LEGISLATIVE COUNCIL

Tuesday 28 November 2000

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

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions on notice be distributed and printed in *Hansard*: Nos 6, 31, 34, 35, 37, 39 and 51.

PREMIER, ELECTORATE OFFICE

6. **The Hon. SANDRA KANCK:**

1. What was the floor space of the previous electorate office of the Premier situated at Main Street, Lobethal?

2. What is the floor space of the current electorate office of the Premier situated at Main Street, Lobethal?

3. What is/was the monthly cost of rental/lease of—
   (a) the previous electorate office of the Premier in Lobethal?
   (b) the current electorate office of the Premier in Lobethal?

4. What is the length of rental/lease agreement for the premises currently occupied by the office of the Premier in Lobethal?

5. Was there any "overlap" of the leases of the previous and current electorate offices of the Premier in Lobethal?

6. What person, or entity, is the lessor of the premises now occupied by the electorate office of the Premier?

7. Is that person, or entity, a past or current donor to the Liberal Party?

8. What facilities are regarded as standard for electorate offices?

9. What upgrading of the new office was needed to meet the standard for electorate offices?

10. What was the cost of that upgrading?

11. (a) How much did the recent relocation of the electorate office of the Premier cost?
    (b) Will there be recurrent additional costs for the new office?
    (c) What is the estimated additional cost of operating the electorate office at the current location?

12. (a) Were there any reasons for relocating from the previous office?
    (b) If so, what are the reasons?
    (c) Have those reasons been addressed in the specifications of the current office?
    (d) Were other locations also investigated?
    (e) If so, in what towns/suburbs were these offices located?
    (f) What was the rental/lease cost of alternative premises?
    (g) Was a virtual electorate office considered as an alternative?

The Hon. R.I. LUCAS:

1. The previous Electorate Office premises at 70 Main Street, Lobethal consisted of 73.5m^2 in floor space.

2. The current Electorate office premises at 20 Main Street, Lobethal provide floor space of 175m^2.

3. The previous Electorate Office attracted a monthly rental charge of $975.85 (GST was not charged on this lease) and the current monthly office rental is $953.30 plus GST totalling $1 048.60.

4. The current premises have been leased for a period of 2 years from 1 September 2000 with a 4 year right of renewal.

5. There was no overlap in lease terms as the previous office was rented on a monthly basis, and the building owner of the current office authorised access to the premises prior to the commencement of the lease to carry out minor alterations.

6. The lessors of the premises at 20 Main Street, Lobethal are Mr and Mrs B.R. Klose, who were represented during the negotiation process by Elders Real Estate.

7. The political persuasion of building owners and landlords is not considered relevant in obtaining appropriately situated and priced accommodation for public use, and consequently the issue is not raised during lease negotiations.

8. There are no strict specifications used to determine suitable premises to accommodate an Electorate Office, as the varying availability of office accommodation in particular areas has resulted in some members occupying conventional office tenancies, some have been accommodated in shopping centres and others in converted residential premises (converted at building owner expense). Whilst there are no detailed "standard facilities" all offices must provide an OHS&W compliant environment that is secure and safe for both staff and visitors.

9. The premises that currently accommodate the Kavel Electorate Office required minimal upgrading in relation to telephone and data services, security, signage, electrical and lighting. No building alterations were required and the existing furniture and fittings (eg. reception counter, loose furniture) from the previous office were re-used.

10. The total cost of upgrading the current Kavel Electorate Office will be $10 504.13 (GST inclusive). A number of electrical and minor maintenance issues are yet to be completed, however fixed price quotations for these works have been received and have been included in the abovementioned total cost.

11. The cost of relocating all furniture, equipment, records, stationery and associated miscellaneous items was $1 442.10 (GST inclusive).

An additional $1 188 (GST inclusive) was spent on the relocation and re-activation of the existing security and duress alarm systems to the current premises.

12. Approval was granted for the relocation of the Kavel Electorate Office to 20 Main Street, Lobethal to provide a more appropriate work environment for the staff of this office.

The current tenancy provides wheelchair access which was not available at the previous accommodation and easier access for the elderly.

The previous tenancy had a number of building issues, including a history of roof leaks and long grass in the rear yard, which the owner had proved reluctant to rectify. These issues posed a safety hazard to staff, as did the confined work area accommodating 2 full time staff members and a trainee.

The current tenancy has resolved these issues and provides greater value for money to the Government.

A number of alternative accommodation options for the Premier's Electorate Office in Lobethal have been investigated over the past 2 years, however I am unable to provide comparative rental costs on these options as none progressed to the lease negotiation stage.

A virtual Electorate Office was not considered an appropriate alternative.

MEN'S HEALTH

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

1. Can the Minister for Human Services detail what specific relationship breakdown health policies or strategies the health system has in place for males aged between 25 and 44 years?

2. How many suicides have there been in South Australia for males aged between 25 and 44 for the years—
   (a) 1996-97;
   (b) 1997-98; and
   (c) 1998-99?

3. What is the percentage of suicides for males aged between 25 and 44 years compared to the societal average?

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

1. The Department of Human Services is currently developing a policy on men's health and wellbeing following the release of a discussion document in March of this year called "Talking About Men's Health and Wellbeing".

Funding from the Department for men's health includes education and support to deal with relationship breakdown, unemployment, substance misuse and social and emotional isolation. Men between the ages of 25 and 44 years would access some of these programs.

2 & 3. The Australian Bureau of Census and Statistics provides calendar year breakdowns as follows:

Year	Suicides 25 to 44 years	% of males in SA	% of males nationally
1996	62	40% of all male suicides in SA	45% nationally
1997	78	48% of all male suicides in SA	45% nationally
1998	101	51% of all male suicides in SA	50% nationally
1999	85	**55% of all male suicides in SA	not available

** collation of SA Coroner's information for this year (ABS data not available)

SPEED CAMERAS

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

1. (a) Can the Minister for Police, Correctional Services and Emergency Services provide the guidelines speed camera operators are meant to follow to ensure cameras are not hidden while in use?

(b) What discretion do operators have to interpret the guidelines?

2. Are speed camera operators required to use "speed camera in use" signs on every occasion the cameras are in use, or are they currently being placed at the operators' discretion?

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

The guidelines for the positioning of speed cameras are that speed cameras should not be positioned to detect vehicle speeds within 200 metres of a change in speed zone sign. The exception being school zones, road works or other places where only a relatively short speed zone is in place. Detection should occur towards the middle of these zones.

Speed cameras are not to be set up on private property without the permission of the owner or occupier of the premises. Speed cameras are not to be within 1 kilometre of another speed detection device on the same road and in the same direction.

When placing speed cameras, operators take into consideration the safety of pedestrians and motorists, the requirement to deploy as near as possible to the allocated site and in the allocated suburb. The requirements for occupational health, safety and welfare of the operators, including parking in shade in warm weather and use of air conditioners are also a consideration.

Operators have the ability to select the site for the speed camera taking into consideration all of the above factors. The site must be selected from the allocated Traffic Intelligence Section (TIS) program and within the allocated suburb. The operator, who is generally the one person whose safety is at risk, makes the final decision about actual placement if the supervisor is not available. If the operator is required to operate outside the TIS program he/she is required to contact his/her supervisor and seek advice of alternative locations.

The operators are required to place "speed camera in use signs" at all locations unless they have approval from the Deputy Commissioner or Assistant Commissioner Operations Support Service not to do so. The signs are often stolen, defaced or turned around. These circumstances are outside of the operator's control. The placement of the sign is a SAPOL requirement not a legislative requirement.

PELICAN POINT POWER STATION

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

1. As at 30 June 2000, how many South Australians have been employed on the construction of the new Pelican Point Power Station?

2. Of these, how many are aged 40 years and over?

3. How many of the employees are from the Port Adelaide region?

The Hon. R.I. LUCAS: The 500Mw Pelican Point Power Station is funded totally by the private sector. It is a more than $400 million investment in South Australia by Australian National Power.

It is not a government project.

Whilst Australian National Power is not obliged to provide employment numbers of its construction phase to the Government, they have provided the following information:

> 'At the start of the project there would be a total construction workforce at its peak of 400. In fact, at the peak of construction the workforce number reached 530.'

I am also advised that the company has been attempting to employ as many local workers from the Port Adelaide region as is possible.

DRINK DRIVING OFFENCES

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

1. Would the Minister for Police confirm how many drivers were charged with drink driving offences in 1999-2000?

2. For the same period, how many drivers had the drink driving charges against them dismissed due to technicalities?

3. Based on volume, what are the main technicalities for dismissal of charges against drivers charged with drink driving offences?

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

Would the Minister for police confirm how many drivers were charged with drink driving offences in 1999-2000?

The Brief Enquiry and Management System (BEAMS) of Prosecution Services Branch is not designed to provide statistics. It is a brief-tracking system where details of individual cases are only ascertainable through the brief number or person name (defendant, victim or investigating officer).

Traffic Support Branch statistics only provide details of detections; they do not distinguish between cases dealt with by expiation notice and complaints laid before the court.

For 1999-2000 5 741 drivers were detected exceeding the prescribed concentration of alcohol whilst driving. This figure includes all offenders who are 'P' and 'L' plate drivers, drivers of heavy vehicles and drivers of taxi/hire cars who have a legal BAC of 0.00 per cent.

For the same period how many drivers had the drink driving charges against them dismissed due to technicalities?

These statistics cannot be ascertained from BEAMS. Moreover, only the court outcome is recorded (result, withdrawn or dismissed). The reasons for dismissal can only be determined by a physical examination of each brief.

As it is reasonable to assume that any instance where a drink driving prosecution dismissed on a technicality would result in a recommendation for an appeal, the Prosecution Services Branch records of appeal recommendations can be regarded as providing an accurate figure. They show that during the period six files were processed and in each instance were referred to the Crown Solicitor with a recommendation for a prosecution appeal to be instituted.

Not all these appeals have been finalised, indeed appeals were not instituted by the Crown Solicitor in every instance. Suffice to say that there have to date been no adverse decisions handed down that would cause problems for future prosecutions.

Based on volume, what are the main technicalities for dismissal of charges against drivers charged with drink driving offences?

No particular technicality was responsible for a majority of dismissals, and indeed, some, if not most, were dismissed on a factual basis as opposed to a technicality.

POLICE INCIDENT MANAGEMENT SYSTEM

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

1. Can the Minister for Police explain what impact the 1997-98 and 1998-99 upgrade of the Police Incident Management System (PIMS), which went live in February 1999, will have on the Crime Statistic figures for the 1999 calendar year considering this will be the first full year of upgrade of the figures?

2. Is the Minister aware that the new PIMS system may result in the statistics showing dramatic falls in larceny from motor vehicles, licensed premises, schools, criminal damage to motor vehicles and other groups?

3. (a) Since its introduction, have any complaints about the new PIMS system been brought to the Minister's attention; and

(b) If so, what were the bases of the complaints?

4. (a) Is the Minister fully satisfied the new PIMS system is working properly; and

(b) Is he prepared to give an unequivocal guarantee of its accurateness?

5. (a) Since its introduction, have any complaints about the new PIMS system been brought to the Police Commissioner's attention; and

(b) If so, what were the bases of the complaints?

6. (a) Is the Commissioner fully satisfied the new PIMS system is working properly; and

(b) Is he prepared to give an unequivocal guarantee of its accurateness?

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

1. The upgrades performed on the PIMS system in February 1999 will have no bearing on the Crime Statistics figures. Counting rules and data collation processes remained unchanged, irrespective of any modifications initiated to the system as part of the PIMS Enhancements project.

2. It should be recognised that the PIMS system is not new by any means, and all essential components of data relating to offence based reporting were not altered. The enhancements introduced to PIMS as part of the project will not cause decreases or increases to be recorded for larceny, criminal damage or any other offence.

3. No.

4. The Minister is confident that the improvements introduced by the PIMS Enhancements Project are functioning satisfactorily. Rigorous testing regimes were undertaken prior to the implementation of all functionality, and it is confidently stated that data accuracy has not been negatively impacted.

5. The Police Commissioner is not aware of any complaints pertaining to the PIMS Enhancements initiatives introduced in February 1999.

6. The Police Commissioner is satisfied that the PIMS Enhancements are functioning as they were intended. All data effected by the February 1999 implementation is perceived to be satisfactorily accurate.

HOUSING TRUST, CATEGORY 3 APPLICATIONS

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

1. How many applications for Category 3 housing were received by the Housing Trust in the 1999-2000 financial year?

2. How many of these applications were successful?

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

1. During 1999-2000 there were 6 924 new applicants for housing assessed as Category 3.

2. Of these applicants 1 638 were housed during 1999-2000. Since 1 July 2000 a further 198 of these applicants have been housed.

PAPERS TABLED

The following papers were laid on the table:

By the President—

- Report of the Ombudsman and Supplement, 1999-2000
- Supplementary Reports of the Auditor-General, 1999-2000—
  - Agency Audit
  - Electricity Businesses Disposal Process in South Australia: Engagement of Advisers: Some Audit Observations

By the Treasurer (Hon. R.I. Lucas)—

- Office for the Commissioner for Public Employment—South Australian Public Sector Workforce Information—Report, June 2000
- Regulation under the following Act—
  - Electricity Act 1996—Planning Council Functions
- Government of South Australia Budget Results, 1999-2000

By the Minister for Industry and Trade (Hon. R.I. Lucas)—

- Flinders Power Pty. Ltd.—Report, 1999-2000

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

- Reports, 1999-2000
  - Department for Administrative and Information Services
  - Listening Devices, 1972
- Regulations under the following Acts—
  - Forestry Act 1950—Forestry Corp Transfer
  - Legal Practitioners Act 1981—Practising Certificate Fee
  - Summary Offences Act 1953—Offensive Weapons
  - Workers Rehabilitation and Compensation Act 1986—New Tax Form

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

- Police Complaints Authority and the Commissioner of Police—Agreement

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

- Committee Appointed to Examine and Report on Abortions Notified in South Australia—Report, 1999
- Regulations under the following Acts—
  - Environment Protection Act 1993—Burning Policy
  - Guardianship and Administration Act 1993—GST
  - Harbors and Navigation Act 1993—Miscellaneous
  - Mental Health Act 1993—GST
- By-laws—
  - Corporation of the City of West Torrens—
    - No. 1—Permits and Penalties
    - No. 2—Moveable Signs
    - No. 3—Local Government Land
    - No. 4—Roads
    - No. 5—Dogs
  - District Council of Loxton Waikerie—Loxton (DC), Waikerie (DC) and Browns Well (DC) Development Plans—General Review and Consolidation Plan Amendment Report

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

- Libraries Board of South Australia—Report, 1999-2000

By the Minister for Administrative and Information Services (Hon. R.D. Lawson)—

- Reports, 1999-2000
  - Privacy Committee of South Australia
  - State Supply Board.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. J.S.L. DAWKINS: I lay on the table the report of the committee concerning native fauna and agriculture.

QUESTION TIME

TORRENS TRANSIT

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief explanation before asking the Minister for Transport a question about the recent federal court ruling on Torrens Transit.

Leave granted.

The Hon. CAROLYN PICKLES: The decision which was handed down by Justice Mansfield last week effectively means that bus drivers who were previously employed by TransAdelaide at the Port Adelaide and Mile End depots and who are now employed by Torrens Transit are entitled to be paid under the provisions of their enterprise agreements with TransAdelaide. There are wider implications for the government's present privatisation proposals. The opposition first raised this matter last July in the context of the government's outsourcing of contracts. I admit that at that time we did not get particularly satisfactory answers; however, the federal court has now ruled. My questions are:

1. Has the minister held any discussions with Torrens Transit and/or the Passenger Transport Board regarding the impact of the federal ruling and, if so, what was the outcome of those discussions?

2. What does the government estimate to be the resource implications of the decision, in particular, the total costs of potential back pay for former TransAdelaide drivers now with Torrens Transit?

3. Does the minister anticipate that the contracts signed earlier this year will be reviewed on the basis of the cost blow-out which will have to be borne by the private contractor; or have some other arrangements been made with Torrens Transit?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): There is a lot of presumption in the honourable member's questions. If she had wished to read the ruling, she would appreciate that Torrens Transit and the unions have until 2 February 2001 to talk through these issues and, if they fail to realise an agreed position, they will return to the federal court.

I understand that Torrens Transit has indicated a willingness to talk through these matters as requested by the Federal Court. I make no presumption of a cost blow-out in terms of the contracts, as the member has suggested, or that I may wish to see it as a consequence of this matter. I have not discussed the matter with Torrens Transit. As the Federal Court has indicated, the discussions are between the contractor, Torrens Transit and the unions. I have not discussed the matter with the PTB but I have received a background paper on the issue. I certainly would not speculate about there being resource implications for the government or Torrens Transit, nor would I speculate that this has implications for other areas of government in this state or interstate.

As the honourable member should know, these matters by right can be taken to the court on an individual basis, and history shows that there has been a mixed result, sometimes in favour of the contractor and sometimes the union. Most recently a Federal Court decision was overturned by the High Court in terms of finding a transmission of business. Looking at the history of these matters, it is wrong to speculate about the implications across the board. They are matters to be taken on an individual basis and, as I said, the Federal Court has sought talks, and I understand that all parties have agreed to talk through the matters, and they have until 2 February to do so.

ENERGY PRICES

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question regarding a recent decision of the Australian Competition and Consumer Commission.

Leave granted.

The Hon. P. HOLLOWAY: It was reported in this morning's *Advertiser* that the Minister for Minerals and Energy (Hon. Wayne Matthew) has spoken out against a decision by the ACCC, which was intended to prevent excessive energy prices. According to the report in the *Advertiser*, the minister believed that the ACCC's plan to set gas haulage tariffs 11 per cent less than those proposed by pipeline owner Epic Energy was, 'a concern of this government'. The minister was reported to have stated the following:

> We have met with the ACCC and expressed our concern that it doesn't provide sufficient incentive to have competition come into the marketplace.

The article also states that the ACCC said that its draft decision for a five-year access agreement was expected to deliver Epic $45.7 million revenue in the first year, while Epic's proposal would produce revenue of $51.2 million which is an increase of $5.5 million. My questions are:

1. Does the Treasurer agree with the comments made by the Minister for Minerals and Energy that tariffs that are 11 per cent lower than those proposed by Epic Energy would be bad for competition?

2. Given that the government has expressed its concern to the ACCC, what increase in gas haulage charges does the government support?

3. If the ACCC revises its gas haulage tariffs to levels proposed by Epic Energy, what impact will these gas haulage charges have on wholesale electricity prices in South Australia, which are already significantly higher than those in the eastern states?

The Hon. R.I. LUCAS (Treasurer): I am not aware of the detail of the minister's statement. I am happy to consult with him and bring back a reply.

TIMBER INDUSTRY

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question on the proposed closure of the Carter Holt Harvey timber processing mill at Mount Burr near Millicent.

Leave granted.

The Hon. T.G. ROBERTS: It is understood by those in the industry that the timber industry is cyclical and based almost entirely on the fortunes of the housing and construction industry. The Mount Burr mill, situated near Millicent, is the only form of employment available for people in that town, although there are jobs available if people are prepared to travel. The unions have negotiated some safeguards in relation to the future of some individuals at the Mount Burr mill, but the factors that are not known relate to the allocation of the log licence.

It is the view of people in the community that, if Carter Holt Harvey are not keen to keep the mill processing operation open and they vacate the site, then the mill could be used by a competitor—which I am sure Carter Holt Harvey would not welcome—who is prepared to provide employment opportunities in a market that they might see as presenting them with opportunities. There are such smaller South Australian owned companies in that region that may be interested—and I say only 'may be' interested—in taking up the log licence allocation and maintaining a presence in Mount Burr.

While we were in office, the Labor government was going to consolidate some of the operations of Forwood Products, and I think an announcement was made or a proposal put to consolidate its operations by sacrificing Mount Burr as a processing plant. However, it was found, after the 1983 bushfires, that the Mount Burr mill would be able to survive on the timber coming on stream in the early 1990s of a size that the Mount Burr mill is able to use.

The questions I have are of the Treasurer, and I am in no way being provocative in relation to the government's presence in the area in terms of the influence that it can use, but these questions are in the minds of the people who live and work in that area. My questions are:

1. Is the log licence allocated for the Mount Burr mill only? Are there any penalties for breach of terms of the licence if the licence conditions are broken? What are the conditions? If there are penalties for breaching the conditions of that licence, does the government intend to enforce them if the contract is broken?

2. As part of the sale process, does the government seek from Carter Holt Harvey any commitments to its role as a major employer in that community and, if not, why not?

3. As the closure of the mill will impact on the community, is the government prepared to intervene urgently and request Carter Holt Harvey to suspend the closure date to allow further discussions to go on with the unions in the community in relation to developing some options for workers in that mill, as the proposed date for closure is 22 December, only a few days prior to Christmas?

The Hon. R.I. LUCAS (Treasurer): For those of us in this chamber who have some connection with the lower south-east, it is a sad day to see the mill at Mount Burr eventually closing. As the Hon. Mr Roberts will know, it has been rumoured for a number of years, as we have seen rationalisation of the timber industry. As I said, for the Hon. Mr Roberts and others in this chamber who have some connection to the lower south-east, in particular, obviously it is sad to see it close.

As the only silver lining to the cloud, I have been advised that the 30 or so staff have been offered other jobs in other mills or sections of the company. I am not sure whether all the individuals' personal circumstances will allow them to take up those offers: I guess that is a decision for the individuals concerned.

However, I am told that, at least in this case, there has been the offer of some ongoing employment within the broader industry company family. As the honourable member is aware, a number of these questions will need to be referred to the Minister for Government Enterprises in terms of log contracts and other such issues. I am happy to take those questions on notice for the minister and bring back a reply.

BIKE ED PROGRAM

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the Bike Ed program.

Leave granted.

The Hon. J.S.L. DAWKINS: The State Government through Transport SA has funded the delivery of the Bike Ed program in recent years. This program aims to improve children's knowledge and understanding of the road traffic environment, to help develop the necessary skills to safely handle riding on the roads, and to develop responsible attitudes to cycling.

On Monday 20 November, on behalf of the government, I had the opportunity to present students of Waikerie Lutheran Primary School and the Waikerie Primary School with certificates marking their successful completion of the program. Other schools in the Riverland region to complete the program include: Glossop Primary School, Our Lady of the River Primary at Berri, the Loxton Primary School, St Albert's Primary School at Loxton, and the Barmera Primary School. Will the Minister provide further information about this program?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank the honourable member for supporting the program so strongly in the Riverland. Some $300 000 of taxpayers' money is provided for this program each year through Transport SA. The government considers it to be an excellent—

The Hon. Ian Gilfillan interjecting:

The Hon. DIANA LAIDLAW: it is wonderful to see that the Hon. Ian Gilfillan supports this initiative—and I cannot acknowledge the gallery. With that $300 000 each year, over the past four years we have been able to increase the participation of schools from 32 to 43 this year. In increasing that number, we have also invested in the training of Bike Ed instructors, and we have contracted Bicycle SA to undertake this work. I think it is particularly pleasing that 4 000 primary school students each year complete this safe bicycle education project. Since the program was introduced in 1995 as part of the government's cycling strategy, a total of 21 000 students have completed the course.

In addition, through Transport SA, the government also conducts the Share the Road campaign. I take this opportunity to alert members to the fact that the next stage of that campaign is to be released shortly. It is based on work undertaken with the heavy vehicle industry (buses and trucks) to encourage a better understanding of the multiple use of our roadways, to encourage cyclists to be aware of the needs of heavy vehicle operators in terms of having a light on their bicycle and making sure that it is working and wearing vividly coloured clothing, and encouraging heavy vehicle operators to understand that, on the open road in particular, at least two metres leeway should be given to cyclists, and on city roads one metre is the safe distance advocated. Many cyclists, including myself, know that too few motorists give us one metre safe cycling distance when seeking to pass. Just the other day I was again nearly skittled from my—

The Hon. Ian Gilfillan: I'd give you two metres.

The Hon. DIANA LAIDLAW: I think you should give me 2½ metres whether or not I am on a bike, but—

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: The Hon. Terry Cameron would give me 10. I am not going to get into a bidding game because I could only become less popular by the minute, I think.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: Oh, only 10 centimetres. This is an excellent program. Not only for fitness but for enjoyment, health and the environment, the government actively encourages cycling. The Share the Road campaign is an intricate part of that as is the Bike Ed program. I thank the honourable member for his support of this excellent initiative.

GREEN POWER

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Treasurer, representing the Minister for Minerals and Energy, a question concerning the buy-back rates for green power in South Australia.

Leave granted.

The Hon. SANDRA KANCK: On Monday 20 November the Minister for Energy (Hon. Wayne Matthew) issued a press release notifying South Australian electricity consumers of the possibility of purchasing electricity generated from renewable sources through energy retailer AGL. The scheme allows electricity consumers to purchase 10 per cent, 25 per cent or 100 per cent of their electricity from green sources.

Green power costs 4.4¢ per kilowatt hour more than electricity produced from fossil fuels, so, for as little as an

extra $1 per week, according to the minister, South Australians can now reduce the amount of greenhouse gases produced to supply electricity to their homes. The Democrats are great supporters of renewable energy and, on 24 October, I asked the Treasurer why South Australia was the only state not offering consumers the option of purchasing green power. So, we applaud this move.

Unfortunately, it may be a case of one step forward but two steps back. My office has been informed that AGL and ETSA Utilities are preparing to make the production of electricity in private homes by photovoltaic (or wind power) systems less economically viable than it currently is. At the moment the system is a net metering one which means that the meter runs forward when the grid is supplying power to the home and then backward when the home is generating power back into the grid. Hence, any electricity produced is effectively guaranteed market rates or 14.25¢ per kilowatt hour.

When AGL took over ETSA Power last year it agreed to let this system continue until the end of February 2001. I am informed that AGL has decided to reduce rebates for energy generated by home renewable systems which feed into the grid. A figure as low as 3.5¢ per kilowatt hour has been suggested. That compares with the current rate of 14.25¢ per kilowatt hour or the new green power tariff to consumers of 18.65¢ per kilowatt hour. Such a poor rate of return drastically undermines the case for investing $10 000 to install a renewable electricity generating system in the home.

Further undermining the case for people producing greenhouse gas-free electricity in their homes is the advent of digital metering. With digital metering it will no longer be possible to run the meter backward, hence a new and separate meter will be required. ETSA Utilities is apparently insisting that these environmentally responsible home owners pay the cost of the new meter, and I am told that $200 will buy the cheapest digital meter available. The above scenario is consistent with cost shifting from corporation to customer which characterises the privatisation of utilities. My questions are:

1. Will the minister intervene to ensure that private producers of electricity from renewable sources are paid the going rate for green power and, if not, why not?

2. Will the minister intervene to ensure that ETSA Utilities bears the cost of the additional digital meters required for private producers of green power and, if not, why not?

The Hon. R.I. LUCAS (Treasurer): I am happy to refer the honourable member's questions, but I think the power of the minister or indeed the government to direct commercial operations in some of these areas, as the honourable member will know, is limited, if it exists at all.

The Hon. Sandra Kanck: That's why we didn't want it sold.

The Hon. R.I. LUCAS: It's a lovely, naive Democrats view of the world that—

The Hon. Ian Gilfillan: It's the coming view of the world—most of the world, except Australia.

The Hon. R.I. LUCAS: The Hon. Mr Gilfillan might allow me to describe the naive view of the world that I am about to assert is a Democrats view rather than assuming he knows what I am about to say. He may well be able to read minds but he could at least do me the courtesy of allowing me to finalise my response before he assumes he knows what I am about to say. What I was going to refer to as the naive Democrats view of the world is that, in some way, under a government monopoly, a policy such as this is not a cost on the community.

The honourable member has said that this is an example of a company passing the cost onto the individual. If in this area or, indeed, in any other area, there is a cost to a particular policy someone has to pay for it. If it is the whole community, through taxation, or lower dividends coming into the budget, or whatever, there is still a cost to it. It is not a wonderfully free world under a government monopoly and then all of a sudden under private sector ownership it takes on a cost. If there is a cost, it exists now and before; and if there is a cost now and before, someone has to pay it.

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: The honourable member may take the view that the rest of the community should pay higher overall electricity prices or the state should get lower dividends for the individuals who undertake these functions within their homes. The Democrats are entitled to adopt that response if they want to do so. However, they should not do it on the basis that in some way this was wonderfully free under a government monopoly and it is now costing something only because it is now a private sector operation. If it costs now, it cost something previously and someone had to pay for it. If under the Democrat view of the world it should not be the individual who pays for it but that it should be every other individual who pays—

The Hon. Sandra Kanck interjecting:

The Hon. R.I. LUCAS: If the Democrats say that every other individual should pay for it, that is the Democrats' policy, but they should not hold this wonderfully naive democratic view of the world that under government ownership and monopoly this is all free and costless. It is not. If there is a cost now, there would have been a cost under the previous ownership structures and arrangements.

The Hon. L.H. Davis: Does the honourable member understand that point?

The Hon. R.I. LUCAS: Time will tell. I am happy to refer the other aspects of the honourable member's question to the responsible minister and bring back a reply.

ROAD UPGRADES

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief statement before asking the Minister for Transport a question about 'Roads to Recovery'.

Leave granted.

The Hon. CAROLINE SCHAEFER: Last night I was pleased to hear of the federal government's move to inject considerable funding into roads, particularly in South Australia.

The Hon. R.R. Roberts interjecting:

The Hon. CAROLINE SCHAEFER: I am sure that most honourable members—other than the Hon. Ron Roberts—would agree that the long lasting benefits of good safe roads in the state would far outweigh a reduction of about 2¢ in the price of a litre of fuel. That aside, I was even more pleased to read in the *Advertiser* today that South Australia has done particularly well with about $1.2 billion road funding because as the Deputy Prime Minister, John Anderson, said:

> South Australia deserved the increase because previously it had been 'done in the eye'.

