Sydney Star City Casino, but I am more than happy to visit the Casino with the Hon. Terry Cameron today, tomorrow or in the near future.

The Hon. M.J. Elliott: What about going to Sydney?

The Hon. NICK XENOPHON: I do not know about going to Sydney, but I will not be betting. I thank the Hon. Mike Elliott for his indication of support. As I have indicated, I am happy for this clause to be recommitted if that is what members wish to do if there are any question marks down the track. I understand that the Treasurer will get feedback from the proposed new operators of the Casino in relation to this clause. They have not raised any specific concerns to me but that does not mean that they do not have any. I do not imagine that they do but we can hear from them.

The main policy should not be guided by the potential new owners of the Casino. In the circumstances, the primary object of this clause is to give consumers a bit more information and if that is somewhat more onerous on the Casino operators, so be it. In the circumstances it is quite a reasonable reform that ought to be implemented.

Clause passed.

Clause 5.

The Hon. NICK XENOPHON: This relates to interactive gambling and there is another clause in the Gambling Industry Regulation Bill that I hope we will deliberate on next week. This clause provides that it is a condition of the casino licence that the licensee cannot make interactive gambling available unless authorised by resolution of both houses of parliament. I urge all members to support this. My understanding of the approved licensing agreement is that the Casino needs to go back to the Gaming Supervisory Authority to get this approved. This clause ensures that the Adelaide Casino cannot offer internet and interactive home gambling without resolution of both houses of parliament.

In the discussions that I have had with Mr Davies, the Chief Executive Officer of Sky City, the proposed new operators of the Adelaide Casino, he did not indicate any particular problems with this measure, but I would like to get that confirmed further by Mr Davies. It was not the operators' intention to offer internet or interactive home gambling. It bid for the current operation of the Casino without internet or interactive home gambling. The approved licensing agreement contains a first right of refusal in relation to internet or interactive home gambling if a licence is being offered, and the Treasurer might be able to assist with that.

The federal government's proposed moratorium of 12 months on interactive and internet home gambling ought to be taken into account as well. I thank the Hon. Carmel Zollo for raising this matter last year in terms of the potential of the Casino to offer these services in the absence of specific parliamentary approval. This clause provides simply that the Casino cannot be a provider of interactive home gambling services in the absence of parliament deliberating on it specifically.

The Hon. R.I. LUCAS: The passage of time will probably ensure this, but I would prefer that we do not vote on this provision today. I want to raise a couple of issues with the honourable member. One relates specifically to Keno, which I think is played at the Casino, although I am not an expert on the Casino. Too often people confuse internet and interactive gambling and use them interchangeably. I know that I have spoken about this before, and I will not repeat the argument ad nauseam, and it is a problem that Senator Alston had in deciding what it was that the federal government was seeking to ban, outlaw or have a moratorium on. I would like an explanation of the honourable member's intention. The amendment provides:

> 'telecommunication device' means—
> (a) a computer adapted by way of the internet or another communications network; or
> (b) a television receiver adapted to allow the viewer to transmit information by way of a cable television network or another communications network; or
> (c) a telephone; or
> (d) any other electronic device or thing for communicating at a distance.

I have not been to the Casino for 12 months to two years.

Members interjecting:

The Hon. R.I. LUCAS: My wife is the gambler in the family: I just watch. She prefers that I stay at a distance because she thinks I am an unlucky charm. She does not like me peering over her shoulder. When last I was there, there was a big Keno area where you could sit in a chair, have a cup of coffee or a sandwich, or whatever, and watch your numbers come up on a big wall to enable you to participate in Keno.

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: I have no idea: that is why I am asking the question. I think they are linked statewide. Given the drafting of this amendment, I am wondering whether the

honourable member is trying to prevent the Casino from participating. This provision would potentially prevent the Casino from operating a Keno game if it was so connected through one of these telecommunications devices. I do not know how Keno operates. This telecommunications device provision is broadly drafted and I seek advice from the member as to whether he has deliberately drafted it so as to prevent the Casino from participating in Keno.

I have seen those sorts of arrangements in clubs, at the Lotteries Commission or somewhere else: you can sit, eat and drink, and play Keno in a regular fashion, watching the numbers come up on a big wall or screen every five or 10 minutes. As I said, I cannot remember whether I have seen it in a tavern or a club, but I have seen it somewhere other than in the Casino. There seems to be some sort of statewide link. I may be wrong: it may be, as the honourable member indicates, an internal arrangement within the Casino. If that is the case, maybe it is not caught by the honourable member's drafting, although, again, an internal telecommunications device might still be caught.

There are one or two other issues of detail in relation to this. As I have said, I have an open mind in regard to this provision but I would need to have that confirmed. I would be interested, hopefully before we finish this debate, to see some legislation from the commonwealth government in relation to its intention by way of the moratorium on internet or interactive gambling, whatever it is to be called. As members would know, a press statement has been issued but I have not seen a draft of the legislation, and I am not sure whether the honourable member has, either. For those reasons, and given the fact that we have only five minutes left in this debate today, it would be useful to have some information collected between now and next Wednesday so that we can get a response to some of those questions.

The Hon. M.J. ELLIOTT: I want to add to that so that the Hon. Nick Xenophon does not have to answer a question twice: my query is along the same lines. Clause 41A(1) talks about gambling available in the Casino. I want to understand what 'gambling available in the Casino' means. Does it mean devices located in the Casino that are hooked up to something outside, or could it be that people are outside but using a service provided inside the Casino? I think it is capable of interpretation either way. I want to understand what you are trying to cover. Are you trying to cover both or one of those aspects? Does it involve gambling connected from outside into the Casino so the game is run there or, on the other hand, does it involve a device inside the Casino that connects to a location elsewhere?

The Hon. NICK XENOPHON: I thank the Treasurer and the Hon. Mike Elliott for their contributions; they made pertinent points. It is certainly not the intention to preclude Keno from being played in the Casino. The intention is to prohibit, in the absence of specific parliamentary approval, any new games being offered in an interactive sense outside the Casino. I hope that deals with the Hon. Mike Elliott's point.

In other words, just as Crown Casino is being mentioned as a potential provider of an internet online gambling site in the state of Victoria, then the idea is that the Adelaide Casino cannot offer a Web site so that people can gamble on the net or via digital TV in an interactive sense in the absence of this parliament giving specific authorisation for that. So I propose to write to parliamentary counsel with respect to the Treasurer's concerns and the remarks of the Hon. Mike Elliott to ensure that it does not have that unintended consequence.

The Hon. M.J. ELLIOTT: I think there is a further possibility. It seems to me that you are really trying to stop the Casino as an operator providing internet gambling; but it can do it without doing it in the Casino. The company can set up a site elsewhere, which can still be the Adelaide Casino site, but it is not actually provided within the premises. It can be providing gambling services elsewhere. If it is your intention that the company itself not provide interactive gaming in any way, then you still have another possibility again, which is that the company itself provides the service, but it does not actually provide it physically from the Casino site.

The Hon. NICK XENOPHON: It is a good point of the Hon. Mike Elliott. My understanding is that, by virtue of having a casino licence, the Casino cannot simply say, 'Well, we will take it off site.' As I understand it, the Casino licence applies to a specific location. But I would like to get specific advice from parliamentary counsel in relation to the issues raised by the Hon. Mike Elliott so that that can be adequately addressed when we next consider the bill.

The Hon. A.J. REDFORD: Mr Chairman, proposed section 41A deals with prohibition of interactive gambling and proposed section 41B deals with prohibition of gaming machines and notes. They are two different topics but they are under the one section. Will we be dealing with these separately?

The CHAIRMAN: If it is the wish of the committee they can be dealt with separately.

The Hon. T.G. CAMERON: I would indicate to the Hon. Nick Xenophon that at the moment I am not in a position to support proposed section 41A. I do not know that I will now have the time to go into the matter. It may be that I just do not understand what the clause is all about. However, section 41A(1) provides:

> It is a condition of the Casino licence that the licensee must not make interactive gambling available in the Casino unless authorised to do so by resolution passed by both houses of parliament.

It then goes on to define interactive gambling as follows:

> A game in which a prize consisting of money or something else of value is offered. . .

Unless I have this completely wrong, if this was carried, would not the Casino have to close down until both houses of parliament authorised it to continue operating? That is how I see it. You would have to close the Casino until we carried a resolution authorising it to open again.

The Hon. NICK XENOPHON: That is certainly not the intention. My reading of it is that if the Casino wants to offer new forms of interactive gambling, in other words a Web site for instance, or via digital TV, so that people can—

The Hon. T.G. Cameron: If we carry this then it will close. I am not a lawyer, but maybe you can help me here.

The Hon. NICK XENOPHON: The Hon. Mr Cameron is indeed a very good bush lawyer. That is certainly not the intention. I am happy to undertake to the Hon. Terry Cameron that I will obtain advice of parliamentary counsel to ensure that his concerns are adequately met in the context of the current drafting. That is not my understanding, but I think it is a point worth taking to parliamentary counsel so that it can be clarified.

The Hon. Carmel Zollo: Interactive online gambling.

The Hon. NICK XENOPHON: Yes, that is what it should be; interactive online gambling to be considered. I

think it is a very good point and I ask that progress be reported.

Progress reported; committee to sit again.

[Sitting suspended from 1 to 2.15 p.m.]

PROSTITUTION

A petition signed by 32 residents of South Australia, praying that this Council will strengthen the present law and ban all prostitution related advertising to enable police to suppress the prostitution trade more effectively, was presented by the Hon. P. Holloway.

Petition received.

RADIOACTIVE WASTE

A petition signed by 1 077 residents of South Australia, concerning the transport and storage of radioactive waste in South Australia, and praying that this Council will do all in its power to ensure that South Australia does not become the dumping ground for Australia's or the world's nuclear waste, was presented by the Hon. Sandra Kanck.

Petition received.

ARCHITECTS BOARD OF SOUTH AUSTRALIA

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I lay on the table the 1999 annual report of the Architects Board of South Australia.

QUESTION TIME

ELECTRICITY, PRIVATISATION

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

Leave granted.

The Hon. P. HOLLOWAY: Today, the opposition was advised by the independent electricity regulator that his office was informed of the errors made in the ETSA sale process by the government's advisers in early April. They then went to the government's key consultant advisers to tell them of the problem, yet the Treasurer apparently never informed the Auditor-General over that time, despite his vital role in the process.

The Premier has said that he first learnt of the need for urgent legislation to correct this problem from the Treasurer last Friday. The Treasurer and the Premier have both said that the mistakes will not lead to higher prices for consumers but have said nothing about the potential for legal action against the government by either of the companies affected. I ask the Treasurer: were the consultants responsible for the mistake in the ETSA lease process the accounting adviser, KPMG, which received over $7.5 million this year, including a success fee payment; and the lead negotiator, Pacific Road Corporate Finance, which received part of a $13 million payment this year, also including a success fee payment? Will the government now be withholding further payments to these companies?

The Hon. R.I. LUCAS (Treasurer): I indicated yesterday and again this morning that I accept responsibility for the mistakes that have been made. I do not intend to take a public position of pointing the finger at individuals or organisations. That is the position which I adopted yesterday and which I adopt today. As I said yesterday and again this morning, at this stage the advice to the government is that taxpayers will not be impacted by the circumstances that have arisen over the past few weeks. The dispute is essentially a reallocation of income between two private sector companies, where one (AGL) may well see an unexpected windfall gain at the expense of CKI Hong Kong Electric, which would potentially suffer a loss.

The Hon. T.G. Cameron: That's a bit different from the story the Labor Party is telling the public.

The Hon. R.I. LUCAS: It is certainly a bit different from the story that was on the front page of the morning edition of the *Advertiser*, which indicated that taxpayers were exposed to hundreds of millions of dollars of potential costs. As I indicated publicly yesterday and again today, it is essentially an issue of how the revenue to be earned from the businesses is to be divided between the two private sector companies. If in the end there is no material detriment to taxpayers in relation to this issue, we have a set of circumstances in relation to our advisers.

Other than the additional penalties and costs that the affected parties have incurred already whereby at their own cost they have had to trawl through the electricity pricing order again to ensure that all potential problems are clarified so that when we come before the parliament we can be confident they have been corrected, what I indicated previously remains the government's position. If, however, against the advice we have received there should be some material cost to the taxpayers as a result of the problems we are seeking to correct, then the government will consider its options in relation to the consultants.

At this stage, if we have received almost $4 billion and there is no impact on that $4 billion, and the taxpayers have received that amount of money and will continue to receive the expected proceeds from the privatisation of ElectraNet and the other remaining businesses, from that viewpoint the notion that in some way the taxpayers could be up for hundreds of millions of dollars is fanciful. Having taken further advice, I placed on the record this morning that, rather than the hundreds of millions of dollars that has been speculated, the ball park of the estimated impact on CKI Hong Kong Electric is approximately $20 million. That is contrary to the stories that the Labor Party and others have been peddling to the media of some hundreds of millions of dollars.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: In that case, I ask the honourable member to withdraw.

The PRESIDENT: I heard most of that exchange, and I ask the honourable member to withdraw.

The Hon. P. HOLLOWAY: I withdraw, Mr President.

An honourable member: And apologise.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I accept the honourable member's withdrawal of that remark; it was incorrect, unparliamentary and offensive.

Members interjecting:

The Hon. R.I. LUCAS: I'm easily offended by the vicious barbs from the Deputy Leader of the Opposition. As I indicated, eventually this issue will be resolved by the parliament. Over the coming three weeks, the parliament will have the opportunity to agree with the government's proposed course of action which it believes is not only in the interests

of the taxpayers of South Australia but ultimately the proper course of action. We know, and we believe that the bidders know, that all the information with which they were provided indicated a certain set of circumstances. If this mistake is not corrected, we will not be true to the representations which the advisory team made to the bidders. We think the proper course of action is to correct the errors that have been made.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: There are many occasions where governments of both persuasions have come back to the parliament with legislation which has had to be corrected.

The Hon. P. Holloway: You've never paid $70 million for advice before.

The Hon. R.I. LUCAS: And we've never received $4 000 million in lease proceeds before. You lost $3 000 million—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —and paid tens of millions of dollars for consultants. That is not a bad comparison: the Labor Party lost $3 000 million and spent millions on consultants and legal fees in the process; this government spent tens of millions of dollars on consultants and actually made $4 000 million in a part process.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I know which deal I would accept and in which I would be interested; and it would not be the proposition which the deputy leader puts.

Members interjecting:

The PRESIDENT: Order!

The Hon. G. Weatherill interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! The chair does not call for order so that someone can run in and fill up that space with an interjection. Interjections will cease whilst the Treasurer is answering the question.

The Hon. R.I. LUCAS: As I said, ultimately, the course of action which this state adopts is in the hands of members of parliament. We must decide whether we are prepared to support the proposed course of action to protect the interests of taxpayers, our business interests and investor confidence in the fact that, when representations are made relating to a big proposal or a project such as this, this government is prepared to see them followed through, even if it means acknowledging that mistakes were made and being honest and open enough to front up, accept the political heat and the criticism and see the legislation through the parliament.

The Hon. P. HOLLOWAY: Precisely when was the Treasurer first informed of this problem, and who informed him?

The Hon. R.I. LUCAS: Yesterday, I said, 'Some time ago', because I wanted to check the record. This significant issue between CKI Hong Kong Electric and AGL was first raised with me by one of my advisory team some time around about April. I cannot be specific and say exactly when; it was around about that time when one of my advisers—

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: I beg your pardon?

An honourable member interjecting:

The Hon. R.I. LUCAS: Well, I am a very cautious person. I was not going to indicate yesterday precisely when this happened, other than to say that it was some time ago. It was not last week or in recent days. I was open, honest and accountable in saying that it was some time ago. Having checked the record, I am now told that it was some time around about April when this particular issue was first raised with me.

The Hon. M.J. ELLIOTT: As a supplementary question, the $20 million loss referred to by the—

The PRESIDENT: Order! The honourable member will go straight to the question.

The Hon. M.J. ELLIOTT: Is the $20 million loss for CKI referred to by the Treasurer the loss so far or what it would have been? If so, will that be made up?

The Hon. R.I. LUCAS: No, it is not the loss so far; it is an estimate of what the potential losses over a two to three year period would be to CKI Hong Kong Electric should we, as a parliament, choose not to take this corrective action.

The Hon. CAROLYN PICKLES (Leader of the Opposition): As a supplementary question, why did the Treasurer not inform the Premier of the need for urgent corrective legislation?

The PRESIDENT: Order! That is hardly a supplementary question, but I will allow it as the last supplementary.

The Hon. Carolyn Pickles: It is; it is related to the first question.

The PRESIDENT: You have two more questions you can ask.

The Hon. Carolyn Pickles: You are making up standing orders as we go along.

The PRESIDENT: I am ruling that way.

The Hon. R.I. LUCAS: The honourable member is getting very grumpy all of a sudden. As I indicated yesterday, when the issue was first raised with me, a number of actions were immediately taken. The first, which took some considerable time, was that the electricity pricing order, at the expense of the consultants, needed to be trawled through from start to finish to ensure that any inconsistencies or mistakes, even including typographical errors, were picked up.

Secondly, there needed to be a trawling through of all the documents and all the representations that had been made by representatives of the government over a long period of time to all the bidders. I then asked that all the documents in the data room, any file notes of management presentations and those sorts of issues be explored to try to find out what had been represented to the bidders. We first needed to establish the grounds for taking legal advice from legal counsel. That was an extraordinarily long process because we had to check to see what representations the government had made.

All the documents that could be located or established were located or established in relation to the representations. The overwhelming evidence of that trawling through of documents, file notes and so on indicated that this government, through its representatives, had made clear representations to the bidders that these were the potential revenues that could be earned should they successfully bid for the business.

