LEGISLATIVE COUNCIL

Friday 6 July 2001

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

SITTINGS AND BUSINESS

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

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

Motion carried.

COOPERATIVE SCHEMES (ADMINISTRATIVE ACTIONS) BILL

Adjourned debate on second reading.
(Continued from 3 July. Page 1796.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports this bill. The bill responds to the decision of the High Court in the Queen v. Hughes, which casts doubt on the authority of a commonwealth Director of Public Prosecutions to prosecute breaches of the corporations law. The Attorney-General has stated that this case highlights the need for the commonwealth parliament to authorise the conferral of duties, powers and functions by state or commonwealth authorities or officers.

The bill addresses the problems of the Agricultural and Veterinary Chemicals Scheme and the National Crime Authority Scheme. All states are enacting similar legislation to validate potentially invalid actions of commonwealth officers in the past. The bill allows the state government to proclaim the legislation applicable to other states. We support the bill.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

CRIMINAL LAW (SENTENCING) (SENTENCING PROCEDURES) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 3 July. Page 1797.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports this bill. The Attorney has sought to expedite this bill through the parliament. We will certainly be supporting that, because we believe it has a very important principle contained in it, which I will cover in my second reading speech. This bill amends the provisions of the Criminal Law (Sentencing) Act 1988, dealing with sentencing procedures, and also makes consequential amendments to the Summary Procedures Act.

Section 7A of the Criminal Law Sentencing Act allows a victim of an indictable offence to present a statement to the court about the impact of an offence on the person or his or her family, an amendment that has been applauded by victims of crime. However, there is no provision for the victim to be screened from viewing the defendant, to read the statement via closed circuit television or to have a support person present. This is only available when the victim gives evidence. The opposition supports the amendment to allow this to occur in order that the victim does not feel intimidated. This is often an horrific situation for many victims, and we commend this long overdue amendment.

The bill also inserts a new section 9B in relation to sentencing procedures. This will ensure that a defendant who is to be sentenced for an indictable offence must be present in court through all proceedings relevant to the determination of sentence. This will now include making it clear that the defendant must be present when a victim impact statement is read out. In a recent notorious case the defendant has consistently refused to be present when the victim impact statement is read out. The opposition believes that a defendant, particularly in the case I have mentioned, should be present to face the victim or to hear the statement read out if the victim is on video or behind a screen. There are some exceptions which may be considered, and the Attorney-General has outlined these in his second reading explanation.

The bill also ensures that the court has power to do what is necessary to compel a defendant to attend for sentencing procedures. This includes the power to issue a warrant to have the defendant arrested and brought before the court. The bill also makes consequential amendments to sections 103 and 105 of the Summary Procedures Act. We support the objects of this bill to ensure that a defendant who has been found guilty of an indictable offence is required to attend court during sentencing proceedings and to hear any victim impact statements and any sentencing remarks which the court may address to him or her, in order that the defendant realises the consequences of the offence. We support the bill.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

CRIMINAL LAW (LEGAL REPRESENTATION) BILL

Adjourned debate on second reading.
(Continued from 11 April. Page 1351.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports the second reading. This problem has been around for many years now, floundering without any real resolution. Certainly, the opposition has had difficulties with previous bills that have come before the parliament in relation to this aspect. This issue, of course, is an accused's right to a fair trial, which is central to the notion of criminal justice in a democracy. The problem emerges as a result of the 1992 case of Dietrich v Regina, which determined that serious criminal trials may be stayed indefinitely if the defendant is unable to secure legal representation. I sought and received extensive comments from the Law Society on this subject, and I think it would be fair to argue that it is in no-one's interest to have trials stayed indefinitely. A defendant whose future hangs in the balance is entitled to an expeditious outcome, but, of course, this must be balanced to ensure that there is no miscarriage of justice in the process.

My colleague in another place, the shadow attorney-general, has had discussions with the Attorney on this issue and I believe that they have reached an accommodation. However, if that is not the case, we will have to move amendments—

The Hon. K.T. Griffin interjecting:

The Hon. CAROLYN PICKLES: Well, my understanding is that an accommodation has been reached and, given that we wish to expedite its passage, if that is not the case we may have to move amendments in another place. Given that I do not wish to go through all the arguments, I will just give a brief outline. The bill proposes to resolve the present situation by ensuring the following:

> . . . anyone charged with an offence against state law, which will be tried in the District Court or the Supreme Court, can get legal aid.

In granting this aid, it will be dispensed and subject to many of the conditions that currently apply. However, there will also be some additional differences, including the following: the defendant will be required to pay for his or her representation, according to their means; the commission will assign a lawyer to the defendant; legal aid will not cover any appeal that may be made against conviction or sentence (commission discretion will apply in this case); and the defendant will have the option, as always, to represent themselves. Legal aid will be terminated if the defendant is able to arrange private representation or if the offence is a minor indictable offence and is tried summarily.

The commission, in requiring defendants to pay for their representation according to their means, will have new powers to investigate and require information about the accused's financial affairs. This provision also applies to third parties such as employers, banks and other sources where there may be a financial connection with the accused. If assets are found, an appropriate application to the court will be made to apply the assets towards the cost of the case. In addition, the commission can also inquire as to the accused's past assets during the five years prior to the offence. If a suspicious transaction is revealed, the commission can ask the court to undo the transaction and make orders about the assets. The bill also provides that in expensive cases that exceed the funding cap the commission will enter into a funding agreement with the state government. However, in exchange, the commission must prepare a case management plan for approval by the Attorney to ensure that funds are used responsibly.

The bill will also have the power to inquire as to the financial status of a person or entity that is financially connected with the defendant. This is in the event that financial support is provided to the accused. The court will then have the power to decide whether such a person or entity should contribute to the costs of the case. This is an area with which the Labor Party had some difficulty, but I understand that that has now been sorted out by my colleague in another place, the shadow attorney-general, with the Attorney-General, and that there is now an agreement about the problems he had with it. I acknowledge that there are serious and credible arguments in opposition to those put by the government. However, on balance, the opposition intends to support the bill.

The Hon. J.S.L. DAWKINS secured the adjournment of the debate.