I am sure the minister will be happy to acknowledge the efforts in particular of the member for Flinders, Liz Penfold, who brought this to our attention some time ago and has continued to do so. Of particular interest to me were $1 mil-

lion in round figures to Ceduna, the same to the Clare and Gilbert Valleys, $891 000 to Cleve, $211 000 to Coober Pedy, $792 000 to Kimba, $140 000 to Roxby Downs, $1.3 million to the Wakefield council, and $1.1 million to Whyalla.

However, I seek the minister's reassurance that this will not mean a ratcheting back of either state or local government funding. Will the minister explain the formula used and reassure us that 'black spot' funding will not be affected at either commonwealth or state level?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): In relation to the last question asked by the honourable member there has certainly been no suggestion in any private discussion or public announcement by the federal government that there will be any withdrawal of funding levels traditionally provided to local councils or to state government for 'black spots', national highways, local roads or any other matter.

The funding of $1.2 billion is on top of the commonwealth's commitment to states and local government and also to the national highways system. The Prime Minister issued a challenge yesterday to see that the state government did not use this additional funding from the federal government as a reason to pull back our own funding commitment to state roads and, increasingly, to local roads. The Premier has given such an undertaking. I respect him for responding so promptly to that challenge from the Prime Minister. In fact, South Australia has been the one state across Australia, I think, that has maintained funding for arterial roads, notwithstanding the fact that under the Keating government funding for roads through our grants system was untied. We have maintained funding. So the Premier's commitment yesterday was an important one.

Certainly, it will be my hope—perhaps I could issue a similar challenge to local government authorities—that they do not adjust their budgets downwards because the federal government has so generously injected these additional funds to local roads. This is a one-off bonus and it must be used to maximum effect, not only for the maintenance of roads but also for economic development. As the Hons Caroline Schaefer, John Dawkins, Terry Roberts and other country members know well, South Australia is experiencing growing pains all through the regional areas. We are expanding strongly in economic terms and that is placing a very big burden on our transport network. Local councils are experiencing great difficulty in maintaining their roads because of the demand for more and heavier vehicles.

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: Over the period of AN ownership? Yes, there were fewer freight trains and lines had been either closed or were not in operation. The state government has increasingly sought to help local councils, whereas previous state governments have not done so. As I recall, some $16 million of state funds has been invested in local roads on Kangaroo Island; some $7 million in the Flinders Ranges; and a further $10 million on top of traditional funding for outback roads in unincorporated areas, such as Gomersal Road in the Barossa Valley. So increasingly, because of this pressure of economic development particularly in regional areas, the state government has invested in local roads—a non-traditional practice for us but we have done it. We will maintain that funding commitment. However, not only would I not wish local councils to pull out of their commitment because of this injection of new funds but I think it is really critical that there be considered investment by local councils to see that there is maximum advantage from this new investment in road safety and economic development and that we do not have a mishmash, hotchpotch effort in terms of road investment with this injection of funds and that we seek to get, across council areas, considered views and considered investment on a regional basis, combined with state government planning that is increasingly being undertaken on a regional basis.

Accordingly, my office has already put out messages across TransportSA, the office of local government and the LGA to see whether we can meet very early on, in the next week, to see how these funds will be managed and to call on local governments from the next financial year, when they will receive the funding, to plan on a regional basis to get maximum benefit, road safety and economic development.

The Hon. T.G. ROBERTS: As a supplementary question, has the state enough road servicing and building equipment and contractors available to it, given that all states will have a call on what is nationally available?

The Hon. DIANA LAIDLAW: It is a reasonable question to ask. I understand that local councils, however, have capacity in their own road gangs and for some time have been calling increasingly for further investment to maintain their work forces. The earth moving businesses and civil contractors have been very reliant on major government projects to maintain their work forces. I understand that there is capacity there, but again I would emphasise the point made earlier in terms of the honourable member's question: it is very important to plan these projects across a regional basis to ensure that we not only maximise road safety advantages and economic development but also that we have the most efficient use of the work force and equipment. It is a most reasonable point to raise.

BUSES, AIRCONDITIONING

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport questions regarding airconditioning on buses.

Leave granted.

The Hon. T.G. CAMERON: I have received a letter from a constituent who has some real concerns about bus services and airconditioning, as follows:

> Dear Sir, I draw your attention to the fact that at least two of the private bus companies operating the Adelaide Metro services are leaving many airconditioned buses sitting in their depots during the hottest part of the day. This is particularly perplexing on hot weekends when less buses are required to operate the services.
>
> I have become aware that on Sunday 26 November, with the temperature around 37 degrees, one company had a surplus of airconditioned buses in one of its depot, while it still used Adelaide's oldest non-airconditioned buses out of another depot about 10 minutes away.
>
> It seems the government has given little thought to requiring its contractors to operate the newer airconditioned vehicles to the maximum of their availability. As a result, thousands of passengers are being denied comfort and relief, while many of these vehicles sit back at their depot between the morning and afternoon shifts or are placed into service on schedules with a lot of time running as 'SPECIAL'. This situation is especially distressing to the elderly who travel most often between 9 a.m. and 3 p.m. when the temperature can reach its peak.
>
> I understand that some airconditioned buses are even being pulled off the road on hot days for regular maintenance to suit the convenience of the mechanics. I am also told that one company has decided to allocate particular buses to particular drivers, which means that, rather than remain on the road in service on hot days, these vehicles end up being parked around Adelaide in the heat of the day while drivers have their meal breaks, sometimes lasting up to two hours.

Since it appears that the staff of some bus companies may be giving little thought to the needs of their passengers by not seeing that airconditioned buses remain on the road during heat waves, will you kindly refer this matter to the Minister for Transport for a positive outcome?

Signed, Perspiring Passenger.

Sources have informed my office that last Sunday both the Port Adelaide and Mile End bus depots had airconditioned buses sitting at the depots while old and un-airconditioned buses were used on the hottest November day in 10 years. My questions to the minister therefore are, first, will she please explain why passengers are forced to swelter in un-airconditioned buses when airconditioned buses are available?

The Hon. R.K. Sneath interjecting:

The Hon. T.G. CAMERON: Bob Sneath interjects, 'And the drivers.' Secondly, will she assure the public that she will have this problem sorted out quickly and that this summer, wherever possible, their comfort—not the convenience of the bus companies—will come first?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): The honourable member has raised an interesting matter. The contracts between the PTB and the bus companies provide incentive payments for increasing patronage, so it would be a surprise to me if any company would not want to put its best bus forward—which would certainly be the newer and air conditioned buses—to gain the largest patronage uptake. Certainly, I would have thought that the companies should have regard to employee comfort. I will certainly follow up both the patronage and the employee issues. In respect of taxpayer investment, this government has invested many millions of dollars in new buses with air conditioning deliberately for them and I would therefore expect that with that investment the taxpayers would be gaining the advantage of those buses. From that perspective also I will promptly follow up the matters the honourable member has raised.

ANHYDROUS AMMONIA FACILITY

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the anhydrous ammonia facility at Port Augusta.

Leave granted.

The Hon. R.R. ROBERTS: Recent public protests and delegations at Port Augusta have arisen over a proposal to establish an anhydrous ammonia storage and transfer facility on what was previously AN reserved land, only 25 metres from a playground and very close to a kindergarten. This has raised serious concerns among residents for the safety of their children and themselves and prompted a rush of phone calls to me to express their concerns. I believe that the minister has also been advised about this, as has every other politician in and around the area. I have spoken to members of the council who believe this activity to be within the existing use provisions of AN land. They say that the EPA has been advised that the local development board is very keen on the proposal and that the recently elected council approved this development at its very first meeting after the elections. The council also believes it is within the existing, if outdated, development plan.

On the other hand, parents and ratepayers allege that the land is in the control of the Minister for Transport. I understand that that agreement was made after the sale of AN. They also allege that they were never consulted or notified of this development in their area prior to its being announced publicly. I believe that a new and hopefully more modern development plan is being developed, and my constituents believe that it ought to encompass these sorts of developments. They advise me that the advice they received from the EPA was that the EPA itself was advised only that the project was to happen. It was not asked to comment, and no advice was sought on the proposal from the EPA. The EPA allegedly was not advised of the proximity of this facility to the playground or the kindergarten.

It is also alleged that the environmental officer of the Port Augusta council was not consulted and heard about this proposal only via media reports and other reports that there were protest meetings. I am also advised that the new council members were rushed at the first meeting, 'did not know what they were doing' and were never briefed on the proposal at any time. In fact, it is asserted that the go-ahead was given under the delegation of powers procedure under the Local Government Act. In other words, because it was below a certain figure, the officers of the council gave the go-ahead. I believe that most councillors knew about the problem only through media coverage. A couple of them turned up to very heated protest meetings and were publicly attacked over the decision.

Further, it is asserted that this facility could be easily located north of Port Augusta on appropriate land near the railway, and away from people and community facilities. I hasten to add that everybody in Port Augusta supports the proposal, but not the position. I am advised that the product is used for mining and that there is no compelling reason why the facility must be in the centre of town. My questions are:

1. Will the minister intervene in this dispute and order a proper independent inquiry and a review of the procedures to allay community anxiety and ensure that the project can go ahead in an appropriate location near Port Augusta, which would ensure minimum community impact and maximum safety for Port Augusta residents?

2. Will the minister also ensure that consultation with the community takes place in such an inquiry?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): The honourable member has raised a number of matters and, because I have been made aware of the issue, I have some but not all the information to respond to the honourable member's questions. The land is not owned by the state government or held by me as Minister for Transport following the sale of Australian National. It is owned by the federal government owned organisation, the Australian Rail Track Corporation.

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: No, it is owned by the federal government agency. It has no direct or indirect relationship in terms of state government ownership, nor do I have any responsibility in that regard. My understanding is that it was deemed to be a complying development under the development plan for the area. It is zoned industrial. The application was for an anhydrous ammonia plant and $50 000 was the value of the work. Because the application was industrial use, it was within the province of the council to deal with it. A complying development does not mean that there needs to be a public consultation or information process. However, information was sought from the EPA under various provisions of the Development Act, and my advice is different from the allegations that the honourable member has recorded here today, but I will get further advice to him.

Because the matter has been approved by the council, that is a valid legal process for the development to proceed and I do not have the power under the act to overturn that. There are legal processes if one wants to take it to a higher authority in terms of the judicial system, but I do not have power over the council approval process.

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: That is another issue that the honourable member may wish to pursue in terms of the development bill that is before this place. With respect to the other matters that the honourable member has raised, I will certainly gain as promptly as I can more detailed information in view of the concerns that have been raised.

RETIREMENT VILLAGES

The Hon. IAN GILFILLAN: I seek leave to make an explanation before asking the Minister for Disability Services a question regarding consumer protection and retirement villages.

Leave granted.

The Hon. IAN GILFILLAN: This is not the first time that I have had to ask the minister a question about retirement villages, following numerous grievances from residents over the past few years. These grievances relate to a minority—and I emphasise 'minority'—of poorly run retirement villages where residents' rights are ignored, their money squandered or misappropriated and their long-term health put at risk. Their problems are then exacerbated by the current government, which fails to offer them adequate protection.

The minister will be interested to learn that a report entitled; 'Consumer protection: What's that?', an assessment of consumer protection in retirement villages in South Australia, has confirmed that there are serious concerns with the lack of consumer protection for aged people in retirement villages. The report was prepared by Kathy Knowles from the South Australian Parliamentary Internship Scheme at the University of South Australia and is based on interviews conducted at different retirement villages involving residents and their families; information from the Office for the Ageing, Shelter SA and the Residential Tenancy Tribunal; and a review of current literature on the issue.

The report found that many of the misunderstandings and disputes that occur in villages are as a result of there being no clear contracts between the relevant parties. It also found that some residents failed to continue fighting disputes for fear of retribution. Further, it appears that the tribunal does not adequately enforce its orders, which can result in appeals in higher courts and financial stress for residents.

A series of recommendations in the report includes the licensing of all retirement villages, establishing a standard minimum contract, police checks on operators, and a strengthening of the tribunal's enforcement procedures. In light of this report, my questions are:

1. Will the minister set conditions and terms for all retirement villages and require that all such villages be licensed?

2. Will the minister develop a standard minimum contract for all villages that incorporates the definition of both the capital replacement and the sinking fund?

3. In her report, Ms Knowles indicates that the Office for the Ageing will appoint a part-time legal adviser to advise residents. Has this appointment been made? If not, when will it be made?

4. Will the responsibilities of this legal adviser extend to fulfilling the role of a legal advocate to guide residents through the contract process and advocate on their behalf should a problem arise?

5. Will the government act to ensure that the maintenance accounts of all retirement villages be audited regularly to ensure that they are not abused?

6. Will the minister require that all future village operators undergo a police and financial check before being allowed to establish or take over a retirement village?

7. Will the minister ensure that the enforcement procedures of the tribunal are strengthened so that the rights of residents are protected?

The Hon. R.D. LAWSON (Minister for Disability Services): I would be pleased if the honourable member would let me have the report prepared by the parliamentary intern to which he refers. I can assure the honourable member and residents in retirement villages that, contrary to the assertions of the honourable member, this government is interested in ensuring adequate consumer protection for all residents of retirement villages.

As the honourable member well knows, the Retirement Villages Act was extensively amended only a relatively short time ago, and earlier this year a process was put in place for the development of amendments to the regulations under that act. That process has been undertaken in consultation with the Retirement Villages Advisory Committee, and submissions have been obtained from a large number of persons and groups in this sector. As a result, a number of recommendations have been made to me.

Those recommendations are currently under consideration, and I can assure the honourable member that a prompt response will be provided. However, this is a complex matter and I think that the honourable member's questions presuppose that this is a simpler issue than it is. There is a vast diversity of retirement villages in South Australia, some of which were established as commercial businesses and others which are operated by local government and also charitable and not-for-profit organisations.

The arrangements between residents vary from village to village. This is not a case where the government, even if it wants to, can stipulate a standard contract which must apply to all these arrangements which are already in place, nor is it a case that an all-wise government can dictate to the parties what should be included in a form of contract. The act provides that certain information must be provided to persons before they enter into a contract for an interest in a retirement village. The act also contains minimum safeguards to ensure appropriate consumer protection whilst at the same time striking a fair balance between the interests of residents and those who seek to develop retirement villages.

In his numbered questions, the honourable member asks whether I, as minister, would set conditions and terms for all retirement villages. The answer to that is 'No.' Would I require that all villages be licensed? To date, we do not have a system under which retirement villages are required to be licensed. No compelling case has been made for the introduction of additional red tape licence fees and the rest. There are appropriate mechanisms to ensure that unsatisfactory operators are excluded from the market but, at the moment, I am not convinced that a licensing scheme is warranted.

The honourable member has outlined a number of other questions. I think it is unnecessary that I use question time to answer those questions specifically, but I will bring back to the Council a more detailed response.

The Hon. Ian Gilfillan interjecting:

The Hon. R.D. LAWSON: By way of interjection, the honourable member asks me specifically about the appointment of a part-time legal adviser to advise residents. The Office for the Ageing provides assistance to persons who have concerns about retirement villages—and there are a number of them. As the honourable member says, there are very few retirement villages which do give rise to a number of problems, but is the government to provide part-time or full-time legal advice for retirement village operators as well as residents?

We provide assistance at the moment through the Office for the Ageing. It is not legal assistance, but it is assistance to direct people in the appropriate ways to approach the tribunal. Legal advice is obtained by the Office for the Ageing on a number of occasions through the Office of the Crown Solicitor on matters of general law. However, it is not seen as a function of the Office for the Ageing to provide individual legal advice to residents, and at this stage it is not intended to provide that advice. I do not believe that it is warranted. I doubt whether it would actually reduce the number of disputes; rather, I think it would be more likely to encourage them. I will examine closely the honourable member's numbered questions and bring back a more detailed response.

GAMING MACHINES

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

Leave granted.

The Hon. NICK XENOPHON: On 8 February 2000, the Hon. Richard Face, the Minister for Gaming and Racing in New South Wales, wrote to the New South Wales Liquor Administration Board inviting the board to give consideration to revising gaming machine technical standards to provide for a number of key design measures with a view to minimising the harm associated with poker machines. Subsequently, the board wrote to interested parties and undertook a number of open fora with respect to considering the technical standards.

Last week, the Racing and Gaming Minister of New South Wales released a paper prepared by the board headed 'Gambling harm minimisation and responsible conduct of gambling activities, review of the board's technical standards for gaming machines and subsidiary equipment in New South Wales'.

The proposed package of measures set out by the board focused on the following: improving player awareness of the true chances of winning by the introduction of information screens containing this data; introduction of harm minimisation messages which are displayed on the screens of gaming machines at appropriate times; reducing by 98 per cent the amount of money that can be inserted into a gaming machine; slowing down the rate of play by 43 per cent (typically 3.5 seconds to 5 seconds); reducing the maximum bet by 90 per cent (from $10 to $1); increasing minimum return to player from 85 per cent to 87.5 per cent; removal of auto play, auto gamble and play through capabilities; removal of the ability to play continuously by holding down or jamming play buttons; and providing breaks after significant wins with the requirement for an informed decision to be made to cash out or play on. My questions are as follows:

1. What steps has the Treasurer's office taken to investigate gaming machine modifications with a view to reducing the impact of problem gambling such as those discussed in New South Wales following the release of the Liquor Administration Board paper on gaming machine modification?

2. Will the Treasurer undertake to have a public process of consultation with respect to gaming machine modifications, allowing participation with industry groups as well as consumer groups and those concerned about the impact of problem gambling?

3. What level of contact and liaison currently exists between the Treasurer's office and/or the Liquor and Gaming Commissioner's Office with the office of the racing and gaming minister in New South Wales or the Liquor Administration Board in New South Wales with a view to new standards that will minimise harm with respect to poker machines?

The Hon. R.I. LUCAS (Treasurer): This is the perfect example of the point of view that I have put privately to the honourable member and publicly in the debate a couple of times in recent weeks. That view is that we have had established, through the Ministerial Council on Gambling, a forum which the commonwealth government indicated would allow us to tackle this issue and a number of other issues in a way where ministers responsible for gambling, together with their officers, could work together to see some greater degree of consistency between the states.

As I have said before on a number of occasions, in my view it will not be possible to get 100 per cent harmony among the states and territories but, if we could get to a position where people were prepared to cooperate and work together, we might get a much greater degree of consistency between the states and territories. I have recently written to the commonwealth minister expressing my grave concern that the commonwealth government cancelled the most recent meeting of the Ministerial Council on Gambling.

The Hon. Nick Xenophon: When is the next one?

The Hon. R.I. LUCAS: That really is in the hands of the commonwealth. I have put the point of view that I would like to meet as soon as possible. I expressed the point of view that this was trumpeted as a priority for the commonwealth government. We have met once in its first year; we were meant to meet a second time and the commonwealth government and its ministers cancelled that meeting; and we are not aware when the next meeting will be.

So I put a strong view—and I am sure it would be shared, at least on this aspect, by the Hon. Mr Xenophon—that this should be a priority. South Australia is prepared to make it a priority in terms of working with other states and territories in this area. We would like to see a similar commitment from the commonwealth government to this issue. The concern I have expressed in other fora is that, given that the meeting was cancelled this year, if it is left to the start of next year, it will be in the lead-up to the commonwealth election, the federal election, and it might no longer be the priority—

The Hon. Nick Xenophon: And the state election as well.

The Hon. R.I. LUCAS: The state election is not due until March 2002, so we have considerable time before we have to worry about those sorts of things. The commonwealth government will be in election mode, one would think, by early next year. My concern is that this Ministerial Council on Gambling is the appropriate forum for this sort of debate and discussion. As I indicated in my recent letter to the federal minister, a number of us want to talk about how we can sensibly cooperate in not only assisting in areas of problem gambling but also addressing what euphemistically

has become known as responsible gaming policies in each of the states and territories. In New South Wales these standards for gaming machines have been raised within the broad framework of the New South Wales government's proposals for responsible gaming policies.

The reason I believe this is a perfect example of why there should be cooperation is the whole notion that each state might in some way mandate a different requirement on gaming machine manufacturers. While it may give great heart to anti-gaming members and community representatives, those of us who do not take that stance might have a view in respect of the requirements of industry if each state has a completely different standard or requirement for gaming machines. If we agree on what should go into gaming machine standards, it would make sense for the states and territories to speak with manufacturers with either one voice or a more consistent voice in relation to the various requirements that people want. If the Hon. Dick Face of the New South Wales parliament wants to go down a particular path, that is fine—

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: I know him very well. We are on first name terms. However, if the Queensland minister takes a different view and seeks to mandate different requirements on gaming machines, I do not think that is a productive process to sensibly advance reform in this area. It is a perfect example where, if the commonwealth government is prepared to give a commitment to the Ministerial Council on Gambling that some of us would like to see, there would be greater cooperation between the states and territories at that level.

In the interim, I have asked our officers to continue to try to work at officer level with officers in the other jurisdictions. So, in response to the honourable member's question: officers are meeting. However, I think that is unsatisfactory because, ultimately, these decisions are taken by parliaments or governments—not by the officers. It is important that the ministers and the governments responsible are actively part of these processes and do not just leave it to discussions between the various officers in each of the states and territories.

The Hon. Nick Xenophon interjecting:

The Hon. R.I. LUCAS: Is the honourable member talking about South Australia?

The Hon. Nick Xenophon: Yes.

The Hon. R.I. LUCAS: I will take specific advice on the matter but my understanding is that those sort of issues are principally governed by the Liquor and Gaming Commissioner. If there are other requirements, I will take up the issue with the commissioner and bring back a reply.

I am happy to have officers work with the other jurisdictions and, in fact, that is already occurring. We are doing what we can to pressure the commonwealth minister to convene a meeting of the Ministerial Council on Gambling, and we hope that, if enough pressure is applied, the minister will convene an early meeting of the council so that these issues can be pursued.

STATE BUDGET

The Hon. R.I. LUCAS (Treasurer): I seek leave to table a copy of a ministerial statement on the subject of the 1999-2000 budget results.

Leave granted.

GAMBLERS' REHABILITATION FUND

In reply to **Hon. NICK XENOPHON** (26 October).

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

1. Recommendations 25 and 26 relate to the role and membership of the GRF Committee.

This expansion was implemented earlier this year and the committee has met three times since. The new membership, including representatives of SACOSS, Heads of Churches, Australian Medical Association and the Law Society, gives a broader community representation and will assist in developing the GRF program.

Other recommendations implemented by the Department are:

- Recommendation 1a—Support services for people affected by problem gambling continue.
- Recommendation 1c—Problem gambling policy be based explicitly on the concept of the minimisation of harm to individuals, families and the community.
- Recommendation 1g—The GRF continue to exclude material assistance from the range of functions provided.

Recommendations 3, 4, 20 and 21 which relate to sources of funding and length of service agreements could not be addressed by the Human Services portfolio and were referred to cabinet for a whole of government response. Cabinet decided to address funding issues for GRF services as part of the 2000-2001 budget process rather than through specific contributions from other gambling codes. This resulted in a May 2000 government budget decision to provide an additional $500 000 per annum out of general revenue for the next three years into the fund. The expenditure of the $500 000 will be incorporated into the 3 year strategic plan and ensures the continuation of the Gambling Helpline and Statewide Community Education campaign.

2. In July 1999 the GRF Committee approved the expenditure of $9 750 ($950 a question) from the 1998-99 GRF Community Education Budget for ten market research questions to be asked as part of the Health Monitor Telephone questionnaire conducted by Harrison Market Research. The sample size for the health monitor was 2000 respondents statewide in South Australia weighted to reflect the general population.

Overall, 27.2 per cent responded that they had heard of Break-Even Services for gamblers.

3. On 8 November 2000, the Minister for Human Services launched a campaign to raise awareness amongst the general community of the signs of problem gambling.

This campaign consists of:

- a media campaign including a 30 second and a 15 second television commercial;
- a radio commercial reflecting the script of the television commercial broadcast in a range of languages other than English;
- an information brochure that describes the services available from the Gambling Help Line and BreakEven services;
- an A4 poster for display in health and welfare agencies with the Gambling Help Line number;
- newspaper advertisements with the Gambling Help Line phone number;
- business-sized cards displaying the Gambling Help Line number for distribution and discreet pick up from gambling venues; and
- a fridge magnet displaying the Gambling Help Line number.

The campaign informs people of the Gambling Help Line number and BreakEven services available, including self help groups, and gives the audience permission to feel that it is OK to make a phone call. It does not necessarily encourage people to act immediately.

The TV advertisement will be screened for a four week period from the second week in November to the second week in December, and will be re-run for a four week period in February. The accompanying campaign components will sustain the message of the campaign during the off air periods, eg pamphlets etc will be widely distributed.

The current campaign therefore whilst continuing to promote the Gambling Help Line was not developed to target problem gamblers alone but the wider community as a whole. It encourages gamblers to consider the risks to their families as well as themselves, from excessive gambling.

ROAD MAINTENANCE GANGS

In reply to **Hon. R.K. SNEATH** (25 October).

The Hon. DIANA LAIDLAW:

1. and 2.

Road Maintenance

Transport SA is currently implementing the procurement strategy for the second round of road maintenance contracts in the state. The first round of contracts, which were let through a competitive tendering process, over the period 1996-97, have recently been completed. For these contracts the state was divided into 28 maintenance zones. 20 of the zones were awarded to Transport SA maintenance gangs, 5 of the zones were awarded to Robert Portbury Constructions (now RPC Roads), and 3 zones were awarded to Boral Asphalt (a national company which operates in all states). RPC Roads (formerly Robert Portbury Constructions) is a company operating in both South Australia and Victoria. They have been operating in South Australia for five years employing and purchasing locally. RPC Roads has an office in North Adelaide, and has established depots in Port Lincoln, Cowell, Streaky Bay and Walkley Heights.

The second round strategy involves approximately half of the sealed arterial road network in South Australia being allocated to private industry through a competitive tendering process. The remainder of the network will continue to be maintained by Transport SA maintenance gangs based at regional depots.

In the competitive tendering process, one of the key evaluation criteria is regional development. In assessing tenderers for these contracts and future maintenance contracts, companies need to demonstrate that their bids include regional employment opportunities.

Of the six contract zones allocated for competitive tendering, under the second round of contracts, four have been awarded to date, as follows:

Zone	Contractor
Eyre Peninsula	RPC Roads
Mid North	Civil Construction Corporation
Metro North Area	RPC Roads
Flinders	Aztec Services Pty Ltd

The Civil Construction Corporation is a Tasmanian based entity affiliated with the Tasmanian Government. The people for their maintenance operations have been recruited from within SA.

Aztec Services is a South Australian Company with its head office in Port Lincoln.

Road Construction

Transport SA has put to tender the majority of road construction works for the last ten years. Typically, this work has been awarded to South Australian contractors. For example, the 12 major road construction contracts awarded over the past 12 months have all been awarded to South Australian contractors, as follows:

Contract	Contractor	Comments
Overtaking Lanes, Noarlunga to Victor Harbor Road	Bardavcol Pty Ltd	South Australian Contractor (Adelaide Based)
Construction of Pt Wakefield to Wallaroo Road, Kadina	Adelaide Civil Pty Ltd	South Australian Contractor (Adelaide Based)
Construction of Sturt Highway Carrara Hill Road Intersection	Bardavcol Pty Ltd	South Australian Contractor (Adelaide Based)
Widening of Eyre Highway, Cungena to Karcultaby	Civil Allied Technical Constructions Pty Ltd	South Australian Contractor (Adelaide Based)
Lincoln Highway Stabilisation	Pavement Technology Ltd	National Contractor (Adelaide Based)
Overtaking Lanes, Dukes Highway	Civil Allied Technical Constructions Pty Ltd	South Australian Contractor (Adelaide Based)
Outback & Rural Road Construction Services	Aztec Services Pty Ltd	South Australian Contractor (Port Lincoln Based)
Overtaking Lanes, Port Augusta to Port Wakefield Road	Tolmer Earthmovers	South Australian Contractor (Adelaide Based)
Construction of Burbridge Road	Civil Corp Pty Ltd	South Australian Contractor (Adelaide Based)
Stabilisation of Roads, Metropolitan Adelaide	Pavement Technology Ltd	National Contractor (Adelaide Based)
Southern Expressway Stage 2 Bridges	York Civil Pty Ltd	South Australian Contractor (Adelaide Based)
Southern Expressway Stage 2 Roadworks	Built Environs/ LR&M Constructions Joint Venture	South Australian Contractors (Adelaide and Gawler Based)

BUSES, PRIVATISATION

In reply to **Hon. CAROLYN PICKLES** (3 May).

The Hon. DIANA LAIDLAW: The special Anzac Day service was scheduled to depart the Tea Tree Plaza Interchange at 5.20am on 25 April 2000, however, ran 35 minutes late due to a driver rostering error. As this was a special service, the normal rostering system was not used and the error led to the 5.20 a.m. service being dispatched from the depot later than scheduled. Once the error was discovered the service was dispatched immediately.

A representative from SERCo, the service provider, visited Mr Burbidge to explain the circumstances of the error and apologised for the lateness of this service.

The performance criteria for services include:

- delivery of passenger services (on-time running);
- customer and public safety;
- service review and improvement;
- quality assurance;
- handling of passenger inquires and reporting;
- management of infrastructure (including buses and depots);
- fare compliance;
- fraud prevention;
- timetable production and distribution; and
- employment management.

The assessment process includes regular reporting by contractors and the conduct of independent service quality audits and customer satisfaction surveys.

The contracts provide an additional payment for patronage increases in each contract area for the 12 month period ending 30 April 2001, when compared to the previous 12 month period.