Having done those two major tasks, the government then took legal advice from both the Crown and its own private legal counsel as regards, if the government was to adopt a certain course of action, what legal options would ensue as a result of that; and, if the government took the alternative course of action, what was the legal position of the government and the interested parties. It was at the end of that

process that I felt confident as a minister that this issue needed to be resolved in the way that we are now resolving it, subject to the cabinet agreeing to that process. The matter was then taken to cabinet, and cabinet considered the process; it was then taken to the government party room, and the government party room considered the process. It was at the end of that process that the government indicated that it would take this course of action.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: No, Tuesday. Contrary to the *Advertiser* report, it was Tuesday that it went to the party room—and it was Tuesday afternoon that there was a premature release of information.

The Hon. R.R. Roberts: We actually knew before that.

The Hon. R.I. LUCAS: I don't think so.

The Hon. R.R. Roberts: We were told at 10 o'clock in the bar.

The Hon. R.I. LUCAS: I don't think so. Considerable work ensued after identifying this major mistake which related to CKI Hong Kong Electric and ETSA Utilities. When that was originally identified, I understand by an officer from within the independent regulators office somewhere around April, all this work was done between then and the past week, and at the end of that, as is appropriate, as minister I took a recommendation to the cabinet and the cabinet authorised it. That is the process that is adopted in all issues. If a problem needs to be addressed by legislation, if it cannot be addressed administratively, a cabinet submission is formulated, it goes to cabinet and, if it is approved, we end up in parliament.

The Hon. M.J. ELLIOTT: I have a supplementary question. Will the Treasurer inform this place what total losses will have been suffered after the passage of the legislation by CKI or any other parties, and is the government making any of those up, including legal costs?

The Hon. R.I. LUCAS: I do not have that information. A number of variables relate to this issue and that is why I have said it is a ballpark estimate. Members may have read it in the *Advertiser* or seen the complicated mathematical formula. There are a number of variables that relate to these calculations and I assure members that it is not a simple matter. The ballpark estimate is in the region of $20 million and that is for the period of two to three years—

The Hon. M.J. Elliott: That is not my question.

The Hon. R.I. LUCAS: I know it is not. I am just saying that I do not have the answer to that question. The only information that I have is that it is a total quantum of $20 million. It is that issue that needs to be addressed, or not addressed, by parliament. The total ballpark estimate for ETSA Utilities is of the order of $20 million. As I said, that is money that is potentially the windfall gain—transference—depending on some variable changes, to AGL.

The Hon. M.J. ELLIOTT: I have another supplementary question. Even if the Treasurer cannot answer with numbers, what costs will we be covering for other parties? Will we cover legal costs or any losses that are incurred while that formula is in force?

The Hon. R.I. LUCAS: I am not sure how I can answer the honourable member's first question without numbers. If the honourable member can explain how I can answer that question without numbers, I would be delighted to take his advice. I am happy to take the honourable member's first question on notice and seek some advice, if that is still troubling him, but I do not have that information in relation to his first question. As to whether the government is underwriting the legal costs of CKI Hong Kong Electric, the answer is no.

An honourable member interjecting:

The Hon. R.I. LUCAS: The government has entered into no arrangement with AGL to cover its legal costs. If the honourable member has other questions, I am more than happy to respond.

The Hon. NICK XENOPHON: I have a supplementary question. Has the government ruled—

Members interjecting:

The PRESIDENT: Order! I cannot hear the question.

The Hon. NICK XENOPHON: Has the government ruled out taking any legal action against any of its advisers if the state is subsequently exposed to litigation by CKI or AGL?

The Hon. R.I. LUCAS: I am prepared to say two things on the public record at this stage, and I have said them already. One is that the government's legal advice is that, whatever course of action is adopted, we can successfully defend the government's position. Secondly, in relation to the issue that the honourable member raised, all I am prepared to say on the public record is that, should there be a loss to the taxpayers of a material nature, the government would consider what options are available to it. I am not prepared to flag on the public record at this stage anything further than that.

The Hon. T.G. CAMERON: I have a supplementary question. Where might those losses come from?

The Hon. R.I. LUCAS: As I said, the primary issue that we are discussing—the CKI Hong Kong Electric and AGL issue—is a transfer of revenue from one private sector company to another private sector company. If CKI Hong Kong Electric loses money, while it is not a one-for-one transfer because some variables impact on the calculations, AGL by and large picks up the unexpected windfall gain from the loss from CKI Hong Kong Electric.

The Hon. P. HOLLOWAY: Can the treasurer confirm that the ETSA lease mistake made by the government and its consultants, who have already received $90 million in payments, including success fees, was the omission of a simple formula for consumer price index (CPI). If so, why are these consultants not being penalised for making so basic an error?

The Hon. R.I. LUCAS: As I indicated yesterday by press release and I do so today in the second reading explanation to the bill, there are four material errors that have been raised, so it is not correct to say that there is just one—

An honourable member interjecting:

The Hon. R.I. LUCAS: No, I have said there are four material errors and I indicated that by way of public statement in a press release yesterday. So it is not correct to say that the only issue is the issue of the CPI.

The Hon. CAROLYN PICKLES: Can the treasurer confirm that Crown Law has advised the government that the state could be open to a law suit, even if legislation designed to fix the ETSA mistake is passed?

The Hon. R.I. LUCAS (Treasurer): I am surprised that the honourable member would still ask that question. I indicated earlier today—

An honourable member interjecting:

The Hon. R.I. LUCAS: —yes I did, and early yesterday—that the government has looked at all the legal options and we know that, whichever course the government adopts, whether it be the legislative course or whether it be to do nothing, there were potentially legal options or legal consequences for both those options. The government has taken advice on those options and, as I said, our advice has been that, should action be taken—not that you ever get guarantees from legal advice and, certainly, that is not possible—the government could successfully defend its position.

Clearly, that indicates that the government has contemplated the prospects of either doing nothing or of legislating. We are aware that there are legal consequences potentially for both. We have taken appropriate advice in relation to those and we believe that the proper course of action is to stand up in this parliament, to indicate openly that mistakes have been made and to do the proper thing—to seek to correct those mistakes—because we gave undertakings through our advisers to businesses and we are not prepared to hide behind any legal technicality or whatever else it might be. We will be prepared to be honest and say, 'Okay, these representations were made on our behalf and we need to set them right.'

CONSULTANCY FEES

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Leader of the Opposition a question about consultancy fees.

Leave granted.

The Hon. L.H. DAVIS: In May 1989, the then Liberal Party opposition first raised concerns about the State Bank of South Australia. As a matter of record, Labor members, including the Hon. Mike Rann, made no attempt to investigate these claims and the many issues that were raised on many occasions in the parliament over the subsequent 20 months. It is also a matter of record that, after these concerns had been raised for 20 months, from May 1989 to February 1991, the then Premier, John Bannon, announced that the State Bank had lost $1 billion. That loss subsequently blew out to $3.15 billion. At the same time, the SGIC was in the process of losing $800 million and was made technically bankrupt. There were also losses of around $100 million on various timber ventures. In all, the total loss was $4 billion with an additional $1 billion in interest payments—a grand (if that is the word) total of $5 billion. In the period 1991 to 1993, the Bannon and Arnold governments sold the government's 86 per cent interest in the South Australian Gas Company and agreed to sell the State Bank. My question—

The Hon. P. Holloway interjecting:

The Hon. L.H. DAVIS: Well, Paul, just listen, and you will find how relevant it is. My question is: will the Treasurer advise the Council of the estimated costs of consultants and other parties involved in dealing with the State Bank losses, the creation of the bad bank, the royal commission, the preliminary plans for the sale of the State Bank, the consultants' fees in dealing with the sale of the South Australian Gas Company and the losses and restructuring of SGIC, and the restructuring of the various government-owned timber ventures? I understand that he may need to take that question on notice.

The Hon. R.I. LUCAS (Treasurer): The honourable member is exactly right: I certainly do not have those figures at my fingertips. Certainly they would be considerable and I think the other costs that need to be borne in mind are the legal costs for advice and court cases during that period. I am happy to take that question on notice and bring back a reply.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: We may well have some inside information. I will certainly bring back a reply. But as I indicated earlier, at least this government's cost of consultants has actually recouped to the state some $4 000 million so far. The cost of all of these legal advisers, court cases and consultants used by the Bannon government cost the state some $3 000 million in losses, in addition to their costs of consultancy. The honourable member raised a good point. I do not have the answers with me. I will take the question on notice and bring back a reply as quickly as I can.

The Hon. A.J. REDFORD: I have a supplementary question. Could the Treasurer also explain what it would have cost South Australian taxpayers if we had not sold ETSA?

Members interjecting:

The Hon. R.I. LUCAS: I am surprised that the Labor Party should query one supplementary to a question, when it had eight to its first question.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It is the content is it? It is only the content members opposite are worried about. Perhaps you could vet the content before supplementaries are asked, or something.

The Hon. Carolyn Pickles interjecting:

The Hon. R.I. LUCAS: Well, I do not think it is very nice for the Leader of the Opposition to say that. If the Leader of the Opposition wants to use that sort of language, that is fine. It is not very parliamentary for the Leader of the Opposition to use that language but, if that is her choice, so be it.

The Hon. T.G. Cameron: I didn't hear it. What did she say?

The Hon. R.I. LUCAS: I think it was something like, 'Don't be a smart arse.' I think that was the response from the Leader of the Opposition.

The Hon. T.G. Cameron: She's called me far worse!

The Hon. R.I. LUCAS: Well, as I said, I am not overly offended by the Leader of the Opposition. Again, I am happy to take the honourable member's question on notice. But as I have highlighted before, clearly in relation to just the interest impact, if we had not, for example, reduced our state debt from the levels that we had inherited and if the interest rates had gone up by approximately 2 per cent, as they have headed towards in the past 12 to 15 months, the net increase in interest costs for the state would have been $150 million a year. So that would be just from interest costs. Clearly, there are very significant costs should we not have taken that difficult decision to reduce our state debt. But I am happy to take the honourable member's question on notice and bring back a reply.

The Hon. A.J. REDFORD: I have a further supplementary question.

Members interjecting:

The PRESIDENT: Order!

The Hon. A.J. REDFORD: No, I am just learning from you lot. Could the Treasurer tell the parliament—

The Hon. R.R. Roberts interjecting:

The Hon. A.J. REDFORD: Ron, I sat through two hours of you preaching and preening to the TV camera, and you didn't get a second.

The PRESIDENT: Order! The honourable member is out of order.

The Hon. A.J. REDFORD: The question to the Treasurer is: what has been the cost to the South Australian taxpayer caused by the delay of the sale of ETSA as a result of the opposition intransigence on this issue?

The Hon. R.I. LUCAS: Again, I will check for the record, but in the budget speech I think I made it clear that we believe that the potential loss to the state caused by the Labor Party and other opponents would—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: At the time, but if we had actually gone to the market two years ago—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: You do not understand these things; the markets actually change, Paul. The shadow minister for finance says—

The Hon. L.H. Davis interjecting:

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

The Hon. R.I. LUCAS: Mr President, this is the shadow minister—

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order! The Hon. Ron Roberts will come to order.

The Hon. R.I. LUCAS: The shadow minister for finance makes the stunning interjection, 'Your advisers said that, given the market, we got a reasonable price.'

The Hon. P. Holloway interjecting:

The PRESIDENT: Order, the Hon. Paul Holloway!

The Hon. R.I. LUCAS: That is exactly the point. The market has changed from two years ago. If the shadow minister for finance has not understood—it has actually moved on. We have a position where, in Victoria, the GPU-owned asset (which was purchased for approximately $2.5 billion or $2.6 billion) was sold this year—according to market sources, because it does not have to be publicly recorded—for $2.1 billion. That equates to a loss in that time of between $400 million and $500 million.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: A movement of the market, for the deputy leader.

The Hon. T.G. Cameron interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Cameron is right.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order, Mr Cameron!

The Hon. R.I. LUCAS: Mr Cameron is exactly right. The opposition has been saying that we should have delayed the utilities lease even longer. If we were going to the market today, as opposed to late last year, we would have suffered a further loss of tens, if not in the low hundreds, of millions of dollars, compared with the figure we got last year. That is over and above the figure of some hundreds of millions of dollars that we lost because we could not get to the market in 1998. The Hon. Mr Holloway does not understand that markets do actually change not only year to year but week to week.

An honourable member: Or day to day.

The Hon. R.I. LUCAS: Or day to day. To sell electricity businesses in the year 2000, as opposed to either 1999 or 1998, one is in a much less heated market, a much less competitive market and there are fewer interested buyers. The market has moved on and we are suffering as a result of the decision taken by not only the Hon. Mr Holloway but other members of his Labor Caucus.

The Hon. L.H. DAVIS: I have a supplementary question. Has the Treasurer heard that the Labor Treasurer of New South Wales, the Hon. Michael Egan, is spewing because the New South Wales electricity assets which were valued at—

The PRESIDENT: The Hon. Mr Davis will resume his seat; it is not a supplementary question.

ELECTRICITY, PRIVATISATION

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Treasurer a question about the—

The Hon. T. CROTHERS: Mr President, I rise on a point of order. I was on my feet to ask a supplementary question. This is a new question.

The PRESIDENT: I called the Hon. Sandra Kanck before the honourable member was on his feet.

The Hon. SANDRA KANCK: My question is about the consultants who worked on the privatisation of South Australia's electricity assets.

Leave granted.

The Hon. SANDRA KANCK: The people of South Australia have, to date, forked out an estimated $90 million in consultancy fees for advice regarding the privatisation of South Australia's electricity utilities, the lease of which has so far returned less than $4 billion to taxpayers. By contrast, the Victorian government paid out $93.7 million for their consultants (compare that to $90 million for South Australia) and got back $21.7 billion compared with our less than $4 billion.

In the wake of this information and the revelations today that the industry regulator advised the government's advisers back in March that there was a problem, will the Treasurer advise why yesterday he refused to inform me how the government first became aware of the problem? Given the enormous discrepancy between the outlays and returns of Victoria and South Australia, why does the Treasurer keep on defending his overpaid consultants?

The Hon. R.I. LUCAS (Treasurer): The Hon. Sandra Kanck can accept some of the responsibility for the reduced asset proceeds.

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: Our assets were never worth $21 billion.

The Hon. M.J. Elliott: You noticed.

The Hon. R.I. LUCAS: Exactly. The Deputy Leader of the Australian Democrats can accept some responsibility for the reduced proceeds. As I said in response to the supplementary question from the Hon. Angus Redford, the delay in getting to market, caused in part by the 1 000 hours of research by the Deputy Leader of the Australian Democrats to arrive at no conclusion at all, meant that the government was unable to get to the market in 1998. The government was never going to be able to get $21 billion for the South Australian assets. The same degree (or in our case, a greater degree) of complexity of our market in South Australia, which most people acknowledge, meant that most of the tasks that had to be accomplished in Victoria equally had to be accomplished here, irrespective of the sale proceeds.

We have said all along that the estimated costs of the transaction consultants would be of the order of 1 per cent to 2 per cent of the total lease proceeds, and we are still within that ball park of consultancy cost as a percentage of the total lease proceeds, because we still have three more businesses out of the seven from which to receive proceeds. So, the

deputy leader can accept some responsibility for the reduced proceeds that this state managed to achieve from the leasing process. She may well be happy with that, and that is a decision for her, but she must accept some responsibility for it.

NATIVE TITLE

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Attorney-General a question about native title.

Leave granted.

The Hon. CAROLINE SCHAEFER: Several weeks ago the federal court in the case of Anderson v. Wilson made a decision about the existence of native title on property which was the subject of lease under the Western Lands Act 1901 of New South Wales. The court decided that the Western Lands Act did not necessarily extinguish native title. This decision has been used by some to seek to discredit the state government's attempts to confirm by legislation the extinguishment of native title over certain leasehold tenures, particularly, as I understand, perpetual leases. Does the decision in Anderson v. Wilson have any relevance in South Australia?

The Hon. K.T. GRIFFIN (Attorney-General): A lot of misinformation has been spread about the decision of the federal court in the Anderson and Wilson case. It is important for us to recognise the differences between that decision and the lease which was the subject of that decision and the position in South Australia. As the Hon. Caroline Schaefer has indicated, the lease which was the subject of the decision in Anderson and Wilson was a western lands lease: it was a lease in perpetuity that dated from August 1953. It was similar to the leases that were the subject of the High Court decision in the Wik case. A number of conditions regulated the use of the land. From the point of view of the validation and confirmation legislation which we have in our parliament, the most important was the condition that prohibited the lessee from using the land for any other purpose than grazing. It had to be used for grazing, and grazing is not necessarily an activity that is incompatible or inconsistent with native title. On the other hand, cropping and use for agriculture is inconsistent with the continuation of native title.

There were some other qualifications in the western lands lease upon the lessee's right to possession, and they included the reservation of minerals to the Crown; the reservation of the state's right to proclaim roads, travelling stock, camping or other reserves, and to withdraw land for these purposes without compensation; and the reservation of the state's power to resume land for mining, townships or public purposes.

The lessee is required to permit authorised persons to enter, search for and remove minerals and to permit the minister for conservation (or any person acting on his behalf) to enter for the purposes of survey or investigation in connection with soil conservation. Under the act, the Governor has the power to withdraw leased lands for settlement purposes and, under the regulations, the commissioner is empowered to cause inspections and authorise a person to enter and open and remove fences. All of these conditions are imposed on that western lands lease in perpetuity.

One must compare that with the situation in South Australia, because we have grazing leases in this state which contain similar conditions and reservations. Those conditions and reservations prohibit the use of leased lands for purposes other than grazing. So, there can be no cropping or agriculture; you can use the leases only for grazing purposes.

As I said, the high court in the Wik case held that pastoral grazing activities are not necessarily inconsistent with native title. We took that into consideration when looking at the validation confirmation bill in this state and the schedule of extinguishing tenures, which we submitted to the federal government and which are now in the schedule to the federal native title legislation, and deliberately excluded South Australian grazing leases from our schedule. So, there is nothing in that schedule which is akin to the leasehold tenures which came under scrutiny in both Wik and the Anderson v. Wilson case.