VICTIMS OF CRIME BILL

Adjourned debate on second reading.
(Continued from 16 May. Page 1484.)

The Hon. CAROLYN PICKLES (Leader of the Opposition): The opposition supports the second reading. I wish to advise that negotiations are still under way with the Attorney-General and representatives of the opposition regarding any possible amendments. I understand that this matter has been resolved or will be resolved very shortly.

I would like to acknowledge the pioneering work undertaken by my former colleague and friend, the Hon. Chris Sumner, former Attorney-General, in this area. His work and commitment has left an indelible impact on public policy and the lives of victims of crime. Accusations are often levelled against members of parliament that we are continually at loggerheads. All people ever watch on television is question time. They do not often see the things on which we are agreeing on many aspects. In the area of victims of crime, the present Attorney-General has carried on the strong support of that original legislation.

I have received extensive comments from the Law Society and the Victim Support Service for which I am grateful. Very briefly, the significant amendments to the act are as follows:

- enshrining in legislation the rights of victims of crimes, the provisions of which are based on the declaration of rights for victims of crime which were adopted by the former Labor government;
- it gives victims rights to information;
- the bill amends the Correctional Services Act 1982 to ensure that victims have certain rights to have their concerns taken into account in criminal justice dealings with the alleged offender;
- amendments are proposed to the law relating to criminal injuries compensation with the intention of limiting the present entitlement to compensation to acts of violence—and this was an area that the Labor Party had difficulty dealing with, and I hope that these issues have now been resolved;
- the bill also proposes to restrict those who can claim compensation by introducing identified categories of victims—again, this was another area where we had difficulties;
- the bill will set a new threshold of three points for the recovery of compensation for non-economic loss and abolishes the present $1 000 combined threshold for loss; and
- the bill proposes that the levy should be differential and CPI indexed.

The Law Society and the Victim Support Service have expressed serious concerns in relation to a number of aspects of the bill, particularly the proposal to reduce payments. Although very supportive of several aspects of the Victims of Crime Bill, Mr Michael Dawson states:

> The Victim Support Service is, however, bitterly disappointed in the basic philosophy and underlying principle behind the changes to criminal injuries compensation. While we agree with many improvements in the bill, we have strong objection to the claimed need to reduce payments under criminal injuries compensation.

The Law Society provides comments in relation to the discretionary powers of the minister, as follows:

> The present Act does nothing to address the problems which have arisen concerning the power of the minister to exercise unfettered discretion to reduce compensation where the claimant has received compensation from any other source (usually WorkCover).

Would the Attorney be able to provide a response to those concerns when he sums up on the bill? With this brief contribution on what is an important area of legislation, I am mindful of the need to process this through the parliament. Accordingly, the opposition has given an undertaking that we will process this through the parliament, and other contributions will be made in another place. We support the bill.

The Hon. IAN GILFILLAN: This is a timely piece of legislation. The Democrats support the second reading of this bill. However, we will be moving a number of amendments in committee. First, I commend the Attorney-General on presenting the bill to parliament. The Democrats are pleased to see the declaration of victims' rights becoming enshrined in legislation. However, we have a number of concerns. We are in agreement with the Victims Support Service Incorporated in its criticism of the basis of much of the proposed change. I quote its response to the bill as follows:

> The Victims Support Service is, however, bitterly disappointed in the basic philosophy and underlying principle behind the changes to criminal injuries compensation. While we agree with many of the improvements in the bill. . . we have strong objection to the claimed need to reduce payments under criminal injuries compensation.

I will continue to quote from the Victims Support Service's response to the bill, as I believe it makes the point very clearly and concisely. It continues:

> In all, about $10 million is spent and $8 million is raised in direct revenue for the fund—leaving a mere $2 million draw on general revenue. There are nearly 200 000 crimes a year with a conservative average of five people affected by each, yet only 1 500 victims claim compensation. Of these only 1 200 are successful. We believe that this is a paltry sum for the state to be investing in repairing the harm to innocent victims of crime. The total savings will be minimal to the system and to Treasury; however, the small sums paid to individual victims means a lot to them and in many cases makes a significant difference to their recovery.
>
> We strongly argue that a gross inequality of justice exists with the funding which is provided for convicted offenders. There are some 1 600 offenders in the care of the Department of Correctional Services in a year, and an average of $400 000 per annum is spent per prison bed.
>
> The operational budget for correctional services is $99 million. This provides for almost any rehabilitation and educational need of an offender. These opportunities are not available to their victims who may have become psychologically and/or physically debilitated, resulting in an inability to continue with employment or to enjoy quality relationships as a consequence of the criminal behaviour.

I emphasise the following point as being most salient:

> We cannot understand how the government would even consider that savings 'need' to be made to the fund when it is such a small investment in the rehabilitation of so many people.

The Hon. T.G. Roberts interjecting:

The Hon. IAN GILFILLAN: The Hon. Terry Roberts interjects, supporting our position. It continues:

> We question, absolutely, the priority of a government which will use many millions of dollars to rescue unsuccessful or mismanaged private enterprises, attract new businesses temporarily into the State and redevelop or buy new sporting venues. . .

Having said this, I should like to consider some of the concerns that we have directly with the bill. I refer to orders for compensation. Clause 20 of the bill deals with orders for compensation, and subclause (5) requires further clarification. It provides:

> (5) The court must not make an order for compensation in favour of a claimant if the court—
>
> . . . (b) is satisfied on the balance of probabilities that the claimant's conduct contributed materially to risk of injury to the claimant.

The clause goes on to provide:

> . . . (unless the court is satisfied that, in the circumstances of the particular claim, failure to compensate would be unjust.)

I would question why the Attorney has chosen to word the subclause in this way. My understanding is that, as with the contributory negligence bill also before us, if a claimant was found to have contributed in some way to the injury, the compensation would be reduced by a proportional amount. Paragraph (a) seems to set the situation that if a claimant had contributed to the risk of injury they would receive no compensation. Surely it would be clearer to incorporate the parenthetical section in the body of 20(5)(b).