The following reductions are made to contract payments for service defects:

- When a trip is not provided at all in its entirety, a reduction of $500 per trip applies;
- When a trip, prior to 1 November 2000, departs a time point greater than 2 minutes early as stated as the time in the timetable, a reduction of $300 per trip applies;
- When a trip, on and after 1 November 2000, departs a point early as stated as the time in the timetable, a reduction of $300 per trip applies;
- When a trip, prior to 1 November 2000, departs a time point

greater than 10 minutes later than the time stated in the timetable, a reduction of $200 applies;
- When a trip, on and after 1 November 2000, departs a time point greater than 5 minutes later than the time stated in the timetable, a reduction of $200 applies; and
- If a vehicle does not comply with the Code of Practice and the Utility Standards, then a reduction of $200 applies.

TRANSADELAIDE EMPLOYEES

In reply to **Hon. CAROLYN PICKLES** (3 May).

The Hon. DIANA LAIDLAW: The following information is provided in response to the questions asked on 3 May 2000 by both the honourable member and the Member for Ramsay.

What is the total cost to taxpayers of managing the hundreds of TransAdelaide redeployees which have been created by the outsourcing of Adelaide's bus services?

The operation of Adelaide's buses has been subject to a process of competitive tendering not outsourcing. In the third round of the competitive tendering process (1999) TransAdelaide had the opportunity to tender for every contract area, but did not win any tenders in its own right. However, in a joint venture between TransAdelaide and Australian Transit Enterprises (ATE), Transit Plus did win the Hills contract. The majority of TransAdelaide employees involved in the bus business gained employment with the successful companies. The cost to manage redeployees from the bus business, for the period 23 April to 30 June 2000, was $650 000.

What is the total number of redeployees still on the payroll?

As at 30 June 2000, TransAdelaide's redeployees from its bus business was 224.17 FTE's.

Where are they being housed?

As at 30 June 2000, TransAdelaide was housing its redeployees at the following localities:
- 163 Currie Street
- 240 Currie Street
- 144 North Terrace
- 242 Victoria Square

Currently, TransAdelaide's redeployees are being housed at one locality—240 Currie Street.

Why are they being prevented from speaking to the media?

TransAdelaide (like the former State Transport Authority) has a longstanding policy relating to media inquiries. This policy, which applies to all TransAdelaide staff in all circumstances relating to TransAdelaide issues, does not permit comment to any media representative unless staff are authorised and trained to do so.

RETIREMENT VILLAGES

In reply to **Hon. IAN GILFILLAN** (9 November).

The Hon. DIANA LAIDLAW: The Minister for Local Government has provided the following information:

Section 23(4) of the Local Government (Implementation) Act 1999 requires councils to prepare and publish a report on how they have dealt with applications for rate rebates from retirement villages. Councils would need to submit their first report to parliament on this matter by 31 December 2001.

GOLLAN, BERTHA, DEATH

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement on the subject of Ngarrindjeri elder the late Bertha Gollan given today by the Hon. Dorothy Kotz, Minister for Aboriginal Affairs.

Leave granted.

HAIRDRESSERS (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 16 November. Page 524.)

Clause 3.

The Hon. K.T. GRIFFIN: When the committee last considered this bill it was looking at amendments proposed by the Hon. Ian Gilfillan to remove from the bill the provision in relation to the discretion proposed to be given to the Commissioner for Consumer Affairs to recognise alternative qualifications for someone wishing to enter the hairdressing industry. The Hon. Mr Gilfillan's argument is that that is an inappropriate discretion to give to the commissioner and instead there should be only one means by which a person can become entitled to practise hairdressing, and that is to satisfy the qualifications set out in the regulations.

It might be remembered that I indicated that that would militate against the flexibility which the Competition Policy Review Report recommended should be given because it takes into account, for example, that people from interstate and overseas, particularly those people from interstate who cannot benefit from the mutual recognition act, would need to satisfy all the requirements of the regulations as to the competencies which should be satisfied. I did identify quite a number of those—I think there were 14 of them, all divided into subcategories—and I said that, if they did not match those, they would not be eligible to practise.

I indicated at the time that I would endeavour to get some information about the responses, remembering that the review was advertised in the *Advertiser* newspaper in a prominent position and information was provided to a wide range of people. The only comments that were received came from Mr Renato Colombo, a spokesperson for a group of people who are not aligned with the Hair and Beauty Industry Association of South Australia. He wrote in his submission that he approved the proposed amendment to the definition which excluded the washing of hair. He queried the scope of the power of the Commissioner for Consumer Affairs to accept alternative qualifications, training and experience; but, once the operation of the scheme was explained, he was satisfied with the granting of this power to the commissioner.

A spokesman for Dial-A-Hairdresser submitted that he was happy with the entire bill. He considers that the removal of the terms 'washing' and 'massage' from the definition of 'hairdressing' is a positive step, and he said that the granting of power to the Commissioner for Consumer Affairs to accept alternative qualifications would be positive for the industry as it would allow in particular those holding overseas qualifications to enter the local industry and inject some different experiences and ways of working which would benefit both consumers and the industry. His only concern was what an employer should pay to an unqualified person to simply wash hair.

I also made some further inquiries about the regulatory position for hairdressing in other Australian states and territories. I am informed that a survey of regulation of the hairdressing industry across Australian jurisdictions indicates that there is a wide variety in scope and view. In New South Wales, Western Australia and Tasmania there are licensing or registration schemes for the occupation of hairdressing. In the Australian Capital Territory, the Northern Territory, Queensland and Victoria the practice of hairdressing is unregulated. However, premises from which hairdressing is practised are regulated.

Those who come from non-regulated jurisdictions and who wish to carry on their profession in South Australia will not be able to take advantage of the Mutual Recognition (South Australia) Act. Under mutual recognition legislation,

mutual recognition applies to only those occupations that are registered or licensed. There is a certain logic in that. If the discretionary licensing power in the Commissioner for Consumer Affairs, who is the licensing authority, is not included in the legislation, I would submit to members of the committee that a significant stumbling block is placed in the way of the creation of a national labour market where people can move freely from jurisdiction to jurisdiction, and that has some attendant costs.

The other jurisdictions in which hairdressers per se are regulated do have a discretionary power in the licensing authority to accept alternative sources of qualification—section 10(4) of the Hairdressers Registration Act 1975 of Tasmania, section 110(1) of the Factories, Shops and Industries Act 1962 of New South Wales, and section 12(1)(d) of the Hairdressers Registration Act 1946 of Western Australia—and they all give the licensing authority the sort of discretionary power which the government seeks to include in the act in relation to hairdressing in South Australia but a discretion which the Hon. Mr Gilfillan seeks to remove. I intimate very strong opposition to the Hon. Mr Gilfillan's amendment.

The Hon. IAN GILFILLAN: To a certain extent I had predicted the observations made by the Attorney. Although this is a separate bill and a separate debate, the issue is the same, that is, whether the commissioner should have this unfettered discretion to choose the standard by which he or she will qualify a person to practise as a hairdresser. It is interesting to reflect on the usefulness of regulations. The Democrats and I are nervous about regulations going into legislation, because we like to see the law specifically spelt out and debated, with i's dotted and t's crossed in the parliament: we believe we are paid to do the job.

The Hon. T.G. Cameron interjecting:

The Hon. IAN GILFILLAN: From time to time we are. Regulations were referred to as subordinate legislation and in my view they are still a subordinate form of legislation to affect the activities of the community. However, they are extremely useful and flow through from the head act to give enabling provisions and spell out more detail than would be comfortable in a lot of legislation. They also have the advantage of being flexible and alterable, as we have seen. Ministers have incurred our criticism on several occasions for reintroducing regulations that have been disallowed by this place. That is a practice I do not support, but it emphasises my argument that regulations are not the locked in concrete, inflexible and impervious to change structure as the Attorney tends to portray them, but through the Legislative Review Committee they do have the advantage of being answerable to this parliament.

They also have the advantage of being available for public hearing so that, in this case, members of the profession or interested people, including the commissioner, can give their own direct evidence. I consider that to be far more desirable than just washing our hands of the detail and saying blithely that we will leave it all to the commissioner. If overseas qualifications are to be recognised, regulations are not incompetent to identify the circumstances in which overseas qualifications would be assessed and other checks or balances which may be required were spelt out to enable the commissioner to comply with the regulations before issuing the qualification. It seems to us to be very sensible and reasonable to include in the job of the commissioner that these are requirements that are put into regulation to conform with the act. I therefore urge the committee to support the amendment.

The Hon. T.G. CAMERON: Whilst I note the Hon. Mr Gilfillan's comments that this is the same situation as the moves by the government to alter the position for conveyancers, I would characterise it as similar. There is a great deal of difference between hairdressing and what a conveyancer does. I take the point that the principle might be the same, but there is a great deal of difference between what we may be required to include in regulations for a conveyancer and for a hairdresser. Has the Attorney notified the appropriate trade union of the changes and, if so, what is its attitude?

The Hon. K.T. GRIFFIN: The union is the Shop Distributive and Allied Trades Union. My advice is that it was not notified, and that is a default on the part of the government. An advertisement appeared in a prominent position in the *Advertiser* (and I do not have it in front of me), drawing attention to the fact that the issue was the subject of competition policy review. No feedback was received from that or any other organisation of employers or employees. The employers who responded were certainly not opposed to the proposition in the bill.

The Hon. T.G. CAMERON: Am I correct in assuming that you have received no correspondence from the union in relation to this matter?

The Hon. K.T. GRIFFIN: None at all.

The Hon. CARMEL ZOLLO: We certainly sought advice or comment from the union concerned. As previously outlined, concern was expressed, hence the initial request to bring back statistics after one year. But, as I have already said, we have now decided to support the Democrats' amendments. I note that the Attorney again talked about restriction on competition in relation to hair washing and massaging. As I indicated in my second reading contribution, the opposition certainly welcomes the lifting of those restrictions and we see that as a positive step. Although I understand that under the mutual recognition act we allow people from interstate to be registered in South Australia, I agree with the Hon. Ian Gilfillan that such discretion in relation to people from overseas or interstate can certainly be provided by regulation so, again, we support the Democrats' amendment.

The Hon. K.T. GRIFFIN: The Hon. Carmel Zollo has made a fair representation of the position. As I understand it, she said that the union had said that in 12 months' time it would like a report of who has been recognised under the discretionary power of the commissioner, and I gave a commitment that that would be done. Suddenly, the Hon. Mr Gilfillan brings in an amendment and the Labor Party decides it will support it.

The Hon. T.G. Cameron: They are playing politics with the issue.

The Hon. K.T. GRIFFIN: This measure has two pages. It defines hairdressing (and now we are amending that) and it talks about prescribed qualifications. In the case of a person who was as at 30 June 1998 required to be registered under the repealed act, it means registration under that act on that day and in any other case it means qualifications declared by regulation to be prescribed qualifications. I do not agree with the Hon. Mr Gilfillan that you can deal with all the variables in relation to those who come from interstate and overseas. You can do it in relation to those who go to the appropriate institution in South Australia to obtain the prescribed qualifications, but that needs some flexibility.

We must remember that hairdressing is ultimately practised by individuals, the same as dentists, doctors and others—but of course different skills are required. Hairdress-

ing is very much a personalised profession. All that the act provides is a form of negative licensing: an unqualified person who carries on the practice of hairdressing for fee or reward is guilty of an offence. The first offence attracts a $1 000 fine, and the second or subsequent offence, $4 000. A person who employs an unqualified person to carry on the practice of hairdressing is guilty of an offence, and the section does not prevent the employment by a qualified person of a person who is undertaking an apprenticeship in hairdressing. So, it is negative licensing. You are not even required to have a licence: you must have some qualifications.

Then, provided you have the qualifications, no one will do any checking unless there is a complaint, and that checking will be done by the Office of the Commissioner for Consumer Affairs, remembering that in some other jurisdictions there is no registration or licensing of hairdressers at all. If there is, under mutual recognition they will not be able to get the benefit of the South Australian legislation, because there will be no flexibility by which they can have their alternative qualifications recognised.

What I said last time to the Hon. Carmel Zollo was that, if people come from Italy, France, the UK, Canada or other jurisdictions, they do not have any convictions and they are not bankrupt, although that is not a relevant consideration for hairdressing, and if they are competent hairdressers, why is it that their qualifications should not be recognised? It is all very well to say that regulations are flexible, but the fact is that we will not pass a new regulation every time another person comes to South Australia who does not quite fit within the qualifications laid down in the regulations and asks us to pass another regulation, given all the attendant bureaucracy that goes with that, so that we can recognise those qualifications. We are giving the commissioner a discretion, and I gave an undertaking to the Hon. Carmel Zollo that I would ensure that a report was available in 12 months about the numbers and the circumstances of those seeking to have their qualifications recognised by the alternative discretionary route.

The Hon. CARMEL ZOLLO: Like the Hon. Ian Gilfillan, I indicate that the opposition does not see it as a problem to put in the regulations certain diplomas or certificates that are obtained overseas. We see it as an extra safety net, so we will be supporting the amendments.

The Hon. IAN GILFILLAN: Although statistically it is interesting to know what happens in other jurisdictions, I would like to think that South Australia has enough courage to take its own initiative, so although it is of interest it is not in my judgment determining in any way at all. However, we have an obligation to ensure that the public of South Australia is not exposed to so-called hairdressing from people who do not have adequate qualifications. It may not be on a parity with medical or dental services, but for a lot of people it is a very critical human service and I think it is irresponsible of us not to stipulate what conditions are required in the regulations for people to practise as hairdressers.

The Hon. T.G. CAMERON: I thank the Attorney for his answers to my questions and I am not persuaded by the arguments of the Hon. Carmel Zollo or the Hon. Ian Gilfillan on this matter. There are something like 200 countries in the world, and a country like America has 50 states, and they all have different qualifications, different courses, etc. I can imagine how big the document would be that detailed all of the regulations and all the various permeations—

The Hon. Ian Gilfillan: That is absolute nonsense.

The Hon. T.G. CAMERON: With respect, your interjections are palpable nonsense because you just do not know.

The Hon. Ian Gilfillan: Of course I know: I sit on the committee.

The Hon. T.G. CAMERON: The honourable member just does not know what are the extent of training programs and the range of qualifications for this industry around the world. Unless the honourable member is prepared to put something to that effect on the record in this place, he fails to win my support.

I think that the Attorney-General has been remiss in not notifying the appropriate trade union of variations to an act of parliament that governs its members, and one would have thought it should be a formality. I encourage the Attorney-General in future to ensure that as a matter of courtesy all relevant organisations are contacted, and that includes trade unions, even though some people on the Attorney's side of the fence might not think so.

I have just looked up the bills file and I understand that the Hairdressers (Miscellaneous) Amendment Bill has been on the record for quite some time. The shop assistants' union, if it is the union that covers these people, has half a dozen operatives in here that could have brought it to its attention. There has been an absence of any formal notification or objection to the government and no-one has contacted me with any concern. Indeed, I would have thought that Don Farrell, the secretary of the SDA, had some appreciation that Trevor Crothers and I might have some influence on this matter, but to date I have not heard one peep out of Don Farrell or the SDA, and I have known the man for 30 years. I know that does not mean that he does not want to talk to me because I had lunch with him a couple of weeks ago, and he did not raise it at the lunch either, but there seems to be a little bit of fault all the way around.

The government should have notified the union. However, the union cannot hide behind that fact. I know that the union is aware of this bill and the amendment, and I am a little disappointed that nobody has sought to contact me on the matter. I can assure them that I would have listened but, in the absence of that, SA First will support the government.

The Hon. K.T. GRIFFIN: I accept the criticism made by the Hon. Mr Cameron. It is a fair comment about this bill and I will endeavour to ensure that there is appropriate consultation in the future when these issues are raised in the context of employees. I might say that, in relation to the Office of Consumer and Business Affairs, if it is any comfort to the Hon. Mr Cameron, under the Plumbers, Gas Fitters and Electricians Act, the Building Work Contractors Act and other occupational licensing legislation, I am authorised to establish advisory panels, and I can tell him that in relation to those areas of occupational licensing the unions are represented. Sometimes two unions are represented where they have different areas of representation.

The Hon. T.G. Cameron interjecting:

The Hon. K.T. GRIFFIN: The plumbers, the gasfitters and the electricians are on the advisory panels and their views are taken into account when there are recommendations about aspects of the operation of those pieces of legislation. We are not completely ignorant of the need to involve representatives of employees through the trade union movement on those sorts of panels and groups. I thank the honourable member for his indication of support for the government's position.

The committee divided on the amendment:

AYES (8)

Elliott, M. J.	Gilfillan, I. (teller)
Holloway, P.	Kanck, S. M.
Pickles, C. A.	Roberts, R. R.
Sneath, R. K.	Zollo, C.

NOES (10)

Cameron, T. G.	Davis, L. H.
Dawkins, J. S. L.	Griffin, K. T. (teller)
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

PAIR(S)

Roberts, T. G.	Redford, A. J.

Majority of 2 for the noes.

Amendment thus negatived.

The Hon. IAN GILFILLAN: It is quite clear from the result of the division that my amendments would not be successful. They are contingent on each other, so it is not my intention to move the other parts of the amendment.

Clause passed.

Clause 4 and title passed.

Bill read a third time and passed

RETAIL AND COMMERCIAL LEASES (GST) AMENDMENT BILL

In committee.

Clause 1.

The Hon. CARMEL ZOLLO: I move:

Page 3, line 2—Leave out '(GST)' and insert: (Miscellaneous)

This amendment is contingent on the further amendment filed in my name, in that this bill would then do more than clarify the effect of the GST on commercial lease agreements.

The Hon. K.T. GRIFFIN: Obviously, a lot more will need to be done to progress the amendments, but it might facilitate the consideration of the amendments if we have discussion on clause 1 now. We may then need to report progress, but when we come to the detailed amendments on the clauses we will be much better equipped to understand each other's position. I suggest that the Hon. Carmel Zollo might indicate generally the essence of her amendment and I can respond, and the Hon. Mr Xenophon can deal with his amendment and I can respond to that, and we might be able to give consideration to the detailed clauses later.

To set the scene, I recognise that the Hon. Mr Gilfillan opposes the bill and that other members have indicated their support for the second reading. It was intended that this bill would deal only with GST matters, but the government realised that other issues might be raised. We had hoped that there would be general acceptance, that, whilst this bill was somewhat tantalising for members who wish to take a particular position in relation to landlords and tenants (most likely tenants), they might resist the temptation on the basis that this bill (without the amendments) contains some benefits for both landlords and tenants in the light of the enactment of the GST.

Obviously, the Labor Party and Mr Xenophon have not been able to resist that temptation and have now hopped into the pool and are screwing around with a couple of amendments which the government is not prepared to accept. If these amendments do get up, they will be resisted in the House of Assembly and, if the government is successful, we will end up with a deadlock conference and the bill will not pass during this part of the session. So, landlords and tenants will find themselves in a position where they are not able to accommodate the provisions of the federal GST legislation and will just have to wear it. I hope that it will not come to that, but that might be the outcome of the debate if we cannot reach a satisfactory outcome focusing on the GST clauses. I think that is a satisfactory way to deal with the matter, and it might help to facilitate consideration.

The Hon. CARMEL ZOLLO: As previously indicated, my first amendment seeks to remove 'GST' because, as the Attorney has mentioned, it has been difficult for the opposition to resist the window of opportunity to move amendments on issues that have been raised with us. The intention to insert new section 45A has come about because a great number of representations from lessees have been received by opposition members seeking assistance to receive fairer treatment when existing leases are assigned to an assignee. Hence, our amendment under the 'procedure for obtaining consent to assignment', etc. in that part of the act.

It is common when a lessee sells their business to assign an existing lease when the sale is complete. Many lessees find themselves not being released from liability for future rent and outgoings and still continue to be liable to the landlord. I understand that that situation comes about because the standard forms of assignment of lease documents contain provisions which continue to hold the lessee liable to the landlord for the original lease term, including any renewals or extensions. The procedure is facilitated under section 45 of the Retail and Commercial Leases Act 1995—'Procedure for obtaining consent to assignment'.

It is a win-win situation for the landlord: if the assignee defaults on rental payments, the lessee, under the terms of the lease, picks up the bill. The opposition amendment tries to ensure that the lessee is automatically released from liability for future rent and outgoings. We believe that there would be greater fairness for all concerned if the lessor were simply to re-let his property should the assignee get into trouble rather than having recourse against the lessee. I understand that New South Wales has legislation containing similar provisions and that it is working.

New section 45A(2) clearly spells out that nothing in the section relieves a lessee or guarantor of a lessee of any liability accrued under a retail shop lease prior to the assignment of the lease. In short, everyone is fairly responsible for their own commitment. We also understand that Mr John Brownsea, the Director of the State Retailers Association, has indicated his support for this amendment. As I have said—and as the Attorney has pointed out several times—I appreciate that this amendment does not relate to the GST aspect of the bill but, as mentioned, it is an aspect of the legislation which causes lessees enormous concern and sometimes grief. I urge members to support the amendment.

The Hon. K.T. GRIFFIN: As I have indicated, the government opposes the amendment to insert proposed new section 45A. The amendment would ensure that the assignee of the retail shop lease is solely liable for money amounts payable under the lease. It removes the liability of a tenant who assigns his, her or its interest and that of a person who guarantees that the assignee will pay. That is quite a significant change in the general law relating to the liability of lessees and those who have guaranteed a particular lessee's performance in respect of a lease.

The amendment would also do the work of an assignment clause in a retail shop lease. I think one must look at this in the context of the contract which is entered into by a lessee:

that is, to be responsible for the obligations placed upon the lessee by a lease for the full term of that lease.

Owners of property, in letting retail or any other property, frequently require a commitment for a fixed term, most likely five years, and that commitment is to pay the rent and do all the other things that a lessee is obligated to do for the duration of that lease. There is generally a provision for an assignment but it is with the consent of the landlord or the property owner. It is in circumstances where the landlord and the tenant or lessee, having entered into a contract for a fixed term, know that they each have mutual obligations, but if someone else can come in to take the assignment then there is still the continuing obligation of the original tenant and also the obligation of any guarantor for the original lessee.

I gather that the purpose of the amendment is to stop a lessor withholding consent to an assignment of a retail shop lease until the present lessee guarantees that the proposed new lessee will fulfil all his/her or its obligations under the lease, and if that is the case I suggest that there already are sufficient protections for lessees who are about to assign and that those protections are in the act itself.

I draw attention to section 43 where a lessor can only withhold consent to the assignment of a lease if the assignee is unlikely to meet financial obligations under the lease, the assignee wants to change the use of the shop and hence the mix of tenancies in a shopping centre, the assignee's retailing skills are inferior or the lessee has not disclosed matters to the assignee. Refusal to grant consent would constitute a breach of section 43 and would be enforced by an application to the Magistrates Court.

Therefore, there are already reasonable protections in place to prevent a lessor from withholding consent in circumstances where that is not justified. If, of course, the lessor is concerned that the assignee is unlikely to meet financial obligations, it may be that the lessor could then withhold consent, remembering that generally an assignment occurs during a period of tenancy and not at the end of a particular term in respect of which usually a tenant has a right to renew upon specified conditions. So I can indicate that this amendment, when we get to it, will not be acceptable. In relation to the Hon. Mr Xenophon's proposals, it would be helpful if we could have an explanation of them. Then I would propose addressing a response to them and reporting progress.

The Hon. NICK XENOPHON: Whilst I have not yet moved my amendments it might be useful, following the indication from the Attorney, to outline the substance of them. So, I propose to speak to the amendments that have been on file with respect to casual tenancies.

This series of amendments seeks to remedy what many tenants in South Australia regard as a gross injustice with respect to casual tenancies. The current position is that landlords can obtain from their tenants not only rent but quite substantial outgoings including the costs, with respect to the outgoings, regarding common areas. What we have seen over a number of years is that a number of landlords, during peak trading times and particularly during the Christmas season, have the practice of letting casual tenancies within the common areas—and the tenants are paying the cost of maintaining those areas—and those casual tenancies, in many cases, take away business from existing tenants who have made a long-term commitment to the landlord and have invested significant amounts of money only to see their livelihoods diminished by virtue of these casual tenancies.

The grossest example I have heard of in recent days—and it occurred not in this state but interstate—involved a Sussan clothing store at the Chadstone shopping centre. In that instance another clothing retailer—a warehouse that was selling seconds—opened and had a casual tenancy immediately outside the Sussan store. In the course of this trading period a significant amount of business was taken away from the Sussan store and, to add insult to injury, the customers of the casual tenancy were using the changing rooms of the Sussan store to complete a purchase in relation to the casual tenant.

This series of amendments relates, first, to defining a casual lease. It relates to a retail shopping centre and it means an agreement under which a person grants or agrees to grant to another person a temporary right to occupy a common area within a retail shopping centre. So it makes it very clear that it relates to common areas.

With respect to disclosure, there are currently, in section 12 of the principal act, a number of matters that must be taken into account, and it simply adds to that and gives the proposed tenant some degree of informed consent before entering into a lease. What this amendment seeks to do is to require the landlord to disclose whether the lessor intends to enter into casual leases with respect to the retail shopping centre; and, secondly, whether the lessor is prepared to give the lessee an assurance that casual leases in respect of the retail shopping centre will not be entered into with competitors other than tenants of other retail shops within that retail shopping centre.

This is an issue that I have discussed on a number of occasions with the State Retailers Association (formerly the Small Retailers Association). Earlier this year I had a discussion with John Brownsea and Max Baldock of that association and they expressed a very real concern about casual tenancies. More recently I have had discussions with Mr Stirling Griff, the Executive Director of the Australian Retailers Association. Information that Mr Griff has given me recently indicates a number of instances of casual tenancies where there has been a considerable detriment to the permanent lessees.

I instance a charity cake stall located directly outside a bakery in a regional shopping centre. It was there for three consecutive days and adversely affected the bakery's business. Another instance involved a supermarket permitted by centre management to place pallets of fruit and vegetables immediately adjacent to a dedicated fruit and vegetable business and to pay casual rates for the space. Another instance involved a roof tile manufacturer who erected displays two to three metres in height, effectively blocking sight lines for five retailers in a major centre for one week. The final instance he gave me was of a vitamin wholesaler who was permitted to sell vitamins outside a pharmacy that sells like goods for five days. All those instances affected materially the livelihoods of those tenants who had signed long-term leases with the landlords.

The amendment to section 33 (new clause 5A) seeks to allow for an adjustment of contributions to outgoings paid by tenants based on actual expenditure properly and reasonably incurred. It seeks to amend section 33 of the principal act to ensure that income received during that period by the lessor under casual leases is taken into account with respect to the outgoings, so that there is a direct credit given back to the tenants on a proportionate basis to deal with that.

The final amendment sought is that the lessor is to ensure that granting a casual lease does not restrict access to retail

shops, including unreasonably obscuring the view of the retail shop. It is a common complaint of tenants that casual tenancies restrict lines of sight and access to shops and cause significant diminution in the viability of their businesses. If we are to support small retailers in particular—small businesses that have virtually mortgaged everything in many cases to be involved in the retailing sector, where they have committed everything, in a sense, to their business and have made very significant commitments to the landlord on a long-term lease—this seeks to remedy these anomalies. I look forward to the Attorney's response in respect of these matters. I appreciate that the substance of the government's bill relates to the GST but as my colleague, the Hon. Carmel Zollo, moved a number of amendments with respect to other matters I think it is appropriate that this matter is debated at this time.

This is an area of very significant concern for retailers throughout the state who feel that they have been subjected to what some would say are unconscionable practices by some landlords. The proposals are not radical; they are there simply to remove an anomalous situation which currently occurs on too many instances in too many tenancies in too many shopping centres in this state. It is a very significant reform to ensure a degree of equity and fairness in the relationship between landlords and tenants.

The Hon. K.T. GRIFFIN: When we consider the amendments clause by clause I will indicate that the government does not support them. I recognise that there may be concern about so-called casual leases, which are defined as an agreement under which a person grants or agrees to grant to another person a temporary right to occupy a common area within a retail shopping area. I acknowledge that the amendments are intended to provide some protection for lessees in a retail shopping centre and to protect them from infringements caused by temporary stalls set up in the common area of shopping malls. I think the implication behind the amendment is that such stalls do restrict access to existing shops and introduce competitors by ambush.

The stalls that I understand are placed in common areas of shopping malls are actually occupied by way of a licence granted by the lessor. That being the case there is no right of exclusive possession to a defined area and the lessee can request that he or she be moved, if necessary. For reasons that I will outline, there is no need to disturb established principles of property law by introducing a further category of proprietary interests such as a casual lease.

Mechanisms for disclosing changes to the operation of a shopping centre are already provided for in the act. Under section 37, if a lessor wants to alter or refurbish a shopping centre and it is likely to adversely affect the business of the lessee, the lessor must notify the lessee of the changes to be made at least one month before they are commenced, which gives the lessee an opportunity to prepare for the changes and, in this situation, they may make representations to the lessor about the appropriateness of the location of a temporary stall.

Under section 38, the lessor may have to pay reasonable compensation to a lessee if the lessor inhibits or alters the flow of customers to the shop or causes a significant disruption to or adverse effect on the trading in the shop or inhibits the lessee's access to the shop. A lease may prevent or limit such compensation if the lessor brought the likelihood of such an occurrence to the attention of the lessee before the lease was entered into.

If the lessor wants to avoid a claim for compensation because a temporary stall infringes existing tenants' opportunities, the lessor should disclose beforehand whether such stalls are to be set up and the nature of those businesses; that provision was introduced with the situation of temporary stalls in mind. As temporary stalls are operated under licences, they do not have an exclusive right of possession to a defined area; the lessor could ask them to relocate to another area in the shopping centre where the traffic flows would be smoother. If a lessee's business is being infringed by the operation of such a stall, the first thing the lessee should do is make a request to the lessor that it be relocated. After that, a serious infringement of trading capabilities could result in the payment of compensation to the lessee for loss or damage to the lessee's business.