There is a significant distinction between the position in South Australia and that in New South Wales. So far as our bill is concerned, it should not in any way be compromised by the decision in Anderson v. Wilson, because the leases, similar to the leases in that case, are not included on the schedule of extinguishing tenures relating to our legislation.

ELECTRICITY, PRIVATISATION

The Hon. T. CROTHERS: I seek leave to direct a question to the Treasurer on the subject of moneys received so far from the lease of our electricity assets.

Leave granted.

The Hon. T. CROTHERS: It has been said that the South Australian electricity assets attracted less money than might have been the case on a fair comparison basis with the sale of the Victorian government's electricity assets. It has further been said that there has been a mood swing in the investment market. Therefore, my questions are:

1. Does the Treasurer believe that the mood swing in public investment moneys away from the purchase of government utilities, which are up for purchase, into the electronic market is a major reason for the lower price that we have received in comparison with the sale of the Victorian electricity assets?

2. If he does believe that, how much of a difference does he think that made relative to the mood swing away from investment in public utilities to investment in electronic and computer markets?

The Hon. R.I. LUCAS (Treasurer): If I may be frank, this is a difficult question to be specific about. The estimates that the government has been given incorporate the issue to which the honourable member refers as well as other issues such as the general movement away from international (particularly American) interest in Australian based utility companies.

The aggregate figure estimated by some in the industry in terms of the potential difference between going to market in the year 2000 as opposed to 1998 (an 18 to 24 month delay) might be in the order of hundreds of millions of dollars up to, potentially, $500 million in terms of lower proceeds. Ultimately, this can only be an estimate, and I am the first to acknowledge that.

There is no doubt that the GPU sale experience and a number of others have indicated that it is a significant sum, and it certainly is in the context of hundreds of millions of dollars rather than a much smaller sum. How much of that is due to the issue that the honourable member has raised is even more difficult to estimate. It is correct to say that that would have been one of the significant influences in terms of investors wanting to put their money into investment

opportunities whether it be in the electricity business, the new economy-type companies (if I can summarise it that way) or the dot com based economies.

As I said, I cannot give an answer that is more specific than that, but I can acknowledge that that would be a factor in the reduced assets proceeds that we will receive of some hundreds of millions of dollars. The only other point I make, which I suspect is where the Hon. Mr Davis was heading by way of interjection or earlier question, is that in New South Wales the earlier estimates (two years ago) of the value of the electricity businesses was anywhere between $25 billion and $30 billion. It has recently been estimated by the industry that, should it go to the market now, it may be that those assets are worth less than $20 billion. That is, there may have been a hidden value—

The Hon. L.H. Davis: That was exactly the question I was going to ask.

The Hon. R.I. LUCAS: The Hon. Mr Davis confirms that that was the question he was going to ask. It may well be that the impact on value in New South Wales as a result of the delay is of the order of $5 billion or more in terms of the value of its electricity businesses.

EYRE HIGHWAY

The Hon. J.S.L. DAWKINS: My question is directed to the Minister for Transport and Urban Planning. Can the minister indicate what steps have been taken to provide emergency access to the Eyre Highway, particularly in the 500 kilometres immediately east of the Western Australian border?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank the honourable member for his question and interest in this matter, because it has been a worry for some considerable time that we have had a very poor provision of access for medical services in remote areas of South Australia for road crashes or local residents. I am pleased to be able to advise that, after considerable lobbying, the federal government has agreed to fund an extension to the Eyre Highway which will provide an airstrip on that highway.

Using the asphalt surface, strengthened and widened, we will be able to have the first of two new airstrips on the Nullarbor at a distance of some 500 kilometres from the Western Australian and South Australian border. Construction of the first strip will commence in November this year; the second will commence in the financial year following 2000-01. This will supplement the private airstrips that are on properties in the area and support the ambulance service crews, of which there are a few, particularly the Royal Flying Doctor Service.

I acknowledge the federal government's contribution to road safety in remote areas in terms of providing these two airstrips and utilising the Eyre Highway asset. The plan is that the first of these two airstrips will be 113 kilometres east of the South Australian and Western Australian border, with construction starting in November. That site will be known as Chadwick. The second will be known as the Florey Darling road strip, and it will be 51 kilometres east of the South Australian and Western Australian border. That will mean that there is provision for planes to fly in when a resident is sick or when there is a road or train accident in the area. The airstrips will be 80 kilometres apart and they will be of great assistance in providing medical aid.

GREYHOUND RACING

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 Recreation, Sport and Racing, a question on the subject of security and the alleged doping scandal at Angle Park on 21 May.

Leave granted.

The Hon. R.R. ROBERTS: I have been approached by a constituent from a very successful racing family whose dog was involved in an incident at Angle Park on 21 May, very shortly after the revelations of doping scandals in other states. I am advised that the system is that owners arrive with their dog, they check in, the ear brands are checked, the dog is weighed, it is assessed by a veterinary surgeon and it is placed into a previously placed kennel in the kennel house.

On the night in question, my constituent arrived with the dog, completed those requirements and arrived at the allocated box with the dog and with the kennel steward present to find that the box was occupied. The dog was allocated another number and it was subsequently placed in the adjoining box. Some dogs get very excited when they race and this dog was muzzled with an American muzzle so it did not bite people or bite at the side of the kennel. As the dog was being placed into the box it got very excited and dived into the corner at the back of the box. It was pulled out by its handler to find that adhered to the outside of the muzzle was a foreign, meaty substance that was subsequently inspected by the steward. I am informed that the kennel steward was advised to take it to the front desk, to Mr Paul Marks, who is an officer of Angle Park. I am advised that that meat was left on the table for later consideration.

The stewards have the responsibility to ensure the proper and legal running of greyhound racing. It was suspected that a doping attempt had been made and my constituents, being long-time participants in the greyhound industry who knew all the ramifications, were insistent that the dog be swabbed to ensure that they were innocent of any wrongdoing. My constituents were very anxious to have the matter dealt with properly in accordance with the rules of greyhound racing and with the laws of South Australia.

I am advised that the sample had been lying around in the office or in the fridge of the secretary for some time, so my constituent contacted the police for assistance. I understand that, four weeks later, a member of the police force made inquiries and was told that the matter was in hand. That meaty substance, which it was alleged had a tablet encased inside it, was finally sent away last week. This brings into question the integrity of greyhound racing and its control in South Australia.

As I have said, my constituents are very keen and have done everything not only to clear their name but to ensure the good name of greyhound racing in South Australia. They are very anxious to have these matters cleaned up. In pursuit of those two objectives—to ensure the credibility of participants within the industry and the preservation of the good name of the industry—I ask the following questions:

1. Is the minister aware of the disturbing situation that exists with respect to these incidents and the apparent lack of action regarding the requirements of the Gaming and Lotteries Act and the rules of greyhound racing in South Australia which are bringing the industry into disrepute?

2. Will the minister conduct his own inquiry and bring back a report to this Council to assure himself and the public of the due probity and proper handling of these matters within

the rules of greyhound racing in South Australia and the laws of South Australia with respect to these matters?

3. Can the minister assure the public of the security of the kennel house at Angle Park Greyhound Raceway?

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.

TRANSADELAIDE

In reply to **Hon. CAROLYN PICKLES** (27 June).

The Hon. DIANA LAIDLAW: Five sports celebrities were invited to give motivational talks to all staff at various TransAdelaide sites as part of the TransAdelaide 'Serious About Winning' internal communication campaign. The campaign encouraged all staff to consider their role in the TransAdelaide team as it bid for the bus contracts.

Between May and September 1999 the following speakers were paid:

Phil Smyth (Adelaide 36ers)	$1 600
John Cahill (former Port Football coach)	$600
Mike Turtur (cycling gold medallist)	$600
Chris Dittmar (former squash champion)	$500
Libby Kosmala—TransAdelaide Board Member (shooting gold medallist)	$0
Total Cost	$3 300

STRAIGHT TALK PROGRAM

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Attorney-General a question regarding the Straight Talk program.

Leave granted.

The Hon. IAN GILFILLAN: Straight Talk is or was a crime prevention program that sought to educate young people about some of the personal circumstances that bring people into contact with the criminal justice system and the consequences that can arise. I have attended several of its presentations and have been most impressed. In addition to its state government funding for one coordinator's position, Straight Talk also received $20 000 sponsorship from the Insurance Council of Australia. Straight Talk operated in a low key way from 1995 to 1999, making regular presentations to schools and other community groups. Anecdotal and informal evidence indicated that it was successful in preventing youngsters from reoffending.

In response to a question from me on 26 August 1998, the government announced almost a full year later, on 3 August 1999, that Straight Talk would be formally evaluated to determine the extent to which it was meeting its goals of crime prevention. The Attorney said at the time: 'Let me put this matter to rest once and for all. This program has the full support of both the government and the Department of Correctional Services.' That is a very effective quote.

Despite this apparent assurance, the program was suspended a short time later, that is, only a couple of months after getting the government's so-called full support. The Minister for Correctional Services wrote to me on 17 March this year confirming that, despite its apparent success, Straight Talk was temporarily suspended toward the end of 1999.

The PRESIDENT: Order! There is too much audible conversation.

The Hon. IAN GILFILLAN: The minister indicated that Straight Talk would be available to the community in a revised format by May 2000. However, the minister's letter failed to indicate why the program had been suspended only months after getting the so-called full support of both the government and the Department of Correctional Services. Also, the minister's letter did not reveal the results of the interdepartmental evaluation which had been promised on 3 August 1999. My questions are:

1. When will the government release the details of its evaluation of Straight Talk carried out in 1999?

2. Why was the program suspended late in 1999 after having been given the assurance of full government support?

3. Has it now commenced as promised and, if not, why not? If so, in what way has its format altered?

4. Were all or any of the alterations recommended by the interdepartmental review?

The PRESIDENT: Order! There is too much audible conversation. No-one took the slightest notice of my previous comment. I hope that the Attorney could hear the question.

The Hon. K.T. GRIFFIN (Attorney-General): I did hear the explanation and I kept one ear cocked for the question. The honourable member has endeavoured to in some way link the temporary suspension of Straight Talk with my very positive support only a few months earlier for Straight Talk, so on this occasion I will be much more cautious about the response that I give. I will refer the question to my colleague the Minister for Police, Correctional Services and Emergency Services in another place and bring back a reply.

EMERGENCY SERVICES LEVY

In reply to **Hon. J.F. STEFANI** (11 April).

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

1. The total number of accounts issued at the date of the question asked by the honourable member was approximately 509 000, and the value of accounts issued up to that date was $93.6 million, consisting of $68.3 million due from the community, general remissions of $19.7 million and pensioner concessions of $5.6 million. Both general remissions and pensioner concessions are met from the Consolidated Account;

2. The total number of property owners not issued with a levy notice as at 1 April 2000, was approximately 20 000. The final value of the levy notices to be issued in respect of these owners will be affected by matters such as the value of any concessions granted by the government, or the outcome to any objections to land use, but it is expected to be in the order of $1.4 million.

In reply to **Hon. IAN GILFILLAN** (11 April).

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

A levy notice in respect of the property located at 27 Fisher Street Norwood, which was the subject of the supplementary question by the Hon. Mr Gilfillan, was sent to that address on 3 April 2000. The levy in respect of that property was paid on 18 April 2000. The reason for the delay in forwarding the notice was the processing of an application for aggregation of land as single farm enterprise in respect of other property, which is owned by either the honourable member or by a company in which the honourable member is a shareholder.

SELECT COMMITTEE ON A HEROIN REHABILITATION TRIAL

The Hon. R.I. LUCAS (Treasurer): I seek leave to table a copy of a ministerial statement made in the other place today on the heroin rehabilitation trial select committee.

Leave granted.

SUPPLEMENTARY QUESTIONS

The PRESIDENT: Before I call on the business of the day, I indicate that there were 18 supplementary questions this week.

The Hon. T. Crothers: I didn't get one!

The PRESIDENT: You got a substantive question. The average for the past 20 weeks is five. I understand why today and this week there would be supplementary questions, but honourable members should be aware of standing order 108, which provides:

Whenever a question is answered, it shall be open to any member to put further questions arising out of and relevant to the answer given.

So that refers to the answer, not the original question. It is difficult, of course, for the chair to judge that, and the chair on behalf of members has to balance between supplementary questions and the orderly asking of questions, which has been agreed to by all members trying to get through a number today. I would ask for your indulgence in future on this matter.

ELECTRICITY (PRICING ORDER AND CROSS-OWNERSHIP) AMENDMENT BILL

The Hon. R.I. LUCAS (Treasurer) obtained leave and introduced a bill for an act to amend the Electricity Act 1996. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

The Electricity (Pricing Order and Cross-Ownership) Amendment Bill amends the *Electricity Act* 1996 in two respects.

First, this bill varies the electricity pricing order issued on 11 October 1999 under section 35B of the *Electricity Act*.

These amendments to the electricity pricing order, which will not come into effect unless, and until, the relevant provisions of the bill are passed and brought into operation, are set out in a notice published in the *Gazette* on 28 June 2000 at page 3397.

A copy of this *Gazette* notice has been provided to Honourable Members.

Second, this bill amends the cross-ownership rules that are contained in Schedule 1 of the *Electricity Act*.

Section 35B(1) of the *Electricity Act* permits the Treasurer to issue an electricity pricing order that regulates prices, conditions relating to prices and price-fixing factors for (among other things):

- the sale and supply of electricity to non-contestable customers;
- subject to the National Electricity Law and the National Electricity Code, network services (eg. services relating to the transmission and distribution of electricity between electricity entities and from electricity entities to customers); and
- other goods and services in the electricity supply industry.

Section 35B(7)(b) provides that an electricity pricing order issued by the Treasurer cannot be varied (except as contemplated by the order) or revoked.

This provision was included to give some certainty to both electricity supply industry participants and their customers at a time of considerable change brought about by the introduction of the National Electricity Market and the privatisation of the State's electricity businesses.

On 11 October 1999 an electricity pricing order was issued pursuant to section 35B(1) of the *Electricity Act*. Among other things this electricity pricing order:

- regulates the price at which electricity can be sold to non-contestable customers;
- regulates the price of certain "monopoly" transmission network services provided by ElectraNet SA (the State-owned electricity transmission business which is to be privatised in the third quarter of this year) and of certain "monopoly" distribution network services provided by ETSA Utilities (the privately-owned partnership which is the lessee of the State's electricity distribution network);
- specifies revenue control methodologies that apply to ElectraNet SA and ETSA Utilities; and
- regulates the alteration of tariffs, the closing of tariffs and the introduction of new tariffs during an initial regulatory period (until 31 December 2002 for transmission and retail and until 30 June 2005 for distribution).

Four material inconsistencies have recently been identified in the electricity pricing order. Three of these inconsistencies relate to the determination of the maximum revenue allowed to be earned by ElectraNet SA and ETSA Utilities and one relates to the regulation of public lighting tariffs.

The first three inconsistencies are contained within complex mathematical formulae.

They are, in fact, unintended consequences of those formulae.

And it has been identified that they mean our electricity pricing order cannot deliver its intent.

These changes are required to allow the electricity pricing order to deliver what was promised and what was intended.

I would like to stress that we are in no way seeking to alter the framework of the electricity pricing order.

We are only seeking to ensure that it operates as originally intended—no more, no less.

I will detail each material inconsistency at length so that the detail of what has occurred, and the unintended consequences of this, are set out fully for the benefit of Parliament.

Also, a small number of inconsistencies of a minor or typographical nature have also been identified. The amendments to the electricity pricing order which are proposed to address these inconsistencies are set out in the notice published in the Gazette on 28 June 2000 at page 3397. In view of section 35B(7)(b) of the *Electricity Act*, legislation is required to enable the electricity pricing order to be amended to address these inconsistencies and the proposed new section 35B(10a)(a), which is to be inserted by clause 2 of the bill, accordingly provides that the electricity pricing order is varied as proposed in that notice. The four material inconsistencies are described below.

Schedule 4 of the electricity pricing order provides for the maximum tariffs that ElectraNet SA and ETSA Utilities can charge in 2000-01 in relation to regulated transmission and distribution network services. Schedule 7 of that order sets out revenue control formulae that limit the amount of revenue ElectraNet SA and ETSA Utilities can earn from these services in the years following 2000-01. However, whereas the electricity pricing order provides for the maximum tariffs listed in Schedule 4 to be adjusted for inflation during the year ended 31 March 2000, the revenue control formulae included in Schedule 7 do not provide for an equivalent adjustment to the maximum allowed revenue figures for 2000-01. Therefore, by charging the maximum tariffs which are able to be charged for 2000-01 as set out in Schedule 4 of the electricity pricing order, ElectraNet SA and ETSA Utilities will earn more revenue for that year than the maximum allowed revenue specified in Schedule 7. Accordingly, it is proposed to amend the electricity pricing order to remove the inconsistency between Schedules 4 and 7 by including an adjustment for CPI in the maximum allowed revenue for ElectraNet SA and ETSA Utilities for 2000-01 as set out in Schedule 7.

During the bidding process all bidders were provided with detailed information about forecast revenue under the electricity pricing order on a number of occasions, consistent with Schedule 4. This bill will ensure the electricity pricing order is amended to be consistent with this information provided to bidders.