I refer to non-financial loss. In his second reading explanation the Attorney-General stated that the review recommended that the threshold for non-financial loss be raised to 5 points. I note that in this bill the chosen threshold is at 3 points. The Democrats would argue that even this is too high and that there is little wrong with the current threshold of 1 point. For those members who are not aware of the meaning behind these points, they represent a scale that reaches from 1 to 50 and are used to help to determine the level of compensation allocated to a victim of crime for what is termed non-financial loss. Non-financial loss is defined in the bill as follows:

> (a) pain and suffering;
> (b) loss of amenities of life;
> (c) loss of expectation of life;
> (d) disfigurement.

Each point represents a particular degree of injury; 50 points is equated to the worst conceivable injury, for example, quadriplegia, and 1 point is an injury that is 2 per cent as bad as the worst case. Each point represents $1 000. In the case of 1 point, the claimant would be awarded $1 000. This would occur if it is deemed that their injuries were 2 per cent as bad as the worst conceivable injury. It then follows that 3 points would represent an injury that was 6 per cent as bad as the worst conceivable injury. In this case the claimant would be awarded $3 000.

The Attorney-General pointed out that this would prevent claims for only transient or trifling injuries. The examples that he used were cut fingers, bruising or muscle strains. My advice from a number of lawyers who are working in this field is that this would also include people who suffer a single fracture of a bone or an adjustment disorder or post traumatic stress disorder of under three months. I think few see these injuries as trifling. I would suggest that the increase in threshold to 3 points is not about victims of crime but rather about cost cutting. In fact, the third report of the Review on Victims of Crime states under the section on 'Raising the threshold for non-financial loss':

> The points scale, which is applied to determine the sum of an award for non-financial loss, effectively introduced a way of 'standardising' these awards. It also reduced the cost to the state of awards for non-financial loss. One way of curbing the number of relatively minor awards for non-financial loss, should this be considered a desirable objective, is to raise the threshold to five points or $5 000.

It seems from this that there is no reason for raising the threshold, other than to reduce the cost of claims to the state. This seems to me to be unreasonable, particularly as the report also notes that the payment of compensation forms a valuable step for the victim in the process of closure.

The Hon. Nick Xenophon interjecting:

The Hon. IAN GILFILLAN: Your words—am I quoting you?

The Hon. Nick Xenophon interjecting:

The Hon. IAN GILFILLAN: I am paralleling your opinion. That is good to hear. It is comfortable to be on side with the Hon. Nick Xenophon. I ask that the Attorney-General, when closing the debate, to let the parliament know exactly what percentage and how many cases would fall in the below three points category. I would also like to see the number of cases that fall in the three to five points range, as raising the threshold would likely also affect claimants with

injuries that may fall in this area. Given the increased chance that they may get knocked back, a claimant may choose not to pursue a claim for fear of financial loss. It is a complicated business, which I will not go into now. If you are on the borderline and are denied, then you have the cost of appealing and having that decision challenged.

I refer to the CPI index. The criminal injuries compensation fund is part funded by a levy paid by offenders and part by general revenue. I note with interest that the bill establishes that the levy will now be indexed to the consumer price index. I ask the Attorney-General why this has been indexed to the CPI whereas the compensation scheme for non-economic loss has not been indexed. As members may know, the equation of one point being $1 000 has not changed since 1994.

With regard to young offenders, I note that the Attorney-General has filed a number of amendments to the bill, one of which clarifies the bill's relationship with the Young Offenders Act. This is a matter I had intended to raise: however, I shall save that to the committee stage. I am currently seeking advice as to whether the Attorney-General's amendment resolves concerns raised with my office. I also echo the Leader of the Opposition's concerns regarding the minister's discretionary powers and would like to see an amendment to that section.

In closing, I indicate that the Democrats will support the second reading of the bill and I look forward to a constructive committee stage. It may be repetitious, but I cannot resist commenting that the time restraint put on dealing with matters as complicated and sensitive as this presents an irrefutable argument for a longer sitting time and I sincerely regret—

The Hon. K.T. Griffin interjecting:

The Hon. IAN GILFILLAN: I know I have prompted the Attorney-General, but we are being pressured into dealing with matters on a pressure cooker basis, which is bad parliamentary procedure.

The Hon. R.R. Roberts: Shame!

The Hon. IAN GILFILLAN: There is an interjection of 'Shame!' from the Hon. Terry Roberts, with which I concur.

The Hon. NICK XENOPHON: I rise to indicate that I parallel the concerns of the Hon. Ian Gilfillan in respect of the bill. I disclose at the outset that I am a member of the Law Society and the Australian Plaintiff Lawyers Association, and I am the principal of a law firm which I do not believe has been involved in criminal injury compensation claims for a number of years. My law firm does practice in the field of personal injury law, although my understanding is that for a number of years those clients have been referred on to lawyers that specialise in criminal injuries compensation law, including Matthew Mitchell, a practitioner for whom I have a lot of regard and who has practiced extensively in this field and who I believe does a very good job for his clients.

I am concerned about the thrust of this bill. It seems to be miserly in its approach. It seems to take away the existing quite modest—some would say derisory—levels of compensation that victims of crime receive. I understand that, as the government says, cost constraints are involved, but I would have thought that this was a case where justice would be served by having adequate levels of compensation for victims. Existing levels of compensation are not adequate. This bill seeks to further erode and chip away at levels of compensation that already exist, and I think it will clearly add to the sense of injustice that some victims of crime feel when their claims are dealt with in terms of the level of compensation to which they are entitled.

Without going through all the provisions of the bill, some points were made by Martin Keith, the President of the Law Society, in correspondence to the Attorney dated 26 June 2001—and I will raise some of these issues further in the committee stage. One issue relates to clause 20, subclauses (4) and (5): subclause (5) provides that the court is prohibited from making any order for compensation if the court is satisfied, on the balance of probabilities, that the claimant, by his or her conduct, contributed materially to the risk of injury. The Law Society's approach is as follows:

> It may well be argued that a person who chose to walk alone after dark is engaging in conduct which contributes materially to the risk of injury.

The Law Society goes on to say:

> The section may also appear to prevent compensation being paid to a good Samaritan who goes to the aid of a person who is being assaulted and themselves suffer an injury.