The proposed amendment provides that the lessor's income from the temporary stalls would effectively pay for the outgoings of the shopping centre instead of the lessee effectively paying the outgoings. While this might be attractive to existing lessees, there would be no incentive for lessors to allow such stalls to be set up to maximise the use of their common areas, and their operations would most likely cease. I understand one of the reasons for setting up stalls is not just to maximise the use of space but to also encourage traffic flow. Of course, it would also have the effect that, if a fledgling business wants to set up such a stall to test the water, that would no longer be able to occur.

All in all, my view is that the amendments, when they are moved, would not be appropriate. I acknowledge that the Hon. Mr Xenophon did not put these amendments on file until after the Hon. Carmel Zollo had put her amendments on file. He decided to jump into the water too once the Hon. Carmel Zollo had tested it. As I said earlier, this legislation was intended to be about GST and only GST. If these additional issues are raised, I suspect that the legislation is not going to pass. It is certainly not going to pass before Christmas and that will mean a longer wait by lessors and lessees to see whether or not parliament recognises that there need to be adjustments to the GST regime.

The only other matter that I should comment on is the observation by the Hon. Carmel Zollo that she understands that something like her assignment provision is in place in New South Wales. I am not aware that that is the case. I will have some inquiries made before we pursue the debate more actively.

The Hon. CARMEL ZOLLO: I can indicate that the opposition will support the Hon. Nick Xenophon's amendments. I thought we were not going to be doing this stage today. The opposition appreciates the significant commitment made by lessees and the need to protect that commitment from the granting of casual leases, I suppose. We do see these further amendments filed by the Hon. Nick Xenophon as providing greater equity and fairness in relation to landlords and tenants. They clearly spell out under what conditions casual leases can be granted and the reason for granting them as well. As indicated, the opposition intends to support these amendments.

The Hon. K.T. GRIFFIN: I have noted the observations. I believe that we should report progress.

Progress reported; committee to sit again.

RACING (PROPRIETARY BUSINESS LICENSING) BILL

Adjourned debate on second reading.

(Continued from 16 November. Page 562.)

The Hon. CARMEL ZOLLO: I have maintained an interest in this issue and the possibility of this legislation for some four years now. The issue of essentially facilitating TeleTrak arose at about the time I was preselected as a candidate for the Legislative Council, and I started travelling regularly to the Riverland. I sensed in that community a somewhat sad divide. Like all regional areas at that time, the Riverland needed to come to terms with sometimes depressed economic conditions. The region needed to look at value adding and diversifying to ensure continuity and expansion of the region's existing industries in a sustainable manner, given our fragile natural resources, as well as to look at new industries.

With the TeleTrak proposal, the community found that on the one hand they were supposedly being offered an opportunity to take part in this new concept and, on the other hand, very little information as to what financial backup and by whom was being volunteered or provided by the proponents of the concept and, even more importantly, who was going to be TeleTrak's gambling facilitator.

I actually found myself feeling quite sorry for the former member for Chaffey. At the time he was faced with a pie in the sky concept and expected to come down heavily to support it. He obviously had not learned the art of parish pumping or putting the interests of his own electorate or indeed himself before that of his party. Now the National Party member for Chaffey has no such problems. From memory, the member for Chaffey was spokeswoman for the Riverlanders for Regional Development Group which commenced pushing for the TeleTrak proposal in 1996. Given the wheeling and dealing and reported media threats we have seen in this parliament by a certain number of Independents elected or invented, the former member for Chaffey was obviously a great innocent. In 1997, in response to estimates questions at the time, the member for Bragg, the then minister, told parliament:

> . . . in South Australia propriety racing is allowed. However, TeleTrak cannot race a race meeting in South Australia unless betting is controlled, either through the bookmakers or the TAB, and that requires support from RIDA, and it does not have that.

When asked whether legislation would be changed to allow TeleTrak to operate in South Australia, the then minister, Mr Ingerson, responded, 'No.' Obviously there has been a change of heart from several quarters, both government and the corporatised racing sector, although former Minister Ingerson's position has remained consistent, as he voted against the legislation.

My colleague the Hon. Terry Roberts, the shadow minister responsible for this legislation, already has placed on record the various versions and announcements put before us by the proponents of this concept. I will not repeat them all. However, I must mention one that is very important, that is, that this form of racing was supposedly not for the domestic market. It was to have been for offshore consumers, to be beamed directly into the Asian market. Now what we have before us is for both onshore and offshore consumption. We are essentially being asked to facilitate interactive, online gambling, without any return in the form of taxes to the state. I understand that races will be shown on the internet which is, of course, different from the manner in which the TAB now facilitates wagering on the net.

I noted in the minister's second reading explanation words to the effect that the approach adopted by government in this area is not dissimilar to those wishing to pursue a licence to undertake casino gaming in this state. Some of us would say that there is a fundamental difference. In relation to returns, the Hon. Terry Roberts described it as 'paying Caesar what is due to Caesar'.

I appreciate that an interim position has been established by the select committee looking at interactive home gambling, a committee of which I am also a member, but, if the parliament is still to have a say in respect of the Adelaide Casino going on line, perhaps we should ask why it is any different for this state-sanctioned interactive provider. Minister Laidlaw confirmed as much on 10 March last year in response to a question I asked on TeleTrak. Given the already saturated market, it is regrettable that we are sanctioning a new form of gambling in this state.

In the past week or so, some other developments have been reported. Recent media reports and Minister Armitage have indicated that the SA TAB has entered into a contract with internet wagering company Cyber Raceways to be the service provider for straight-line race track meetings, whilst TeleTrak is the major shareholder in Cyber Raceways. Ownership of racing and the wagering industry in this state are merging into one. The same media report of 20 November 2000 states:

> The state's racing industry is almost certain to make a bid for the South Australian TAB once the legislation allowing the sale is approved by parliament. The three codes—thoroughbred, harness and greyhound racing—intend combining to make the bid, industry stakeholders have been told by Thoroughbred Racing SA Pty Ltd, the controlling body of turf racing.

The report continues:

> It has also been revealed that the former head of the SA and Victorian harness racing boards, Ian McEwen, is chairman of Cyber Raceways. The past chairman of the SA Greyhound Racing Authority, Graham Inns, is also on the board of directors. Mr McEwen. . . and Mr Inns were members of the three person Racing Codes Chairmen's Group which this year signed the heads of agreement on behalf of the racing industry for the TAB sale.

The other chairman was Michael Birchall, the head of the then SA Thoroughbred Racing Authority which remains opposed to the concept of proprietary racing proposed by TeleTrak, the major shareholder in Cyber Raceways.

Last but not least, the TAB sale legislation is now before this parliament, and logic dictates that this legislation should have been presented to this parliament ahead of the bill now before us. Dennis Markham, writing in a different article in the *Advertiser* on the same date (20 November), commented:

> The three codes remained mute. . . thoroughbred authorities have bitten their tongues rather than criticise proprietary racing for risk of upsetting the chances of the TAB legislation getting sufficient numbers to be passed.

Like all members, I recently received correspondence from Cyber Raceways Limited advising that CRL is a production company and not a wagering organisation. However, I do not believe that this has any bearing on the fact that this legislation does not make provision for a specific return to the state. The sale of the TAB is a separate issue and certainly we cannot speculate on its outcome. Unlike other states, I am aware that at least some regional councils in South Australia have provided expressions of interest and seed funding for this proposal. I understand that work has already commenced at Waikerie. I think there was an item to that effect in last week's *Advertiser*.

I hope that the success of TeleTrak does not come at the expense of the established racing codes or in particular contributes to the number of gambling addicts and adds

additional stress in our community. As already indicated by the shadow minister, the opposition is not opposed to proprietary racing, but the legislation we have before us does not give the state any direct return and does not allow fair competition with the traditional racing codes.

The Hon. R.K. SNEATH secured the adjournment of the debate.

EDUCATION (COUNCILS AND CHARGES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 November. Page 605.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition opposes the bill. The issues presented in the bill by the Government are not new; in fact, they are quite the opposite. They are unimaginative and potentially harmful to the future of this state and the children who rely on government to deliver a quality, accessible and affordable education. The extensive and detailed debate in the House of Assembly is an indication of the level of disquiet and serious community concern about the government's proposals.

The bill proposed by this government is divisive. The minister in this place who introduced the bill, the Hon. Rob Lucas, was Minister for Education during a particularly negative period of the government's educational history in South Australia. At one time he was referred to as the most divisive minister for education this state had seen—the minister for closing schools. However, the present minister is seeking to emulate this dubious accolade with his philosophy of Partnerships 21 and his continuance of the Treasurer's stubborn and misguided policy of cutting funding for education by $180 million over three years and moving away from a free education system in this state. Local school management must be about improving education outcomes, not transferring the government's responsibilities to parents.

My colleague in another place, the shadow minister for education, has detailed her concern about the unseemly haste in dealing with this bill and the lack of consultation before the bill was introduced. As I understand it, no-one was consulted. The member for Taylor sought to have the bill referred to a select committee of the House of Assembly to scrutinise the aspects and the effects of the bill, but that was defeated in the other place. I do not believe this bill should be debated at this point in time. I do not believe we should pass this bill without consultation with schools, principals, teachers and the education community. A select committee process would have allowed that to occur. There are gross inequities in the concept of Partnerships 21, and schools in poorer areas are at a special disadvantage, but that is the way of this government and the federal Liberal government: the rich get richer and the poor get poorer.

I believe that education has been the great leveller in the latter part of the 20th century, and it is a disgrace that at the beginning of the 21st century we are starting to revert to misguided concepts by rewarding the more well off in our society instead of encouraging those from a socially disadvantaged background to partake of the richness of a great education. Former Labor ministers for education Ron Loveday and Hugh Hudson, who both championed the ideals of equity, would cringe at the arrogant behaviour of federal and state Liberal governments on the issue of education.

As this bill sets up a framework for school councils to become Partnerships 21 governing councils or non-Partnerships 21 school councils, the fact that the minister has failed to keep to his promise of a six week consultation on the bill bodes ill for the future of schools in South Australia. Since the shadow minister announced that she would refer the bill to a select committee for further consultation, she has received many positive responses from schools that are concerned about the implications of this bill and the lack of consultation.

There is no need for this bill to proceed at this point under the present legislation. School councils in South Australia have been operating under the Partnerships 21 scheme since January this year. During estimates committees on 23 June last year the minister stated:

> School councils may change in size, composition and even name but they will remain incorporated bodies and continue to be indemnified under our current legislation, so there will be no changes.

Given the extent of the proposed changes, surely parliamentary scrutiny would have been justified.

Let us now turn to the compulsory school fees issue. This has had a shoddy history. First, the Treasurer in his former position as Minister for Education kept forcing the issue and was rebuffed by the legislative process. On four occasions the regulations governing school fees have been disallowed by the Legislative Council, so this issue has been debated repeatedly and found wanting. This government took nine months to reintroduce compulsory fees after the last disallowance, and the ongoing issue of the effects of the GST has yet to be addressed. The minister's latest direction to schools on how to avoid including items which attract the GST as part of the compulsory fee raises even more questions. We have debated this issue so many times in this place that I will not take up the time of the parliament on it, except to say that the opposition is opposed to compulsory school fees. The opposition will oppose the second and third readings of this bill.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.

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

A quorum having been formed:

The PRESIDENT: Order! This is pretty undignified. Members will resume their seats. If they want to lobby, they can do so outside. If we are not going to do anything, we might as well suspend.

DEVELOPMENT (SYSTEM IMPROVEMENT PROGRAM) AMENDMENT BILL

Bill recommitted.

New clause 2A.

The Hon. M.J. ELLIOTT: I move:

Page 3, after line 6—Insert new clause as follows:

Amendment of s. 3—Objects

2A. Section 3 of the principal Act is amended by inserting in paragraph (a) 'and to encourage the management of the natural and constructed environment in an ecologically sustainable manner' after 'planning and development'.

It is becoming increasingly apparent that development is about a whole range of matters: it is about trying to maximise an economic benefit for the community; it is about trying to address issues of comfort of individuals, which is why we do

not want factories making lots of noise directly adjoining residences; and it is about ensuring that, as development occurs, it occurs in an ecologically sustainable manner. I am seeking to ensure that, in all aspects of this act, not just in relation to the development plans themselves, consideration is given to issues surrounding the need for management of the natural and constructed environment in an ecologically sustainable manner.

The Hon. DIANA LAIDLAW: I oppose the Hon. Mr Elliott's amendment, and in doing so I move the following amendment:

Page 3, after line 6—Insert new clause as follows:

Amendment of s. 3—Objects

2A. Section 3 of the principal act is amended by inserting after subparagraph (ii) of paragraph (c) the following subparagraph:

(iia) to encourage the management of the natural and constructed environment in an ecologically sustainable manner; and

The amendment moved by the Australian Democrats is not appropriate in the government's view for inclusion in section 3(a) as one of the objects of the act because it would open very wide the grounds for judicial review. It would mean that almost any decision, either on a development application or a plan amendment report (PAR), could be challenged on the basis that it would not promote ecologically sustainable development.

Such policies already reside in the planning strategy and hence do not need to be included in the body of the act, which is designed to contain process requirements and not policy. Nevertheless, the government has some sympathy with the matters raised by the honourable member and therefore I have moved an alternative provision. In terms of ESD, it is more appropriate for such policies to be furthered by development plans, and such a course would also mean that we would strictly limit the possibility of legal challenge but be effective in the way in which we could encourage ecologically sustainable development. I hope that members will support the government in its objective of setting ESD goals, but as part of development plans and not in the objects of the act.

The Hon. M.J. ELLIOTT: I have had discussions with the minister about the appropriate location within the objects of the act for this concept of ecologically sustainable development. My concern is that, on a reading of the Development Act, one finds that development plans are just a component of the act and that many decisions are made and many actions happen under the Development Act outside the actual development plans themselves. In fact, major projects, for example, effectively go out of the standard planning procedures under development plans.

To refer to ecologically sustainable development, which the minister now acknowledges is appropriate in the act, only so far as it relates to the development plan itself is a failure to recognise that the act is about a lot more. For that reason, I believe that it should be incorporated within section 3(a) rather than, as the minister proposes, in a new section 3(c)(iia), which relates just to development plans.

The Hon. T.G. ROBERTS: We will be supporting the government on this. The information that has been given to me to support the government is that the new objects of the amendments to the bill should encourage the management of natural and constructive environments in an ecologically sustainable manner. I think that we have almost reached the position of planning maturity, where everyone knows what the objects of planning should be.

I will not say state government, but in some local government areas the reason why they do not put forward their best objects in terms of planning is that they decide that they are not going to do it for a particular reason. We seem to have evolved to where the information base that people are operating from is such that you cannot avoid planning for all the best possible reasons, including in a sustainable way, given that nearly every local government body now has a plethora of support in relation to environmental planners, planners who study legislation, planners who study policy and planners who determine policy, yet we still have the same mistakes being made at local government level.

When problems are enunciated by ratepayers, generally either short cuts have been taken or the advice has not been listened to, or pressure groups have placed pressure on planners to a point where best methods have not been incorporated into the planning associated with the objects of either local government or state government bodies. Where you place the emphasis for the objects of sustainable development or best planning objects is not the important question. The important question is: how do you oversee the best possible objects?

I use one quick illustration here, and that is the protection of heritage trees. In nearly every case where an objection has been placed, either planners or vandals get their way. There have been two or three cases in which, if what we regarded as heritage listed trees that should have been protected had been protected by legislation, they would not have been removed, but someone goes and does it by poison, by cutting them down or by pushing them over with a bulldozer.

It is a matter of the objects being supported by legislative protection that actually means something in relation to the Planning Act. I guess that should be part of the government's overall plan when we bring in new legislation; that is, to get commitments at an important level where process is being followed and where process is being developed. That is the point at which it becomes vital to get that protection.

We are supporting the government's position and hope that the indicated benefits that come from the issues that the Hon. Mike Elliott raised are picked up and used in an educative way through the new act, so that we have another generation of better planners under the guidance of either this government or any succeeding government, who follow the act to bring about better planning.

The Hon. Mr Elliott's amendment negatived; the Hon. Ms Laidlaw's amendment carried; new clause inserted.

Clause 5.

The Hon. M.J. ELLIOTT: I move:

Page 5, lines 8 to 12—Leave out paragraph (d).

This part of the subclause gives the minister a new power to prepare an amendment to a development plan. I am quite happy in regard to issues surrounding a major development, but I do not think that a case has been made for this additional power and, unfortunately, as ministerial powers to prepare amendments to development plans proliferate throughout this act, it actually guts the original intention of the act.

These clauses are sometimes put in with the best of intent and end up being used for other reasons. The one that sticks in my mind most clearly is from some years ago, when a new PAR was done for the Craigburn Farm area. It is a classic case. The minister's power then related to a development plan that could be declared by the minister if it covered more than one council area. The reason for that originally was to try to

get some continuity and consistency in planning in contiguous areas.

As I recall, the area that the PAR applied to in fact was about 95 per cent in Mitcham council and 5 per cent in the then Happy Valley council, and the area that was of interest at that stage was solely within Mitcham, so something that was put there for good reason became a device to walk straight around the intentions of the Planning Act in terms of local involvement, etc. The fact that interim effect was used at the same time was a second abuse of ministerial discretion.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: No, I did not say that it was a major development. What I said was that it was a case where a minister had been given a particular discretion in relation to preparing development plans, away from the normal process of coming up through councils and, having been given that power for what I think was a good reason, used it for one that I do not think most people in the community would have supported.

As I said, there simply has not been a case made for what I see as likely to be this additional loophole, particularly when it attaches to major developments that are already causing some significant concern in the community, and for good reason.

The Hon. DIANA LAIDLAW: A number of points must be raised in opposition to this Democrat amendment, and my first comments are made in terms of the Hon. Mr Elliott's explanation. I do not know whether he wanted deliberately to confuse the issue, but this amendment has nothing to do with any of the issues related to Craigburn Farm. Craigburn Farm was developed by a PAR back in 1992, well before major developments were even provided for in this bill.

The clause before us relates to the ability for a minister—the minister does not have to do it—as part of the major development process to also initiate a PAR. So, when a major development is proclaimed or authorised by the Governor, the developer and everyone else can get on with it, because the PAR and the zoning issues have been addressed at the same time. It is simply an efficient practice in terms of planning and development in this state. Once the major development status has been authorised and proclaimed by the Governor, you just have to get on with it.

The fact is that the current process, which often requires a PAR to follow, is left up to the council to advance, and councils do not always have the resources, the energy or the will to do it. Everyone then gets in a bit of a mess, because a major development has been proclaimed but the zoning, which should automatically arise from that major development status, has not been advanced by the local council. That does not happen on all occasions but, when it does, planning legislation and practice in this state is brought into disrespect.

This is simply a neat way of advancing a project that has gone through all the hurdles in a major development process as outlined by this parliament in the act, including environmental considerations and other input. So, with respect to the honourable member's concern about issues of eight years ago, I think that example is not appropriate in terms of arguing the case for his amendment which is to oppose a very reasonable provision to allow a PAR to be advanced as part of a major development process.

The Hon. T.G. ROBERTS: The opposition opposes the Democrats' amendment to leave out paragraph (d). It goes with being in government and trying to bring about a change to provide perhaps a worse situation if a ministerial development plan was not introduced. I know there are some fears about ministerial amendments to development plans being brought in to override good planning proposals or measures or to have a council that has done the right thing in relation to its own development plan being overridden by a ministerial amendment plan that has all the wrong features.

What the Hon. Mr Elliott and the rest of us would like to see inherent in a plan is to 'encourage the management of the natural and constructed environment in an ecologically sustainable manner', which is the amendment that was not carried, but with the culture of that being included in what we see as good management plans. However, I hope that, being the government, a ministerial amendment plan would be brought in to make improvements to an already deteriorating circumstance or to prevent a circumstance such as the one which the minister outlined to bring into line a council plan that has not been kept up with or where a council has not made the effort to integrate its plan with what would be the government's intention in relation to a major development. For those reasons, the opposition does not support the amendment moved by the Democrats.

Amendment negatived; clause passed.

Clause 9.

The Hon. M.J. ELLIOTT: I move:

Page 11, line 26—After 'is amended' insert:

(a) by inserting after subsection (1) the following subsection:

(1a) However, a declaration cannot be made under subsection (1) in relation to an amendment—

(a) that would change the category of a form of development from category 3 to category 2 or category 1, or from category 2 to category 1; or

(b) that would otherwise have the effect of increasing the likelihood of development being approved under the development plan as amended (when compared to the development plan without the amendment).;

(b) [Bring in the remainder of clause 9]

I raised this issue during the second reading debate. On three occasions, the Environment, Resources and Development Committee has written to a number of ministers expressing concern about the use of interim effect. There is no question that interim effect was always intended to be used for a particular purpose: that is, that, where the government—or, for that matter, a council—wants a change to a development plan which will lead to something not being allowed which currently is allowed, without interim effect, the moment one puts the draft amendment out for public display the smart people will quickly rush in and get an application to do what the amendment plans to stop.

A couple of years ago, we had a PAR with interim effect applied to the Mount Lofty Ranges. There was wholehearted support by the community in relation to that interim effect. However, it is possible that interim effect is not used for that purpose and that what happens is that, instead of the interim effect stopping something which otherwise would have been allowed, it actually enables something which previously was not allowed. Then, as it travels through the normal public consultation process, applications can come in.

The whole idea of having a planning process in place and the right of the public to express their opinion is that there may be a further change to a draft PAR. It would be quite pointless at this stage to change the draft PAR and amend it further because the applications have, if you like, snuck through a loophole that has been created by the interim effect. I can think of at least one example where an interim effect actually led to something happening which was probably regretted later, but by then it was too late.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: No. More recently, in the hills face zone. Although the minister sought to tighten things up, as it turned out—and it was not the minister's intention—the PAR that came in with the interim effect enabled something which, after the court interpretation came through, would not have been possible. I am referring to the vineyard on Brown Hill. That is what ended up happening. If an amendment such as this had been in place, after the court ruling it would have been found that the initial PAR was stricter than the later one. Regarding an application which was using interim effect, if the minister chose later to change that plan in response to further public comment it would not have been able to sneak through that loophole period as it has now been able to do. We still do not know what other court challenges might arise from that. I do not say that by way of criticism because, in this case, I think the minister was trying to tighten things up. However, as it turned out, the interim effect actually enabled something which otherwise would not have been possible.

As I said, interim effect was always about trying to make sure that somebody does not rush something through in that loophole period while consideration is being given to the plan. What my amendment seeks to do (and the reason I had it re-worded) is to try to make it quite plain that something that could not happen under the previous plan, while there might have been an application—and I have no problem with that while the interim effect is there—would not stand later, and that somebody cannot use that loophole period to get something up that later would not be possible.

As I said, it has been the clear view of a number of ERD committees that that interim effect had a particular purpose. Anyone who read the debates when it first came in will know why it was put in. My amendment just tries to put that beyond any doubt.

The Hon. DIANA LAIDLAW: This is not necessarily an easy issue. I respect the sincerity with which the honourable member is seeking to address some of the circumstances, but the way in which he wishes to do it—in fact, any way one looks at it—makes it a quagmire or a minefield for judicial judgments, or we will find that hardly any interim effects are lodged or approved—and that is the principal reason why interim effects are advanced today—and heritage issues and heritage alterations to a house are also classified as development.

I think that, unintentionally, the honourable member would see circumstances where ministers would be reluctant to apply for interim effect because of the freeze that the honourable member would have across the whole area both in terms of advancing heritage issues and applications and also because of the judicial ground on which an applicant could argue whether or not an issue is development. We do not have those sorts of matters arising now, but unwittingly all matters would be brought into the process. I think that that would be unfortunate, irrespective of the latest example the honourable member mentioned about the Garrett development in the hills face zone—and that was not PAR and interim effect. I would ask the honourable member to reflect on the fact that we were working with the judicial judgment of the day—

The Hon. M.J. Elliott: I understood that.

The Hon. DIANA LAIDLAW: I know, but if I had not moved with that interim effect Garrett could have come in and the grounds for assessment would have been even more relaxed than with the interim PAR. Even with the council having to assess it on the ground of the interim PAR, that interim PAR had stronger guidelines than the earlier PAR that applied. I accept that a later Supreme Court judgment ruled in a manner that led us to introduce a stronger PAR and interim effect, but the intervening PAR and interim effect did have more rigid guidelines.

I would not accept the example the honourable member gave as reason to advance his argument. Regarding the earlier examples that he has given concerning mainly Craigburn—again an instance back in 1992—I have openly acknowledged that we have all learnt from that exercise—I as minister have not applied it—and also in terms of promoting interim control as a basis for openly advancing development beyond the heritage issues that I outlined earlier. A future government could do that, but the point is that I think we have all learnt from the earlier circumstance.

I think the ERD Committee and everybody else is very aware of the situation, and I think the community is alive to the issues as well. It is that public process that is very important. To try to remedy it—and I am not too sure which amendment we are speaking to because the honourable member has two on file—by either of the measures makes it a process fraught with more judicial difficulty than the one we have now. I strongly suggest that we do not go down that path but leave the matter as it is, knowing the integrity with which governments over the past eight years have dealt with the issue, and leave it to the public process to reflect on the issues if they are not advanced in the way in which the parliament intended or the ERD Committee raised.

Neither of the amendments eases the process, which is complicated particularly in relation to the very broad definition of what is development. I believe that it would stop all matters of development application for a considerable length of time and would be counterproductive in terms of the heritage PARs on interim effect.

The Hon. M.J. ELLIOTT: I think the minister needs to reflect on the sorts of cases where she has used interim effect. It seems to me that interim effect has normally been used for a very clear purpose. We are not talking about an ordinary PAR. The minister would acknowledge that, when we brought in the PAR in relation to the hills face zone, she had a very clear purpose, which was to try to stop something from happening. There is no question about that, and I do not think anyone can go to court and argue that that was a shade of grey matter.

It was very clearly spelling out that, for instance, olive groves were not to be allowed: there was no shade of grey about that. Similarly, the Mount Lofty Ranges development plan to which I referred and which came in probably about eight or nine years ago—I am trying to remember—was very clear in its intent, and I do not think anyone can go to court and argue about that. I admit that there are some areas in development plans that might get into the grey areas, but I put to the minister that, when you set about stopping something—and that is what you are doing with interim effect—you are very clear about that and your development plan is written for that specific purpose. To suggest that you will find yourself in court on legal challenges in relation to that I do not think is the real world. Can the minister think of any development plan during her time to which she has given interim effect and where there would have been these shades of grey, because I do not believe they will be there?

I put to the minister that, when you are using interim effect, it is for a very clearly defined purpose. The minister said that this could mess things up in some way in relation to

heritage buildings, but I must say that I did not follow that, and I would appreciate a clear, specific example of how she feels we could have a development plan which, without interim effect, would end up being deleterious to heritage.

I believe that it is more likely that one would bring in a development plan which says, 'You shall not do certain things in relation to heritage buildings', which is an interim effect thing and, clearly, it seeks to prevent certain types of development. I cannot think of an example in relation to heritage where it would work in a negative sense.

The Hon. DIANA LAIDLAW: Mr Chairman, I seek clarification as to which amendment on file the honourable member is addressing.

The Hon. M.J. ELLIOTT: It is the amendment on the second sheet with '28/11/2000' at the top.

The Hon. DIANA LAIDLAW: So are you moving the first amendment?

The Hon. M.J. Elliott: I withdrew the other one because I felt this one was much clearer.

The Hon. DIANA LAIDLAW: There are two things in answer to the questions that the honourable member has posed and, whichever the amendment, the arguments are essentially the same. As I have acknowledged, the interim effect is most used for heritage PARs and they are aimed at preventing demolition of heritage items—

The Hon. M.J. Elliott: Which is development.

The Hon. DIANA LAIDLAW: Which is development. However, they also contain policies on appropriate development for heritage items, and this is the dilemma I am trying to highlight. With development there are broad circumstances and, therefore, even with a heritage PAR this increases the likelihood of appropriate heritage development being approved. Accordingly, the amendment will make all interim effects subject to challenge in the courts with consequent uncertainty, and any court ruling disallowing an interim effect PAR will be retrospective to the effective date thus calling into question all development decisions in the meantime.

My greatest concern in relation to the honourable member's amendment is paragraph (b), which highlights the considerable uncertainty that this matter introduces. Most PARs contain provisions that both support appropriate development and speak about inappropriate development. So, a heritage PAR aimed at protecting heritage will contain policies on appropriate future development of listed heritage items, and such a PAR will increase the likelihood of a well designed heritage conscious development being approved. The additional test proposed will prevent the most common form of interim effect. I say that having conferred with a number of people within and without the department involved in providing advice on these matters. They know the grounds on which the advice is offered, and that is their considered view. I believe it would be most unfortunate if the additional test the honourable member is proposing would see reservation in recommending or the minister advancing to the government that interim effect be applied. It would be counterproductive.

The Hon. T.G. ROBERTS: I indicate that the Democrats' amendment has only just reached the shadow minister in another place. I indicate that we will support the government's position. We will be looking at the implications of the amendment and the outcome of further consultation and consideration of the amendment in another place.

The position that the honourable member has outlined almost appealed to me and also seemed to appeal to the minister; however, the minister has ruled it out as a negotiated clause that may be accepted. I believe the minister in her contribution has ruled that there is no possibility of the government adopting any of it. When did the minister first see the amendment?

The Hon. Diana Laidlaw: The amendment to date—two hours ago.

The Hon. T.G. ROBERTS: So have you given it consideration?

The Hon. DIANA LAIDLAW: I have given it a lot of consideration. It really just fluffs at the edges of what the Hon. Mr Elliott was proposing earlier and which I objected to in principle, and that principle has not changed no matter how much fluff is introduced in rearranging the words. The effect is the same and in principle I oppose that proposal.

The Hon. T.G. ROBERTS: The honourable member's amendment to his amendment has gone unrewarded.

The Hon. Diana Laidlaw: I am not interested in fluff.