An inconsistency has also been identified in the calculation of the "k" correction factors that are used in determining the maximum revenue allowed to be earned by ElectraNet SA and ETSA Utilities. These correction factors are needed because the revenue control formulae in Schedule 7 require the maximum allowed revenue for years after 2000-01 to be set, and the tariffs for the years after 2000-01 to be determined, on the basis of forecasts of electricity demand and consumption. To the extent that these forecasts for a year prove to be inaccurate, an adjustment is made to the maximum allowed revenue in the following year by way of the correction factors. This adjustment takes into account the time value of money, so that any correction is adjusted in real terms and includes allowance for the rate of return that could be earned during the relevant period. However, due to the CPI change component in that adjustment mechanism being expressed as a ratio rather than a percentage change, that adjustment mechanism overstates the

correction factors. It is therefore proposed to amend the electricity pricing order to ensure that the adjustment mechanism operates as originally intended. However, it is possible that ETSA Utilities (and, to a lesser extent, ElectraNet SA) may be able to offset some of this reduced revenue by "gaming" the correction factors (ie. under forecasting electricity demand and consumption) so as to take advantage of the inconsistency in the calculation of the "k" correction factors and thereby earn more revenue than was intended by the electricity pricing order. This would be to the detriment of AGL South Australia Pty Ltd.

The third inconsistency relates to the calculation of the maximum allowed revenue for ElectraNet SA for 2002-03. This inconsistency arises because the maximum allowed revenue for ElectraNet SA for 2002-03 is based upon its maximum allowed revenue for 2001-02, which includes an adjustment for the "k" correction factor and an adjustment for the performance incentive scheme that is referable to 2000-01. In other words, as expressed in the electricity pricing order, the adjustment for 2000-01 would be an ongoing adjustment, rather than just a once-off adjustment to the maximum allowed revenue for 2001-02 as was intended. It is therefore proposed to amend the electricity pricing order by excluding the effect of the correction factor and the performance incentive scheme when setting the maximum allowed revenue for ElectraNet SA for 2002-03.

If not corrected, these three inconsistencies might (subject to the possibility of "gaming" referred to above) result in ETSA Utilities and ElectraNet SA having their maximum allowed revenue from regulated services significantly reduced while AGL South Australia Pty Ltd might benefit from a substantial unintended windfall gain. The correction of these inconsistencies will, however, have no impact on non-contestable customers (currently being small customers with energy consumption of less than 160 MWh pa) because the electricity pricing order sets the maximum tariffs that can be charged to them until 1 January 2003.

It also needs to be noted that if these inconsistencies are not corrected then the potential lease proceeds for ElectraNet SA will be reduced significantly.

The fourth of the material inconsistencies that has been identified in the electricity pricing order is in relation to the treatment of public lighting tariffs until 31 December 2002. The electricity pricing order sets out the maximum public lighting tariffs which may be charged by AGL South Australia Pty Ltd until 31 December 2002. AGL South Australia Pty Ltd purchased the State's electricity retail business on 28 January 2000 and so has a monopoly over the sale of electricity to non-contestable customers in South Australia. For these purposes, local councils which purchase electricity for public lighting purposes are classified as non-contestable customers. These maximum public lighting tariffs are "bundled" in the sense that they cover the price of the electricity used for public lighting, the price of the network services associated with the provision of that electricity and a provision/maintenance charge (which is charged by ETSA Utilities to AGL South Australia Pty Ltd) for providing and maintaining the relevant public lighting assets. The electricity pricing order prohibits AGL South Australia Pty Ltd from charging non-contestable customers more for "prescribed retail services" than the relevant bundled tariffs. However, inconsistently with the specified maximum public lighting tariffs, "prescribed retail services" are not defined to include the provision and maintenance of public lighting assets. It is therefore proposed to amend the electricity pricing order so as to remove this inconsistency. Unless corrected AGL South Australia Pty Ltd has the potential for a windfall gain by overcharging councils in the described fashion.

As previously stated, a small number of inconsistencies of a minor or typographical nature have also been identified. The rectification of these inconsistencies will not impact materially on the operation of the electricity pricing order. As with the proposed amendments to the electricity pricing order that I have previously referred to, the notice in the Gazette also amends the electricity pricing order to remove these inconsistencies.

The bill further requires the Treasurer to send a copy of the amended electricity pricing order to each licensed entity to which the order applies and to ensure that copies of the amended electricity pricing order are available for inspection and purchase by the public. Moreover, it provides that a reference in any document (eg. a contract) to the electricity pricing order is to be construed as a reference to the amended electricity pricing order unless the context otherwise requires.

Finally, the bill amends the cross-ownership rules that are set out in Schedule 1 of the *Electricity Act*. The purpose of the cross-ownership rules is largely to prevent the reaggregation, until 31 December 2002, of the State's electricity businesses following their privatisation. However, even after this date, any proposed reaggregation of those businesses will continue to be subject to the provisions of the *Trade Practices Act* and the jurisdiction of the Australian Competition and Consumer Commission.

By virtue of the cross-ownership rules, the holder of a licence in relation to one of the State's electricity businesses following its privatisation, or an associate of that holder, is generally prohibited from (among other things) becoming "entitled" to any shares in the holder of a licence issued in relation to another of the privatised electricity businesses. For these purposes, the concept of "entitlement to shares" is stated to be as defined in the Corporations Law. However, earlier this year the Corporations Law was amended to remove the concept of entitlement to shares and to replace it with a similar (but not identical) concept of "relevant interest" in voting shares or securities. Accordingly, the bill provides that a reference in the cross-ownership rules to the Corporations Law is a reference to the Corporations Law as in force at 19 August 1999. This date is the date on which the *Electricity (Miscellaneous) Amendment Act 1999*, which inserted the cross-ownership rules into the *Electricity Act*, received Royal Assent.

This bill will further facilitate the privatisation of the State's electricity businesses and I commend it to Members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Amendment of s. 35B—Initial electricity pricing order by Treasurer

The amendment provides that the electricity pricing order is to be varied as set out in a notice published in the *Gazette* on 28 June 2000. The Treasurer is required to send a copy of the varied order to each licensed entity to which the order applies and to ensure that copies of the varied order are available for inspection and purchase.

Clause 3: Amendment of Sched. 1—Cross-ownership Rules

The amendment provides that references to the *Corporations Law* in the Schedule are to be read as references to the *Corporations Law* as in force at 19 August 1999, the date of assent of the amendment bill that inserted the Schedule into the principal Act.

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

NATIVE TITLE (SOUTH AUSTRALIA)(MISCELLANEOUS) AMENDMENT BILL

In Committee.

Clause 1.

The Hon. T.G. ROBERTS: I rise to indicate that the opposition will now be supporting the bill, and I congratulate the parties for reaching an agreement prior to the Legislative Council having to debate a bill that could have been, had agreement not been reached, somewhat contentious. It is the intention of the opposition where possible to reach negotiated settlements in relation to native title and our preference is for all stakeholders to sit around the same table and to negotiate outcomes that benefit all of the stakeholders, but in so doing the protection of the Aboriginal people, which is intended in the legislation as drafted, should be uppermost in the negotiators' minds. The interests of this most powerless group within that negotiating confine must be looked after by government and by the representative interests of their choosing.

I have raised with the Attorney-General on other occasions the imbalance that has resulted from the historical disempowerment of Aboriginal people, not only in this state but Australia wide. Because of modern day negotiating styles, legislation, regulation, and the courts (which can be intimidating), it is the opposition's view that special circumstances should prevail when negotiating with regional and remote Aboriginal groups. Resources and special consideration should be available for the representatives of Aboriginal

people to enable them to meet the requirements of what I regard as fair and free negotiating rules, boundaries and protocols.

I have referred previously to the frustrations that government has in dealing with issues associated with native title. I understand the government's frustration in dealing with health, education, housing, and the delivery of services for Aboriginal people in this state. Due to the vastness of the state and the distances people have to travel, the over-worked representatives of the Aboriginal groupings have difficulty in meeting deadlines required by government and bureaucrats who have a different understanding of how negotiations should be carried out.

I think the sensitivities of remote and regional Aboriginal people have been understood in reaching agreement on the bill. The government did take note of the objections raised by Aboriginal people and their representatives by holding up passage of this bill for some 18 months. The Crown Law Office and the Attorney's office worked hard to get a consensus of opinion before the bill reached this Council, and I thank the Attorney for that.

The opposition will be operating under the instructions of Aboriginal people and their representatives in processing this bill. If it needs to go through today—and I understand that is the case—we will process it and give it speedy passage. The Attorney has suggested that in future the opposition becomes more involved in the negotiations so that we are aware of the difficulties and strategies involved. As opposition spokesperson for Aboriginal affairs, I will make myself available at any time anywhere, to be involved in negotiations with the government, if that is required to get a consensus through all parties. The Labor Party is prepared to use its influence to achieve that consensus. The Victorian Aboriginal Justice Agreement was released recently. Within the framework of the Victorian Aboriginal Justice Agreement and structure they take an all of government approach to dealing with Aboriginal affairs. It is something we should consider in relation to how we are to proceed.

I foreshadowed in my previous contribution that the ALRM in particular is prepared to look at a different form of negotiating strategy which includes more negotiations and a more consensual framework for negotiations. I am sure the lessons will be learnt by government and to some extent the opposition in relation to how to proceed in dealing with all the difficulties that I have raised involving the remoteness and isolation, the workload that the representatives of Aboriginal people undertake and the crossover of responsibilities of many people in the field of representing Aboriginal interests. This takes them into the commonwealth arena and other states, and therefore those representatives may not be able to meet the deadlines and time frames involved when parliaments process bills. Out of that comes experience that we will be able to use for future negotiations, discussions and protocols. Let us hope that we get more consensus out of that process.

The Hon. K.T. GRIFFIN: I thank the honourable member for that indication of support. There are difficulties in getting a consensus view on the very sensitive issue of native title. The validation and confirmation bill is one example of the difficulties that arise where, notwithstanding that we are authorised as a parliament and a state to validate particular acts and confirm extinguishing tenures authorised by the federal parliament through its legislation that it has enacted, we are having considerable difficulties in getting that up to the barrier. Notwithstanding that, this bill is one where we need to bring our state legislation into line with the September 1998 amendments to the commonwealth Native Title Act. These amendments which we will be considering have been the subject of wide consultation, and all parties, in particular the native title steering committee and the federal government, are supportive of the changes that we are proposing. So, at least that is one mark on the board and hopefully next week there will be another.

Clause passed.

Clause 2 passed.

Clause 3.

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

Page 2, lines 1 to 4—Leave out definition of 'affect' and insert:

'affect'—an act or activity affects native title if it extinguishes native title or it is wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights deriving from native title[1.];

[1.] Cf. s.227 of the Commonwealth Act.

This is to amend the definition of 'affect'. It is surprising that we even have to get down to defining what 'affect' means, differently from what might be in any of the recognised dictionaries. This is necessary to ensure a greater level of consistency with the commonwealth legislation. It more closely reflects the definition in section 227 of the commonwealth Native Title Act 1993.

Amendment carried.

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

Page 2, lines 13 to 15—Leave out paragraph (d) and insert paragraph as follows:

(d) by striking out the definition of 'native title holder' and substituting the following definition:

'native title holder' (or any other expression referring to a person or persons who hold native title in land) means—

(a) if a body corporate is registered on a native title register as holding the native title on trust—the Aboriginal group for whom the native title is held on trust;

(b) in any other case—the Aboriginal group recognised at common law as holding the native title;;

This amendment substitutes a new definition for the existing definition of 'native title holder'. It has been amended to incorporate the concept of Aboriginal group. This concept was introduced to ensure consistency with section 61 of the commonwealth Native Title Act. There is reference particularly in new section 4A which I propose to insert which further explains the concept of Aboriginal group.

Amendment carried.

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

Page 3, line 20—Leave out paragraph (j) and insert:

(j) by striking out subsection (2) and substituting:

(2) In this Act and in every other Act or statutory instrument—

(a) a reference to native title extends (unless the context otherwise indicates or requires) to rights and interests comprised in, deriving from, or conferred by native title;

(b) a reference to rights or interests (or rights and interests) deriving from or conferred by native title is a reference to rights or interests (or rights and interests) comprised in, deriving from or conferred by native title;

New subsection 3(2) clarifies the meaning of references to native title rights and/or interests.

Amendment carried; clause as amended passed.

Clause 4 passed.

New clauses 4A and 4B.

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

Page 4, after clause 4, line 4, line 15, insert new clauses as follows:

Insertion of s.4A

4A. The following section is inserted after section 4 of the principal Act:

Registered representative

4A. (1) A registered representative of native title holders or native title claimants represents the Aboriginal group that holds or claims to hold native title in the land so that (for example)—

(a) a notice is given to the Aboriginal group by giving it to the registered representative; and

(b) a person negotiates with the Aboriginal group by negotiating with the registered representative; and

(c) an agreement lawfully negotiated by the registered representative with respect to the land in which the native title is claimed or held is binding on the Aboriginal group.

(2) The above examples are not intended to be an exhaustive statement of the ways in which a registered representative might act on behalf of the Aboriginal group nor are they intended to suggest that the group may only act through the registered representative.

Amendment of s.13—Principles governing proceedings

4B Section 13 of the principal Act is amended—

(a) by striking out paragraph (b)

(b) by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) The Court is not bound by the rules of evidence and may inform itself as it thinks fit.

(3) However, in informing itself about a native title question, the Court must, if there is an established evidentiary practice in the Federal Court for dealing with similar questions, follow the practice of the Federal Court.

This amendment inserts two new clauses; they are the substituted amendments of 27 June. New clause 4A inserts a new section 4A to give some example of how the registered representatives of native title holders in the Aboriginal group can interact with each other. It is an interesting way of undertaking a parliamentary drafting of legislation but it is helpful, particularly in the context of native title, to have a few examples so that people can better understand the way in which the legislation applies.

New clause 4B will amend paragraph (b) of section 13 to ensure that the procedures which apply in respect of proceedings involving native title questions at a state level are consistent with those which apply at a federal level under the Native Title Act. (Wherever I refer to the Native Title Act it can be understood to be the commonwealth act.) The amendment arises as a result of the amendment made to section 82 of the Native Title Act by the Native Title Amendment Act 1998 relating to the application of the rules of evidence but is designed to reflect the fact that there are differences between the rules of evidence that will be applied in a state context and those that apply in a federal context under the commonwealth Evidence Act 1995.

The expression 'established evidentiary practice' used in this amendment is intended to be a flexible concept with the ability to change over time as the practice of the Federal Court changes. This amendment is one of those which, in the past few days, have been of particular interest to the Native Title Steering Committee. The way in which it has now been drafted is accepted as an appropriate way to deal with the issue so far as South Australian law is concerned.

The Hon. T.G. ROBERTS: There have been some bad experiences of Aboriginal groups and their representatives caused by people who are not recognised by Aboriginal interests being dedicated or accepted as representatives of groups without any authority or respect. One of the problems that we have experienced in broad negotiations, particularly in mining areas and some pastoral areas, is that, unless the correct representatives are sitting around the table negotiating on behalf of the interests and the people in that designated geographical area, there is a lot of loss of faith by the true and real representatives of Aboriginal people in that, if they are not at that table being shown the respect they require to bring about negotiated settlements, that leads to a lot of heartache in those communities.

Proposed new clause 4B was one of the areas of concern for stakeholders in respect of the principles governing the proceedings. It is good to see that compromises have been made in this area. The opposition supports new clauses 4A and 4B.

New clauses inserted.

Clause 5 negatived.

New clause 5.

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

Page 4—Insert new clause as follows:

5. Division 5 of part 3 of the principal act is repealed and the following divisions are substituted:

DIVISION 5-NOTIFICATION

Registrar to be informed in relation to native title questions

15. The court must ensure that the registrar is informed of

(a) applications, and amendments of applications, involving native title questions; and

(b) proceedings in the court involving native title questions; and

(c) decisions of the court on native title questions.

Registrar to give notice in relation to native title questions

16. (1) The registrar must give notice of—

(a) applications, and amendments of applications, involving native title questions; and

(b) proceedings in the court involving native title questions; and

(c) decisions of the court on native title questions,

in accordance with the regulations.

(2) The regulations may include provisions for any one or more of the following purposes:

(a) fixing the time for giving a notice;

(b) requiring in specified cases notice of an application for a native title declaration to be given both before and after the registrar has determined whether the claim should be registered;

(c) regulating the contents of a notice and requiring, in specified cases, that a notice be accompanied by specified documents;

(d) regulating the way in which the notice is to be given and requiring, in particular, the giving of public notice in specified cases.

DIVISION 6-MISCELLANEOUS

Joinder of parties

16A. (1) The court may, at any time, order that a person who appears to have a proper interest in proceedings involving a native title question be joined as a party to the proceedings.

(2) An order may be made under this section even though the person to be joined as a party was given notice of the proceedings and failed to apply to be joined as a party within the period allowed in the notice.

Costs

16B. (1) Unless the court otherwise orders, each party to proceedings is to bear its own costs of the proceedings to the extent the proceedings involve a native title question.

(2) For example, if a party has, by an unreasonable act or omission, caused another party to incur costs in connection with the proceedings, the court may (in the exercise of its power to make an exception to the general principle that each party is to bear its own costs) order the party at fault to pay some or all the costs incurred by the other.

The detail contained in proposed sections 15A and 16 of the November bill will now be dealt with in the regulations, which is the more appropriate place to deal with the level of detail required after the giving of notice in various situations. Proposed section 16 now refers in general terms to the giving of notice and delegates or leaves the detail of how that is to occur to the regulations.

The regulations will still reflect the content of section 66 of the Native Title Act. Again, the South Australian Native Title Steering Committee had some concerns about this, as it did with an earlier amendment to which I referred, but it has agreed that it will raise no objection to this amendment provided I give an undertaking, which I now do, to consult with the South Australian Native Title Steering Committee in relation to the regulations prior to their being finalised and promulgated and also with respect to any subsequent amendments of those regulations that may be proposed from time to time.

The Hon. T.G. ROBERTS: The opposition accepts the undertaking of the Attorney-General. We hope that he passes the message stick on to whoever follows him. I take it that it does not follow the individual; that it follows the office.

The Hon. K.T. Griffin: I referred to 'any subsequent amendments the government may propose'.

The Hon. T.G. ROBERTS: I think this is necessary because of the way in which governments of all persuasions use regulations. I understand the concerns of Aboriginal groups in particular that are not as well versed as perhaps other pressure groups in the community in dealing with regulations and the method in which they can be used.