I am concerned, for instance, about the effect of the clause in relation to the conduct of a victim contributing materially to the risk of injury. Will it mean, for instance, that, if a person who has no choice about having to walk home from work at night because of their economic circumstances (if they work in Hindley Street, or wherever) is assaulted in a side street on their way home, they have in some way contributed materially to the risk of injury and, hence, their entitlement to compensation is in some way adversely affected? That would seem to me to be a very unjust result, and I put the Attorney on notice that that is something I wish to explore in the committee stage.

The Hon. T.G. Roberts interjecting:

The Hon. NICK XENOPHON: I would like to leave by 5 o'clock tonight! The issue of inadequate levels of compensation has not been addressed by this bill, and it needs to be addressed. This bill does not address existing problems; rather, it makes them worse with respect to the government's approach. I should point out that previous Labor governments started the ball rolling in terms of winding back levels of compensation. But I would hope that the opposition is now taking a different approach rather than agreeing to the approach in this bill.

In terms of the threshold being raised to three points on the scale, that seems to me to be quite unfair. It is very important for a victim to get some sense of resolution and completion and a sense of healing by receiving even a small award of compensation. One of the first cases I conducted (I think it was about 18 years ago) involved a victim of an assault where the injuries were not serious. The agreed amount awarded in the end was only $500 but, for the pensioner who received that award, it was very important in terms of the matter being brought to resolution and some acknowledgment that he deserved compensation. Because of his injury and the inconvenience that caused, even though it was relatively slight, it was very important for him in terms of the psychological impact of the assault.

This particular provision makes it much more difficult for a victim to claim and, I believe, will add insult to injury in many cases in terms of what they have already gone through as a result of the assault. I indicate that I will not be opposing the second reading. I am concerned about a number of clauses and I look forward to the debate in committee.

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

EXPLOSIVES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 3 July. Page 1813.)

The Hon. T.G. Roberts interjecting:

The Hon. IAN GILFILLAN: Mr Acting President, I ask to be protected from any facetious interjections because I anticipate that there is a sporting chance of them: the Hon. Mr Terry Roberts is looking fractious. I would not be surprised if he has a jumping jack in his pocket. The bill arises as a result of the Workplace Services' review of the Explosives Act 1936. The Democrats recognise the concerns that led to the review and agree with the measures proposed in the bill. The reforms that will be implemented with the passage of this bill are necessary and are supported by a large proportion of the community.

I do, however, agree with the Hon. T. Roberts in recognising that community support for these measures is not total. A number of people will see no need for this legislation, and I believe that it would be irresponsible of us to ignore their concerns. While I appreciate those who seek to use fireworks in a responsible manner, it is my belief that this legislation is nonetheless necessary. The laws regarding the sale and use of fireworks are spread throughout the statute book. The sale of fireworks is regulated under the Explosives Act. Regulations under the Country Fires Act prohibit the use of fireworks during the high fire season.

The Summary Offences Act outlines the offence of using fireworks to injure, annoy or frighten any person. However, nothing addresses the general use of fireworks. The risk of injury as a result of the use of fireworks is of particular concern. Research conducted by the US Consumer Product Safety Commission discovered that over 40 per cent of those injured by fireworks are children under the age of 14 years. Granted that the situation in the United States differs from that here in Australia, nonetheless, I would expect similar figures here.

Further concern about fireworks relates to the effect that they can have on pets and wildlife. The Workplace Services review of the Explosives Act noted that the RSPCA reported over 1 000 calls regarding lost animals. Anyone who has a dog will know the distress that the noise from fireworks can cause the animal. Another concern relates to the potential damage to the environment from the misuse of fireworks. Grass fires have become a common occurrence on New Year's Eve when there is a heightened use of fireworks by inexperienced people. It is interesting to note the practice of other states in regard to the use of fireworks: in Queensland a person using a firework must hold a pyrotechnicians or shotfirers licence. Does the Hon. Terry Roberts hold a shotfirers licence?

The Hon. T.G. Roberts: I am starting to study for one.

The Hon. IAN GILFILLAN: Right, well, I wish you good luck.

The Hon. T.G. Roberts interjecting:

The Hon. IAN GILFILLAN: There would probably be a lot of use for a shotfirers licence around here. Western Australia and Victoria both effectively banned the use of fireworks by the general public, allowing only qualified operators to use them. The ACT allows more general use over the queen's birthday weekend—an interesting weekend to choose. However, a permit is still required. The Northern Territory requires those wishing to purchase fireworks to have a permit, aside from the period of 29 June to 1 July, when the public can purchase fireworks without a permit.

It is time that we in South Australia moved to a more strictly regulated system on both the sale and use of fireworks, rather than the simple regulation of sale that we currently have. This bill begins this process, and we support the second reading.

The Hon. R.D. LAWSON (Minister for Workplace Relations): I thank members for their contributions and expressions of support for this bill, which will empower the police to issue expiation notices and take more decisive action in relation to breaches of the fireworks regulations, but, more importantly, will facilitate the making and amendment of regulations, which will provide for a better regime for the use of fireworks and the enjoyment of fireworks by the South Australian community. Unfortunately it will mean that the private use of the Mount Vesuvius, jumping jacks, catherine-wheels, Roman candles, and so on (which were part of our childhood), will no longer be available, except under the supervision of a competent person who is a qualified pyrotechnician.

The Hon. Terry Roberts in his contribution referred to the fact that the behaviour of dogs was somewhat badly affected by fireworks; and that is certainly true, as the Hon. Ian Gilfillan noted when he referred to the number of complaints the RSPCA receives about fireworks. The Hon. Terry Roberts did ask how the police would intervene if complaints were made to authorities in relation to the annoying use of a fireworks display. I should say that the present regime has given rise to difficulties in enforcement because of the way in which the permit system has operated. Police simply do not know (and very often have to assume) that a valid permit is in existence and that its terms are being complied with.

Under the current regime, it is very difficult to identify what fireworks displays are occurring with permits and what are occurring without, and the police powers have been limited. However, I should say that, in response to the honourable member, I am told that there were 104 prosecutions in the last year for offences in relation to the irresponsible use of fireworks. I think that very statistic indicates the need for reform. Once again, I thank members for their expressions of support for this measure.