The Hon. T.G. ROBERTS: I am sure our shadow minister will consider that description when she has a look at the provision. As I have said, we have just received the amendment for consideration. The Labor Party has a complicated process of decision making which makes it almost impossible for us to consider it at this stage. As I have said, we will consider it following internal consultations.

I refer to the problems we have had at ERD with preliminary reports, PARs and other development plans, particularly when interim effect has been granted. My memory goes back to one which was given effect in January, I think, at a time when the committee was not able to consider any of the implications associated with it. It was not brought to our attention that the interim effect was given until probably February or even March on one occasion. When an interim effect is granted, there is no damage done that cannot be cleaned up by either administrative or other ways so that communities do not feel the impact of some interim effects. But there are other situations where they can cause immeasurable difficulties for groups within communities who have been organised and who have been going through the processes.

We have an ERD Court now that has improved matters tremendously in relation to how people feel about following the democratic process in relation to bad planning, or planning that impacts on them adversely. But when interim effect is granted and has outmanoeuvred, if you like, or has gazumped some community activities around approvals, that is when governments start to get a lot of flak; and that is when committees have to pick up some of the fallout from those interim effects that have been granted.

In terms of heritage, we would tend to agree with the minister's demonstrated position but we would also argue that with heritage more harm is likely to be done by allowing something to continue than by using it to stop something. I think we are in agreement on that. It is only a matter of a development application rather than a heritage application, although there can be some damage done in heritage areas as well. We will probably have an answer after the bill has gone to another place. I would recommend that you continue lobbying with the shadow minister.

The Hon. M.J. ELLIOTT: It is pretty disappointing when one meets with a minister, listens to the point of view, and acknowledges that perhaps the wording could have been better—with the best of intentions—and then gets accused of producing a bit of fluff.

The Hon. Carolyn Pickles interjecting:

The Hon. M.J. ELLIOTT: No, she just suggested that the change in the words was a bit of fluff. The minister is quite aware that she persuaded me not to proceed with a number of amendments because I was convinced by her argument. I actually thought—this is the only time I will do this in debate this year unless she aggravates me again—that her arguments about heritage were a giant piece of fluff, the sort of thing that would give more cats than are on this planet fur balls for life. There was no substance in this vague mention of heritage and no real construction to the argument to give a real-world example of a plan where interim effect has been necessary that would have been messed up by what I had done. At least I set about giving examples of where I thought things had gone astray in the past because of interim effect, seeking to fix that.

It is no good having this very reasonable minister at the moment who does not abuse interim effect. We just do not know when we will next get an unreasonable minister who will use it for reasons that this parliament never intended. That is the point I am trying to make. The parliament, when it passed the legislation, had a very clear intention in relation to interim effect. The minister acknowledges that and says, 'As long I am minister, I will not misuse it.' I am seeking to try to guarantee that the legitimate uses of interim effect are allowed to continue but that some future minister will not be in a position to abuse it. It makes a farce of the whole PAR system if a minister comes in with a ministerial PAR in particular—and that is where they become the biggest danger—right out of left-field. If a minister puts in a ministerial PAR and puts in interim effect, the whole planning process becomes a farce. That is possible. It is an abuse that is sitting in the legislation waiting to happen.

I do not know how many times I have been in debates in this place over the years with a whole lot of ministers, particularly the current Attorney-General, who were always trying to close loopholes in legislation, trying to make sure the legislation did precisely what was intended and nothing else. This is what I am trying to do with this amendment. The minister is critical of the amendment, seems to acknowledge that there is a problem and certainly says that she would never—

The Hon. Diana Laidlaw: It's not a problem if it's used properly.

The Hon. M.J. ELLIOTT: The minister would have to acknowledge that it is capable of being abused. The present minister will not do such a thing, but it is possible; the law has a giant loophole waiting to be abused by a less reasonable person than herself. It is there, waiting to be used. I do not believe it is beyond the wit of humanity to come up with a form of words that ensures the interim effect does precisely what it intends and does not have potential abuse sitting and waiting. My amendments seek to address that. I listened to the minister's concerns when I met with her previously, took them on board and tried to change it to a better form of words. I was not offered an alternative but instead told, 'I am a reasonable person; there is nothing to worry about; and we do not need an amendment.'

The Hon. DIANA LAIDLAW: That underplays the argument I presented. I understand that the honourable member is genuine in the task he wants to advance but, whichever way you look at it, it becomes a legal minefield. I would argue that any way we have sought to rectify it is a worse evil than the potential for it to be misused. It has not been misused for the past six years, when members and the public have generally got on top of what is expected of the provision. That is why I would argue that you may have a concern but any way we look at fixing it creates a minefield than would be a worse evil than the one you have in mind, which I do not see in common play in any respect.

Amendment negatived; clause passed.

[Sitting suspended from 6.04 to 7.45 p.m.]

Clause 14.

The Hon. M.J. ELLIOTT: I move:

Page 15, after line 9—Insert:

(5a) Notice of the appointment of a member of a regional development assessment panel must be given in accordance with the regulations.

Recognising that there appears to be broad support for this clause, I will not argue for it further.

The Hon. DIANA LAIDLAW: The government accepts the amendment.

The Hon. T.G. ROBERTS: The opposition supports the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 15, lines 10 to 21—Leave out subsections (6) and (7) and insert:

(6) Sections 73, 74 and 90 of the Local Government Act 1999 extend to regional development assessment panels as if—

(a) a regional development assessment were a council; and

(b) a member of a regional development assessment panel were a member of a council.

(7) Non-compliance with section 74 of the Local Government Act 1999 (as applied by subsection (6) of this section) will constitute a ground for removing a member from the relevant regional development assessment panel.

The effect of this amendment is to ensure that regional assessment panels are open to the public in exactly the same way as we have expectations about council meetings themselves. The point has been made that this relates to planning matters, and the government is trying to argue that, because it is a planning matter, it wants the issue to go behind closed doors. The only people supporting the government's position—and they are not insignificant in this issue—are some local councils. I have been approached by several councils who support the approach that I am putting forward, that regional assessment panels should meet in public.

It comes down to whether or not there is an expectation that regional assessment panels are to be accountable and how one keeps them to account. In my view, if the debate behind a decision and if the votes are not put on the table, I cannot see how we will ever get accountability. It should be noted that a very large amount of planning decision making is already done by delegated authority, but the overwhelming bulk of that delegated authority work relates to fences or carports, matters that are not of major development significance. The sorts of matters that will go before regional development assessment panels will be matters of great significance, and to suggest that the decision making in relation to those developments should be undertaken behind closed doors I do not find acceptable, and I do not believe that the overwhelming majority of the community will either.

If the matter related to a complying development, there would be no issue but, in many cases where a significant development went off to an assessment panel, it would probably relate to a non-complying development. Some people are suggesting that they do not want politics to be involved in decisions but, with a non-complying development, in the first instance there should not be an expectation that it will automatically get up, so surely what the commun-

ity thinks is relevant. If the fact that the community is aware of why the decision makers are doing what they are doing and how they are voting creates pressure, so be it. We in this place have to live with that all the time. How we vote on any individual bill or clause is on the record.

The debate involved in making the decision is also on the record. Some people simply cannot bear the heat. They do not like the idea that, currently, in council while they are sitting in the chamber making these decisions, members of the public are sitting behind listening to them debating it. They say that it puts unreasonable pressure on them. In relation to non-complying developments, I argue that that is not an unreasonable pressure. If you do not want that sort of pressure on you, then get out of politics, because that is what politics is all about: being lobbied from all sides and having to make up your mind on the merits of the case, and having the intestinal fortitude to stand by your beliefs, having taken into account what the community believes.

As I said, while the LGA (as a body representing all local government) is opposed to an amendment such as this, a number of councils have expressed a contrary view, and I know that at least one member of the opposition who has had recent local government experience opposes the LGA's view. The Local Government Association has said that, whilst it would prefer that this amendment not get up, if it did, rather than referring to the Local Government Act, it would like the clauses contained in the Local Government Act to be imported.

I have not given instructions to Parliamentary Counsel to do that at this stage, although I discussed it during the early drafting. I do not have any problems in doing that, but I was not going to put Parliamentary Counsel through a huge amount of work, knowing that it could suffer the same fate as many of the other amendments I am moving here tonight. However, if there is acceptance of that, I have no problems at all with the words currently contained in the Local Government Act being incorporated into this act, rather than referring back to that act.

The Hon. DIANA LAIDLAW: I would like to move my amendment in an amended form.

The CHAIRMAN: The minister's amendment comes in after line 24: this is up to line 21.

The Hon. M.J. Elliott: The issue is the same.

The CHAIRMAN: If it is the same issue I will be happy for you to move that.

The Hon. DIANA LAIDLAW: Before moving the amendment, I admit that this is not necessarily easy to follow from the amendments that I have placed on file, so I will give an overview, first, in opposing the Democrats' amendment and, secondly, in speaking to the two amendments which I have placed on file and which are complementary.

First, I would argue very strongly, as is provided in the bill, that councils should have the power to determine their policy as to whether they should be sitting in camera or in public, first in hearing an application and secondly in determining that application. The bill that I have introduced on behalf of the government makes clear that it is over to the council to determine that decision.

I find it very interesting that the honourable member seeks to take such a political stance on this issue, because with so many other amendments to this bill and on other occasions he will always accuse me as minister of trying to usurp the powers of council on so many issues. I challenge the honourable member that he is wrong on those occasions, in terms of good planning policy, and I would challenge him that he is wrong also on this occasion, in terms of good planning policy.

The whole basis of the new act and the amendments since 1994 has been to encourage councils to prepare well in advance what their policy will be for planning, so that there is certainty for local residents and certainty for developers. Therefore, across the community we can make better planning decisions because all these matters have been dealt with up front.

If councils have done what the parliament expects in terms of the provisions in this act, then I believe very strongly that, in terms of hearing the application and determining the decision, councils should also be able to make the decision as to whether they are heard in camera or in public. The honourable member has taken extreme exception to that and determines that the parliament should say that every application, irrespective of its nature, whether there are confidential financial or legal matters, should be completely open.

I totally reject that. The honourable member talks about this being dealt with on the merits of the case and getting the politics out of it. In this parliament we do not apply to our committees the standards that he is now insisting councils should apply to their committees or panels.

The Hon. L.H. Davis: I bet the Australian Democrats do not operate like that, either.

The Hon. DIANA LAIDLAW: I am not too sure how the Democrats make their decisions: it is bewildering. I can only say that, in terms of standards and integrity, there is not a standing committee or select committee of this parliament that provides for the public to be present while we are determining a decision. We hear the evidence in public, we receive written public submissions and we receive evidence.

The Hon. L.H. Davis interjecting:

The Hon. DIANA LAIDLAW: That is another good point. But we also have, even in hearing evidence, a provision to go in camera. That is not even provided for by the Democrats here in their amendment. They say that every panel, irrespective of the nature of the application, whether there are legal or financial implications, should be heard in public, yet that standard we do not apply ourselves.

Also, when it comes to the standing committees, we have a provision to go in camera to hear evidence, and certainly do not have the public there while we make that decision. The honourable member is grandstanding in this place and outside, and I would ask him to just think about the integrity of the argument that he is seeking to apply to councils.

The Hon. L.H. Davis: The Memorial Drive kid!

The Hon. DIANA LAIDLAW: Good point. I do not respect his argument and I certainly do not support it. I do accept that perhaps there should be guidance provided by this parliament, rather than the approach that the government has in this bill, which is that it is over to councils completely to make up their mind. I have talked at length about this with the Labor Party and the LGA, and have put some amendments on file to the provision in the bill that, when a regional development assessment panel is meeting, both for assessment purposes and when a decision is made, that should be conducted in the open.

I have said that in this amendment, but I have provided for circumstances taken from the Local Government Act for councils' general conduct, where a council can hear a matter in private. I have also provided in (8ab):

> (b) during so much of a meeting that consists of its discussion or determination of any application or other matter that falls to be decided by the panel.

So, I have sought to separate the hearing of an application and the determination, and in both instances to provide that, while the government preference would be that it be held in the open, there are bases for a regional panel or council panel to hear matters in private. As I say, that is a standard we apply to this parliament for our own committee system, and I strongly argue that it should be the standard we apply to councils.

Finally, I have moved other amendments that members be entitled to reasonable access to agendas of meetings and other matters and that accurate minutes be kept of proceedings. I understand that there is general support for those provisions in terms of housekeeping arrangements. I move:

Page 15—

After subsection (8a) proposed to be inserted by the Minister for Transport and Urban Planning—Insert:

(8aa) Subject to subsection (8ab), a meeting of a regional development assessment panel must be conducted in a place open to the public.

(8ab) A regional development assessment panel may exclude the public from attendance—

(a) during so much of a meeting as is necessary to receive, discuss or consider on a confidential basis any of the following information or matters:

(i) information that would, if disclosed, confer a commercial advantage on a person with whom a council is conducting (or proposes to conduct) business, or prejudice the commercial position of a council;

(ii) commercial information of a confidential nature that would, if disclosed—

(A) prejudice the commercial position of the person who supplied it; or

(B) confer a commercial advantage on a third party; or

(C) reveal a trade secret;

(iii) matters affecting the security of any person or property;

(iv) matters that must be considered in confidence in order to ensure that the panel does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;

(v) legal advice, or advice from a person who is providing specialist professional advice;

(vi) information provided by a public official or authority (not being an employee of a council, or a person engaged by a council) with a request or direction by that public official or authority that it be treated as confidential; or

(b) during so much of a meeting that consists of its discussion or determination of any application or other matter that falls to be decided by the panel.

Page 15—

After subsection (8e) proposed to be inserted by the Minister for Transport and Urban Planning—Insert:

(8ea) Minutes must be available under subsection (8d)*(b)* within five days after their adoption by the members of the panel.

The Hon. T.G. ROBERTS: This has been one of the most contentious areas of the bill before us not so much because of any hidden secrets about determinations or where they are coming from but because of the fact that there are so many differing points of view on how to proceed with something that is a new part of the decision-making processes within local government. This takes away from local government some of the responsibilities that it now has and puts them in the hands of a panel over which it may or may not have control. I suspect that some councils will still have some influence and control over development assessment panels.

The information I have been given is that, in some cases, councils deal with as high as 90 per cent of applications in metropolitan areas and about 70 per cent in regional areas. So, there is a general consensus on how to proceed without too much controversy. However, in a democracy which is being buried under information there is a demand by the people for transparency in the way in which decisions are made. Whether governments like it or not, there are many retired people who have had a lot of life's experiences and are now sitting on community panels making assessments and value judgments on how governments (local, state and federal) run and are operated. If you do not take that into account as a government at a local level, there will be a lot of changes made whenever a local government election comes around.

One of the problems that we have is that we are dealing with volunteer community members. When the hybrid situation of panels and the transfer of powers from local government to panels takes place, that will cause some concern within those groups, organisations and communities. It is easy to understand why no-one is confident about what the outcomes will be. One thing that we do know is that in regional areas it is difficult to get people to run for local government because they come under criticism for a lot of decisions that are made for and on their behalf by paid council officers. They rely heavily on the information given to them by CEOs and paid professionals, and it is getting more difficult to get people to take the step to serve local government in any capacity let alone one where a lot of time is spent on making decisions about developments which, in some cases, are controversial and which bring pressure to bear on them and their families.

I think there should be some provision such as our committee system for panels to meet in camera to make their assessments and decisions. I think there should be a new process in terms of openness when the evidence is being taken so that, when consultants' reports are being tabled and discussed, all the information on which the panels deliberate to make their decisions should be made available for access by community groups and organisations and individuals. It should be presented in an open way to the community so that they can make assessments based on the best scientific evidence that the panels receive.

The conflict that I can envisage is when, during the assessment process in camera, new or fresh evidence is taken on board that is not made known to the community through the evidence taking processes and procedures. Sometimes this happens with parliamentary committees. The taking of evidence has been closed and either we are given privileged information in camera or we receive late evidence that is tabled but we cannot present it or use it or draw on it in the committee because of its late arrival.

We will accept the government's position in relation to the panels, but the shadow minister in another place has indicated that she will be looking at a hybrid presentation from the Labor Party that will reflect some of my comments. She will also make comments of her own when dealing with this clause. Hopefully, they will take into account the points that the Hon. Michael Elliott makes in relation to his fears but still allow for the secure approach toward assessment and deliberation that we call for as members of our committees. That should encourage people to put themselves forward for these assessment panels.

I think it will be a matter of watch and wait by local government to adjust as it sees fit as those panels make their assessments to see how successful they are because, where vested interests are concerned, it does not matter what

decision is made, there will always be some section of the community that is upset. My experience is that the general rule of thumb is that if people believe that on the best possible weighted evidence and with the best intention councils make decisions, they will abide by those decisions as long as there does not appear to be any sort of a cover-up or process that is interrupted by vested interest pressure where they cannot gain the same access to that evidence in a fair and democratic way. So, we will support the hybrid position in another place and allow them to debate that and put their comments on the record.

The Hon. M.J. ELLIOTT: If the minister read section 90 of the Local Government Act, she would see that it entertains that there can be—

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: My amendment refers to section 90 of the Local Government Act and draws that across. It allows meetings to be closed under certain circumstances. Some of those are covered in the beginning of the minister's amendments. Paragraph (a) of the ministers amendment is not a problem, but in my view paragraph (b) is because it enables. I feel confident that some of these committees will be closed all the time and that, as a matter of practice, they will conduct all their proceedings (apart from submissions) behind closed doors.

I refer the minister to subsection (8) of section 90 which notes that informal meetings can still be held. I do not have a problem with that. It provides that informal meetings can be held provided that a matter which would ordinarily form part of the agenda for a formal meeting of a council or council committee is not dealt with in such a way as to obtain or effectively obtain a decision. This provision does not prevent these committees from having some discussions, but what it does is provide that, in a public forum, they must have a substantive discussion and that substantive decisions have to be made in public.

It was never my intention that the committee under any circumstances could not meet behind closed doors. However, the minister's subclause (b) gives them carte blanche to disappear behind closed doors whenever they are not taking evidence. If the minister looks at section 90 of the Local Government Act she will see that it clearly entertains the possibility of discussions taking place either for reasons of commercial confidentiality or for more general discussion.

I am disappointed that the minister should entertain the prospect that transparency could be lost. The minister is quite right in saying that I have often and repeatedly stood up for the rights of local government. However, when they put up resistance to freedom of information, I support freedom of information going into local government because the issue of transparency is really important in the democratic process. It is a very important issue. I do not want us to lose transparency in the planning process.

We will have decisions and debate about non-complying developments behind closed doors not only by elected members of local government but also by non-elected members—people who have been appointed by the minister. We are heading towards arbitrary decision making because, if you do not know what the arguments are and who is voting what way, you could end up with two people with essentially the same submission—one getting up and one not getting up. You are setting up the possibility for corruption in this way because there is no real accountability for the decision making process.

The only thing you know at the end of the day is what submissions came in and what the decision was, and everything in between disappears. I am surprised and disappointed that the Labor Party seems to be acknowledging that there is a bit of a point here but, at the end of the day, accepts what the government is saying which is, 'Let these committees go into camera any time they want, including the substantive debate and the vote.' That just makes for arbitrary decision making.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: And bureaucratic red tape. But it will happen and in fact the committees will comprise bureaucrats—unaccountable bureaucrats because you will not even know why they have done what they have done. So, I am disappointed. I am not sure that the minister is sufficiently familiar with section 90 of the Local Government Act. As I have seen her as a relatively liberal Liberal, I am surprised that she is prepared to tolerate a lack of transparency in local government.

It is no good arguing, 'If they get their development plan right we've got nothing to worry about.' I would agree that many things have gone wrong because development plans have not been well thought through but, at the end of the day, there will still be non-complying developments which ultimately, on their merits, should be able to get up. But, if they are non-complying, for goodness sake at that point the development plan is not of any further assistance. What is important is to know how the decisions were made, because they provide guidance in terms of precedent, in terms of what it is that made a development acceptable or not.

I am disappointed with the way things have headed so far in this debate, but I suppose, considering that this parliament overall has not been particularly keen on transparency in the democratic process, I should not be surprised that it does not want to inflict it on local government.

The Hon. DIANA LAIDLAW: I will not rise to that remark. I ask the honourable member to take the emotion and the heat out of the big 'P' political context that he is trying to run here and ask him to accept that we are asking, through these series of amendments that I have moved, no more or less of local government than we provide for ourselves through our committee process. I highlight that, in terms of any select committee that we set up in this place, we provide—and the honourable member would have moved it time and again—that standing order 396 be suspended so as to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but that they shall be excluded when the committee is deliberating. That is the standard which we provide for ourselves and which the honourable member would have moved in all the lovely committees that he is so keen to see set up in this place.

Further, under the Parliamentary Committees Act 1991 I highlight that, regarding the admission of the public—and this is for the ERD Committee, the one he sits on, and other committees that the parliament establishes as standing committees—clause 26 provides that, except when the committee otherwise determines, members of the public may be present at meetings of the committee when the committee is examining witnesses but may not be present when the committee is deliberating. That is what we think is a fine standard for us when we are deliberating: we exclude the public. The government's amendment has not gone as far as that by saying that councils will exclude the public; it says

that councils have a right to determine whether circumstances are appropriate for them to exclude the public.

You can grandstand, breast beat and do all the rest for any political reason, but this is not about transparency, because we provide for that, so you cannot accuse the government of denying transparency. This is about the standard of decision making which we set ourselves for our own decision making processes, which I would have thought was completely appropriate and in fact is moved in a more relaxed way for councils. I reject outright the statement by the honourable member that we are seeking to deny transparency: what we are seeking to do is to provide a set of guidelines for councils to make their own decisions about the way in which they should advance sound development, assessment and determination in their own council areas.

The committee divided on the Hon. Mr Elliott's amendment:

AYES (4)

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

NOES (12)

Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T.	Holloway, P.
Laidlaw, D. V. (teller)	Lawson, R. D.
Pickles, C. A.	Roberts, T. G.
Schaefer, C. V.	Sneath, R. K.
Stefani, J. F.	Zollo, C.

Majority of 8 for the noes.

Amendment thus negatived.

The Hon. M.J. ELLIOTT: I move:

Page 15, after line 24—Insert:

(8a) A regional development assessment panel must ensure that accurate minutes are kept of its proceedings.

(8b) Members of the public are entitled to reasonable access—

(a) to the agendas for meetings of a regional development assessment panel; and

(b) to the minutes of meetings of a regional development assessment panel.

(8c) Minutes must be available under subsection (8b)(b) within five days after the relevant meeting.

Three matters are covered by this amendment: first, that the regional development assessment panel must keep accurate minutes; secondly, that members of the public are entitled to reasonable access to both the agendas and minutes of the meetings of the regional development assessment panels; and, finally, that the minutes must be available under subsection (8b)(b) within five days after the relevant meeting. I note that it is the same requirement that exists for local government in relation to the keeping of minutes. It may be that the minutes have not been ratified but local government has worked under those rules and, in fact, the government has had them in place for a considerable period of time, so I cannot see that there will be any problem with that requirement. Again, it is a matter of attempting to get as much transparency in this process as we can.

The Hon. DIANA LAIDLAW: I support in sentiment the matters raised by the honourable member but I do not support his amendment. I have a similar amendment on file but I have highlighted that the minutes must be available under subsection (8d)(b) within five days after their adoption by members of the panel rather than the provision that the honourable member has moved, which I think is far too relaxed, that is, the reference to five days. I believe there is an important distinction between the honourable member's amendment and what I provide in my amendment.

The Hon. T.G. ROBERTS: The Labor Party indicates that it will be supporting that amendment.

The Hon. Diana Laidlaw's amendment carried.

The CHAIRMAN: I will not be putting a question on the Hon. Mr Elliott's amendment.

The Hon. M.J. Elliott: I am not sure that I follow.

The CHAIRMAN: Because of the nature of the debate, the amendments covered a number of issues and some were overlapping. The Minister for Transport sought leave to move her amendment in an amended form which she did in the earlier debate on the first question on part of the Hon. Mr Elliott's first amendment; then I asked the Hon. Mr Elliott to move his amendment which then came in after line 24.

The Hon. M.J. ELLIOTT: I move:

Page 15, after line 33—Insert:

(11) A council may, by giving the minister at least two months notice in writing, withdraw from a regional development assessment panel.

(12) If a council withdraws from a regional development assessment panel under subsection (11)—

(a) the council remains liable for its share of the costs and liabilities of the regional development assessment panel incurred or accrued before the date of withdrawal; and

(b) the Governor may, after the minister has consulted with the remaining councils, by regulation, vary or revoke to a regulation previously made under subsection (3) or (4) on account of the withdrawal (and in this case subsection (10) does not apply).

It seems to me that at this stage many councils are saying they would like to go into regional development assessment panels. Over time, it may be that some councils will decide they no longer want to be in a particular development assessment panel. It might be that they will either want to withdraw from the process or indeed decide that they would like to go into a different panel with another set of councils.

While we have a mechanism in the bill to go into the development panels, there is no way of coming out and perhaps going into a different regional development assessment panel. It seems to me that that is an unreasonable restriction on local government and I hope that all members agree.

The Hon. DIANA LAIDLAW: The government supports the amendment.

Amendment carried; clause as amended passed.

Clause 17.

The Hon. M.J. ELLIOTT: I would argue that the ministerial investigation of development assessment performance is unnecessary because, in fact, there is already power in the existing act for any person to seek enforcement or remedies for a breach under section 85. I do not think there is any justification for this new section 45(A), recognising that section 85 should provide the necessary power for any person to seek enforceable remedies.

The Hon. DIANA LAIDLAW: The government does not support the position of the Australian Democrats. The Hon. Michael Elliott, in opposing this clause, has made reference to section 85. I will highlight the technical grounds. Section 85 does provide the minister with certain powers, but they are in terms of a breach of the act. This specific provision before us now is in terms of a breach of administration and there is that technical difficulty. I would argue that the independent investigation provisions (which I understand are fully supported by the Local Government Association) recognise that there may be a need from time to time for the minister to have some greater flexibility in responding to concerns raised about the development assessment performance of a relevant planning authority.

It is about the performance and not about a technical breach of the act. I understand where the honourable member is coming from but I would argue very strongly that there are independent investigation provisions. While one would hope that they will never need to be used, there should be a provision to cover concerns about the development assessment performance of a council or relevant planning authority.

The Hon. CAROLYN PICKLES: On behalf of my colleague the Hon. Terry Roberts, I indicate that the opposition is supporting the government position on this clause.

Clause passed.

New clauses 17A, 17B and 17C.

The Hon. M.J. ELLIOTT: I move:

Amendment of s. 46B—EIS process—Specific provisions

17A. Section 46B of the principal Act is amended—

(a) by inserting after subsection (8) the following subsection:

(8a) The Minister must then ensure that copies of the proponent's response are available for public inspection and purchase (during normal office hours) for at least 20 business days at a place or places determined by the Minister and, by public advertisement, give notice of the availability of the response and invite interested persons to make written submissions to the Minister on the response within the time determined by the minister for the purposes of this subsection.;

(b) by striking out from subsection (9) 'then' and substituting ', after the expiration of the time period that applies under subsection (8a),';

(c) by inserting after subparagraph (iii) of subsection (9)*(b)* the following subparagraph and word:

(iv) any submissions made under subsection (8a); and;

(d) by inserting in subsection (10)*(a)* 'or (8a)' after 'subsection (5)'.

Amendment of s. 46C—PER process—Specific provisions

17B. Section 46C of the principal Act is amended—

(a) by inserting after subsection (8) the following subsection:

(8a) The Minister must then ensure that copies of the proponent's response are available for public inspection and purchase (during normal office hours) for at least 20 business days at a place or places determined by the Minister and, by public advertisement, give notice of the availability of the response and invite interested persons to make written submissions to the minister on the response within the time determined by the Minister for the purposes of this subsection.;

(b) by striking out from subsection (9) 'then' and substituting ', after the expiration of the time period that applies under subsection (8a),';

(c) by inserting after subparagraph (iii) of subsection (9)*(b)* the following subparagraph and word:

(iv) any submissions made under subsection (8a); and;.

Amendment of s. 46D—DR process—Specific provision

17C. Section 46D of the principal Act is amended—

(a) by inserting after subsection (7) the following subsection:

(7a) The Minister must then ensure that copies of the proponent's response are available for public inspection and purchase (during normal office hours) for at least 15 business days at a place or places determined by the Minister and, by public advertisement, give notice of the availability of the response and invite interested persons to make written submissions to the Minister on the response within the time determined by the Minister for the purposes of this subsection.;

(b) by striking out from subsection (8) 'then' and substituting ', after the expiration of the time period that applies under subsection (7a),';

(c) by inserting after paragraph *(b)* of subsection (8) the following paragraph and word:

(ba) any submissions made under subsection (7a); and.

Members who have been in this place for a number of years would know that the Democrats have been particularly critical of the EIS process, and more recently we have had the PER and DR processes added to the range of options available for assessment of some projects. The Democrats would like to see quite a significant overhaul of the EIS process but these amendments address one particular deficiency, that is, the involvement of the public in the EIS process. At present, the public really have only one opportunity to comment during the EIS process and the inadequate involvement of the public leads to a number of difficulties.

First, one needs to realise that the public collectively has a great deal of knowledge. I remember when I first became involved in debates about the Jubilee Point project that one of the people who came to speak to me about the issue was a CSIR0 scientist whose doctorate was a study of the Adelaide foreshore: he knew more about the Adelaide foreshore than probably anyone else in Adelaide. He predicted that any structures built on the beaches would invite disaster. That member of the public had very specialist knowledge. The way the EIS process worked, and works, is that he was able to put in a written submission—and he might or might not have been invited to make an oral submission—but that would then disappear into the process.

Subsequently, the people who prepare the EIS summarise what this person had to say, even though they might have completely misunderstood. There does not have to be any malice or any bias involved; those things would only make it worse. There is no way for any future involvement of that person in the process, with all the knowledge they have. I am seeking in these amendments to give a greater opportunity for genuine public involvement in the process.