I am sure that there is more than one pressure group in South Australia that has been caught out by regulations being used in an adverse way by governments of all persuasions without notification until they read the *Gazette* or some other vested interest group notifies them that their rights and some of their privileges have either been weakened or taken away. The opposition supports the amendment.

New clause inserted.

Clauses 6 to 9 negatived.

Clause 10.

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

Page 7—
Line 13—Leave out 'accepting' and insert 'registered'
Line 15—Leave out 'accepting' and insert 'registering'.

These are drafting amendments.

Amendments carried; clause as amended passed.

Clause 11.

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

Page 10, line 11—After 'native title' insert:
claimed
Page 11, lines 14 to 23—Leave out subparagraph (i) and insert:
(i) at least one member of the Aboriginal group currently has, or previously had, a traditional physical connection with part of the land covered by the application; or
Page 12—
After line 12—Insert new subsection as follows:
(2a) In considering a claim, the Registrar—
(a) must have regard to information contained in the application and in any other documents provided by the applicant and, to the extent that it is reasonably practicable to do so in the circumstances, to relevant information provided by the state or the commonwealth; but
(b) is not limited to that information and may (but need not) obtain and have regard to other information.
After line 39—Insert subsection as follows:
(6a) On registering a claim, the Registrar must register the applicant for registration as the registered representative of the claimants.
Page 13—After line 15—Insert section (after Division 3 heading) as follows:
Court to hear application for native title declaration
20.(1) An application for a native title declaration is to be heard by the ERD Court.
(2) However, the ERD Court may, on its own initiative, and must, if directed to do so by the Supreme Court, refer an application for a native title declaration to the Supreme Court for hearing and determination.

The first amendment is a minor technical amendment to the wording in proposed section 18A(2)(k)(iii). Referring to the native title 'claimed' is intended to more accurately reflect the process under the Native Title Act. One can look, for example, at section 62(1) of the Native Title Act.

The second amendment amends proposed section 19A(1)(e)(i) to more closely reflect section 190B(7) of the Native Title Act. The third amendment inserts a new subsection (2a) to proposed section 19A to ensure that the registrar will have regard to certain material from extraneous sources, and that reflects section 190A(3) of the Native Title Act.

The fourth amendment adds a new subsection (6a) to proposed section 19A and requires the registrar to register the applicant for registration as the registered representative of the claimants, and that is to clarify what was implicit in the November 1999 bill, that it is the applicant who becomes the registered representative once a claim has been registered. The last amendment will insert new section 20 to clarify that the ERD court will ordinarily hear a native title declaration unless it chooses or is directed by the Supreme Court to refer the application to the Supreme Court. That is to clarify the relationship between the two courts.

Amendments carried; clause as amended passed.

Clause 12 passed.

Clause 13.

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

Page 13, line 24—Leave out 'Local Government Act 1934' and insert:
Local Government Act 1999

This amendment changes the description of the appropriate act in view of the enactment of a new Local Government Act in 1999.

Amendment carried; clause as amended passed.

New clauses 13A and 13B.

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

Page 14, line 7—Insert new clauses as follows:
Amendment of s.24—Registration of representative
13A. Section 24 of the principal Act is amended by striking out from subsection (1)(b) 'on their behalf' and substituting 'on trust'.
Insertion of s.24A
13B. The following section is inserted after section 24 of the principal Act:
Native title declaration in proceedings for compensation
24A.(1) This section applies to proceedings based on a claim made to the court for compensation for an act extinguishing or otherwise affecting native title in relation to land for which a native title declaration has not been made.
(2) The court must conduct the proceedings as if they involved concurrent applications as follows:
(a) the claim for compensation; and
(b) an application for a native title declaration establishing whether native title currently exists at the date of the court's decision.
(3) The court must, at the conclusion of the proceedings, make a native title declaration.
(4) Divisions 2 and 2A do not apply in relation to a presumptive application for a native title declaration under subsection (2)(b).

New clause 13A proposes to amend section 24(1)(b) so that it refers to native title being held on trust rather than on their—that is, the native title holders—behalf. This terminology is more consistent with the terminology of the Native Title Act, and I refer members to sections 55 and 56 of that act. New clause 13B proposes to insert a new section 24A into the state act. Proposed section 24A reflects section 13(2) of the Native Title Act, which provides that the court must

not make a determination regarding compensation unless it also makes a determination as to the existence or otherwise of native title.

New clauses inserted.

Clause 14 passed.

New clause 14A.

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

Page 14, line 10—Insert new clause as follows:

Substitution of s.26

14A. Section 26 of the principal Act is repealed and the following section is substituted:

Merger of proceedings

26.(1) If the court has separate proceedings before it in which native title declarations are sought in relation to the same land, the proceedings must be heard together to the extent that they relate to the same area of land.

(2) For the purposes of subsection (1), the court may make appropriate orders for either or both of the following—

(a) the division of claims into separate claims;

(b) the amalgamation or separation of proceedings.

This new clause is intended to more closely reflect section 67 of the commonwealth act. It proposes to insert a new section 26 and it deals with how overlapping claims are to be dealt with by the court.

New clause inserted.

Clause 15 passed.

New clause 15A.

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

Page 14, line 13—Insert new clause as follows:

Insertion of Part 4A

15A. The following part is inserted after section 27 of the principal Act:

PART 4A

COMPENSATION FOR ACTS EXTINGUISHING OR OTHERWISE AFFECTING NATIVE TITLE

Claims for compensation for acts extinguishing or otherwise affecting native title

27A.(1) This section applies to claims for compensation for an act extinguishing or otherwise affecting native title.

(2) If a claim is made to the court by a person other than the registered representative of the native title holders, the statement of claim—

(a) must have annexed to it a schedule setting out the information classified in the regulations as mandatory information; and

(b) may have annexed to it a further schedule setting out information classified in the regulations as permissible additional information; and

(c) must be accompanied by an affidavit sworn by the person bringing the claim (the representative)—

(i) stating that the representative believes that native title exists or existed in relation to the area to which the claim relates; and

(ii) stating that the representative believes that all of the statements made in the statement of claim are true; and

(iii) stating that the representative is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to it and stating the basis of the authorisation.

(4) In determining compensation, the court is to apply the same principles as would be applicable if the compensation were determined under the Commonwealth Act.

(5) If the court makes an order for compensation, the order must set out—

(a) the name of the person or persons entitled to compensation or a method for determining their identity; and

(b) if the compensation is to be distributed between 2 or more persons—the basis of the distribution; and

(c) a method for determining disputes regarding entitlement to compensation.

This clause inserts a new section 27A. That reflects section 62(3) of the Native Title Act. Proposed section 27A sets out the information which must be provided if a person other than the registered representative of native title holders makes a claim for compensation.

New clause inserted.

Clause 16.

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

Page 14—

Line 24—After 'post' insert:

or by some other agreed method

Line 31—After 'post' insert:

or by some other agreed method

These amendments will mean that notice can be given personally by post or by some other agreed method. That is a more flexible approach for the giving and receiving of notice by mutual agreement.

Amendments carried; clause as amended passed.

Remaining clauses (17 and 18) and title passed.

Bill read a third time and passed.

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

In committee.

Clause 1 passed.

Clause 2.

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

Page 4—

Line 7—After 'This Act' insert ',except for Parts 5 and 10,'

After line 7—Insert new subsection as follows:

(2) Parts 5 and 10 will be taken to have come into operation on 1 July 2000.

Parts 5 and 10 of the bill have GST implications. These parts amend the Criminal Injuries Compensation Act (part 5) and the Environment, Resources and Development Court Act (part 10). As the bill is still before the Legislative Council, it is unlikely that it will have passed both houses and come into operation before 1 July when the new tax system comes into operation. It is necessary that those provisions with GST implications operate from 1 July. These amendments will provide that those clauses of the bill relating to GST will be taken to have come into operation on 1 July.

Amendments carried; clause as amended passed.

Clauses 3 to 10 passed.

New clause 10A.

The Hon. P. HOLLOWAY: I move:

Section 7 of the principal act is amended by inserting after subsection (9) the following subsection:

(9aa) The court must not, however, make an order for compensation in favour of a victim if the injury to the victim occurred while the victim was engaged in behaviour constituting an offence against a person or property (or both) or was loitering in any place or trespassing on land or premises with the intention of committing such an offence.

This seeks to limit the circumstances under which compensation in favour of a victim of injury can be made. I will cite a well-known case that illustrates the point. It came before the courts in March 1997 and the events occurred in March 1995. This matter was raised by my colleague the Hon. George Weatherill in this place on Wednesday 19 March 1997. If I read the question and the Attorney-General's answer, it will make clear the opposition's position on this amendment. The Hon. George Weatherill asked:

The *Advertiser* yesterday carried a story about four people who broke through a fence to steal marijuana from a person's backyard. One of these people was shot dead and the other three went to court, claiming victims of crime compensation. When the judgment was handed down, the judge said that he would give them something like 40 per cent less than the act provides. Because these three people were so shocked that their friend was shot, they received $2 800 each

as victims of crime, even though people are saying that these people were trying to commit the crime by jumping into a person's backyard and trying to pinch marijuana crops.

My colleague asked whether the Attorney would look at this matter, check on the judgment and appeal if he saw fit. As I said, the details of what happened were carried in the *Advertiser* of Tuesday 18 March 1997. On that occasion, the Attorney responded in the following terms:

When I saw the newspaper report I was quite perturbed because it seemed that persons who apparently received some compensation should not have done so because they were acting in the course of a criminal act. I sought some advice from the Crown Solicitor's Office, which informed me that it had argued that the court had the power to deprive a person of damages because of the plaintiffs' conduct which contributed to the commission of the offence. There was no previously decided case with a fact situation sufficiently similar to this to submit that a precedent had been set in relation to the facts of this matter. So, the Crown Solicitor did argue that this was one of those cases where, even if technically the applicants had been entitled to some form of compensation, the court was entitled to deprive them of the damages.

As it turned out, the judge who heard the matter considered that it was appropriate to reduce the damages by 60 per cent in relation to each of the plaintiffs. His Honour rejected the proposition that they should be denied all compensation on the basis that it would be too hard on the plaintiffs. He found that, whilst they must accept much of the responsibility for what took place on the night in question, Mr Tomac's response—

he was the person involved—

was over the top. He was the person actually convicted of manslaughter. It is an issue at which I will have a more detailed look. I would be interested to know what the opposition might propose and whether, if an amendment was proposed to the act, it would support it. If so, I would certainly be pleased to receive any submission from it.

That was over two years ago. When this bill, which amends the compensation provisions, was introduced, the opposition decided that, after two years, it was about time that the matter was addressed. The amendment seeks to deprive people in such cases of victims of crime compensation. All of us are aware that there is inadequate enough compensation for many victims of crime. I am sure that all of us who have had people in our electorate office from time to time would be aware of situations where people have suffered enormously as a result of criminal action. Given that limited resources are available, the opposition believes that we should ensure that the resources that are available are properly focused on those who deserve it. Cases such as this should be addressed by a change to the act to ensure that compensation is not available to people who engage in behaviour that constitutes an offence against a person or property. I seek the support of the committee.

The Hon. K.T. GRIFFIN: I understand the issue raised by the honourable member but, as I indicated in my second reading reply, whilst I have a lot of sympathy for that position and indicated that at the time this particular offence occurred, there is currently quite a comprehensive review of the Criminal Injuries Compensation Act and I would expect that amendments will be required to that act. I am hopeful that we would have them before the parliament early in the next session. Therefore, it seems somewhat premature to be moving on this issue, which I know excites some emotion, if there are more coherent and comprehensive approaches to be recognised in legislation later in the year.

So, as I said when I replied, I do not want to be taken as either opposing or supporting the amendment in the longer term, but I ask the committee to acknowledge that there is this review and that this is one of the issues which is very much a live issue and which in one way or another is likely to be addressed. If it is not addressed to the liking of the opposition or any other member of the Council—or the parliament, for that matter—it can be addressed at that time.

As I indicated in my reply, this provision is unduly harsh in its operation. There are also some practical legal difficulties, and I will deal with those shortly. This is not a small, uncontroversial amendment: it is a significant change to the policy of the act and deserves some wider debate in the context of a review of the principal act. I think it is fair to say that victims need to be consulted with respect to this as well.

It should be recognised that this clause would prohibit the court from ordering compensation in favour of a victim of crime where the victim was injured while engaging in certain criminal behaviour. The crimes which would disqualify the victim are any offences against a person or against property, and loitering or trespassing with the intention of committing such crimes. As a matter of general principle, the government has no difficulty with the concept that criminal behaviour of the victim should be taken into account. It is important to recognise that the act seeks to compensate primarily those victims of violence who are innocent victims and not criminals who are hurt by others in the course of the commission of their crime. That is reflected in section 7(9), which requires the court to take into account any conduct of the victim contributing to the offence or to the victim's injury.

The present provision is not a disqualification. Rather, the court looks at all the circumstances to determine whether or not compensation should be reduced. It can reduce the compensation, for example, where the claimant is a trespasser who is assaulted by a householder, or a robber who is injured by a confederate in the course of a robbery. The proposed amendment takes a less flexible approach, disqualifying the injured person altogether in such cases. While in many circumstances total disqualification may be appropriate, perhaps there are some where it is not. That is why I have concerns about moving quickly to support this amendment without consideration of those issues.

I will give a few examples. Consider the case of a youth who is on the premises of a service station late at night and who has a spray can, intending to apply a graffiti tag to an exterior wall or a nearby bus shelter. He or she is walking across the forecourt when a car pulls up and a man disguised and armed with a shotgun gets out, rushes into the service station and attempts a holdup. The service station staff call police or activate security alarms and the robber panics. Seeing the youth nearby he grabs him or her and takes him or her hostage at gun point. As circumstances develop the youth is held for perhaps an hour or two at gun point before police are able to persuade the robber to release him or her to safety. The youth suffers perhaps a mental injury. It may be a post traumatic stress disorder. It persists for many months. It may have the result that the youth is not able to complete final exams at school or drops out of an apprenticeship. It may be that his or her life and health are very severely affected by what has occurred.

From the many criminal injuries compensation claims which cross my desk, mental injuries of this type can have disastrous effects on the victim and on others close to them. Under these amendments the youth could receive no compensation.

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: Well, he was just walking across the forecourt intending to commit an act of graffiti, but does not commit the act but happens to be caught up and

taken hostage by someone who is embarking on an armed holdup. The judge might consider the youth's conduct not particularly grievous in all the circumstances. It would not matter that police had declined to prosecute the youth or had dealt with the matter by way of an informal caution. It would not matter that the evidence of the youth given at great personal cost secured the robber's conviction. Under the amendment the youth would have been loitering or trespassing on the service station premises with the intention of committing an offence against property, and that would be that.

There could perhaps be the situation of spouses who have separated after a marriage that is marred by domestic violence. I think one can relate to that from the number of these sorts of instances which come to our knowledge, either through our respective offices or in other ways. Suppose the wife decides to enter the husband's home while he is out, by force if necessary, in order to search for items of her property which she thinks he may have kept. If she enters his property without permission it may be that she commits the offence of being unlawfully on premises. If she has in mind to break into the home, clearly she falls within the scope of the amendment. Suppose that her former husband is unexpectedly at home, surprises her as she enters the front gate and violently assaults her, fracturing several bones. It appears that under the amendment she will have no claim, and if she happens to have entered the home unlawfully and is assaulted in the home by the husband then the same situation is applicable.

Some may say that this is the intention of the provision—something along the lines of, 'Let it be a lesson to them; they will not do that again in a hurry.' That is a fairly robust approach, and perhaps many will take that, but we do have to try to get a proper balance in this, recognising our own concern about the sort of example to which the Hon. Paul Holloway referred, and those others where the line is not clearly drawn. The government does not dissent from the principle that criminal behaviour on the part of the victim is relevant in determining whether or not compensation should be paid. I have already identified what is happening in relation to that.

The Hon. Ian Gilfillan: You have made your point.

The Hon. K.T. GRIFFIN: I have some other things to say, but if I have made my point that, hopefully, will give a perspective to it, which has not yet been given.

The Hon. IAN GILFILLAN: I indicate opposition to the amendment. I think the Attorney could have a successful career as a scriptwriter for some sort of TV series. I did not want to spoil the text by interrupting the next few stories. However, I think that particular description of a situation does lucidly portray the reason why I regard the amendment as unsafe. The Attorney has indicated that there will be a broader reappraisal of this whole matter and I am sure that it will resurface.

I cannot help but feel that the amendment is prompted by perhaps more than a robust approach; maybe even a ruddy glow around the neck area, in relation to which I think these sorts of pressures should be resisted by legislators rather than taken hastily on board in an attempt to put amendments in which sound good, that give a sort of warm, fuzzy, the bastards-will-pay sort of feeling. So I would like to indicate that, accepting the fact that the matter will be raised again, and accepting my opinion that it is quite unsafe in the area of the wording, that a person 'could be loitering in any place or trespassing on land or premises with the intention of committing such an offence'.

That is an arbitrary judgment. The intention would have to be proved and that would be very difficult in some circumstances. I think as it is currently worded it is a particularly unsafe amendment, so I oppose it from that point of view and also I think the principle needs to be revisited.

The Hon. P. HOLLOWAY: I will try to be as brief as I can. I am pleased that the Attorney is reviewing the legislation, although I do remind the committee that this particular event happened over five years ago. The court case on the instance that I referred to earlier happened two years and three months ago. So a long time has elapsed.

The Hon. K.T. Griffin interjecting:

The Hon. P. HOLLOWAY: Fair enough, I accept that. However, given that the numbers will not be there to carry this amendment, let us hope that the Attorney does produce something fairly quickly. Let me say that I was not particularly convinced by the rather extreme examples that the Attorney gave. I think one thing we ought to be aware of is that there are many people who witness horrific accidents who are not themselves victims but who suffer mental trauma. Those people in most cases may not get any compensation.