Bill read a second time.

In committee.

Clause 1.

The Hon. NICK XENOPHON: I know that the Fireworks Association has had some concerns about the bill, and whilst I do not intend to dwell on those extensively I want to put on the record that the approaches I have had from it indicate that it is concerned about the efficacy of the bill. I know that there has been community concern about noise and disturbance from fireworks. It is worth putting on the record that the government's approach to this bill, which, I note, is supported by the opposition, may go beyond what is necessary—it is using a sledgehammer to crack a walnut.

Obviously, the minister has researched this matter, and I would like to ask him whether, as a general principle, he will monitor the impact of this bill in terms of not only residential amenity but also its impact on the fireworks industry and whether there will be monitoring of illegal fireworks sales and any breaches of the act. In other words, in terms of the public or social benefit that this bill is intended to achieve, will there be monitoring to ensure that it is effective in satisfying those goals, and will the minister indicate whether

he is prepared to report in, say, six months or a year as to the efficacy of the provisions of this bill?

The Hon. R.D. LAWSON: I am sure that in the fullness of time there will be an evaluation of the effectiveness of the proposed new regime for fireworks. However, I can report that other states which have adopted a similar regime to that which we propose to adopt have encountered no serious difficulties or negative impacts. Indeed, we are adopting a model of regulation which has been tried elsewhere and found to be effective. I am sure that there will be an evaluation in the fullness of time and that no doubt this matter will be discussed in the parliament.

The honourable member mentioned the Fireworks Association, a small association of which Mr Mick Palmer is the president and his son Matthew Palmer is the secretary. They represent retailers in this state. I have had a number of meetings with Mr Palmer in his capacity both as president of the association and a retailer. Those discussions have been fruitful, and as a result I have a better appreciation of the industry in this state.

At the end of those discussions, the association's position towards changing the regulations was to seek a Guy Fawkes night type of regime: namely, a one-day or one weekend of the year type of regime, which still exists in the Australian Capital Territory and the Northern Territory. However, upon examining the system in those territories and comparing it with the regulations which have been adopted in all other state jurisdictions, it seemed to those conducting the review and also to the government that the one day of the year option was not really a practical or feasible option for this state.

I have assured the association that we will be sensible in the way in which these regulations are introduced, and that its members will have adequate opportunity to quit their stocks. I have also encouraged the industry to change its focus from the present one of mainly retail sale to the provision of pyrotechnical services, so that rather than simply selling fireworks to members of the public they will be able to sell a service of providing supervised displays. That is exactly what has happened, especially in New South Wales and Queensland, where, if you examine the *Yellow Pages*, you will find a large number of businesses which now cater to the party function and event type of fireworks displays.

What we envisage is that public displays will continue to occur not only of the size of Sky Show, the Royal Adelaide Show and major events at Football Park and the like but also community, school and local kindergarten fundraising events and the like, which will occur, as they have in the past, but now under supervision and without many of the adverse effects which have been experienced. So, I am certainly alive to the issues about the industry; and the government is sensitive to ensure that these regulations are introduced in such a way as to enable them to either change the focus of their business or to wind their business down, if that is what they choose to do, as others have had to do in other jurisdictions. We will be evaluating the effectiveness of these new regulations as all governments do.

The Hon. T.G. ROBERTS: I would like to take the opportunity to read a fax that I received from the LGA in relation to this bill and the amendment. The fax, which is dated 3 July 2001, states:

> The LGA has actively campaigned for and hence supports the need for tighter controls on fireworks given the problems experienced in the community through the irresponsible use of 'backyard fireworks'.
>
> The LGA has no difficulty with the amendments proposed in the above bill. We have communicated with Minister Robert Lawson MLC—

and that must have been as fiery as the meeting held with the Fireworks Association—

> and he has formally confirmed that the LGA will be consulted in relation to the preparation of the proposed new regulations. Local government has a significant interest in the regulations given the implications for councils of the proposed authorisation process, such as when a display is planned to occur on council land.
>
> The LGA has also offered to assist the state government with a community awareness program closer to the timing of the introduction of the proposed tighter controls. It is preferable that the changes be promptly progressed given the level of community concern and that they are operational prior to the commencement of the next fire danger season.

The opposition's position is reflected in the intentions of the LGA and its letter to us, so we will be supporting all stages of the committee and the amendment.

The Hon. R.D. LAWSON: I thank the honourable member for mentioning the support of the Local Government Association, which I should have mentioned myself. I am pleased to record the fact that the Local Government Association has been supportive, as the communication read by the honourable member suggests. As the Local Government Association notes, it has offered to assist us in community awareness programs which will be an important element in these new regulations because it is envisaged that community events are likely to take place on council owned or controlled properties, and councils obviously have an important role to play in relation to not only events but the regulation of things like fireworks.

Clause passed.

Clauses 2 to 6 passed.

Clause 7.

The Hon. R.D. LAWSON: I move:

> Page 4, line 18—
> After 'prohibit the' insert:
> manufacture,

This amendment is simply to add the manufacture of fireworks to the other provisions which relate to storage, receipt, removal, packaging, etc. The existing regulation making power which this clause seeks to expand also includes a power to regulate, amongst other things, the manufacture of fireworks which is, of course, a necessary element in any effective regulation making under this act because there are people in South Australia who manufacture fireworks.

With the changing of our population, and the immigration to South Australia of many people from Asia where fireworks are rather more popular than they are in our culture, I am advised that quite a number of people are manufacturing fireworks and it is necessary that that element of the market also be regulated.

Amendment carried; clause as amended passed.

Remaining clauses (8 and 9), schedule and title passed.

Bill read a third time and passed.

FREE PRESBYTERIAN CHURCH (VESTING OF PROPERTY) BILL

In committee.

Clause 1.

The Hon. K.T. GRIFFIN: The bill was referred to a select committee on 11 April. The select committee was to report on 25 July, but I am pleased that we were able to report

earlier. The committee comprised the Hon. Angus Redford, the Hon. Paul Holloway, the Hon. Ron Roberts and the Hon. Legh Davis, and I was the appointed Chairperson. The committee met on five occasions. We inserted an advertisement in the *Advertiser* newspaper on Saturday 5 May, and we invited evidence from interested persons and organisations. We approached various organisations, which had previously communicated with me and my office, inviting them to make a submission.