New clause 17A, proposed new subsection (8a), provides for public input. There have been a couple of EISs where there has been some invitation for the public to give further input, even though the act does not allow for it. It makes sense to do that, because we have to make sure that issues that have been raised early in the public consultation process have been fully understood and fully addressed. At the end of the day, it does not change the basis of the EIS in so far as the minister will make a decision. It does not alter the power. I hope it will perhaps improve the quality of the assessment itself. There are a number of other changes I would like to see made to improve the quality of assessment, because I think we can point at several EISs where the assessment has not been up to scratch, and we all pay the price for that. It is not a matter of whether you think developments are a good or a bad thing, in terms of how they look or anything else: if it ends up costing the state a lot of money for ever more, as one development is proving to do, and if it is avoidable and perhaps can be avoided with better assessment, then we need to get the assessment process right.

This improved involvement of the public, which contains a great deal of expertise, is of value. It would also in part address a more general public jaundice towards a system that people see as rigged. It does not matter whether or not people agree that it is rigged; the fact is that the public view is that it is, and that the public feels that for the most part decisions have been made and that we are just going through a charade. The more one seeks to engage the public in this process—

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: There is a risk of that, but it does allow some genuine examination of issues in a little more depth. A charade can still be played, but we have to accept that honest mistakes are made at times, and perhaps this could address some of those.

The Hon. DIANA LAIDLAW: The government is opposed to the amendment. We have a process in this state in respect of major developments where the major develop-

ment panel determines the type of environmental assessment that will be made. That assessment is undertaken, the public then has its say—and that is actively encouraged—and the proponent then responds to those issues, so that is a well defined public process. The honourable member is now seeking to add to that process by having a second say for the public on the proponent's response before the assessment is undertaken and released.

Having been involved in these processes for some three years now as Minister for Urban Planning, I can say that I take very seriously the accusation that we have just heard here that the process is rigged. A determination that a major development application should be undertaken is on the minister's decision alone, because there is reason to believe that there are environmental, economic or social grounds. Having made that determination, you take that decision very seriously in seeking the best outcome from this process that the parliament has entrusted to the minister. It is not rigged: it is one where you genuinely seek public input and the proponent's response. That is done where this parliament has determined that, given special circumstances surrounding a major development, the assessment process should be shortened.

What disturbs me about the exercise that the honourable member is suggesting is that it provides little to distinguish the major development panel's determination of which type of assessment is appropriate to that major development. You may as well abandon what the parliament has determined in the past as the three types of assessments that can be concluded as necessary to be undertaken by the proponent of a project designated to be a major development. I think that would be unfortunate in the circumstances, because the parliament has refined the process to take into account the different nature of a major development. So, I would argue that that is a highly disturbing aspect of the honourable member's amendment. Another disturbing feature is the provision of up to five weeks (if you are lucky) for a second go by the general public after the—

Members interjecting:

The Hon. DIANA LAIDLAW: It is, because the parliament already provides that when the EIS is released it is available for public comment. We deliberately seek that public comment then, the proponent responds to that public comment and the assessment is then made, taking into account the public comment to the EIS and the proponents's response. It is a fair and even-handed process that the parliament has determined should be advanced for projects (and there are not many of them) that are seen fit to be a major development. Generally, a minister would determine it on environmental grounds, so you would hardly be frivolous about environmental issues if the grounds for granting a project major development status are on environmental grounds.

This amendment blurs or makes irrelevant any distinctions between the three types of environmental assessments that we would require, and also extends the time line, which was one of the reasons why in its wisdom this parliament passed major development provisions some years ago, well before I was minister. We would not wish to see a departure from that course. I would not want to see the relevance and importance of the major development process gradually whittled away by endless tinkering at the edges, because I think the process works well, is credible and has brought sound outcomes.

The Hon. T.G. CAMERON: To how many applications would this clause apply if it were passed?

The Hon. DIANA LAIDLAW: In anticipation of this question—although it is not a dorothy dixer—I advise that, since 1997 when I became minister, some 11 major developments have been declared, and 14 chose not to make a declaration. We take very seriously parliament's responsibility to assess these. Many developers would wish their project to go through the major development status, but that would discredit the very special circumstances the parliament has stipulated for the streamlining of the planning system. So, rather than any project a developer would see fit to advance being fast tracked, the majority have not had major development status declared.

The Hon. T.G. CAMERON: Would the minister put on the record what the 11 major projects were?

The Hon. DIANA LAIDLAW: This is in a form that could be inserted into *Hansard*. It is not confidential; it is public property. I seek leave to have inserted into *Hansard* the table of those that have been declared since 1997.

Leave granted.

Major developments declared since the beginning of 1997

Proposal	Level of assessment	Declared date	Date completed
Adelaide Central Plaza (formerly Capital City Adelaide)	Development Report	22 May 1997	2 July 1998
Beverley Uranium Project*	Environmental Impact Statement	2 June 1997	16 April 1999
Honeymoon Uranium Project*	Environmental Impact Statement	25 June 1997	-
Redevelopment of the Hindmarsh Soccer Stadium	Development Report	11 September 1997	24 September 1998
Redevelopment of Memorial Drive Tennis Centre	Development Report	29 January 1998	24 September 1998 17 June 1999
Mildara Blass Winery Proposal	Development Report	26 November 1998	7 October 1999
SAMAG Magnesium Project			
· Haul Road—Port Augusta	Environmental Impact Statement	15 April 1999	-
· Magnesium Smelter—near Port Pirie	Environmental Impact Statement	25 May 2000	-
Holdfast Shores—Stage 2	Development Report	15 July 1999	-
SA-NSW 275 kV Interconnected (SNI)—Transgrid	Environmental Impact Statement	27 January 2000	-
AMCOR Plant	-	28 September 2000	-

*Declared by Mining Minister

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: For the honourable member, I will read out what I accepted: Adelaide Central Plaza (formerly Capital City Adelaide); Beverley uranium project; Honeymoon uranium project; redevelopment of Hindmarsh Soccer Stadium; redevelopment of Memorial

Drive Tennis Centre; Mildara Blass winery; SAMAG magnesium project—the haul road to Port Augusta and the magnesium smelter near Port Pirie; Holdfast Shores Stage 2; the SA-New South Wales 275 kilowatt interconnector TransGrid project; and the AMCOR plant.

The Hon. T.G. CAMERON: I thank the minister for that information. It was extremely enlightening. SA First will support the Democrat amendment.

The Hon. M.J. ELLIOTT: I noted that the minister said that the public had already had one bite of the cherry, or something along those lines. I made the point before, and it is an important one, that as the process currently works there is opportunity for a public submission, but the public submission basically goes into the process. It is a one-off chance to make a written submission and sometimes people are asked for an oral submission. What is given is taken away and processed by somebody else. Later on we see the issues raised by a member of the public and what is thought of them.

As one example, I mention a fellow who had a PhD from studying beach sand along the Adelaide coast. He probably knew more about the issue than anybody else but somebody else decided what points he was making and probably missed most of them, and he had no chance to say that he was misunderstood and that the wrong emphasis was put on something. That is not unimportant. If we are trying to have a genuine scientific inquiry (and I would have thought that a genuine EIS process is in part about that), we must try to establish the facts. There are two stages to an EIS. Stage 1 is to establish the facts—what are the potential economic, social and environmental impacts? The next process is the political one. On the basis of that, the minister decides whether or not it will go ahead.

It is really important, regardless of what decision is made by the minister, that the facts are laid out and are given full scrutiny. I do not believe that the input of the public allows a genuine analysis of issues. A number of people have told me that they made a submission and presented me with someone else's version of what they said. What we see in the final EIS document is a summary of the submissions. It also contains the proponent's response. The person may know that the proponent got it wrong, but they have no input. By then the document is prepared, and that is what the minister makes up his or her mind on. That is not an acceptable process if we are trying to establish the facts. There are two parts to the EIS process: one is to establish the facts and the other is to make the decision.

With major projects, we have taken the project outside the normal planning process, recognising that there are matters of great significance and recognising that it is so important that, ultimately, the decision will need to be a political one. I do not have a problem with that but I do have a problem if decisions are made on bad information and if we do not have a process that ensures that we have good information. I have said previously that there are other changes that I would like to see to the EIS process. For instance, the major projects panel, which makes a decision about whether there is an EIS, PER or DR, should follow the process right through and oversee it. That panel has to determine the important issues that need to be addressed, and then it is pulled away and it disappears into a more bureaucratic process. Let us optimise and maximise the knowledge that the public has on matters related to environmental impact statements.

Sometimes the EISs get it right. It is still early days and I have not put it through full scrutiny, but the SAMAG EIS looks to be a fairly thorough document on my first reading, and I have been reasonably impressed that it has focused on the key issues, which were likely to be things like thermal warming of the gulf. It has gone into great depth in analysing that issue. By comparison, the EIS for Glenelg covered sand movement issues superficially, yet that was always going to be a major issue and has proven to be one of the major failings of the project. There was no real encouragement for that to be looked at in depth.

This is not a criticism of the minister. I do not expect the minister to supervise all the fine detail of the EIS process, but at this stage the process is hit and miss. What I have seen so far, for the SAMAG project the EIS process looks to have worked reasonably well. I reserve my judgment because I have not had a chance to go into finer detail but it appears to have gone into a great deal of depth on matters of importance, but other EISs, of which the Glenelg one is an example, have not come to grips with the important issues. That is a criticism not of the government or the minister but of the process.

All I am trying to do is improve the quality of the information that gets to the minister. I believe that giving the public two bites of the cherry, as the minister describes it, will improve the quality of the process. The minister says it could drag it out but, if the minister looks at the EIS process, she will see that some are incredibly long. If we get the public involvement right, it would not need to be a simple addition of saying that 20 days has been added to the process. I believe it is capable of fitting within the current time frames.

The Hon. T.G. ROBERTS: The opposition has a lot of sympathy for the points made by the Hon. Mr Elliott in relation to some of the failed developments. The EISs appear to be run on consultants' reports that appear to have been directed at an outcome rather than the best scientific evidence, drawing that evidence to a conclusion, basing an outcome on best scientific evidence. It is a roundabout that members of the public do not trust in a lot of cases, particularly when those developments impact on them or their lifestyles. As I said in my earlier contribution, they may have access to more information than, in some cases, the consultants, whether by way of retired CSIRO residents, the internet or by personal consultation with experts engaged by themselves at their own cost. That is happening at the moment in relation to some developments where community organisations and active community groups are starting to commission consultants' reports because they have a lack of trust in outcomes determined by them as a result of the systems that we operate.

That is not only a criticism of the South Australian system but it can be made nationally and probably internationally as well. I am not au fait with what is going on overseas but in Queensland a number of projects in recent times have been questioned by community organisations raising funds and commissioning their own consultants' reports. Governments are on notice that communities will not put up with reports that have been given targeted outcomes, and a lot of cynicism comes from communities who believe that consultants will write reports that have favourable outcomes for governments, otherwise they will not get commissioned again to do what they think the masters of those reports want.

Whether or not that is true, I am in no position to say. In relation to some of these failed projects, which have failed miserably on important environmental matters, when some of these community organisations were raising issues of particular environmental importance, their criticisms and predictions of some of those projects came true very quickly.

Governments pay for those mistakes, and I guess what the amendments that the Hon. Mr Elliott is putting forward are saying is, 'We don't trust the system that operates now. We want an overrider to that system that will produce the effect that the honourable member has described.' I suspect that, because of some of the newer developments in tactics used by community groups and organisations—and I am not pointing a finger at any group or organisation, but there are now professional disrupters within community organisations which have targeted community groups and which are now acting on behalf of proponents of projects.

They are well funded, and I can cite the case of one in Sydney, where a development project proponent actually funded a community organisation to get a particular outcome. That was in direct opposition to a genuine community group that started up with no funds at all, using the political system to drive its opposition to a particular project, and the contamination of the community's intentions was delivered on the basis that the intentions of the developers had contaminated that process.

So, I do not think that the answer to the problem we have is the one included in the amendments. If community groups and organisations are to be set up, I would ask how they are going to be funded, because that is an important part of the first stage of community activities in trying to keep up with bureaucratic reports and activities. If the funding is not there, the information is not there.

It can be there in a sense from well intentioned volunteers but, if you are trying to get your best possible position put forward based on best scientific evidence, in a lot of cases that best scientific evidence costs money and, of course, once you go down that road, you move away from being a community group or organisation representing community interests, and you could possibly—although I am not saying this of all groups and organisations—be contaminated by people less well intentioned than you or the organisation to which you belong.

I do not have an answer as to how you get an evenly weighted, well informed public running of their campaigns at the same time as governments and/or developers are running theirs, because I do not think that there is a formula you can use. The interruptions to that information chain and the misinformation that surround some of the developments are horrific.

We will be opposing these amendments, but we would certainly put the government on notice of the dissatisfaction, although I am sure that it already knows. I am sure that the preliminary stages of information gathering can save governments a lot of money in trying to come to terms with community dissatisfaction about particular projects, by making sure that the public relations campaigns are not just smiling faces and happy buttons but that the interchange of information between government and the community and developers and the community, based on a contract of fairness and equity, does not treat the public like mushrooms but is able to bring on board community representatives during the preliminary processes in a way that makes the original EIS a genuine one and keeps communities informed.

That sort of process is now developing. We have moved away from the New South Wales process whereby community activists were threatened. There are even unresolved murder cases in relation to development projects in Sydney in the 1960s and 1970s, but we have moved on from there now, fortunately. Let us hope that we can build respect within our communities to base our projects on a better footing in relation to exchanges of information within the structures that we have at the moment.

The committee divided on new clause 17A:

AYES (5)

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

NOES (13)

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

Majority of 8 for the noes.

New clause thus negatived.

New clauses 17B and 17C negatived.

New clause 18A.

The Hon. DIANA LAIDLAW: I move:

After proposed new subsection (7c) insert:

(7ca) If an application is for a development that involves construction work where the total amount to be applied to the work will, when all stages are completed, exceed $4 million, other than an application for a variation to an approved development that, in the opinion of the Development Assessment Commission, is of a minor nature, the Development assessment Commission must—

(a) by public advertisement, invite interested persons to make written submissions to it on the proposal within a period of at least 15 business days; and

(b) allow a person who has made a written submission to it within that period and who, as part of that submission, has indicated an interest in appearing before it, a reasonable opportunity to appear personally or by representative before the Development Assessment Commission to be heard in support of his or her submission; and

(c) give due consideration in its assessment of the application to any submissions made by interested persons as referred to in paragraph (a) or (b).

I think there will be unanimous support for this amendment. It is based on a recommendation to the government by the Environment, Resources and Development Committee in one of its reports that Crown development applications be referred to a number of agencies identified in the regulations, including the EPA, Coast Protection, Transport SA and others. This referral is for advice, not for direction, and the minister responsible for the Development Act would continue to determine these applications.

The second part of my amendment, which has not been advanced by the ERD Committee, arose in discussions about the provisions of the bill. What the government proposes is that Crown developments above $4 million in value be the subject of a public advertisement and that people be invited to make written submissions within a period of at least 15 days. That would be at the same time as the Crown development is being referred to the agencies that I have nominated in the earlier part of the amendment. It does not seek to drag out the process. It simply seeks to provide an extra level of comment from interested persons but not for all Crown developments, only those of over $4 million, which is the same level that is currently provided for under the Public Works Act for Crown developments to go to the Public Works Committee for assessment.

My argument is that, if the Public Works Committee level of assessment for development increases from $4 million to $6 million, $8 million or $10 million, or whatever may be

considered at some stage, so too should this dollar figure trigger be amended so that there is that relationship. There are a number of consequential amendments to the matters that I have just highlighted.

The CHAIRMAN: The first part of the amendment is headed new clause 18A, amendment of section 49—Crown development. The minister's additional amendment is to insert proposed new subsection (7ca).

The Hon. T.G. ROBERTS: The opposition supports the amendment. We have one concern about the base value of the trigger figure of $4 million. What is the government's plan for monitoring stage developments that might start off with a figure of $3.6 million which does not trigger the interventionary process that we are recommending but then over time might aggregate to $10 million or $12 million?

The Hon. DIANA LAIDLAW: Proposed new subsection (7ca) provides:

> If an application is for a development that involves construction work where the total amount to be applied to the work will, when all stages are completed, exceed $4 million. . .

So, you cannot be too smart by half and do it in bits and pieces and the government try to evade the procedure of public advertisement and written applications. It must be the total project cost on completion.

New clause inserted.

New clause 18B.

The Hon. DIANA LAIDLAW: I move:

> Amendment of s.49A—Development involving electricity infrastructure
>
> 18B. Section 49A of the principal act is amended—
>
> (a) by striking out subsection (7) and substituting the following subsections:
>
> (7) The Development Assessment Commission must assess an application lodged with it under this section.
>
> (7a) The regulations may provide that where an application relates to a proposed development of a prescribed class, the Development Assessment Commission must refer the application, together with a copy of any relevant information provided by the proponent, to a body prescribed by the regulations for comment and report within the time prescribed by the regulations.
>
> (7b) A prescribed body may, before it provides a report under subsection (7a), request the proponent—
>
> (a) to provide additional documents or information (including calculations and technical details) in relation to the application; and
>
> (b) to comply with any other requirements or procedures of a prescribed kind.
>
> (7c) If an applicant is referred to a prescribed body under subsection (7a) and a report from the prescribed body is not received by the Development Assessment Commission within a period determined under the regulations, it will be conclusively presumed that the prescribed body does not intend to report on the matter.
>
> (7d) If an application is for a development that involves construction work where the total amount to be applied to the work will, when all stages are complete, exceed $4 000 000, other than an application for a variation to an approved development that, in the opinion of the Development Assessment Commission, is of a minor nature, the Development Assessment Commission must—
>
> (a) by public advertisement, invite interested persons to make written submissions to it on the proposal within a period of at least 15 business days; and
>
> (b) allow a person who has made a written submission to it within that period and who, as part of that submission, has indicated an interest in appearing before it, a reasonable opportunity to appear personally or by representative before the Development Assessment Commission to be heard in support of his or her submission; and
>
> (c) give due consideration in its assessment of the application to any submissions made by interested persons as referred to in paragraph (a) or (b).
>
> (7e) The Development Assessment Commission will then prepare a report to the minister on the matter.;
>
> (b) by inserting after subsection (9) of the following subsection:
>
> (9a) If a prescribed body has provided a report under subsection (7a), a copy of the report must also be attached to the Development Assessment Commission's report.;
>
> (c) by striking out from subsection (10) "three months of its receipt of the relevant application" and substituting "the time prescribed by the regulations";
>
> (d) by striking out from subsection (11) "three-month".

It is the same argument, but it relates specifically to electricity infrastructure because, within the past 12 months or so, we had to amend the Development Act to provide specifically for development involving electricity infrastructure. These amendments simply apply what I have argued and what the Legislative Council has now approved as the process for consultation and agency input for Crown developments. This amendment provides exactly that same process but for the Crown's developments involving electricity infrastructure and private sector investments undertaken on behalf of the Crown in terms of electricity infrastructure.

The Hon. T.G. ROBERTS: The Labor Party will support it based on the safeguards provided by the previous clauses. However, why have we seen it only in this time frame?

The Hon. DIANA LAIDLAW: Because there has been a lot of consultation about these various provisions, and there are processes the parties must go through, and the government also. I was able to confirm to the opposition only recently that the government is prepared to accommodate these amendments. It was my understanding that the opposition and the Hon. Terry Cameron would find them agreeable and, if I was really lucky, I thought the Democrats might agree with me, also.

New clause inserted.

Clause 19.

The Hon. M.J. ELLIOTT: I have withdrawn the amendment I originally had to this clause.

The Hon. T.G. Roberts interjecting:

The Hon. M.J. ELLIOTT: You will get a chance; the issue still comes up. I indicated during the second reading stage that I thought that the government's clauses in relation to car parking were—and I am not sure what word to use, but I might even use the word 'brilliant'—a really excellent idea.

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: I still think they were a really good idea.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: That's right. I thought that the concept that was contained within it was worth taking further. I will briefly repeat what I said because it leads on to another set of amendments I am about to move. The car parking fund will obviously be important in inner city areas—areas which are being redeveloped where quite dense development is going in—where particular developments may not have sufficient car parking within them.

A council might decide that it wants to tackle car parking on the basis of a designated area. So, rather than saying each person has to supply a certain number of car parks, what it might do is to try to have some denser car parking stations or whatever else, and rather than requiring the car parking to be incorporated within the development they can levy a fund which can then be used to put some car parking within the designated area. That makes a great deal of sense.

I would argue that car parking is not the only issue we need to address in inner urban areas, and particularly those that are being redeveloped. For instance, one thing that is happening with redevelopment is that the percentage of hard surface is increasing, so the amount of stormwater is increasing quite dramatically. Some councils, if we do not do something about it fairly soon, could find that the stormwater capacity is only half what it needs to be to cope with development, and as a result councils will be up for major expenditure.

Another thing worth looking at is the issue of green space. There are some parts, particularly inner Adelaide and the western suburbs, where there is very little green space. There is a state green space fund, but very little inner city development is captured by it. Certainly on the urban fringes new developments are required to put in a certain percentage of green space, or sometimes they pay a little bit of money into the fund.

What I sought to do in the first instance was to change the car parking fund to a development fund, and the initial amendment I put on file did that. However, I am now seeking to leave the car parking fund as a discrete fund as first proposed, and my proposed amendment will allow a council to essentially approach the minister and say, 'In this particular area of our council we have a major problem with stormwater, but it is also an area we want to re-zone perhaps for denser urban development. We would find it useful if we could have a stormwater fund', or, 'In this particular area we would find it useful if there was a green space fund'. In other words, different councils might have different needs. So, instead of changing the car parking fund to a development fund, my proposed amendment will enable the council to approach the minister. The minister by regulation can then set up a designated fund for a designated purpose. In fact, that is something that can negotiate whatever else needs to be done to ensure that it does not become very arbitrary in its application.

What I am seeking to do is to replicate it but, rather than simply having a car parking fund for every council, individual councils might recognise particular needs and, if they can convince the minister that their need is justifiable, the minister by regulation could then bring these other funds into play. I hope that the minister will accept the acknowledgment of the good idea that she has had and perhaps also see that the idea does have further application. I think it needs to be recognised that, as we go into the urban consolidation phase we are now in, hopefully the urban sprawl is slowing down and that inner city councils have a major problem on their hands coping with infrastructure.

For new developments on the fringe, the stormwater gets put in by the developer, the roads get put in by the developer and even green space is put in by the developer. But what about the inner city, as we go through redevelopment? In fact, the redevelopers do not make a contribution to the necessary infrastructure. I think that there should be the same sort of expectation. In some cases they will make an increased demand on infrastructure, for instance, an increased demand on stormwater or, as the minister has here, an increased demand on parking. There must be a way of ensuring that the true costs of development to the community are picked up. By this sort of device, a device which is indeed the minister's suggestion, I think that we can address not just the car parking issue.

As I said, I have withdrawn the amendments I had on file to clause 19 in terms of establishing a development fund in place of a car parking fund, but I flag an amendment to insert a new clause to enable the establishment of development funds, and that will be new section 50B. I move:

Page 18—

Line 19—Leave out "section is" and insert:

sections are

Page 19—

After line 27—Insert:

Development funds

50B. (1) The Governor may, by regulation, establish a development fund for a part of the area of a council designated by the regulation (a "designated area") for a purpose designated by the regulation (a "designated purpose").

(2) A regulation may only be made under subsection (1) on the application of the relevant council.

(3) A designated area must be defined by reference to an area established by the relevant Development Plan.

(4) A fund will consist of—

(a) all amounts paid to the credit of the fund under subsection (5); and

(b) any income paid into the fund under subsection (7).

(5) If—

(a) a person is proposing to undertake development of a prescribed kind within a designated area; and

(b) application for provisional development plan consent is made under this Part; and

(c) the relevant authority considers—

(i) after taking into account the provisions of the relevant Development Plan, that the development does not adequately provide for certain facilities or infrastructure; or

(ii) after taking into account the nature of the development, that it will be necessary or desirable to provide certain facilities or infrastructure in connection with the development; and

(d) the relevant authority and the applicant agree that the applicant will make a contribution to the relevant development fund under this section; and

(e) the applicant makes a contribution to the development fund of an amount calculated in accordance with a determination of the relevant council,

then the development may be approved and proceed despite the circumstances referred to in paragraph (c).

(6) A determination of a council for the purposes of calculating amounts to be paid into a development fund—

(a) has effect when published in the *Gazette*; and

(b) may be varied by the council from time to time by further notice in the *Gazette*.

(7) Any money in a development fund that is not for the time being required for the purpose of the fund may be invested by the council and any resultant income must be paid into the fund.

(8) The money standing to the credit of a development fund may be applied by the council to provide facilities or infrastructure within the designated area for a designated purpose.

The Hon. DIANA LAIDLAW: The government certainly intended to oppose the amendments placed on file by the Democrats to extend the car parking fund for a variety of reasons. It is an arbitrary provision and we know from New South Wales practice that there have been a lot of very questionable arrangements—underhand and under carpet—arising from the open-ended nature in which deals can be done by unnamed councillors seeking support for votes for a whole range of very open-ended provisions under the Local Government Act. I think for some very good reasons no other state has adopted such an open-ended process. The honourable member has indicated that he has placed—

The Hon. M.J. Elliott: I took on board what the minister said.

The Hon. DIANA LAIDLAW: Thank you; I accept that, because I did not necessarily think that the honourable member would want to be associated with an amendment that

could lead to corruption; that is something I would never accuse him of. However, the honourable member has introduced a new set of amendments today (I saw them at about 3 p.m. or 4 p.m.) and they involve quite significant policy issues which I wish to advance with the local government developer industry across the parliament. I should highlight that they are matters that have been advanced since the government released a green paper on urban regeneration and are being considered across government as we advance the feedback from that green paper.

I anticipate taking a whole range of urban regeneration and curb urban sprawl issues to my colleagues to consider in the new year. Whether this type of fund will be advanced as part of that package is something on which I cannot comment at this stage but it is something I want to work on with the Local Government Association and councils generally because, as the honourable member would know, there are some very big issues about the way in which we see the future development of our metropolitan area.

I do not believe anyone wants to see urban sprawl but the consequences of no sprawl is inner city renewal where we have a declining population and ageing infrastructure assets. As I have said in this place before, people are very happy to have all the rights they want to exercise on their own property but, as I have learned through bitter experience in planning, they do not want those same rights to be exercised by their neighbour or people down the street or across the road.

We have to work through these issues with a great deal of care and so, fundamentally, I do not want to dismiss what the honourable member has proposed as a concept but I cannot support it at this stage. In the new year, it may well be that with further discussion with the Democrats and other members of parliament, the Local Government Association, and people in the community at large a fund of this sort could be considered. However, we must understand what we are asking of the developer industry in relation to their undertaking of a community service obligation—an undertaking that, some may argue (and I can hear it now), is a tax on the developer industry.

The Hon. T.G. Roberts: A tax on the developer industry.

The Hon. DIANA LAIDLAW: Yes, it has started already. I can see Labor Party policy on the run. We must ensure that we approach this with care to get the right result, as far as we can manage it. With community support, we should be looking broadly at the issues and acknowledging that the honourable member has advanced an issue which should not be dismissed but which must be subject to much more considered debate across the community at large. So I reject it with an open mind—if the honourable member will accept that approach.

The Hon. M.J. Elliott: That is much better than other rejections I have had.

The Hon. T.G. ROBERTS: It is the most gracious rejection of a concept I have heard for some considerable time—the concept is fine but the amendment is no good. The Labor Party has been persuaded by the argument put forward by the Minister in relation to the concept. We support the car parking fund and indicate that it formalises what are already existing practices.

I note the proposition put forward in relation to vandalising the concept and turning it into a slush fund. South Australia has had a better start, and hopefully a better middle and a better end in relation to local government. I do not see that the concept being set up by the honourable member would or could lead to corruption if it has been set up in a formalised way with checks and balances built into it. We will probably see it in March, coming out of the Liberal Party policy rooms and in their documents which I hope the honourable member—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: I am saying that we might see some developed plans that were filched from all parties, including the Democrats. I would suggest that the Democrats get that out into a policy statement and letter box it straight away. We will be supporting the amendment. We will also be supporting the concept—

The Hon. Diana Laidlaw: Are you supporting the amendment?

The Hon. T.G. ROBERTS: Only the amendment that introduces the car park fund.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: Yes.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: Well, you had better come over and check my notes, minister. That is our contribution.

The Hon. M.J. ELLIOTT: This might be an appropriate moment, recognising that I am going to lose the clause, to burst into tears. No, it might be an appropriate moment to make an observation about some urban consolidation happening in Adelaide right now that causes me some concern. There are a couple of forms of urban consolidation. The ERD Committee has been having an unofficial look at urban consolidation. We did a tour around various suburbs looking at some things that are being done.

The Hon. T.G. Cameron: Another junket.

The Hon. M.J. ELLIOTT: Yes, it was a major trip. I must say, as a general comment, I was pretty concerned by what I saw in terms of the quality of urban consolidation happening in Adelaide. I will not reflect on that right now, but I will describe one particular example.

We went to have a look at a site that has just had a PAR done by the Unley council in respect of some land adjacent to Unley Road immediately to the south of Glen Osmond creek. I did not know that Glen Osmond creek was there until the bus turned down the laneway to go into the site. The site was zoned commercial/industrial and has been rezoned residential. I must say—and it is meant to be a quite dense residential area; I am not sure whether it is two or three storeys—that it is an appropriate location in terms of being close to the main road, shops, public transport and quite a few facilities.