The Hon. K.T. Griffin: Some do.

The Hon. P. HOLLOWAY: Well, some may; that is why I did qualify it to that extent. Some may, but many do not. I come back to the point I was making earlier, that, if there are limited resources that our society has available, we in the opposition would prefer to see them go to the most deserving cases. The Attorney produced a fairly extreme example of somebody who was going to commit an act involving graffiti. I imagine it would be extremely difficult in such cases, and I am sure that the police who deal with graffiti find it very difficult to prove that somebody would have the intention of committing such an offence if the event had not actually occurred. But I will not take up the time of the committee. It is obvious that we do not have the numbers. The opposition just wants to put on record the fact that we do believe that some change in this area is highly desirable, indeed urgent.

New clause negatived.

Clause 11 passed.

New clause 11A.

The Hon. P. HOLLOWAY: I move:

Page 5, after line 32—Insert new clause as follows:

Amendment of s.11—Payment of compensation, etc. by the Attorney-General

11A. Section 11 of the principal act is amended by inserting after subsection (3) the following subsection:

(3a) However, the Attorney-General must not make an ex gratia payment to a victim if the injury to the victim occurred while the victim was engaged in behaviour constituting an offence against a person or property (or both) or was loitering in any place or trespassing on land or premises with the intention of committing such an offence.

This is related to the new clause that we have just dealt with. However, I will proceed with this, even though the previous amendment was lost, because here we are talking about ex gratia payments from the Attorney-General, so it is slightly different. I will be interested to know what the Attorney-General's view is, whether he has made any ex gratia payments in the time that he has been Attorney-General in situations that this new clause would prevent.

The Hon. K.T. GRIFFIN: I cannot recollect having done that. Where the person has been the offender, rather than the victim, there is a wide range of circumstances in which the discretion is exercised to make ex gratia payments. I would have thought that this is an issue that is in the same category

as the one we have just defeated and, therefore, ought not be proceeded with. It does significantly fetter the discretion, and I do not believe that that discretion should be fettered. In any event, because it is closely tied in with the previous amendment, which is an area subject to review with respect to the whole act, it seems to me inappropriate to be moving on this at this time.

The Hon. IAN GILFILLAN: I oppose this amendment for the same reasons I opposed the previous amendment.

New clause negatived.

Clause 12 passed.

Clause 13.

The Hon. K.T. GRIFFIN: This is the first of a series of responses to the issues raised by the Hon. Mr Gilfillan. This deals with forensic procedures. The Hon. Ian Gilfillan, when he commented on this clause, correctly identified that the intention of the amendment is to make clear that DNA profiles may be stored on the database, where the person was either convicted of the offence with which he or she was charged or another offence by way of alternative verdict.

It is clear from section 16(1)(g) of the act, which outlines the information to be provided to persons on whom forensic procedures are performed, that it is envisaged that such profiles will be stored on the database. This is also consistent from a policy point of view. It would seem incongruous that two persons ultimately convicted of the same offence would have different rights under the principal act only because one of them had been charged with another offence. This amendment will clarify that situation.

Clause passed.

Clause 14 passed.

Clause 15.

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

Page 6, lines 23 and 24—Leave out 'inserting in subsection (2)(a) "or of another offence by way of an alternative verdict' after "out' and insert:

striking out subsection (2) and substituting the following subsection:

(2) However, a DNA profile derived from material obtained from carrying out a forensic procedure under this act on a person under suspicion may only be stored on a data base if the person—

(a) was found guilty of the offence in relation to which the forensic procedure was carried out or of another offence by way of an alternative verdict; or

(b) was declared to be liable to supervision.

This is a technical amendment to clarify the position with respect to the storage on the database of DNA profiles obtained as a result of section 30 orders, which are orders authorising the taking of material for the purpose of obtaining a DNA profile from a person after the court has dealt with the charge.

This issue arose in the recent case of Police v. Stefanopoulos, Year 2000, South Australian Supreme Court, Reports, Page 59, where the defendant tried to argue that, based on the wording of section 49, only DNA profiles obtained from forensic procedures carried out during the investigative stage before conviction can be stored on the database. While his honour found that, in the context of the act, the proper meaning and effect of the legislation was that the power to store DNA profiles was not limited to material obtained from forensic procedures carried out during the investigative stage, his honour described the language in section 49(2)(a) as 'not ideal', suggesting a lack of clarity.

It is clearly the intention of the act that DNA profiles obtained as a result of orders pursuant to section 30 may be stored in addition to DNA profiles obtained as a result of orders made prior to conviction. This amendment clarifies this issue in the following manner: section 49(1) of the principal act provides that the Commissioner of Police may maintain a database of information obtained from carrying out forensic procedures under the act. This section authorises the storage of material obtained by an order pursuant to section 30. Subsection (2) currently limits the storage of DNA profiles to material collected from persons found guilty of the offence in relation to which the forensic procedure was carried out or from persons who were declared 'liable to supervision'.

The amendment will limit the operation of subsection (2) to forensic procedures carried out on persons under suspicion. In other words, the limitation under subsection (2) will not apply to the results of forensic procedures carried out on a person by operation of an order under section 30. This amendment does not remove any protection currently applicable to any person as ample protection is afforded by section 49(3), which provides for the removal of DNA profiles of persons who are subsequently acquitted of the relevant offence, and the provisions of Division 8, which sets out the requirements for the performance of forensic procedures after the court has dealt with the charge.

The Hon. IAN GILFILLAN: Will the Attorney advise how a person is defined as being 'liable to supervision', and what is the procedure with respect to retention of the DNA material if a person is relieved of the liability to supervision?

The Hon. K.T. GRIFFIN: This refers to that very special area under the Criminal Law (Mental Impairment) Act which focuses on the criminal intent of a person who might be charged with a serious criminal offence. The Criminal Law (Mental Impairment) Act provides that, on the report of three psychiatrists (in some instances, as a result of the bill we passed a couple of weeks ago, that might be one or two psychiatrists), it is established that the person, whilst committing all the acts that comprise the offence, nevertheless because of mental impairment did not have the necessary mental capacity to form the necessary criminal intent.

In those circumstances, the person is then declared to be liable to supervision. It is a way by which we deal with the old 'not guilty on the ground of insanity'. So, rather than that archaic provision, the new Criminal Law (Mental Impairment) Act—which has been in force for a couple of years, at least—provides for alternative means and recognises for the first time that a person might be mentally impaired (mental illness, intellectual impairment, and so on) and has committed all the acts that make up the criminal offence but does not have the necessary criminal intent.

In those circumstances, they are found to be liable to supervision and the court fixes the period for which they are liable to supervision, which would be in the range equivalent to the circumstances where they were found guilty because they had the necessary criminal act in the commission of the offence. So, if they are liable to supervision, they have for all practical purposes committed an act which is a criminal offence and been found guilty, although subject to mental impairment and, therefore, not formally convicted.

The Hon. IAN GILFILLAN: Will the DNA data then be removed from the public file upon the expiration of that supervision period?

The Hon. K.T. GRIFFIN: No, it is not, as I understand it. It is not intended to remove it, other than in accordance with the act, but the person is treated as though he or she were convicted of a criminal offence. So, you are comparing like with like; they have committed all the acts, they have not

had the necessary capacity to form the criminal intent but the acts have occurred. If someone is released from prison having committed those acts and that crime and has been found guilty, under the principal act that stays on the database forever and a day, because they have been convicted. The same applies with the person declared to be liable to supervision. I think that provision is already in the act. That reference to 'liable to supervision' is already in the act, so we are not changing that substantive issue.

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

Amendment carried: clause as amended passed.

Clauses 16 to 23 passed.

Clause 24.

The Hon. K.T. GRIFFIN: Clause 24 forms part of part 12 dealing with expiation of offences. The Hon. Ian Gilfillan summarised his understanding of the amendment to section 14 of the Expiation of Offences Act. With respect, this understanding is not quite correct. The amendment will provide that, where an expiation order is revoked by the court on the grounds set out in subsection (3), paragraphs (b) or (c) or new paragraph (ca), the alleged offender is deemed to have been given a fresh expiation notice on the day of revocation. However, this will apply only where the revocation occurs within 12 months of the offence being committed. So, if the revocation occurs at a time beyond the 12 month period from the date of the offence, then the provision does not apply. Once the new expiation notice is given or deemed to have been given within that 12 month period, then the normal time within which a prosecution must be brought, that is, six months, will begin to run.

The Hon. IAN GILFILLAN: I assume the Attorney is correct.

The CHAIRMAN: That is a very good assumption.

Clause passed.

Clause 25 passed.

Clause 26.

The Hon. K.T. GRIFFIN: In the second reading debate the Hon. Mr Gilfillan raised concerns which had in turn had been raised with him by the Civil Litigation Committee of the Law Society. These concerns relate to the proposal to limit legal representation on review of minor civil actions to those circumstances in which legal representation would have been permitted at first instance. The basis for the honourable member's concern is not entirely clear. He refers to litigants having clients with similar small debts. As parties in this jurisdiction are not represented, the litigants themselves do not have clients in this scenario. However, I believe that the Hon. Mr Gilfillan's concerns are directed at the possibility that a decision made by the court may set an unfortunate precedent, without the benefit of legal representation to assist the court.

First, it should be noted that decisions of the District Court on reviews of minor civil actions have very little value as precedent. In most cases there will be higher authorities on the questions of law raised by the case. In the rare cases where there are no such authorities, the decision of the District Court judge creates persuasive but not binding precedents. Further, there is a process of reservation of the question of law to the Supreme Court whereby difficult legal issues can be resolved. It should also be remembered that the review is not an appeal in the strict sense and that once again the rules of evidence do not apply and the court is free to inform itself as it sees fit. This helps to overcome the disadvantages of not being represented and any disadvantage to the court of not having the benefit of counsel to assist it.

In addition, there is strong justification for making clear that the same rules of representation apply at first instance and on review. It would be inconsistent if a person was unable to be represented at first instance but could then be represented on review. It is generally agreed that there should generally be no representation at a first instance hearing of a minor civil action before a magistrate. To overcome any difficulties flowing from lack of representation, the rules of evidence do not apply. The court may inform itself as it sees fit and the magistrate is to conduct the proceedings as an inquiry of the parties rather than leaving it to them to present the case as adversaries. This process keeps costs down and enables ordinary people to represent themselves when seeking justice in small disputes where the cost of legal representation might loom large as a proportion of or even exceed the amount in dispute.

If on review different rules apply and legal representation is permitted, two problems arise in those cases where only one of the parties can afford legal representation. One is that there is likely to be an unequal contest on review between the represented and the unrepresented party. Foreseeing this, a party who cannot afford a lawyer is likely to withdraw from the contest and capitulate to the requirements of the other side. That is, one party can intimidate the other into not pursuing his or her legal rights. The other is that a party who can afford representation will scarcely bother to present his or her case fully at first instance but will treat the cases as a mere precursor to the review at which the legal representative will sort out the matter. That is contrary to the general intention of the scheme, which is that the Magistrates Court, not the District Court, should be the primary forum for these actions, with the District Court's role being limited to a review.

The situation in which one side can afford a lawyer and the other cannot will arise not only in the case of disputes between individuals of differing resources but also for, example, in disputes between an insured and an insurer, a consumer and a trading corporation, a debtor and a corporate creditor and in many others. Legal aid is not available for reviews of minor civil actions. It should also be recalled that, until the decision in Halil v. Hender in 1996, there was no clear authority about whether or not representation was available in these reviews, and the view had often been taken that it was not. The proposed amendment restores the situation. It should also be noted that interstate only the Northern Territory allows representation on equivalent appeals, but it also allows representation at first instance. South Australia is the only state to exclude representation at first instance and then permit it on review.

The Hon. IAN GILFILLAN: I put these two formulas forward so that the Attorney can put my mind at rest at least. One example is where the action is from a group of individuals who (to take his example—the circumstances may not be identical but they are similar) may have a dispute with an insurance company and several of them take their own minor civil action under the value of $5 000. The point that I believe the Civil Litigation Committee of the Law Society is making is that, when that issue was taken to appeal, it would have wider ramifications than affecting just that one insured person who feels aggrieved. Likewise, I give the example of a scheme which could be regarded as fraudulent—in which one or two people have perpetrated fraud on a series of individuals, all of whom individually have not lost more than $5 000.

If he chooses, the Attorney may respond to those scenarios. They may not apply, because it may be that where there is one perpetrator the matter then moves out of the scope of minor civil action and goes into a superior court, but I would like the Attorney to comment on that.

The Hon. K.T. GRIFFIN: If it is fraud, provided there is sufficient evidence to prove the offence beyond reasonable doubt, it is likely that the matter would, first, be resolved in the criminal court and it may be that the issue of compensation would be dealt with in the criminal court at that time. There might be several people who suffered loss as a result of the actions of an insurer and each has a separate cause of action. If they act together in pursuing their respective rights, the matters might come on consecutively in the court or the magistrate might even determine that they can be dealt with together if there is one set of facts which gives rise to a claim by a number of individuals who have been affected by that one set of facts. However, I do not think that that changes the position.

The Hon. Ian Gilfillan: Would they be entitled to take representation on appeal?

The Hon. K.T. GRIFFIN: I do not think they would. I do not see why that is different from one person having a dispute with an insurer. I think the honourable member might be referring to the precedent issue.

The Hon. IAN GILFILLAN: I think this is significant. It is not necessarily the precedent, although that might well be the case. We have an arbitrary figure of $5 000, which is reasonable but, where you have this multiplicity of incidents, the actual accumulated amount that is involved may well be $20 000 or $30 000. However, taken individually in parcels, it is less than $5 000, so on appeal that matter would not be given legal representation.

The Hon. K.T. GRIFFIN: It is difficult when we talk about hypothetical cases. I suppose the real possibility is that, if the loss arises out of the one set of circumstances, they may become joint plaintiffs. That would take the matter into the Magistrates Court or perhaps even beyond the jurisdiction of the Magistrates Court depending on the number of people involved.

I do not think I can take the matter much further. That is about the only set of circumstances in which I could see the scenario raised by the honourable member actually being likely. In those circumstances, as I have said, they might become joint plaintiffs, but that would depend very much on each set of circumstances. The principle should remain the same if you have a claim arising out of a set of circumstances even if it affects others who might have a similar claim. Even on review you do not have an entitlement to legal representation unless the parties join together to become joint plaintiffs which would take it out of the range of a small claim.

Clause passed.

New clause 26A.

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

Page 12, after line 4—Insert new part as follows:

26A. Section 277 of the principal act is amended by inserting in subsection (1)(a)',including fees and charges for searching, whether electronically or in any other manner, the register book or any document deposited or registered or information recorded under this act or pursuant to any other act, and for obtaining copies of any material so searched' after 'under this act'.

This amendment will provide for regulations to be made for the imposition of fees for inquiries and searches made in respect of information maintained by the Registrar-General under the Real Property Act 1886 and other relevant legislation such as the Community Titles Act 1996 and the Strata Titles Act 1998.

Since 1979, non-regulated or administrative fees approved by the relevant minister have been imposed for most inquiries on the land ownership and tenure system (the LOT system), which is maintained by the Registrar-General. Developments in computer technology have also changed the way in which most searches are conducted. A person making an inquiry regarding a particular title will generally be provided with a print-out of information held on a computer. Fees approved by the minister are currently imposed for the provision of such print-outs.

During the second reading debate, the Hon. Mr Gilfillan raised a concern which appears to have arisen from the letter which I sent to each of the parties regarding the proposed amendment. It might teach me to be a bit more precise, although I tried to be helpful in advance. In my letter I stated I had received advice that the imposition of fees for access to the register book and instruments may be contrary to section 65 of the act which requires the public to have free access to these documents.

Perhaps I could have been a little clearer. Where a member of the public has sought physical access to the register book, no fee has been imposed. I remember when I was searching titles in my practice days that I would go to the Lands Titles Office and hand over a sheet of paper about the size of an envelope which had written on it the date and the certificate of title register book volume that I wanted to look at, and I signed it with the name of the firm that I represented, handed it over, and they would go to a range of shelves, pick out the volume, hand it over the counter, and I would then be able to look at it. At that stage, that was all done for free.

However, fees have been charged for print-outs of information obtained from computer searches of the register book conducted by staff at the Lands Titles Office. The fees are administrative in nature. As the act imposes no obligation to provide computer print-outs, there is nothing unlawful about charging these fees. A difficulty has arisen because a member of the public has pointed to section 65 and argued that that section entitles him to access the computer register itself rather than a print-out of information contained in that register.

Only one member of the public has sought such access to date. The Registrar-General has advised that, given that the costs of providing members of the public with the facilities to directly access the computer register and section 65 appears to entitle members of the public to have such access, the act needs to be amended to ensure that the Registrar-General is able to charge a fee to cover the cost of providing such access, which the Registrar-General advises is large.

My proposed amendment will enable a fee to be set by regulation to be charged for such access. At the same time, the government has decided to take the opportunity to provide legislative footing for the imposition of other fees relating to the provision of information contained in the register book or any document or information held by the Lands Titles Office under the act.

The government has also decided that, in future, such fees should be set by regulation rather than by the relevant minister. I hope that initiative will be recognised as a valuable one. It will enable parliamentary scrutiny of the level of fees being set. New part 13A will therefore amend the regulation making power under section 277 of the Real Property Act to provide that regulations may set fees for searching the register book and other documents and information held by

the Registrar-General, including where such searches are conducted electronically. The amendment will also provide for fees to be set for obtaining copies of material so searched.

The Hon. IAN GILFILLAN: I have two questions for the Attorney. First, what prompted the change in 1979 to the level of fees and charges? Secondly, from the actual wording of the amendment, I am not clear whether the fee and charge will only apply to obtaining copies of any material so searched. If it is purely the sort of procedure that the Attorney indicated that he followed in his practice to acquire the folios and flick through them, for which there may or may not be a charge, will the Attorney clarify whether the fee or charge will apply even to having access to the document and searching it oneself?