The purpose of this bill is to vest the property of the now defunct Free Presbyterian Church of South Australia in bodies capable of dealing with the properties. The properties are held in trust for the Free Church, but that church ceased to exist many years ago. The trustees are all long since deceased. Since the demise of the Free Church, the Presbyterian and the Uniting Churches have assumed the care and financial responsibility for four of the properties, and the churches are concerned to recoup their expenses from the sale of four properties dealt with in the bill and to free themselves of the financial burden of those properties so that these resources can be directed into areas of more benefit to the community.

The division of the Free Church properties must occur through an act of parliament because these properties cannot be dealt with through traditional methods of property transfer. An act of parliament is required to extinguish the existing trusts, which have long since become incapable of being satisfied, and to vest each property in a body that will either assume care and control of that piece of land or will dispose of the land and deal with the proceeds of such sales as agreed by the relevant parties. Two land parcels are to be vested in councils and one land parcel in the Presbyterian Trusts Corporation. Each body has already assumed care and control of the properties to be vested in it. The remainder of the properties are to be vested in a body which will be responsible for the sale of the properties. That body is the Free Church Negotiators Inc. It was a body created under the Associations Incorporation Act on 1 April 1999 and is representative of both the Uniting Church and the continuing Presbyterian Church. It has power to receive and hold property vested in it by parliament and to sell the properties and gives other related powers.

The committee received written submissions from various persons and organisations, and they have been identified in the report. Apart from submissions supporting the bill, a number of submissions were received which requested that one of the properties dealt with in the bill, the property at Ryan Road, Aldinga (and that is referred to in clause 4(1)(c) as the land contained in Limited Certificate of Title Register Book volume 5695, folio 439) be omitted from the bill or vested in a party committed to preserving the ruins of a church situated on the site. The committee heard evidence on behalf of the Tomatin McRae Association Inc. That is an association with an interest in preserving the church ruins on the Aldinga property. Its members include various descendants of persons who were trustees of the Aldinga property on behalf of the Free Church. The association argued that the descendants of the persons named on the title of the Aldinga property have a legal or equitable interest in the Aldinga property under the terms of a conveyance of the property executed in 1856.

Having considered the submissions, advice from the Crown Solicitor and the evidence, the committee accepted that the descendants of the trustees named on the title to the Aldinga property have no legal or equitable interest in the property. The committee agreed that, given the uncertainty regarding the title to the Aldinga property, the property should be dealt with by an act of parliament and, as such, the committee supports the inclusion of the Aldinga property in the bill. However, the select committee acknowledged the historical and emotional attachment of the Tomatin McRae Association and other descendants of the trustees to the Aldinga property and noted evidence of the Free Church negotiators regarding their preparedness to come to an arrangement regarding sale of the property to a party for heritage purposes.

When the committee considered this, we looked at what options were available for expressing the views of the committee in relation to that property. In the report we encouraged the negotiators, once vested with the property and able to deal with it, to endeavour to negotiate an agreement with the Tomatin McRae Association that may lead to the preservation of the remains of the Free Church located on the Aldinga property.

The committee recognises that costs have been incurred by the churches in meeting rates and other costs and in relation to the development of this bill. The committee accepted that the properties dealt with in the bill have now become a financial burden on the continuing Presbyterian Church and the Uniting Church, which have assumed financial responsibility for those properties. Agreement has now been reached between the relevant parties as to the disposal of the various properties once belonging to the Free Church. The committee accepted that disposal of the properties should occur through an act of parliament because the properties cannot be dealt with through traditional methods of property transfer. Trustees in whom the various properties were vested on behalf of the Free Church have all died long ago and the objects of the trust no longer exist. There was a unanimous conclusion on behalf of the committee that the bill is an appropriate measure and recommends that it be passed without amendment.

The Hon. P. HOLLOWAY: The Attorney-General has just set out the findings of the select committee on this bill. It was, of course, quite appropriate that a select committee should look at this matter, given that it involves property held in trust, and that clearly there was the potential that people affected by the changes might wish to have a say. The Free Presbyterian Church, which is now defunct, owned a number of properties throughout the state. As the Attorney said, only one of those properties raised any concern as far as members of the public are concerned, and that was the remains of the Free Church at Aldinga. So, clearly, in relation to all the other properties there was acceptance of the arrangements proposed in the bill.

The committee, appropriately, took evidence from the interested parties in relation to the Aldinga property. We heard both from the Free Church negotiators and also from a representative of the Tomatin McRae Association who wished to see the property preserved in some way to recognise the historical links with the community. Clearly, it is a difficult matter when properties are so old—in fact, I think this particular property pre-dated the Torrens title system, so there was clearly some doubt in relation to who might have been the beneficial owners of the property. But, as the Attorney-General has pointed out, on considering this matter and on hearing legal advice, the committee as a whole came to the conclusion that, in fact, there was no way that this matter could be satisfactorily dealt with to determine

ownership other than through an act of parliament for the property to be disposed of.

However, as the Attorney has also pointed out, I think those of us on the committee—certainly, speaking for myself—accepted that the Tomatin McRae Association did have a legitimate concern about the future of that property. Clearly, it is of great attachment to them. It is a significant part of this state's history and, if that property could be preserved in some way that is satisfactory to that association, that would be a desirable outcome. I will read the relevant part of the committee's report in relation to that. The Attorney has covered it but I think it is worth reading it again. The report states:

> The committee acknowledges the historical and emotional attachment of the Tomatin McRae Association, and other descendants, to the Aldinga property. The committee notes the evidence of the Free Church Negotiators Inc. regarding their preparedness to come to an arrangement regarding sale of the property to a party for heritage purposes. The committee strongly encourages the negotiators, once vested with the property and able to deal with it, to endeavour to negotiate an agreement with the Tomatin McRae Association that may lead to the preservation of the remains of the Free Church located on the Aldinga property.