The concept of having nodes of dense development is one that, personally, I find attractive. However, having arrived at the site I became concerned when I saw Glen Osmond creek. Initially it is difficult to recognise it as a creek, because what you see is a dead straight concrete drain disappearing from Unley Road in a westerly direction for a couple of hundred metres. Noting that it was mooted for redevelopment and noting that we now have a government talking about cleaning up catchments and those sorts of things, I presumed we might have an opportunity for Glen Osmond creek to be reinstated, cleaned up and all of those sorts of things.

On making further inquiries, it now appears that the current plan for Glen Osmond creek by the Unley council is to put a concrete cap on top of it and use it for car parking. Here we are in the year 2000 and we have this area which will be totally redeveloped in the next decade. Currently Glen Osmond creek is just a concrete culvert, and the current plan for Glen Osmond creek is to put a concrete cap on top of it so that it can be used for car parking—

The Hon. T.G. Cameron: How far?

The Hon. M.J. ELLIOTT: For a couple of hundred metres. I find that quite extraordinary. In reading the new PAR for the area, it acknowledges that there is a shortage of green space in the area. Logic indicates to me that, if there is a shortage of green space, why would you not try to reinstate this creek line as green space—probably put a few little bends in it, plant a few trees, have some grass around it, perhaps even a bikeway—

The Hon. R.R. Roberts: People friendly?

The Hon. M.J. ELLIOTT: People friendly, yes. I must acknowledge that one of the problems that Unley council raised in all of this was that it did not see that it had the money to fix it. In moving my amendments, I think I am acknowledging that there are some problems if councils are strapped for cash. Although there is an opportunity, you can have an argument about whether they are able to grab that opportunity. Because this land is in multiple ownership, it will be a series of smaller developments. They will be substantial but not large enough to put money into green space funds or anything else.

This development might generate a need for a new car park, and I suppose the car parking fund might even pay for the concrete cap that is placed over Glen Osmond creek, which I find quite frightening, if that is what it does. However, with appropriate amendments—

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: Well, they might be. However, I think if you have dead straight concrete drains with near vertical sides they are dangerous for kids. There are things you can do to make them far less dangerous. It worries me that we really are not getting close to having any sort of integrated planning at this stage in terms of addressing issues like this.

Here we are in the year 2000 and I am sure we can do better. My feeling is that the sort of amendment which I put forward and which some people are saying has some merit, but not yet, is one potential answer to address these sorts of issues. We really do have to move quite quickly. As we prevaricate, we are seeing block-splitting going on right through the Adelaide metropolitan area: one house block becomes two, sometimes three; there is lots of concrete, lots of hard roof, and loss of gardens but no compensating green space for people to stretch their legs; and there are massive increases in stormwater, which probably means that larger concrete drains should be used rather than alternative pathways being found.

There is major redevelopment about to happen. Either we just stand back and watch it happen, it will be bad development and the city of Adelaide will be a worse place to live in, or we try in some way to grab the opportunity while it is here and make Adelaide a better place to live in. That is what the amendment was seeking. There may be other ways but there is not a lot on the table at this stage in terms of creative suggestions as to how to do it.

The Hon. T.G. CAMERON: Unlike the Hon. Terry Roberts, I have been lured by the coquettish arguments of the Hon. Mike Elliott and will be supporting his amendment.

Amendments negatived; clause passed.

Clause 20.

The Hon. DIANA LAIDLAW: I move:

Page 20, after line 9—Insert:

(4a) A council must, within 14 days after appointing a person as a member of the development assessment panel, give notice of the appointment by publishing the prescribed particulars in a newspaper circulating in the area of the council.

I note that the Democrats have the exact same amendment on file.

The Hon. M.J. ELLIOTT: As the minister has noted, the Democrats have an identical amendment on file. Obviously, we will be supporting the minister's amendment.

The Hon. T.G. CAMERON: Would all councils have a newspaper circulating in the area of the council?

The Hon. DIANA LAIDLAW: The *Advertiser*.

Members interjecting:

The Hon. DIANA LAIDLAW: The answer is 'Yes.'

The Hon. T.G. CAMERON: What sort of advertisement are they expected to put in and what sort of costs are likely to be involved? It is not cheap to advertise in the *Advertiser*.

The Hon. DIANA LAIDLAW: It could be the country newspaper, for the rural council areas; it could be the *City Messenger* for Adelaide city council; it could be the suburban Messenger Press newspapers—

The Hon. T.G. Roberts interjecting:

The Hon. DIANA LAIDLAW: It could be the *Bunyip*. If the council wants to put it on the front page, it will be very expensive. There are varying rates but I understand the honourable member's concern about the cost. But it could be either the *Advertiser* or a range of local papers, and various rates apply. This was an amendment sought by, I think, the Local Government Association in terms of advising local ratepayers of the names of elected members and council staff who would be members of these panels.

Amendment carried.

The Hon. M.J. ELLIOTT: I do not intend to persist with my amendment to page 20, lines 13 to 25. It is similar to amendments that were rejected by this place earlier.

The Hon. DIANA LAIDLAW: I move:

Page 20, after line 28—Insert:

(9a) Subject to subsection (9ab), a meeting of a development assessment panel must be conducted in a place open to the public.

(9ab) A development assessment panel may exclude the public from attendance

(a) during as much of a meeting as is necessary to receive, discuss or consider on a confidential basis any of the following information or matters:
  (i) information that would, if disclosed, confer a commercial advantage on a person with whom a council is conducting (or proposes to conduct) business, or prejudice the commercial position of a council;
  (ii) commercial information of a confidential nature that would, if disclosed—
    (A) prejudice the commercial position of the person who supplied it; or
    (B) confer a commercial advantage on a third party; or
    (C) reveal a trade secret;
  (iii) matters affecting the security of any person or property;
  (iv) matters that must be considered in confidence in order to ensure that the panel does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
  (v) legal advice, or advice from a person who is providing specialist professional advice;
  (vi) information provided by a public official or authority (not being an employee of a council, or a person engaged by a council) with a request or direction by that public official or authority that it be treated as confidential; or

(b) during so much of a meeting that consists of its discussion or determination of any application or other matter that falls to be decided by the panel.

The Hon. T.G. ROBERTS: The Labor Party supports the amendment and will address some differences in another place.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 20, after line 30—Insert:

(10a) A disclosure under subsection (6)(a) must be recorded in the minutes of the development assessment panel.

This is a pretty straightforward provision. I am moving that a disclosure of interest must be noted in the minutes of the development assessment panel.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 20, after line 33—Insert:

(11a) However, a development assessment panel may, before it releases a copy of any minutes under subsection (11), exclude from the minutes information about any matter dealt with on a confidential basis by the panel.

(11aa) Minutes must be available under subsection (11)(b) within five days after their adoption by the members of the panel.

(11b) An act of a development assessment panel is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

The amendments I originally had on file related to releasing copies of minutes and vacancies in membership, to which I have added a further amendment placed on file since then, which provides that the minutes of the meetings be available within five days of their adoption. It is a slight variation on what the Hon. Michael Elliott had earlier. Prior to the suggestion that the minutes be released, the Democrat amendment did not provide that they be adopted by the panel, and we have strongly recommended that that must be so.

The Hon. M.J. ELLIOTT: I move to amend the minister's amendment as follows:

Page 20, after line 33—Insert:

(11a) Minutes must be available under subsection (11)(b) within five days after the relevant meeting.

As I have done previously, I seek to have the minutes made available within five days of the relevant meeting. I have a concern that regional assessment panels may meet on a monthly basis or even less frequently; it depends on how many issues are referred to them. So, while earlier in clause 11 we talk about people having reasonable access to the minutes, if the assessment panel does not meet frequently I would argue that you are not getting reasonable access if you have to wait until five days after they have adopted the minutes. That could well be five weeks or a good deal more after the original meeting. I would argue that the minister is not then guaranteeing reasonable access. So, I still believe it is reasonable that the minutes be made available, noting that they have not been formalised. That is exactly what happens with local government minutes now, and I have heard no complaints about the fact that local government minutes must be available within five days.

The Hon. DIANA LAIDLAW: A similar amendment to the Hon. Mr Elliott's was defeated when we considered the procedures for the regional development panel. We are now considering the council panel. I would argue that the procedures should be the same across the panels.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: Don't deliberately try to confuse the situation or annoy me.

The CHAIRMAN: The effect of the Hon. Mr Elliott's amendment would be to leave out the minister's (11aa) and insert his own (11a). The question is that the amendment moved by the Hon. Mr Elliott to the Minister for Transport and Urban Planning's amendment be agreed to.

Amendment to amendment negatived; amendment carried.

The Hon. M.J. ELLIOTT: My next amendment was consequential on some earlier amendments that were lost, so I will not proceed with it.

Clause as amended passed.

Clause 24.

The Hon. M.J. ELLIOTT: I move:

Page 22, line 30—Leave out all words in this line after 'amended' and insert:

(a) by striking out paragraph (b);

(b) by inserting after its present contents (as amended by paragraph (a) and now to be designated as subsection (1)) the following subsection:

(2) This section expires on 1 January 2006.

It is one of the curiosities in South Australia that one rule applies to the private sector and another to the public sector and when talking about safety standards in buildings I point out that government buildings do not have to comply with the same standards as private buildings. Either something is safe or it is not; something is reasonably safe or it is not. How there can be a double standard in buildings just because of ownership is a mystery—

The Hon. T.G. Cameron interjecting:

The Hon. M.J. ELLIOTT: Because a lot of government buildings do not comply now. Standards are expected of the general community but they do not have to apply to anything that is publicly owned. I find that quite extraordinary and I have tried to be extremely generous by suggesting that the government has until the year 2006 to try to reach the same standards that are expected of everybody else today.

The Hon. DIANA LAIDLAW: The government opposes the measure, not on the basis that we regard fire safety as an issue where the government does not have immense responsibility, both to the public and in terms of its own public buildings, but because the government is an enormous landholder and owner of buildings. I assure the honourable member that, as the capital budget permits—and we have a big capital budget for building upgrade, and I highlight North Terrace in recent times and schools in general—fire safety is always undertaken and brought up as part of the process of upgrading those buildings, but it is not undertaken as a separate exercise that can be out of sync with the forward agenda of other capital works upgrading.

In opposing this amendment, I am not reflecting on the government's lack of responsibility for fire safety in general or to the people who work within government buildings but indicate that we have a high regard for our commitment and we pledge that government buildings will be upgraded as capital works permit. All members would note that this government works within its budgets, so we are not raising more money to do a whole lot of capital works, and that imposes some constraints upon the responsibility that we wish to exercise. Therefore, as government buildings receive approval for upgrade, I undertake that all the appropriate fire safety works will be carried out too.

The honourable member may have been to the Festival Centre recently for concerts, performances, open days or other activities, and he would have noted all the excellent work that has been undertaken on that building as part of a major upgrade of the centre. The government would argue that that is the approach that must be taken, rather than isolate fire safety from the management of all the other buildings tasks for which the government is responsible, namely,

disability access, asbestos, earthquake damage, and a whole range of factors, all of which we undertake seriously, but within capital works demands they cannot all be undertaken in time frames such as the one that the honourable member has set.

The Hon. T.G. CAMERON: I am a little concerned about the issue that the Hon. Mike Elliott has raised and I seek some clarification from the minister. I note that the amendment by the Hon. Mike Elliott allows for a phasing in period to the year 2006. I listened carefully to the minister's contribution in relation to the government's responsibilities concerning existing buildings, and my question is, what is the situation with a new building?

The Hon. DIANA LAIDLAW: It would not gain approval without the appropriate fire standards in terms of the building codes. They are certainly incorporated. I highlight to the Hon. Terry Cameron that some of the older buildings, in particular, even though they may have fire equipment, just like the Festival Centre some 25 years ago, either it ages in terms of maintenance or newer methods have been advanced over the years and it will be upgraded. It does not mean that the older buildings do not have fire safety equipment; it just might not be as recent as that in more modern buildings, but no building today would be without that equipment.

The Hon. T.G. CAMERON: I thank the minister for her answer. In relation to existing buildings, could a situation occur where the private owner of a building was ordered by the government to undertake extensive repairs to their building whilst at the same time the government might be exempt from having to undertake the same repairs that a private owner might have had to do?

The Hon. DIANA LAIDLAW: I am not aware that the government would be ordering any private owner in that regard. Councils may.

The Hon. T.G. CAMERON: A council may order a private owner to undertake remedial work on his building in relation to fire safety but an identical building with the same problem which is owned by the government could sit there with the problem unattended to. I am just confused as to why there is a double standard.

The Hon. DIANA LAIDLAW: I have not indicated that there is a double standard in terms of the government's responsibility. As the government is a big land-holder and has many responsibilities over many buildings in the city and across council areas right to the outback, it has responsibilities in terms of asbestos, disability access, air-conditioning, and a whole range of building codes that must be met for occupational health and safety requirements. It is a matter of balancing all those demands. They cannot all be necessarily met within the time frames that the Hon. Mr Elliott wishes to set for fire safety. Sometimes it is most unwise in terms of management of capital and building maintenance to undertake a fire safety work and then open a building and not deal with a whole range of other issues. It is not an economical practice because sometimes the government would have to close down the bidding. It is wiser to undertake the upgrading of a building as a whole and that is the way the government has responsibly undertaken its asset maintenance.

Amendment negatived; clause passed.

Clause 26.

The Hon. DIANA LAIDLAW: I move:

Page 24, lines 22 to 25—Leave out all words in these lines after 'specify' in line 22 and insert:

(a) a level or levels of audit inspections to be carried out by the council on an annual basis with respect to building work within its area (including building work assessed by private certifiers under Part 12) involving classes of buildings prescribed by the regulations; and

(b) the criteria that are to apply with respect to selecting the buildings that are to be inspected under the policy.

This concerns the issue of building inspections. This has been agreed to following consultation with the LGA and the Housing Industry Association, and we are asking that councils must have a policy on how it will conduct inspections of property. In developing that policy, certain guidelines or criteria will be provided as part of that policy.

The Hon. T.G. CAMERON: Would the system that has been proposed by the government mean that different councils could end up with different codes of practice or different systems of inspection? I would have thought that we would be seeking uniformity amongst councils, which is why I always favoured the consumer affairs department doing this.

The Hon. DIANA LAIDLAW: I understand the basis of the honourable member's concern but can clarify that the criteria for developing the policy will be the same in each instance. What the council will decide, however, is whether it wishes to undertake inspections of every property or whether it is only 50 per cent of properties within its area that are subject to development applications and approvals. Up front everyone knows what is available, so that those sorts of proportions may well differ across councils but not the other criteria that are the basis for development of the policy.

The Hon. T.G. CAMERON: Will councils have any power to charge for these inspections?

The Hon. DIANA LAIDLAW: I understand that the LGA has sought a small increase in the inspection fee to cover this policy arrangement, and that is before the government for consideration at the moment.

The Hon. T.G. CAMERON: How much is the existing fee and how much is the small increase that it is seeking?

The Hon. DIANA LAIDLAW: I do not have that information to hand, but I can provide it for the honourable member tomorrow morning.

The Hon. T.G. CAMERON: Can I be provided with the information before we vote on this clause? That may help me make up my mind, otherwise I will be voting against it.

The Hon. DIANA LAIDLAW: I cannot provide that information to the honourable member tonight, I am sorry.

The Hon. T.G. CAMERON: Does the minister have any idea what this new inspection procedure might add to the cost of building a new house?

The Hon. DIANA LAIDLAW: I said 'a small increase.' It is a matter that has been raised by the LGA on behalf of councils, and I just do not have the dollar figure and would not wish to provide the honourable member with wrong information. I can provide it tomorrow morning but I cannot provide it at 10.15 tonight.

The Hon. T.G. CAMERON: I thank the minister for her offer to provide the information tomorrow morning but, as I understand it, we will be voting on this amendment tonight; is that right?

The Hon. DIANA LAIDLAW: The honourable member had already indicated to me that he was not going to support anything I favoured in this bill, so the advice that he provides me, while disappointing, is not necessarily a surprise. In terms of peace of mind for the honourable member, I will obtain it tomorrow morning although I cannot tonight. But it will be by regulation, and that will come before the Legislative Review Committee and the parliament for disallowance, if the honourable member wants to consider that course.

It is not something that we are aiming to hide or anything: it will be out there as public information for the honourable member tomorrow, and through the regulation process.

The Hon. T.G. CAMERON: But I make the point that we are going to vote on the bill tonight. The minister is still involved in negotiations with the LGA or councils and has not struck a fee. We could support this legislation tonight and find out next week that it is not a small increase, that it is bigger than that. There is no protection there at all. I do not trust the LGA on this issue, I tell you right now. Anyway, the minister has the numbers, so she can proceed. The Labor Party will support her.

The committee divided on the amendment:

AYES (12)

Davis, L. H.	Dawkins, J. S. L.
Elliott, M. J.	Gilfillan, I.
Griffin, K. T.	Kanck, S. M.
Laidlaw, D. V. (teller)	Lawson, R. D.
Lucas, R. I.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.

NOES (7)

Cameron, T. G. (teller)	Holloway, P.
Roberts, R. R.	Roberts, T. G.
Sneath, R. K.	Xenophon, N.
Zollo, C.	

Majority of 5 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 32 passed.

The Hon. DIANA LAIDLAW: I move:

That the bill be recommitted in respect of schedule 1.

Motion carried; bill further recommitted.

Schedule 1.

The Hon. M.J. ELLIOTT: I move:

Clause 2—

Page 29, line 34—Leave out 'subsections' and insert 'subsection'.

Page 30, lines 1 to 4—Leave out subsection (4b).

My concern is that subsection (4b), under clause 2, can put an ordinary member of the public at a significant disadvantage in a court case, as is often the case. Subsection (4b)(b) potentially allows the costs to be determined between solicitor and client. You could have ordinary Joe Blow simply seeking to pursue a matter in the Environment, Resources and Development Court, and he is lined up against someone with very deep pockets and a team of QCs and potentially may face very high costs being awarded against him.

That causes me a great deal of concern. I think an increasing view is forming in the public that courts and justice do not have a great deal to do with each other but that the depth of your pockets bears a closer relationship to your ability to win in the law court than anything else. In relation to matters relevant to this bill and act, I think it is inappropriate and unnecessary that costs could awarded in this way. It is for that reason that I move these amendments.

The Hon. DIANA LAIDLAW: I am a bit puzzled as to why the honourable member would move these amendments. I thought the Democrats would support the provision in the bill, because at the moment the court divides the costs. For example, if four parties are involved in a case, the costs are divided by four. If one of those parties was a shop or a supermarket owner and they brought in 20 people to have their objections heard and the lawyers filibustered and all the rest of it, they would pay only one quarter of the costs because the costs are required to be divided equally.

We believe that is not fair and that the court should have an opportunity to proportion the costs amongst the parties in accordance with the extent to which they took up the time of the court in terms of the process. So, under the government's amendments, a small neighbour or individual would not be held accountable to pay the same costs as a major company or client because the court is restricted to equally proportioning those costs between all the parties represented. I strongly oppose the Democrats' amendments and express some surprise that they have been moved in this form.

Amendments negatived.

The Hon. M.J. ELLIOTT: I move:

Clause 4—

Page 31, line 5—Leave out 'or as may be prescribed'.

Page 32, after line 18—Insert:

(ab) in the case of a DR—the minister must ensure that a public meeting in relation to the matter is conducted in accordance with the requirements of the regulations (despite the fact that such a meeting is not required under the Development Act 1993); and

These amendments relate to new section 29(17) of the Native Vegetation Act 1991. My concern is that the inclusion of the words 'or as may be prescribed' creates uncertainty and may allow the Native Vegetation Act to be overridden by the executive.

The Hon. DIANA LAIDLAW: The government supports the amendments.

Amendments carried; schedule as amended passed.

Bill read a third time and passed.

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

In committee.

Clause 1.

The Hon. K.T. GRIFFIN: What I propose in relation to this bill, which has been on the *Notice Paper* now for a long time, is that tonight I will make some observations, and then I will invite the opposition and the Australian Democrats to make their observations particularly in relation to some issues in respect of which they have amendments, and then, because the amendments from the Australian Democrats became available only this morning and the amendments from the opposition became available only tonight, we will report progress and continue with the consideration of the bill tomorrow.

It seems to me that in that way we will have all the competing arguments on the public record for members who may not have had a chance to consider the amendments, and then we can determine a position on those amendments. As I think members realise, the government has been very concerned to try to move this piece of legislation along. It has had numerous consultations with different interest groups. There have been mountains of correspondence. On each occasion that I have personally met with representatives of the Aboriginal Legal Rights Movement and native title claimants I have indicated a number of concessions which the government is prepared to make, although indicating quite clearly that the government does not concede that any of the tenures that are removed from the coverage of the bill did not extinguish native title.

In fact, we continue to assert that those tenures to which I will refer in a moment did extinguish native title by virtue of their grant and that, although proposed to be removed from the coverage of the bill, will still be the subject of consider-

ation at some time in the future, and it may be that they will even be dealt with in the court processes unless the parties can agree that they definitely have extinguished native title and we can proceed perhaps in some other way.

As I say, I have indicated in a number of circulars that I have forwarded to members what the government's position is on each occasion, that either concessions have been made by the government or challenges have been made to the position of the government. I did that in the belief that it was better to have some information circulated in writing than to wait for all those matters to be dealt with in the debate. I must say that I have been somewhat disappointed that, notwithstanding the concessions, those Aboriginal people with whom I have been consulting have not been prepared to make concessions, and in fact on each occasion have sought to obtain further concessions from the government.

One has to put this bill in the context, as I have indicated previously, that it does result from legislation in the federal parliament resulting from consideration by the federal parliament of the Wik 10-point plan, and that the state is authorised, through the federal legislation, to confirm the extinguishment of native title over the tenures which are listed in the commonwealth's Native Title (Amendments) Act schedule.

In all other jurisdictions in Australia steps have been taken to ensure that that has been done, and in the case of Western Australia in a different form from that which has been enacted in both Labor and non-Labor states on the eastern seaboard. So, it is somewhat disappointing that we have not been able to progress this in what is now almost two years since a bill dealing with this and a number of other issues was introduced into the parliament on, I think, 8 December 1998.

I will read into the record the various circulars that I have made available to members to give the best coverage of the issues which we have to address. Members will note that I have on file a number of amendments which reflect the concessions the government has been prepared to make. The first circular to which I refer is dated 13 November 2000. It responds to some extent to a document circulated by indigenous representatives, and at the time I believed it to be misleading in a number of ways, and I was anxious to at least respond to the issues referred to in that document.

The Hon. T.G. Roberts: Which document was that?

The Hon. K.T. GRIFFIN: This was a document circulated about the bill by indigenous representatives. I can probably obtain the detail. It is relevant only to the extent that it responded to the first circular to which I referred. I did indicate that the Native Title Steering Committee was seeking to have removed certain leases from the bill and I indicated a response. The first category was leases that are no longer current, that is, historic leases. The circular states:

- I have offered to remove historic scheduled leases from the bill. A submission of the steering committee in September 1999 noted that 'in most cases' where the committee had concerns about leases in the bill 'the leases in question expired decades ago'. The exclusion of historical scheduled interests is an offer made in direct response to the concerns expressed by the committee and is a significant compromise on the part of the government.

The next category, leases for grazing or grazing and cultivation, provides:

- There are no leases for grazing on the schedule of extinguishing tenures. There were never any leases for purely grazing purposes on the schedule. To suggest that there were such leases on the schedule is misleading.
- There are leases for grazing and cultivation on the schedule—I have offered to remove these from the bill, along with miscellaneous leases granted solely or primarily for grazing, cultivation and nursery; land based aquaculture and grazing; vegetable and fodder growing and grazing; and fellmongering establishment.

The steering committee refer to leases for grazing, or for grazing and cultivation, which include relatively large leases in the southern Flinders Ranges, north of Whyalla and along the northern margin of the Eyre Peninsula/Far West Coast.

I previously provided the steering committee, South Australian Farmers Federation and the Chamber of Mines and Energy with information about historic leases for grazing and cultivation in these areas that are now covered by pastoral leases.

I have:

- offered to remove all historic leases from the schedule;
- offered to remove all miscellaneous grazing and cultivation leases from the schedule;
- never included any leases for grazing only on the schedule.

It appears that advisers to the steering committee have become confused on this point. Should the steering committee accept the government's compromise offer, none of the grazing or grazing and cultivation leases referred to in the steering committee's document will have their extinguishing nature confirmed by the bill.

Short-term leases (21 years or less) for areas more than 25 acres that do not require the land to be used for intensive purposes, such as orchards, vineyards, buildings etc.

- It is not correct to categorise leases for 21 years as short term leases.
- The terms, size and purpose of the lease are three of the numerous issues that were considered in compiling the schedule—others include rights of third parties, obligations on the grantee, capacity to upgrade, the historical origins of the lease and the location of the lease. These principles are consistent with the High Court Wik decision.
- To the extent that the terms, size and purpose of the leases on the schedule are relevant in determining whether the lease granted exclusive possession, they have already been taken into account. To limit the schedule based on some, but not all, of the relevant criteria has no basis in law and would result in arbitrary outcomes.

Any leases which include public access rights over the whole or parts of the land.

- As discussed above, the rights of third parties in relation to the land under lease is a relevant factor in determining exclusive possession, along with all the other factors discussed above.
- As also discussed above, to limit the schedule based on only one of the relevant criteria has no basis in law and would result in arbitrary outcomes. To the extent that any rights granted to third parties are relevant they have already been taken into account.

Any leases that include reservations in favour of Aboriginal people.

- I do not believe that any leases with reservations in favour of Aboriginal people are included in the schedule of extinguishing tenures. Such leases were not intended to be included in the schedule when the schedule was being compiled. However, I am willing, and have offered, to specifically exclude any such leases.

Any leases held by corporations or Aboriginal native title claimants as a result of purchases of land by the Indigenous Land Corporation. . . or ATSIC over the past 10 years.

- Section 47A of the [Native Title Act] provides for extinguishment to be disregarded if the grant of the lease took place under legislation that makes provision for the grant to be for the benefit of indigenous people, or if the land in question is held expressly for the benefit of indigenous people or otherwise held on trust or reserve for the benefit of indigenous people.
- Where ATSIC purchases are covered by section 47A of the NTA any extinguishment will be disregarded if that is what indigenous people want. If the conditions of section 47A are not satisfied, it is appropriate to give the indigenous owners of land the same protection for their tenure that non-indigenous owners will have if the bill is passed.
- I have, however, now excluded previous exclusive possession acts which consist of the grant or vesting of an interest in the [Indigenous Land Corporation] from the operation of the bill because I have been informed that the ILC supports such an exclusion.

I refer now to leases acquired by church organisations specifically for part of a mission which are still held by the church, as follows:

As discussed above, if the land is held expressly for the benefit of indigenous people or otherwise on trust or reserved for the benefit of indigenous people, section 47A of the NTA provides that any extinguishment will be disregarded. If the conditions of section 47A are not satisfied, it is appropriate to give church organisations that hold land the same protection as other landowners.

I refer to leases for outback race tracks and for other kinds of community purposes, as follows:

Community purposes leases grant exclusive possession to the lessee. These are leases which are solely or primarily for community, religious, educational, charitable or sporting purposes. The steering committee appears to confuse the relevance of the rights granted to the lessee and the use made by the lessee of the land when it states, 'Often this land is only used for the community purpose a few days a year.' Community purposes leases have extinguished native title because they have granted rights to the lessees inconsistent with the continued existence of native title. The frequency with which the lessee exercises those rights is not relevant. The High Court authorities make it clear that, if the grant of rights under a lease is inconsistent with the continued existence of native title, native title is extinguished and it is not necessary to look at activities occurring on the ground.

I refer now to leases over lands within national parks and other kinds of conservation areas, as follows:

I have offered to remove leases granted under section 35 of the National Parks and Wildlife Act 1972 solely or primarily for garden, grazing or cropping purposes. Other leases on the schedule relating to parks are clearly for intensive purposes to the exclusion of other interests.

With respect to leases over shack sites, the circular states:

It is not proposed to remove any shack site leases from the schedule because they are miscellaneous leases over small blocks of land on which families have had their homes for years. These leases convey rights of exclusive possession to the shack owners which are inconsistent with the continued existence of native title. I trust that the above information is helpful to you. I believe that the compromise I have offered to indigenous representatives is a fair one. The compromise takes account of the major concerns that have been raised by indigenous interests while still clarifying land tenure issues for perpetual and miscellaneous lease holders.

If this bill is passed, the holders of perpetual and miscellaneous leases dealt with by the bill will not need to be involved in native title claims over their properties. I hope that you will give your support to this compromise and that the bill will be passed before the end of the spring sitting of parliament.

There was an interjection when I indicated that the circular to which I have just referred was responding. The document to which the circular refers is dated 16 October 2000. It relates to communication from the Native Title Steering Committee, as I understand it. That is the first circular which identifies the numbers of compromises and the areas of compromise which have been proposed.

There was then a subsequent circular on 15 November referring to the circular of 13 November, as follows:

In response to indigenous concerns, there has been a change to the amendments I sent to you on 13 November. The original amendment dealing with Indigenous Land Corporation land excluded from the operation of the bill any previous exclusive possession acts that consisted of the grant or vesting of an interest in the ILC. The new amendment excludes any previous exclusive possession acts consisting of the grant of the lease that was acquired by the ILC before the date of assent to this validation and confirmation act. A copy of the revised amendments are attached and have now been put on file.

Then I indicated that I intended to deal with this bill in parliament on Tuesday 28 November 2000. It continues:

I have now amended my initial offer to indigenous representatives, which was to remove only historical scheduled interests from the operation of the bill, a number of times. As a result of a number of meetings with indigenous groups about this bill I am offering to exclude the following tenures from the operation of the bill: leases with reservations expressly for the benefit of aboriginal people, leases acquired by the ILC, historical scheduled interests, leases granted under section 35 of the National Parks and Wildlife Act 1972 solely or primarily for the following purposes: garden, grazing and cropping; and miscellaneous leases granted solely or primarily for the following purposes—grazing and cultivation, grazing and cultivation and nursery, land based aquaculture and grazing, vegetable and fodder growing and grazing, and fell-mongering establishments.