The Hon. K.T. GRIFFIN: It is very difficult to go back into history 21 years to determine the reason why. There is a suggestion that even then we were starting to computerise titles and that the fee was brought in to deal with copies of computerised titles. I really do not know the answer. I will endeavour to find out for the honourable member, but it will have to be communicated to him after the bill has been dealt with.

In relation to the second question, about 15 per cent of the register books are still in the book form to which I referred during my early days of practise. Theoretically, it is still possible that this amendment will allow fees to be charged for accessing those register books. I am informed that it is not the intention that that be the case. I simply say that the regulations will come back to the parliament and they will be subject to parliamentary scrutiny. So, if there is a difficulty with that or any other fee or issue, they can be the subject of proper scrutiny.

The Hon. IAN GILFILLAN: I think the wording of the amendment needs to be analysed, because if it does imply what I believe it does, and that does not reflect the intention, now is the time to look at it. The amendment provides:

> . . . inserting in subsection (1)(a)', including fees and charges for searching, whether electronically or in any other manner, the register book or any document deposited or registered or information recorded under this act or pursuant to any other act, and—

and I emphasise the word 'and'—

> for obtaining copies of any material so searched'. . .

That wording would imply, unless there are other conditions in the act elsewhere, that the fees and charges will apply only if copies of the material so searched are obtained.

The Hon. K.T. GRIFFIN: My understanding is that the Land Ownership and Tenure System (LOTS) has been accessible for some time online in the offices of lawyers, conveyancers and agents, and that a fee is charged for accessing that information and not just for ordering copies over the counter or in some other way. It would be very difficult, in drafting, to distinguish between the two.

I think it is quite proper for a fee to be charged for accessing, even online, the information on the LOTS system. In the past, if you ordered a copy of a certificate of title, you always had to pay for a photocopy from the old register book. As I understand it, you now have to pay for a copy of the computerised title if you want a hard copy. All this is designed to recover the costs. As I said, the information that I have is that it is not intended that there be a charge for merely accessing over the counter those old register books, which comprise 15 per cent of the original and which are still accessible in that way. They are all gradually being computerised.

The Hon. IAN GILFILLAN: I make the assumption that the Attorney believes that there is no ambiguity about the wording of the amendment, because it certainly does provide 'electronically or in any other manner'. It is wide in its scope of what the searching can be. As I interpret this provision, the searching can be extensive in any form that is available but, unless a copy is taken under the provisions of the act, one is not liable to be charged a fee. I am not making a judgment about whether it is right or wrong; I am just asking whether or not the amendment is ambiguous or not what the government intended.

The Hon. K.T. GRIFFIN: I cannot see that it is ambiguous. It was intended that the provision be broadly drafted to cover all possibilities. I remind the committee that these fees will be fixed by regulation; they will no longer be fixed by the minister.

The Hon. IAN GILFILLAN: If that is true, the head power will need to be in the act to set the fees in the regulations.

The Hon. K.T. GRIFFIN: That is what is here.

The Hon. IAN GILFILLAN: I do not want to be tedious but, if I were determining the power of the regulation, I would be inclined to accept that the regulation can set a fee or charge only for obtaining a copy.

The Hon. K.T. GRIFFIN: I disagree with the honourable member in relation to that. I think there are plenty of circumstances in which accessing it by computer, if it is online—

The Hon. Ian Gilfillan: By definition, would that be covered by 'and for obtaining copies'? That is the point I am raising.

The Hon. K.T. GRIFFIN: It includes fees and charges for searching whether electronically or in any other manner, that is, accessing the information electronically, whether it is online, into your office or in the office of the Registrar-General.

The Hon. IAN GILFILLAN: I suggest that, if it is intended that fees and charges should be applied for the searching, there ought to be a separate statement, because that would mean that there is a fee or charge merely for the searching. There is another charge for obtaining copies of any material but, as it is worded now in the one sentence, it appears to me that it hangs together and that there will be no charge unless there is that last part of the sentence which starts 'and for obtaining copies'. It may be that I am pedantic, and I am quite happy to hear another opinion expressed.

The Hon. K.T. GRIFFIN: What you are saying is that this limits the power to charge.

The Hon. Ian Gilfillan: I believe it does.

The Hon. K.T. GRIFFIN: I will take this on notice. Rather than holding up consideration of the bill, I will undertake to have it looked at in terms of the drafting. It has to go to the House of Assembly. I undertake to have the issue clarified, because I agree with the honourable member that we do not want any ambiguity about the power to make regulations to charge. If there is an issue there, I undertake to have it resolved appropriately.

New clause inserted.

Clause 27.

The Hon. K.T. GRIFFIN: The Law Society has submitted that the amendment should operate retrospectively to the date of the last amendments to the Wills Act. In general as a matter of public policy, it is considered that legislation should be prospective in nature wherever possible. It is only in the most rare and exceptional case that retrospective legislation

is enacted. One of the main arguments against retrospectivity is that it may adversely affect those who have acted in accordance with the law as it currently stands.

It is acknowledged that, as section 12 applies specifically to those who unwittingly fail to comply with the legal requirements for making or revoking a will, it is unlikely that any testator would have relied to his or her detriment on the existing section 12. However, there are still people who would be disadvantaged by applying the provisions retrospectively—for example, where a person would have benefited under what purports to be a will or by revocation of a will of someone who died between 13 December 1998 and the date that the proposed legislation comes into operation. The document that purports to be a will or revocation fulfils the requirements of the existing section 12 but would not fulfil the requirements of the amended section 12.

Further, it would clearly be undesirable for retrospectivity to affect an existing grant of probate. This would mean that there would be an inconsistency depending on whether probate had already been granted, which might unfairly penalise persons who would have benefited had section 12 not been applied in their case. While the Law Society points to inconsistency depending on when the death of the testator occurred, if the Law Society's proposal was accepted, it would mean that wills of persons dying on the same day could be treated differently.

It seems inappropriate that two people could die on the same day and yet a different law could potentially apply to each, when the general law is the applicable law that is in force on the date of death. I am not convinced, as I said in my reply, that the concerns expressed by the Law Society with respect to some potential complexity override the general principle that retrospective legislation is undesirable.

The Hon. IAN GILFILLAN: I thank the Attorney. I realise that he made that observation before but I think it is appropriate to have it at the right place in committee. If I have interpreted the Attorney's explanation correctly, even to a simple degree, the law that will apply depends specifically on the date of death, even if the actual time to determine and reach probate on a will stretches through to the—

The Hon. K.T. Griffin: It is the law that applies at the date of death.

The Hon. IAN GILFILLAN: No qualification?

The Hon. K.T. Griffin: That is right.

Clause passed.

Remaining clauses (28 to 30) passed.

Long title.

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

Page 1—After 'Magistrates Court Act 1991,' insert 'the Real Property Act 1886,'

Amendment carried; long title as amended passed.

Bill read a third time and passed.

LIQUOR LICENSING (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. CARMEL ZOLLO: As indicated in my second reading contribution, whilst this is a conscience vote for opposition members, I strongly support the provision for this licence and recognise the importance of electronic commerce in the economy of South Australia and the importance of doing all we can to facilitate its development. I notice that the Hon. Trevor Crothers took umbrage that I did not mention wine exports in my second reading speech. He also took umbrage on other matters, for reasons that I do not understand, but that is another story. I realise that I talked exclusively about the local jurisdiction and the Hon. Trevor Crothers was right in pointing out that I had not mentioned the importance of electronic commerce in the wine industry.

I know that electronic commerce is already playing a very important part in the export of our wine and the industry is an extraordinary success story for the state. As I mentioned, the export industry is exempt from processing and physically delivering in the time frame in this bill. I continue to wish it well and hope that this legislation will play some part in facilitating that industry. As I indicated in other debates, I look forward to the introduction of the electronic commerce legislation, which will give legal status to commerce on the net.

The Hon. NICK XENOPHON: Regarding purchases transacted over the internet, I note that there is a new offence of supplying liquor to a minor otherwise than on licensed premises. What resources will be put into policing this? Obviously, there will be an expansion of electronic commerce, but there is a potential down side in terms of minors having access to the internet. There is no longer the gate (if you like) of the licensee of premises being able to undertake an identity check, something that I know is contentious in terms of the under-age purchase of alcohol at premises. What is proposed by way of checks and policing of this form of e-commerce transaction in terms of the supply of liquor?

The Hon. K.T. GRIFFIN: Neither the Liquor and Gaming Commissioner nor I believe that e-commerce ordering and delivery will be favoured by minors for a number of reasons. Presently, access is relatively slow. We expect that a direct sales licence will be more applicable to premium wines, although that is not necessarily so, and that delivery will occur not instantaneously but after a period of time has elapsed, for the very reason that these groups will operate by placing an order with the producer or the brewery for direct delivery.

Even now under a bottle shop licence, for example, a retail liquor merchant's licence, orders can be taken by telephone. I am told that there are many people who currently order their supplies of alcoholic beverages through mail order and, more particularly, telephone order.

The Hon. T.G. Roberts: Mostly only to known customers.

The Hon. K.T. GRIFFIN: Yes, but the same issues arise there as occur in relation to the internet, because in relation to delivering in South Australia there is a statutory obligation not to deliver or supply to a minor.

The Hon. T.G. Roberts: But you could deliver to an empty house.

The Hon. K.T. GRIFFIN: That is always a possibility. The other possibility is that you deliver at home when the parents are around or when some responsible adult is around, and they will very quickly resolve it. But it is an offence to sell or supply liquor to a minor and, under this regime, the same rules apply as apply in licensed premises or, through mail order or telephone order. Largely, it is a matter of periodic checks of the supplier. It is a complaint driven process, because a lot of the issues related to under-age drinking or complaints investigation are driven by complaints based information, or other information that might come from some other means, through police or otherwise. So that is the best I can offer in relation to that. It is not going to be any

less onerous for a supplier where the order is placed by electronic commerce than the present mail or telephone order.

The Hon. NICK XENOPHON: Is there currently with respect to mail orders and telephone orders any system of spot checks to ensure that minors are not supplied or is it considered not necessary from the Attorney's or the commissioner's point of view, and is it foreshadowed that, given the potential expansion of e-commerce, there may well be occasional spot checks to ensure that suppliers are undertaking appropriate checks to ensure that minors are not supplied?

The Hon. K.T. GRIFFIN: There have not been any spot checks. The mail order business is quite huge, involving tens of millions of dollars even in South Australia, with Cellarmaster and others, and where do you start if you are going to make some spot checks? But there is a statutory obligation upon the licensees to ensure that they do not sell or supply to a minor. Before the Supreme Court decision which prompted us to move to a special direct sales licence there were three internet licences issued by the commissioner and there was at least a page of conditions attached to each, all of which dealt with the obligations under the act—responsible service, minimisation of harm, and so on. That is certainly what would be intended with respect to this form of licence.

The Hon. T.G. ROBERTS: I would feel more comfortable with this clause if the delivery had to be made to an identified adult.

The Hon. K.T. Griffin: You are able to do that now.

The Hon. T.G. ROBERTS: I know that with all of the services that are provided now most people who are using the services are responsible adults who make a decision to buy a particular product. I think the internet is indiscriminate. If somebody is on the phone generally you can recognise the tone of their voice, but with the internet you do not know what age a person is, and there is no identification required. A delivery could be delivered to a home, pre-paid on an adult's bankcard, or whatever, or on the understanding of an account, and then put on a front doorstep or a back doorstep while parents or responsible people are not there. That is the difficulty that I see. Is it the case that hotels will be able to accept orders from the internet? I suspect that they will be able to. They will be able to get into the delivery process themselves. There is nothing to stop hotels from taking orders from the internet directly to their bottle shops and delivering to homes. Would that be the case?

The Hon. CAROLINE SCHAEFER: I cannot see this as anything more than an advanced system of ordering via catalogue or ordering via post. If I belonged to a wine club which happened to be based in Sydney and I ordered four or five cases of wine, no-one would know who is to collect the wine at the other end. To me this is purely an advanced method of ordering by post, and I cannot see why there needs to be this particular onus. If it is delivered to a home at the moment there does not appear to be any check on who takes delivery of mail ordered wine. I see this as a possibility to open up international orders very conveniently and quickly.

The Hon. K.T. GRIFFIN: As the Hon. Caroline Schaefer says, this is all meant to be technology neutral. I think that is the description—certainly medium neutral, whether it is mail, over the counter, e-mail, or whatever. But if someone was delivering liquor and leaving it on a front or back doorstep there are two consequences of that. The first is that if it came to the knowledge of the commissioner that would be pursued because that is not responsible service of alcohol and a minimisation of harm, which is the underlying principle of the Liquor Licensing Act. The second is that if it was not collected, if it was left on the front doorstep and it was not there and over the next week the owner of the home who had ordered it found that it had been stolen, for example, I presume that all hell would break loose. There are a lot of checks and balances there. The onus is still on the licensee, whether it is Cellarmaster or anybody else. They have an obligation under the law to deal with alcohol sales and delivery in a responsible way, and that means ensuring that it does not come into the hands of minors. So that is really the position. What I suggest is that, because one or two members are not able to be here at the moment, we should report progress and deal with this on the next day of sitting.

Progress reported; committee to sit again.

ELECTRICITY (PRICING ORDER AND CROSS-OWNERSHIP) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General): On behalf of the Treasurer, I lay on the table a copy of the *South Australian Government Gazette* No. 102 of 28 June 2000 containing a proposed variation to an electricity pricing order. It was, in fact, referred to in the Treasurer's earlier statement to the Council but, unfortunately, the tabling of the *Gazette* was omitted.

LIQUOR LICENSING (REGULATED PREMISES) AMENDMENT BILL

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

CRIMINAL LAW CONSOLIDATION (APPEALS) AMENDMENT BILL

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

YOUNG OFFENDERS (PUBLICATION OF INFORMATION) AMENDMENT BILL

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

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

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

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

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

STATUTES AMENDMENT (CONSUMER AFFAIRS—PORTFOLIO) BILL

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

STATUTES AMENDMENT AND REPEAL (SECURITY AND ORDER AT COURTS AND OTHER PLACES) BILL

Adjourned debate on second reading.

(Continued from 28 June. Page 1356.)

The Hon. T.G. CAMERON: I support the second reading of this bill. After the incident at the District Court in the Way building in September 1999 where Wayne Maddeford held a court reporter hostage at knife point for four hours, it became clear that the security procedures at courts were, to say the least, inadequate. Since this incident, the Sheriff, with the support of the Chief Justice of the state and the state courts administrator, has put into place more thorough security arrangement. However, to make the security arrangements at court more effective, there is a need to provide legislation to enable searches and, if necessary, detention. Under the bill, people who are required to attend court and those who wish to observe proceedings are to go through a security procedure such as airport style metal detectors and, if necessary, personal searches.

Under the amendments put up by the Attorney-General, police may act as Sheriff officers with the permission and under the supervision of the Sheriff. This also, as I understand it, puts search rights beyond doubt. Regular users, that is, lawyers or barristers, can be properly and easily identified. A distinction can be drawn between lawyers who need to be in court—that is, defendants, lawyers, etc.—and who must submit to a search if requested, and those who want to be in court, such as visitors, who can refuse but who will also be refused entry. As I understand it, under common law people are free to attend court proceedings, but that is obviously with the caveat that that is as long as they act in an orderly manner.

Under this bill, a search can take place if Sheriff officers have reasonable suspicion, for example, through a metal detector, that a person is carrying an offensive weapon, and the Sheriff can decide who is turned away if they refuse to submit to a search. I understand that for some people these procedures could touch on their cultural sensitivity.

While this may conflict with a common law right to attend proceedings, the thrust of the bill is to allow the courts to proceed in an orderly manner without the fear of an incident such as the Maddeford incident—and I think every member of this Council would support that. Thus, I believe it is consistent with the spirit of common law. SA First will support the bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their support of the bill and their acknowledgment of the necessity to ensure the safety and security of all those who attend our court system in whatever capacity. If I have not already made it clear, I should say that the legislation has been developed in close consultation with the Chief Justice and the acting sheriff and has their full support. The Leader of the Opposition has asked a number of questions in her second reading contribution and I will take this opportunity to address them. The leader asked what 'reasonable force' would entail. No definite or specific answer can be given to this question. Rather, it can be said that the standard of reasonable force attached to what may generally be called a law enforcement power is very common and can be found for example in sections 73, 81 and 83(c) of the Summary Offences Act, all of which deal with police powers; section 48 of the Electricity Act, which deals with the execution of a warrant under that act; section 86 of the Correctional Services Act, which deals with the powers of the correctional officers; and so on.

These examples could be multiplied. It is, in short, the common and conventional general formula by which to confer the power to use force to achieve an end required by the law, but also to limit it. The force used must be reasonable in all the circumstances in which it is sought to exercise the authority. If it is not reasonable, the exercise of the authority will be unlawful.

The leader asked what happens when people who do not speak English come into contact with the proposed system. The Hon. Terry Cameron remarked upon the fact that, in undertaking a search, some recognition must be given to cultural, religious and other sensitivities. I sought advice from the acting sheriff. He told me that, when a person who does not speak English is required to attend court, past experience has shown that they are normally accompanied by a family member or a support person who does speak English. If a person is required to attend court, it is normally the case that an interpreter has been arranged for his or her attendance in the courtroom. This interpreter is summoned if no help is at hand.

It is the practice for the security officer to determine whether the person has any papers which might signify the reason for his or her attendance and, if so, the security officer then contacts the court registry to seek the attending interpreter. If all else fails, I am informed that some court staff with a non-English speaking background might assist or the court security staff will call the interpreting service provided by the state Office of Multicultural and International Affairs. So, a range of alternatives is possible.