Clearly, a number of practical issues are involved in that. The committee was not able to make any assessment of the viability of such arrangements but I think, in principle, that sentiment expressed in that conclusion is something that we would hope and expect that the Free Church negotiators will take up to try to find some satisfactory way of preserving the heritage of this area. So, with those brief comments, I indicate that the opposition supports the bill.

The Hon. R.R. ROBERTS: I support the acceptance of the report of the committee into these matters. As previous speakers have commented, a number of properties are involved in this exercise and the only real point of dissent was in respect of the Wee Free Church at Aldinga. I have to say at the outset that an old saying was once put to me, 'Wherever there is a will, there is a row,' and that did come to the fore. However, that was indicated in respect of one particular property. In respect of the other matters encompassed in this bill there was unanimous agreement with the proposals outlined by the bill.

As a bush lawyer, if you like, I do have some sympathy with people who are involved in testaments of this nature. It is easy over time to put a different complexion on the meaning of particular parts of wills or testamentary dispositions. My view in all these things—and I have been involved in a number of these select committees—is that the absolute wishes of those people who leave properties or other matter in trusts ought to be looked at very closely and, wherever possible, those wishes need to be fulfilled.

I was very comfortable in the early stages to accept that the Wee Free Presbyterian Church fell into the same basket as the rest of the properties listed in the bill until we started to take evidence. Ms Fryar, representing the Tomatin McRae Association, presented the committee with a copy of a deed which states:

> Conveyance in fee from D. Stewart to John Tuthill Bagot and his heirs to the use of. . .

It then lists those people who paid their £5 for the property. It finishes off with the statement, 'their heirs and assigns forever'. At that stage I must confess I was leaning closely to a recommendation that it be recognised that there was some claim by the Tomatin McRae Association, but then we were presented with a trust deed which clearly laid out that the church was to be run by a trust; and the history then shows very clearly that was the case. What it represents is that there is a close association with the McRaes and one can understand why their 'heirs and assigns' maintain a particular interest in this historic site.

I was concerned that at no time during the evidence presented to us, although we were being told that the property was not of much value—and that is why I asked for a proper assessment from the Valuer-General as to what the property was worth; I am sure it is worth about $36 000—I was concerned the Tomatin McRae Association, while it professed—and I think genuinely and understandably professed an association and indeed, one could probably go further to say, almost a love of this property—it has not sought to buy the property. During the deliberations of the committee we had some discussions about it, and the report clearly shows that the committee unanimously decided or thought it was a proper recommendation for us to make that when this bill is completed reasonable and meaningful negotiations ought to take place between the new owners, that is, the Uniting Church and the continuing Presbyterians, and that meaningful negotiations ought to take place with the Tomatin McRae Association.

At no time did Tomatin McRae express a desire to be the purchaser with first right of refusal on this property. I would have preferred the recommendations to be stronger and that in those terms it be given the first right of refusal, but I am happy with the recommendation of the committee that those negotiations take into account the views and aspirations of the Tomatin McRae Association for the preservation of this site for future heritage. Whilst I can understand some disappointment among the Tomatin McRae Association, this bill clears up a matter that needed to be cleared up once and for all and gives the right to everyone to sit down and come up with a reasonable solution.

That solution may be that Tomatin McRae decides to buy it or it comes to some agreement with the council. Having mentioned the council I should conclude with the remark that it was suggested to the appropriate councils in the area that this was a heritage site—and I do not think there is any argument about that—and that the council ought to take it over. Tomatin McRae had agreed to do some maintenance work with respect to these ruins, but late in the piece the council did correspond to say that, if it was the desire of the committee and the parliament, it would possibly look at it.

Those matters are all open for negotiation with the interested parties. I am confident that the committee has come up with the appropriate recommendations at the end of the day, and I am also convinced that there is ample opportunity to get a reasonable solution to all the matters that were expressed as concerns during the proceedings of the committee. I support the proposition as outlined in the report of the select committee.

The Hon. A.J. REDFORD: I will be very brief. Unfortunately, I was unable to be present for the meeting at which the evidence from various people was presented, although I had the opportunity to read the *Hansard* record of that evidence. First, I endorse the recommendations of the committee. Secondly, I also offer my congratulations to the Attorney on bringing this bill to the parliament. This has been a very long, drawn out affair and hopefully we will be one step closer to resolving the difficult and vexed property issues that have dogged the Presbyterian and Uniting Churches over decades now. Hopefully both groups can now get on and deal with the more important issues that confront the respective churches in the 21st century. With those brief comments I endorse the

report and would recommend the speedy passage of this bill through the parliament.

Clause passed.

Clauses 2 to 8 passed.

The CHAIRMAN: I am bound to point out that clause 9, being a money clause, is in erased type. Standing order 298 provides that no question shall be put in committee upon any such clause. The message transmitting the bill to the House of Assembly is required to indicate that this clause is deemed necessary to the bill.

Title passed.

Bill read a third time and passed.

COOPERATIVE SCHEMES (ADMINISTRATIVE ACTIONS) BILL

Adjourned debate on second reading.

(Continued from 3 July. Page 1796.)

The Hon. IAN GILFILLAN: I indicate the Democrats' support for the second reading of this bill and, I expect, right through its process. It seems to be just another limb of earlier legislation which passed through this parliament and which harmonised the federal Corporations Law with state law. The Attorney-General outlined in detail in his second reading explanation why this measure is required. The decision of the High Court in Hughes has cast doubt on the ability of commonwealth authorities and officers to exercise powers and perform functions under state laws in relation to several intergovernmental legislative schemes. He indicated, quite accurately, that the object of the bill is to deal with doubts cast by the decision in Hughes on the ability of commonwealth authorities or officers to exercise powers and perform functions under state laws in relation to the following intergovernmental legislative schemes.

As in the title of the bill, it covers officers of the commonwealth under the Agricultural and Veterinary Chemicals (South Australia) Act 1994, the National Crime Authority (State Provisions) Act 1984 and other state cooperative scheme laws. The Democrats do not see any problem with this. I cannot claim to be fully conversant with all the detail of the bill and its consequences, but the general thrust is one that we support. We therefore support the second reading and indeed will support the bill right through.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their indications of support for this bill, particularly for their willingness to deal with the bill expeditiously. I regret that we have to deal with some of these sorts of bills hurriedly. Unfortunately, because of the scheduling that the commonwealth frequently imposes in this area, it is difficult to avoid the ultimate rush at the end of what is generally a fairly short period within which we have to deal with these sorts of matters.