This is a significant extension of my initial offer and has been made in a genuine attempt to address what I understand to be the main indigenous concerns about this bill. I note that so far no concessions at all have been forthcoming from the South Australian Native Title Steering Committee.

The steering committee has asked that I exclude from the bill leases with reservations of public access rights. I have considered the arguments put by the steering committee on this issue very carefully but I disagree with the interpretation of the relevant legal authorities taken by the steering committee. There is abundant authority for the fact that grants of rights to land are to be classified as lease, licence or some other form by reference to the character of those grants and the nature of the rights involved. The existence or otherwise of rights of public access is just one factor to be considered in this process.

It is now accepted authority that the grant of a right of exclusive possession will have extinguished native title (see Mabo, Wik, Fejo and Ward). There is also High Court authority for the proposition that the mere existence of public access reservations does not lead to a conclusion that a grant is not one of exclusive possession.

To the extent that any 'public access' reservation is the relevant factor in determining whether a lease grants exclusive possession, it has already been taken into account, along with other relevant factors, at the time the schedule was compiled. To make the existence of such a reservation the sole factor in excluding leases from the bill would lead to results inconsistent with accepted legal authorities. I am not prepared to exclude leases with 'public access' reservations from the bill.

I believe that parliament has a responsibility to clarify land tenure issues based on relevant legal principles. That is what this government is attempting to do in the Validation and Confirmation Bill. Failure to do so will only lead to further instances of the confusion and concern that many perpetual leaseholders experienced in August this year when notified of native title claims over their properties (I note that there are over 2000 applications to become parties to the claims already notified). Further notifications of claims in the near future will no doubt cause similar levels of concern.

The bill has been before parliament in one form or another for nearly two years. The bill has implications for many South Australians and consideration of this bill cannot be delayed any longer.

I strongly urge you to support the Validation and Confirmation Bill.

There was one further circular which elaborated on the offers which had previously been made and I think it is important for that too to be on the *Hansard* record. That circular is dated 28 November and states:

I refer to my circular of 15 November 2000 setting out my offer of compromise to the South Australian Native Title Steering Committee.

The main remaining point of disagreement between the government and the South Australian Native Title Steering Committee is that the government does not believe it is appropriate to exclude leases with public access reservations from the operation of the bill, solely because of the presence of an access reservation in the lease.

I have considered the arguments put by the steering committee and the Congress of Native Title Management Committees about leases with public access rights very carefully but still disagree with their interpretation of the relevant legal authorities.

As I explained in my circular of 15 November, I strongly disagree with any suggestion that public access rights of themselves are determinative of the question of extinguishment.

Where there is an exclusive possession grant, extinguishment will necessarily have occurred. This principle is set out at paragraph 569 of WA v Ward [2000] FCA 191 where the judges state in dealing with the Argyle lease, that:

> We cannot, with respect, accept the trial judge's statement that the 'grant of exclusivity of possession . . . is not the determinant . . . '. As we have previously noted, it was accepted in Mabo [No 2], Wik and Fejo as beyond arguments that a common-law lease, that is, one that confers exclusive

possession will, by virtue of that conferment, wholly extinguish native title.

The decision of Mason J. in the High Court case of Goldsworthy Mining Ltd v Federal Commissioner of Taxation (1973) 128 CLR 199, that the reservation of public access rights does not prevent a grant from being one of exclusive possession, is relevant in this context.

I remain of the opinion that the South Australian Native Title Steering Committee's legal position on this issue is not sustainable. To the extent that any 'public access' reservation is the relevant factor in determining whether a lease grants exclusive possession it has already been taken into account, along with other relevant factors at the time the schedule was compiled. Mr Grahame Tanna of the Commonwealth Attorney-General's Department was responsible for developing the schedule. In his evidence to the Commonwealth Parliamentary Joint Committee, Mr Tanna said of this balancing process:

> . . . regard was had to a variety of factors; these were the factors which basically the High Court had regard to in Wik. However, as evidenced by the majority judgments in Wik, no particular factor was decisive or necessarily carried more weight in determining whether any particular leases conferred a right of exclusive possession, subject to the proviso that, where provisions were neutral, certainly purpose became important (*Hansard*, 30 September 1997, page NT 630).

To make the existence of such a 'public access' reservation the sole factor in excluding leases from the bill would lead to results inconsistent with accepted legal authorities and affect the certainty that this legislation is intended to create. I am not prepared to exclude leases with 'public access' reservations from the bill. As I stated in my circular of 15 November, I believe that parliament has a responsibility to clarify land tenure issues based on relevant legal principles. Failure to pass the validation and confirmation bill will lead to further instances of the confusion and concern that many perpetual leaseholders experienced in August this year when notified of native title claims over their properties.

There are now over 2 000 applications to become parties to the claims already notified. Further notifications of claims in the near future will no doubt cause similar levels of concern. I understand that many perpetual and miscellaneous leaseholders are following the progress of this bill with keen interest. I urge you to support the validation and confirmation bill.

They are the circulars which clearly set out the issues from the perspective of the government. I notice some amendments on file which deal with other leases, which are in the schedule of the federal Native Title Act amendments. When those amendments have been explored by the members who propose them, I will be able to respond.

I will make a couple of other observations about the leases with a reservation of public access. The schedule of extinguishing tenures was compiled by an examination of the enabling legislation, the purpose for which a lease was granted and other relevant matters, not by examining each and every lease ever granted under the legislation. To open up the schedule and look into each lease or tenure would, apart from being a superhuman task (and I have stated that previously on a number of occasions), lead to inconsistencies and capricious outcomes. This could similarly occur if every lease were to be examined and classified by reference solely to any public access reservation. For example, the reservation of public access to the sea coast in many cases is meaningless, given that the leases do not abut the sea coast. The exclusion of such leases based on the inclusion of a reservation would lead to terrible anomalies.

My officers have conducted some investigations in the time that has been available. It would appear that the reservation of coastal access rights in leases that are not located along the coast is peculiar to miscellaneous leases. One example of a lease stated to be for community development purposes is issued over land in the hundred of Mingbool. It grants the right 'for the public generally to have free and unrestricted access to, from, over and along a strip of land of the width of 30 metres from high water mark inland where the sea land hereby demised abuts the sea coast.'

Most people would know that the hundred of Mingbool is situated in the South-East. It is situated some 30 kilometres inland from the nearest coastline, along the South Australian-Victorian border. Clearly, the right of access to the coast is meaningless. Its inclusion in such a lease leads to the conclusion that such a term was a standard clause in leases of this type. Obviously, if that were to be the criterion by which it was determined whether or not native title had been extinguished, it would be anomalous and unjust.

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: It is a miscellaneous lease in the hundred of Mingbool; it has a reservation for public access to the sea, and it is 30 kilometres from the sea. Similar terms are included in certain grazing and cultivation leases, and that supports the conclusion to which I have referred. We have examples of miscellaneous leases granted over land in the Riverland, all containing meaningless reservations that grant public access to the sea coast, and everybody knows how far the Riverland is from the coast.

It must be pointed out, however, that grazing and cultivation leases are proposed to be excluded by compromise from the confirmation provisions of the bill, not because they contain reservations of public access to waters or the sea coast but because indigenous groups expressed strong concern that the inclusion of any lease, one of the primary purposes of which was grazing, could be inconsistent with common law. I do not agree with that conclusion, but in the spirit of trying to get an appropriate compromise I indicate that we could exclude that from the scope of this bill without the government conceding that native title has not been extinguished over that tenure. I could refer to a number of issues. I will give my voice a rest and give others an opportunity to speak to their amendments. I will respond at that point; then we can see where we go.

The Hon. SANDRA KANCK: It seems that it would not be another session of parliament without an opportunity to speak on native title. It would be nice if we did not have to deal with it again, in the short term at least. Certainly, since the last time I spoke on this in the last session, quite a deal has occurred. We saw the notification of claims to approximately 11 000 South Australians during the break, with attendant fear and hysteria. I was invited to attend public meetings that the member for Chaffey, Karlene Maywald, organised in the Riverland to deal with some of the concerns that her constituents were raising. I was not able to attend those meetings, because they occurred at very short notice, but I did provide a written statement which I understand was read to those meetings. In it I reinforced things I have previously said in this parliament, such as that I would no more move to extinguish native title on perpetual leases than I would move to extinguish rightful perpetual leases under normal circumstances.

I note that the Hon. Trevor Griffin has made a considerable amount of movement over the past few months. I remember that when legislation was first introduced two years ago I began advocating for the Attorney-General to get out and speak to Aboriginal people. I know that within the past two months he has been doing that and he has been out to a number of regional centres to consult with Aboriginal people, and I acknowledge him for doing that. I expect that he is not necessarily comfortable with his proposed amendments, and I therefore further acknowledge him for that, because it takes a degree of strength to be able to do that.

The Attorney-General noted that the South Australian native title steering committee had not made any concessions. I do not think that they need to make any concessions because it is the rights of native people that are being undermined in this process. At all times through this debate over the last two years, it has appeared to me that, no matter what the intentions are of the Attorney-General or the government, we are dealing with racist legislation. It is underlain by a racist decision at the federal level when legislation was passed that allowed the overriding of the Racial Discrimination Act, but the fact that that occurred does not in any way justify our doing the same thing.

I note in the assorted correspondence that the Attorney-General has sent out to all members of the Legislative Council in the last few months the observation that validation confirmation legislation has been passed in all states, and the assumption therefore is that we should do it too. When I was a teenager I would ask my parents whether I could do something or other because all the other girls were doing it, and my father would ask me whether, if all the other girls went out and threw themselves under a bus, I would do the same thing. There is definitely a parallel here. If other states enact racist legislation, we are in no way obliged to similarly enact racist legislation, and I will certainly do all that I can to take a stand against legislation of that nature.

Last month I received a delegation of the congress of native title management committees, and a number of Aboriginal groups from all around the state were represented at that meeting. I was quite moved by some of the presentations. They talked particularly about the relationship that they have with the land and how intrinsically their health is linked to the land. I know that some of the people in the Riverland, who have been frightened by the claims that have been made there, have said in a delegation to me that they do not know what Aboriginal people intend by the native title claim. They do not know what they want to do with the land.

The delegation from the congress of native title management committees made it beautifully clear. One of them said to me, 'When the land is sick, all we want to do is come onto that land and sing the land until it is better.' That was a beautifully simple statement about what their intentions are. They do not want to take over the land. They want to be able to visit the sites that are of significance to them. They want to reinforce the connections that they have with the land.

I am looking forward to moving on in the committee stage and to making some progress. I have amendments on file that will take us further than the Attorney-General may wish to go, but I certainly acknowledge that in the last few months some great leaps and bounds have been made in the progress of this legislation.

The Hon. T.G. ROBERTS: I place on record for the Attorney a few comments in relation to the tactics and strategies that have been developed since the development of the commonwealth's 10 point plan, its application to the states and the responsibilities the states have in picking up the contents or the intentions of the 10 point plan. I indicate that it is our belief that the premise on which the commonwealth first relayed to the states that they had responsibilities in relation to the commonwealth's position was flawed, and that a lot of the dissatisfaction that has found its way into the states has emanated from a very poor start at the commonwealth level in relation to the intentions of the commonwealth government after it set up its negotiations with federal bodies representing Aboriginal interests at a national level.

The 10 point plan, which was hailed as delivering buckets of extinguishment to those who had fears of insecurity, in a lot of cases through ignorance and in other cases through an inflamed emotional climate, stopped the progress of the intentions of Wik and Mabo. It interrupted a process that appeared to me from an observer's view to have the start of a healthy concept and, if there was some patience in the parliamentary and legislative approach to how the next generation of Australians would be looking at dealing with issues associated with alienation that occurred over 150 to 200 years, we might start to get some of the programs right. Unfortunately, we moved from what I would say were well-defined intentions by the courts in their redefining of terra nullius and an explanation of Wik and Mabo finally getting out to new generations of Australians.

Through those court decisions, we as parliamentarians could correct some of the abuse which had occurred and which had so shattered Aboriginal lives over that period of settlement. Europeans took the land for granted, and believed that they had a right to occupy Australia in the way they did without any concept of justice directed to its original inhabitants. I was of the view that the evolutionary processes, combined with the sensitivities of legislation, might be able to redefine the next generation's position in relation to dealing with reconciliation and with the difficulties of people living together in a reconciled way that is acceptable to our original Australians and to those who have settled Australia. I hoped that options could be taken up by indigenous Australians to define themselves in a way in which they wanted to define themselves in living in a developed nation with developed societies.

If they chose to live as an urban Aboriginal person, a regional Aboriginal person or a remote Aboriginal person, then the legislative programs that we put together should have been able to define those options for Aboriginal people in Australia. I do not blame the current legislators in the states and at commonwealth level for the outcomes of poor practices that have been put in place over the generations in trying to deal with a snapshot of how Aboriginal people lead their lives now, because I do not think that anyone would have considered that decisions made in the 1920s, 1930s and 1940s would have had such an impact on the lives of generations of Aboriginal people.

We have reached a point now where we all know the defined position of urban Aboriginal people, in particular, and especially young people, in relation to unemployment levels, drug abuse, alcohol abuse, family breakups and the mental health of a nation, almost, of poorly nourished and mistreated people. That may be an exaggeration: people might say that what I am saying is a little over the top and a little dramatic in relation to a bill in its final hours before us in parliament, where the tone is set and the positions are now in concrete.

But I guess it is a last appeal to the government to hold out what I would see as an extended hand to Aboriginal people in this state to say that we are prepared to go the extra harder yard; we are prepared to talk to those stakeholders who are in competition for the access—and that is all we are talking about; we are not talking about ownership control—to land that means so much to Aboriginal people in defining who and where they are. I suspect that we are past that position.

In the two years that we have had this bill, the Attorney has been very patient—and I thank him for that—in reaching the current position. I hope that others who analyse the struggle in this state to get to where we are now realise that the Attorney-General has recognised that dealing with

indigenous people in an open, honest, frank way, as he has, and dealing with indigenous people on their own terms in their own lands is a major step forward in comparison to how some of the other states have dealt with the negotiating process.

There are only a couple of points where we differ in relation to the progress, and through the last defined negotiated process away from where he has been, out in the regional and remote areas, extracting opinions and discussing issues, I hope that the parliament might be able to get that last ounce from the government side in accepting the amendments that we have before us.

Having said that, there are some concessions that we may be able to make in the last hours of the negotiating process to make the Attorney-General's position more tenuous, perhaps, with his stakeholders, but we are arguing for, in particular, the proposed new subclause (4) which, after paragraph (d) of the definition of 'excepted act', provides:

> insert:
>
> (e) a previous exclusive possession act that was subject to a reservation or condition for the benefit of the public of a right of access over the whole or any part of the land or waters;

Or the application of the amendment to national parks. There could be some confusion about the principles that the government has set itself to define land tenure relevant to legal principles, which is how the Attorney has outlined it. I have been assured, and I think that there are enough illustrations on record to show, that in this state there is a willingness to negotiate away from the courts and away from the eyes of the parliamentary process to bring about outcomes that can be worked in conjunction with what would be described as the government's primary tenet, that is, to encourage development.

There has been a willingness on the part of Aboriginal people to accept that development has to continue in the mining, pastoral and recreational industries where projects have been defined for marinas, aquaculture programs, etc, and that Aboriginal people want to be part of those developments and get some of the benefits that come from developing the land.

Where it does not impact on their spiritual and cultural activities, they have shown a willingness and shown leadership in this state to be given a little bit more leeway in terms of the principles set in land tenure arguments being argued out through relevant legal principles and being so defined as to prevent any negotiations that may continue out of an evolutionary process in this state that has an umbrella, which includes the joining of Aboriginal people into groups of negotiating bodies, which the Hon. Sandra Kanck referred to as 'the congress'.

I do not think that I have seen a prouder group in parliament than the congress that visited recently and announced, in very serious tones, that they were going to be a new negotiating body that would deal with governments in a professional way, and that they would hold their word as to how they were going to deal with governments in relation to land use agreements.

It is perhaps not within the confines of the defined position of the Attorney to allow the principles associated with the congress and land use agreements to run with a little more freedom in relation to some of the definitions of 'exclusive possession' and, potentially, 'extinguishment.' If we can minimise the reference to extinguishment to include national parks and to cover the previous exclusive possession of public right of access, then I think we will have a very appreciative congress and a very appreciative group of Aboriginal leaders in this state. I am sure that something will grow out of a respect base that is only starting to be defined.

I think the government must accept some measure of congratulations for that, because that has grown out of a respect base given by the government to those negotiating leaders. That is one thing that is not done often enough in this state and other states, that is, paying respect to elders and the negotiating teams and bodies even if the outcome is negative. If that respect is duly paid to those negotiating bodies and individuals, it means a lot to Aboriginal people. It may not mean as much to secretaries of organisations with which we deal continually.

Presidents and elected people in white society tend to take their positions for granted and in many cases are resentful of anyone who challenges their position in relation to whom they represent. However, Aboriginal people take a different view of representation. The respect that we pay to them is important to the whole weight with which we deal with Aboriginal issues in this state. Again, I make a final plea to the government to be a little more liberal in its approach in terms of interpretation, and I hope that it will see its way clear to accept the amendments that we have on file.

The Hon. K.T. GRIFFIN: I thank members for their observations. I do not necessarily agree with them, but I do agree with some. The fact is that in South Australia we have been trying to establish goodwill. Regarding native title claims, we recognise the reality of the situation—that, if native title claimants proceed through the legal process, it will be great for the lawyers and bad for everyone else because, as I have said on so many occasions, there is a huge cost to everyone in financial terms. I think the estimate still stands that the cost to the government alone is about $5 million for every one of the 26 or 27 claims that now exist in the state, but that does not take into account the human cost. Going to court is a traumatic experience for anyone, and when it comes to dealing with native title issues it is even more so because whole communities of claimants are affected.

As I have said on many occasions, there are people who will undoubtedly give evidence, but when some of these cases come to court in probably 10, 15 or 20 years' time—that is about the pace at which the courts will be able to handle these cases—there will be people who will not want to give evidence, who will be unable to give evidence because of incapacity or frailty or who have passed away. I do not think that serves anyone's interests. I am referring not just to native title claimants: it applies equally to all the other likely witnesses who will have to give evidence. Even if native title is determined to exist, the parties will be sent back to negotiate to try to work out what that native title really is.

So, it is a long drawn out process. I think it is a totally unsatisfactory process, and that is why the government has contributed a substantial amount of money when it thinks ATSIC ought to be doing it. We are trying to persuade ATSIC to fund the process from the perspective of native title claimants, but we have put significant sums into it because we think that, in the interests of all South Australians, it is important to try to get a negotiated outcome to native title claims. It will give a greater level of certainty to all those who have an interest as well as providing benefits now rather than many years into the future.

So, we have placed an emphasis on negotiation. The fact that the Congress of Native Title Claimants has indicated its willingness to participate in negotiations is a significant step

forward. The only difficulty is that the pace is slow. Hopefully, as representatives of native title claimants become familiar with the process and the issues, we will be able to speed it up because, as I have said to them, the closer one gets to an election the more likely it is that there will be political pressures brought to bear and the more difficult it will become to get agreement.

The other issue which is relevant is to acknowledge that the government recognises that for Aboriginal people links with the land are very important. That is one of the reasons why in the indigenous land use agreement negotiations so far there has been a particular emphasis on Aboriginal heritage which, of course, applies not only to the lands which are subject to claim but to perpetual lease, freehold lands and so on. That is why in the course of these negotiations emphasis has been placed on trying to get better processes in place to both recognise Aboriginal heritage and provide a better level of access to sites in particular. So, there are some benefits already beginning to flow from the process. The government is determined to do the best it can to try to ensure that there are positive outcomes for all those who have an interest in the Illuwa negotiations.

In respect of this legislation, I take exception to the Hon. Sandra Kanck referring to the legislation as racist. The fact is that the High Court has already determined not just that native title exists at common law but that there are certain factors which, when taken into consideration and applied to certain lands, have extinguished native title. So, the principle of extinguishment is already embodied in the common law.

When in 1993 the federal government legislated to deal with native title, it did not deal with the substantive issues: it dealt only with process issues. Part of the problem and the frustration with the commonwealth Native Title Act is that it deals largely with process; it does not deal with substance. That is where we are getting bogged down, because the process, in typical commonwealth parliamentary style, is cumbersome, difficult to understand and hugely bureaucratic. Then the commonwealth parliament enacted legislation which recognised extinguishment that has occurred as a result of certain tenures having been granted (quite in accordance with the High Court decisions) and then authorised the states to pass confirmatory legislation.

There is an argument about whether this legislation actually extinguishes. The opposition and the Australian Democrats argue that this actually does the extinguishment. From my perspective, it confirms that extinguishment occurred at the time of the grants even back in the 19th century when grants occurred. So, it is not racist to recognise that, under the principles which govern land tenure, native title has been extinguished. We may regret that that has occurred, but it has occurred and we are doing as much as we can to ensure that in other ways it is redressed, but it is wrong in principle in my view to regard what we are now doing as enacting racist legislation.

The Hon. Terry Roberts has made a plea for the government to agree to the amendments that the opposition is proposing. I notice that there is one quite significant difference between the opposition amendments and the Australian Democrats amendments, and that relates to shack sites. Obviously the opposition could not bring itself to alienate a substantial number of shack holders who would be getting notices as the notification process for native title claims proceeds, and it could not bring itself to the point where it would be bombarded with correspondence from shack holders who would be served with notifications about native title claims possibly affecting their land.

I think it might be helpful for a few minutes if I were to deal with the specific tenures to which the opposition and Democrats amendments relate, and then it is on the record and we can continue the debate on another day, if that is convenient to everybody. The first tenure relates to an amendment to proposed new subclause (4)(d)(iii) dealing with national parks leases. The amendment would have the effect of removing all leases granted under the National Parks and Wildlife Act 1972. All these amendments will be opposed by the government, including that one. The national parks leases for garden, grazing and cropping were proposed to be removed from the schedule by the government so as to be consistent with the removal of miscellaneous leases granted solely or primarily to grazing and cultivation purposes. I am firmly of the view that all leases contained in the original bill, as I have said on many occasions and I will say again, extinguished native title at the time they were granted.

The removal of leases which included grazing as a purpose was done to be consistent with the government's preparedness to ensure that grazing leases per se would never be extinguishing tenures by virtue of this legislation and at the request of the South Australian Native Title Steering Committee. Other leases on the schedule relating to national parks are clearly, for intensive purposes, to the exclusion of other interests and are in the form of common law leases which grant rights of exclusive possession. It is not, I submit to the committee, appropriate to exclude them from the operation of the bill.

The next one, which has been dealt with at some length, is proposed subclause (4)(e), which deals with leases with public access reservations. I do not think I need to explore the arguments against what the opposition and the Australian Democrats want in relation to those leases any further. I need to say in relation to that that this one is not negotiable: it is just not negotiable for all the reasons that I have indicated. If that means that the bill fails, then that will be the case. It is just not negotiable, because the arguments put by the Native Title Steering Committee and by the opposition and the Democrats are just not sustainable on the law.

The Hon. Sandra Kanck: I haven't put my argument yet.

The Hon. K.T. GRIFFIN: I am presuming what your argument will be. I had hoped you would put your argument so I can refute it, but I am doing it now so that you can think about it and come up with an alternative if you wish to, in the light of what I am proposing. The next relates to historic leases, that is, proposed subclause (4)(f). This amendment would have the effect of removing from the operation of the bill all leases which were previous exclusive possession acts and which are not current as at 23 December 1996. The previous exclusive possession acts include commercial exclusive agricultural, residential and community purposes leases as well as scheduled interests. Scheduled interests are listed in part 5 of schedule 1 of the Native Title Act and are mostly perpetual and miscellaneous leases.

As I have indicated, I have offered to exclude scheduled interests which were no longer in existence as at 23 December 1996. The amendments provide that historic scheduled leases are excluded from the confirmation provisions once and for all and will not creep back even if they come under another category of previous exclusive possession act in section 23B of the Native Title Act. I oppose the exclusion of all historical previous exclusive possession acts, but as I

have indicated I am prepared to exclude historical scheduled interests.

Proposed subclause (4)(g) addresses community purposes leases. This amendment will exclude all community purposes leases from the operation of the bill. Community purposes leases grant exclusive possession to the lessee and they are leases which are solely or primarily for community, religious, educational, charitable or sporting purposes.

In opposing the inclusion of community purposes leases in the bill indigenous representatives submitted that 'often this land is only used for the community purpose a few days a year'. Such an argument confuses the relevance of the rights granted to the lessee and the use made by the lessee of the land. Community purposes leases have extinguished native title because they have granted rights to the lessees inconsistent with the continued existence of native title. The frequency with which the lessee exercises those rights is not relevant. The High Court authorities make it clear that if the grant of rights under a lease is inconsistent with the continued existence of native title then native title is extinguished and it is not necessary to look at activities occurring on the ground.

I refer next to proposed new subclause (4)(h) which addresses leases greater than 40 square kilometres. This amendment would exclude any lease larger than 40 square kilometres, which allows the lessee to use the land for grazing or pastoral purposes from the confirmation provisions of the legislation. This would include perpetual and common law leases which are not confined to specific purposes. I would argue that this places a disproportionate emphasis on the size of a lease, which is only one of the numerous factors that need to be considered when determining whether a lease has granted exclusive possession.

Other relevant factors include rights of third parties, obligations on the grantee, capacity to upgrade, the historical origins of the lease, and the location of the lease. These principles are consistent with the High Court Wik decision. To the extent that the size of the leases on the schedule is relevant in determining whether the lease granted exclusive possession, it has already been taken into account. To limit the operation of the bill based on some but not all of the relevant criteria which indicate exclusive possession is no basis in law and in the government's view would result in arbitrary outcomes. I would also suggest that the inclusion of this clause would fundamentally compromise the structure and purpose of the bill.

The only leases greater than 40 square kilometres that would not be excluded from the bill are those granted specifically for purposes other than grazing or pastoral purposes, or other than purposes which include grazing or pastoral purposes. This would not include most perpetual leases that were silent as to purpose but, in practice, granted over the agricultural areas of the state. We have already offered to exclude scheduled leases granted solely or primarily for grazing or cropping purposes.

It is incorrect to assume, as this proposed amendment does, that leases which are not restricted to specified listed purposes grant fewer rights than leases granted with specific purposes. The fact that grazing is allowed by a lease will not of itself mean that native title rights will survive the grant of the lease. If the lease involves other rights over the land, which are not consistent with the continuing existence of native title, the fact that grazing is also allowed on the land is irrelevant. I note that it is quite possible for owners of freehold estates to use their land for grazing.

Proposed new subclause (4)(i)—leases requiring building works forfeited or surrendered without the building works being done. This amendment would exclude all previous exclusive possession acts, consisting of the grant or vesting of a lease, which contains the condition that the lessee construct buildings or other permanent improvements (apart from fences) where the lease is forfeited or surrendered before there has been substantial commencement of such construction from the operation of the bill.

To the extent that any such condition is relevant in determining whether the lease granted exclusive possession, that factor has already been taken into account in the process of compiling the schedule. I suggest also that this amendment misinterprets the relevant High Court authorities that state clearly that where exclusive possession is conferred on a lessee it is not necessary to consider what activities occur on the ground.

Proposed new subclause (4)(j)—leases for a term of 21 years or less. This amendment would exclude any lease which was granted for a period of 21 years or less, which is either less than 12 hectares or larger than 12 hectares, and which allows the lessee to use the land for grazing or pastoral purposes, from the confirmation provisions of the legislation. This could include current smaller residential, commercial and agricultural leases as well as larger common law and other exclusive possession leases which are not confined to a specific purpose. This amendment places disproportionate emphasis on the term for which the lease is granted to the extent that the term of the leases on the schedule is relevant in determining whether the lease granted exclusive possession; that factor has already been taken into account.

To limit the operation of the bill based on some, but not all, of the relevant criteria which indicate exclusive possession has no basis in law and would result in arbitrary outcomes. Again, it is not correct to assume, as this proposed amendment does, that leases which are not restricted to specific listed purposes grant fewer rights than leases granted with specific purposes: in fact, the situation is quite the contrary. The fact that grazing is allowed by a lease will not of itself mean that native title rights will survive the grant of the lease. If the lease involves other rights over the land which are not consistent with the continuing existence of native title, the fact that grazing is also allowed on the land is irrelevant.

I also want to suggest that honourable members moving this amendment need to check the drafting because at the moment it does not make sense even in the context of the issues raised by indigenous groups. I think if we check the drafting we might then have a better understanding of what is proposed.

The last one relates to shack sites, proposed new subclause (4)(k). This amendment would exclude all previous exclusive possession acts consisting of the grant or vesting of a miscellaneous lease solely or primarily for holiday accommodation and facilities purposes from the operation of the bill. As I have already indicated, they are commonly referred to as shack site leases. This is where there is a difference between the opposition and the Australian Democrats. It ought to be recognised that they are miscellaneous leases for residential purposes over small blocks of land on which families have had their homes for years. These leases convey rights of exclusive possession to the shack owners which are clearly inconsistent with the continued existence of native title.

They are the responses I make to the amendments on file. It may be that there are other arguments honourable members may wish to make. We can come back to this. I would certainly be happy to engage in further debate about them, but the government is not persuaded by what little has been said so far by the Hon. Sandra Kanck, and so much has been said by the Hon. Terry Roberts that there is any merit in the amendments being proposed. We will have an opportunity to discuss them again, and unless any other members wish to make further comment—there is some good reading overnight, if you can stay awake—I suggest that we report progress.

Progress reported; committee to sit again.

TAB (DISPOSAL) BILL

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

ADJOURNMENT

At 12.01 a.m. the Council adjourned until Wednesday 29 November at 2.15 p.m.