The Leader of the Opposition referred to the correspondence that she received from the Law Society about lawyers attending court. I have not seen this correspondence, and a search of my correspondence section has failed to reveal it, so it appears that I have not received it. I can only go on what the honourable member says. I agree thoroughly with the proposition that lawyers must be allowed to move conveniently between courts and that the business of the courts should not be held up by delays in dealing with searches. I understand that it is not a matter of status but of doing efficient business.

I do not know and I have not been made aware of any such problem with the system, which has been operating for some time, but I do not agree that the legislation itself should deal specifically with an exemption for lawyers. In my view, that matter should be worked out between the Law Society and the Sheriff as part of the administration of the scheme that has been put into place by the courts. The Sheriff is responsible to the courts for the administration of a security system devised by the courts for their own protection and the protection of others.

I point out that nothing in this legislation requires any person to be searched. That is a matter for the discretion of the Sheriff and those acting under his orders. I also point out that, once one starts with a statutory exemption, there is no knowing when or where to stop. What about police prosecutors, police officers in general, judges, judges' associates and tipstaves—the list goes on. I do not think it is desirable or sensible to begin compiling such a list in this kind of general enabling legislation.

The Leader of the Opposition also referred to a telephone call that she received from the Public Service Association. As far as I am aware, I have received no representations from the PSA. If the honourable member can give me some notice of what concerns, if any, the PSA have, it may be possible for me to consult with the relevant authorities on the issues raised.

The Hon. Carolyn Pickles interjecting:

The Hon. K.T. GRIFFIN: Are they? If there are any outstanding issues, I am happy to deal with those before the bill is finally resolved in the House of Assembly.

Bill read a second time.

In committee.

Clause 1.

The Hon. A.J. REDFORD: Because I was engaged on other duties, I did not get the opportunity to make a second reading speech, so I would like to make a couple of comments about this bill which affect me and some others. As members would be aware, there have been significant changes in the attendance procedure at the courts since that unfortunate incident involving an accused person taking some court staff hostage. My understanding of the events that led up to that incident is that there are two versions. One is that there was a failure on the part of the then Sheriff's officers to properly search the accused person. The other version is that the judge's tipstaff brought the judge into court before the Sheriff's officer could properly search the accused before he was taken into court. Nevertheless, the incident occurred—it was very serious and quite unfortunate.

Since then, we have seen various security procedures adopted throughout the courts in South Australia. I have had varying experiences associated with being searched during my attendances at the courts. There have been occasions when I have been recognised and allowed to go through unimpeded; on other occasions, I have had to submit to a full search. The protocol that has been adopted is that legal practitioners are entitled to go about their daily business without being searched. I think that makes sense. It is pretty rare for a legal practitioner to do the sort of thing that the accused person did on that day.

This has been an interesting process. Because so few of these security staff recognise me, I thought I should go through the process that would enable me to be recognised as a lawyer because, as members know, lawyers come in all shapes and sizes. I discovered that the protocol for getting into the courts without being searched was to take a business card to the Sheriff's office and get it covered with plastic and stamped. There is no photograph attached to this card, but armed with this card you can have access.

If you are a member of the Law Society—and I have not been a member for a little while now for reasons that I have stated in previous contributions—you can produce that card and that is adequate. If you are not a member of the Law Society, you provide a business card and they put a bit of plastic on it and stamp it with the Sheriff's office seal—and that is what I did. It might amuse members to hear this. One day I happened to be in the vicinity of the courts, so I thought I would pop into the Sheriff's office and show them my card. I assumed that I might have to sign something to prove that I was the person named on the card, but I did not have to do that. The person behind the counter took the card. I sat down and waited while she buzzed in and out of about three offices and came back and said, 'My apologies Mr Redford, but your business card which indicates that you are a member of parliament is not good enough; you have to have the card of a legal practitioner.'

The Hon. Diana Laidlaw: Who set this rule?

The Hon. A.J. REDFORD: I don't know. The minister knows the sort of person I am and that I would not argue or create a fuss about anything.

The Hon. Diana Laidlaw: Did you on this occasion?

The Hon. A.J. REDFORD: On this occasion I shrugged with some degree of resignation. All the attacks on being a member of parliament that we have sustained over the years has probably taken a bit of fight out of me. I went back to the office and found that I had used up all my Scales & Partners cards. I had another batch printed and I sent two off just in case they mucked one up.

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: No, I deleted 'Honourable'; I did not want to take any chances. I wanted my security card. I was doing my best to distance myself from being a member of parliament. However, it does illustrate that some better consideration needs to be given to the people who are entitled to these cards because there are others who attend courts and who might fall within the category. Members of parliament, generally speaking, are a non-violent lot. They are not prone to be people who carry weapons into courts. Perhaps the courtesy could be extended to them, and there may well be other groups. I am not sure how far the Sheriff has considered that but perhaps I am an unusual person. I would be interested to know whether the member for Mitchell's business card would be accepted at court or the business card of the Hon. Nick Xenophon.

Since this bill was introduced I thought that I would stop and talk to these people at the search points and find out what they think of it. The first point they make—and this happens a lot in the government, whether we are in government or the other mob is—is that they have not been given any additional resources in terms of personnel. They have had to juggle this responsibility with their other former responsibilities, and my observations are that it works relatively well.

The second aspect is that we have heard all sorts of stories about the initial items that have been collected from people, including knives, replica guns, knuckle dusters, chains and all sorts of offensive weapons—although I understand that the collection of these items has tailed off considerably in the past few months as word gets out that if you have offensive weapons taking them to court is not a good move. However, I do see police officers walk through with guns, which I have always found personally objectionable.

The other interesting point that these people make to me is that the measure has contributed to a general level of reduction in antagonistic exchanges between the staff who work in these very difficult circumstances dealing with distressed and difficult people behind the counters in the courts. I have been told that the number of instances has been reduced quite substantially. I did say to a couple of people, 'Is that simply because the anger is being transferred from the staff who work behind the counter to the staff who work in the security area?' The response I received from people in at least three different courts is that that is not the case: the procedure seems to take the aggravation out of the situation. It may well be that, apart from the actual security and the bringing of offensive items into court, these have been good measures for other reasons.

I want to mention a couple of issues. With regard to the requirement for a physical search, my understanding is that these machines—and they are gradually being put into courts around the state (Holden Hill's machine is due within the next two to three weeks)—are capable, in conjunction with the hand-held device, of detecting all offensive weapons. What concerns me—

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: Metallic offensive weapons.

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: With the greatest respect, how far do we go with these things? I am concerned that we

are extending the powers to provide for the searching and strip-searching of people. A court intimidating enough for ordinary members of the community—and on some occasions, when you get the wrong judge, even for members of the legal profession. With the greatest respect to the Attorney, unless there have been incidents, I am not sure that we really require the power to make people entering public buildings open their mouths, adopt certain postures or remove clothing. That is set out in clause 9E(4)(a).

I have always been of the view that, if we are going to give powers to officers, government officials or agents or the like, there should be a real justification for doing so. The Attorney quite rightly points out that some items might not be detected by metal detectors. Quite frankly, that might well be the case. We certainly have not had any instances of that and, quite frankly, all of us have travelled interstate or overseas and we are not subjected to searches greater than that provided by the machines available in the courts.

In the absence of some clear requirement, I am not sure why we need to go this far. One can imagine all sorts of events happening in court with some person who is not careful with items. A broom lying around in a broom cupboard can become a dangerous weapon in the hands of the wrong person. Do we ban and remove all brooms from courts? I have grave misgivings about extending these sorts of powers to officers in the absence of some very clear need and demand. I am not suggesting that it will be abused, but there are large numbers of people who have great powers in the community and we need to keep a close eye on it.

If we are going to extend some powers, I suggest that there ought to be some justification for that. I am not sure that there is any justification for it, particularly when one remembers that all sorts of items are available in the court. At the end of the day, a pen in the hand of a person can be a lethal weapon if used in an appropriate way, so should we take pens away from people? I have to say—and I have said this on previous occasions to the Attorney—I am yet to be convinced that there is a requirement to extend the sorts of powers to people to undertake quite extensive and intrusive searches, particularly where people are required to attend court in some cases and in other cases are exercising their right to see the courts in an open society. That causes me significant concern.

The Hon. K.T. GRIFFIN: I acknowledge that the honourable member has these concerns. It really is a dilemma. We need adequate powers to deal with all those sorts of issues and to be prepared for the worst. That is not to say that the powers will be used, nor that they will be abused. It is important to be somewhat cynical about the way in which these powers might be exercised. People are cynical about the police, forest inspectors and a whole range of other people who are clothed with authority to question, examine and search, and rightly so. I am one of the advocates for caution about granting powers to government officials, because we have to be cautious about extending powers over citizens which might be subsequently abused.

In these instances of court security, we have to recognise that there needs to be the power to search, and we have tried to limit that as much as possible. It must be recognised that there are items such as Kevlar knives and wooden knives which can be offensive weapons. I share the concern of the honourable member that, if in the general community we start to ban these sorts of items in a way that creates even further constraints without satisfying a public interest objective, we are on a dangerous path. However, we are presently contemplating things such as Kevlar knives being prohibited weapons because they can go through metal detectors, screening devices, X-ray machines and so on, whether at airports, courts or elsewhere.

The powers set out in this legislation are necessary but they are constrained. I am confident that sensible procedures will be put in place to deal with members of the legal profession and others, as well as dealing with those who go to the courts, either as defendants, who might be dangerous individuals, or their colleagues, friends and relatives, who might equally have a nefarious purpose for being at court. In those circumstances a balanced approach must be taken. I share the concerns of the honourable member but I do not share them in respect of the extent to which we have to legislate. I recognise the need for a cautious approach and for proper procedures to be in place, which I am assured will be in place to deal with court security once the legislation is enacted.

The Hon. A.J. REDFORD: The point that the Attorney-General made that a lot of other people are given powers underpins what I am saying. Often when we debate legislation relating to such powers and say that it is the thin end of the wedge, we get the response that it is not, that there is a need for it in that particular case. Now the argument has been extended to the effect that a whole lot of other people have been given such power. If we think carefully about this, that demonstrates that some of those other people were the thin end of the wedge.

When talking about the thin end of the wedge, how far do we take this power to strip search? Will it be extended at some stage to other public buildings, to parliament, to police stations, to libraries, to schools? Are we going to create a society where security devices appear everywhere? That is why I am concerned about it.

My other concern, which I did not mention earlier, is that, when acting for accused people, it is hard enough to get witnesses to turn up to court voluntarily. To have the police inform them that, if they come to court and give evidence for the accused, they will be strip searched on the way through will make them even less cooperative and make it more difficult for defence counsel to get them to attend court. Courts should not be unfriendly, but I recognise the need for appropriate security in them.

I endorse the Attorney's comment that we need a very cautious approach. We should be extremely cautious. If it is demonstrated that we have to give them power for strip searching at a later time, let us do it when it is clearly demonstrated. With the greatest respect, I am not sure that, if we are adopting a cautious approach, we have reached a point in our courts in South Australia where we require the power to strip search people.

The Hon. CAROLYN PICKLES: We have listened with interest to the comments of the Hon. Mr Redford. I share his concern to some extent, but it is an unfortunate fact of life that we now have people who, while going about their daily business, have had their life seriously threatened. Sometimes these measures may seem to be over the top, but an excess of caution may eventually save a life. We were subjected recently to the media pictures of some 30 men if not heavily armed certainly with chains and whatever else hanging around them wandering through the courts, clearly designed to intimidate people. Although it may seem to be over the top, a way around it may be that the Attorney would agree to bring down a report to the parliament on the operation of this act within an appropriate period.

The Hon. K.T. GRIFFIN: I will refer that matter to the Chief Justice, because the Courts Administration Authority annual report would be an ideal place to have a report. I will ensure that it is drawn to the attention of the Chief Justice.

Clause passed.

Clauses 2 to 5 passed.

Clause 6.

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

Page 5—

Line 5—leave 'exclusively'.

After line 33—Insert new paragraph in the definition of 'security officer' as follows:

(d) a police officer authorised in accordance with an arrangement under section 9CA to exercise the powers of a security officer;

The first amendment is the result of a request from the Chief Justice. Some courts—the Industrial Court as an example—rent space in a building occupied by others. In addition, in remote country areas courts may sit in the local council offices, motels or other buildings. In short, there are occasions when the court is not the sole occupant of the premises and it is therefore necessary to remove the word 'exclusively'.

The second amendment, and the two which follow it, that is, to clause 10, are part of a package that seeks to achieve the same end. I will explain the three of them now. The amendments result from consultation with South Australia Police, the acting sheriff and the Chief Justice. As members will be aware, SAPOL provides assistance to the Sheriff in his role of maintaining security and order in the courts from time to time. This assistance takes two distinct forms. First, the Sheriff may have cause to call upon the police for back up in cases of emergency, such as the siege that led ultimately to this bill. In such cases, the present powers of the police are adequate.

In the second, however, the police may have cause to fill in for a Sheriff's officer on the odd occasion. I am assured that the Sheriff provides a Sheriff's officer for all courts wherever sitting, no matter how remote, but the occasion may arise where the scheme falls through by no fault of the system. For example, a court may be sitting in a remote area and the attending Sheriff's officer may fall ill. In such a case, the local police officer may have to fill the gap. In such a case, that police officer will need the particular powers given to court security officers under this bill.

It is proposed that the Sheriff may enter into an arrangement with the Commissioner of Police to cover this and any other eventuality of mutual benefit whereby a police officer may be authorised to act in effect as a court security officer and exercise the powers conferred by this bill without actually being appointed a Sheriff's officer. Where the police officer is acting as a court security officer, it is necessary that he or she should be responsible to the Sheriff because it is the Sheriff who is responsible for the provision of court security. The first amendment simply recognises the possibility of this happening by including a police officer acting under such an arrangement in the definition of 'security officer'.

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

Amendments carried; clause as amended passed.

Clauses 7 to 9 passed.

Clause 10.

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

Page 7—

Line 11—After 'security officer' insert:

appointed by the Sheriff

After line 24—Insert new section as follows:

Arrangements under which police officers may exercise powers of security officers

9CA. (1) The Sheriff may enter into an arrangement with the Commissioner of Police under which police officers are authorised (without appointment) to exercise the powers of security officers on a temporary basis.

(2) In exercising powers pursuant to such an arrangement, a police officer is responsible to the Sheriff.

(3) In any proceedings an apparently genuine document purporting to be a certificate of the Sheriff certifying that a specified police officer was authorised for a specified period or at a specified time or in specified circumstances to exercise the powers of a security officer in accordance with an arrangement under subsection (1) constitutes proof, in the absence of proof to the contrary, of the matters so certified.

The first amendment deals with the proposed arrangements which I have just described, making clear that a police officer acting as a court security officer does not have to be issued with or carry an identification card as a court security officer. Police officers have their own system of personal identification and that suffices for the purpose. The second amendment inserts a new section which contains the bulk of the arrangements described earlier.

Amendments carried; clause as amended passed.

Clause 11 passed.

Clause 12.

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

Page 13, lines 5 and 6—Leave out 'or a member or officer of a participating body must be brought before the body' and insert:

, a member or officer of a participating body or a justice must be brought before the body specified in the process.

This amendment is unrelated to the explanation that has gone before. It corrects an oversight. The proposed section which is sought to be amended deals with what happens when a Sheriff's officer arrests a person pursuant to an order of a court. The oversight was the fact that it is still possible for some process by which a person might be arrested and detained to be issued by a justice. This amendment therefore inserts the words dealing with a justice to ensure there is no loophole.

Amendment carried; clause as amended passed.

Remaining clauses (13 to 24), schedule and title passed.

Bill read a third time and passed.

WATER RESOURCES (WATER ALLOCATIONS) AMENDMENT BILL

Consideration in committee of the House of Assembly's message.

(Continued from 28 June. Page 1367.)

The Hon. R.I. LUCAS (Treasurer): We have a slight complication to our usual procedure. We are going through a set piece en route to a conference of managers, so the government acknowledges that the numbers are not with the government in relation to this particular issue and we do not intend to pursue the debate at this stage. The slight complication is that the Legislative Council has instituted a package of amendments from opposition parties (which the government opposed) but the Legislative Council also incorporated a small number of amendments from the government (which we still support) but our colleagues in the Lower House have actually removed all the amendments, including the government's amendments. That is the slight complication in this issue.

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: I will not comment, minister; I have had enough other issues on today. I will go through the set piece and indicate that I will move the Council do not insist on its amendments, but in so doing I indicate that the government's position broadly remains the same as when we debated this bill in this chamber, that is, there were some amendments that the government did move the last time we debated this issue and the government continues to have a full and utmost belief in the integrity and importance of those amendments. The government opposed some other amendments and, as we indicated, the minister is certainly prepared to have further discussions. It would appear those discussions may now occur in the confines of the conference of managers. For the *Hansard* record, I move:

That the Legislative Council do not insist on its amendments.

I understand the numbers will not be with the government in relation to this matter, but we will not be dividing on the issue. This is to help us to get quickly to a conference of managers some time next week.

Motion negatived.

QUESTIONS, SUPPLEMENTARY

The PRESIDENT: I would like to refer to a situation which occurred during question time today involving the Hon. Sandra Kanck who wanted to ask a question and the Hon. Trevor Crothers who almost simultaneously indicated a desire to ask a supplementary question. I departed from my normal practice of giving preference in calling an honourable member for a supplementary question when I recognised the Hon. Sandra Kanck. On reflection, I should have called the Hon. Trevor Crothers and at least heard his supplementary question, as I had earlier before ruling the Hon. Legh Davis's supplementary question was out of order, only a moment before.

Members would appreciate the chair is often put in a difficult situation during a spirited question time and that the chair must find a balance between relevant supplementary questions and the orderly sequence of questions to which I referred earlier and which have long been agreed to by members themselves. It is not the chair's desire, or indeed usual practice, to seek to deny an honourable member what may be a legitimate question.

ADJOURNMENT

At 6.25 p.m. the Council adjourned until Tuesday 4 July at 2.15 p.m.