The Corporations Law—the new federal enactment resulting from the referral of limited power to the commonwealth—was to have come into operation on 1 July. As it turned out, the date is now 15 July, because one jurisdiction was not able to get its legislation through. Notwithstanding that South Australia was very concerned about the lack of some protections in the reference, nevertheless, we were the first jurisdiction to get our legislation through. So, we cannot be accused of holding up the implementation of the scheme.

This bill will enable us to deal appropriately with any challenge to the way in which a commonwealth officer has exercised power under a state law, and provide the capacity for us to deal by proclamation with the other schemes that might be affected by the Hughes decision in the High Court. I again thank honourable members for their prompt consideration of the bill.

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

CRIMINAL LAW (SENTENCING) (SENTENCING PROCEDURES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1949.)

The PRESIDENT: I call on the very flexible, the Hon. Mr Gilfillan.

The Hon. Diana Laidlaw: Flexible or cooperative?

The PRESIDENT: Both.

The Hon. IAN GILFILLAN: To be cooperative with this government one must be flexible, so it comes together pretty well. I indicate Democrat support for this bill, which is quite constructive in various ways. It is not, as it has sometimes been portrayed in the media, a sort of measure to lock Liddy in his seat while the victim impact statements are read: it shows some quite significant wider consideration for the way in which people who are giving evidence or impact statements can do so and, because of that, of course, as with any proper legislation, it applies and is drafted on a non-specific, non-subjective basis, and that is the emphasis that I would have put on the Democrats' support for the bill.

In no way would I accept a translation of our support for this bill as being related to an attempt to, so-call, 'get Liddy'. My past experience has been that law that is related and targeted at one particular set of circumstances tends to be poor law and is regretted later in hindsight. Fortunately, I do not believe that this bill is in that category, and I feel that it is appropriate that it is dealt with in this parliament and at this time. My only hope is that, at this stage (at the latter end of the session), it is being given adequate attention by not only this place but by the Law Society and others who may want to contribute to the matter and put their points of view to us before we finally decide on the form of the bill.

Those are probably the only observations I need to make to qualify Democrat support for the second reading. I suppose that it is a bit mean-spirited to say, 'Well, it's a shame that we don't have more time'—that the program has not been adjusted and engineered so that adequate time is allowed for the discussion and debate of such an important matter. However, I do believe that the amendments and the improvements in the system that are enabled through this legislation justify its getting appropriately speedy treatment in this parliament.

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

ADELAIDE CEMETERIES AUTHORITY BILL

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

The Hon. DIANA LAIDLAW: Since this bill has been in this place, the House of Assembly has considered all the matters related to the Adelaide Cemeteries Authority Bill. It was also required to address a money clause, which we could not earlier consider in this place, relating to new clause 4,

after page 10. In addition, Parliamentary Counsel picked up the fact that a recommendation in the report was reflected in clause 8 of the bill but not in clause 22, and so they were inconsistent and the House of Assembly has made the amendments and has asked us to agree to them, and I would recommend that the Legislative Council agree to those essentially drafting amendments.

Finally—and I understand this matter can be dealt with administratively—the member for Hanson picked up the fact that the map accompanying the bill made reference to Burbridge Road and not the new name, Sir Donald Bradman Drive. We do not have to address that matter in this place; it can be dealt with by the stroke of a pen administratively. Again, I simply thank the members from this place who earlier sat on a select committee to address this bill for their subsequent consideration of the bill in this place and consideration by members in the other place and I now move:

That the amendments proposed by the House of Assembly be agreed to.

Motion carried.

WEST BEACH RECREATION RESERVE (REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 July. Page 1858.)

The Hon. M.J. ELLIOTT: I understand that this bill is about to be sent to a select committee. As I expect to be the Democrat representative on that committee, I should not state too many positions right now until we have heard all the evidence. The one general comment that I will make about the West Beach Recreation Reserve is that if there is any part of Adelaide's real estate that the white shoe brigade would not mind getting its hands on it is probably the West Beach Recreation Reserve.

In those circumstances, the outcome of the select committee and the legislation that emerges from it will be vitally important. In years to come, governments of the past 15 years will be judged fairly harshly for what they have allowed to be done to our coastal areas. Our coastal areas were unparalleled in the world in terms of their naturalness, to a greater or lesser extent, but the white shoe brigade and others have got their teeth into them in a significant way.

I think we must be careful that we leave for future generations something of lasting value rather than looking for a quick buck. There is no question that the West Beach Recreation Reserve as a recreational area and open space is highly significant. It also contains some of the few remaining sand dunes on the Adelaide coastline. There are many person hours and dollars going into trying to help sand dunes in other areas recover, and quite a bit has been spent to defend the sand dunes on this site. This reserve is significant recreationally and environmentally; it is a significant public open space. As I said, I think the outcome of the select committee and the ultimate legislation which emerges from that will be important. It is one more matter upon which we will be judged in years to come.

The Hon. T.G. ROBERTS: I rise to indicate that, although this matter has not been before caucus, it is the intention to refer it to a select committee, and I do not think there are any alternatives, so there will not be much for us to discuss. In relation to naming people, we have done that on the run as well. Normally, we would discuss that more broadly in our caucus but, as time is of the essence, we can cooperate on that. We have a number of people involved in a number of other select committees, but the Hon. Bob Sneath and I will be available to go on this select committee. I concur with the Hon. Mr Elliott's assessment of the issue.

I would like to spend another few minutes dealing with the history of the West Beach Trust. The area has been of significance to a lot of people, particularly country people, who have used that precinct as a low-cost holiday area for some considerable time. The area around Semaphore and West Beach has for some time been used historically for medium to low cost recreational purposes, that is, for an introduction to golf for people on modest budgets; and the accommodation has always been modestly priced and generally available. It provided an option during long periods of time for people from country areas to congregate there. In fact, I think Broken Hill people use the area exclusively—

The Hon. M.J. Elliott: Broken Hill West.

The Hon. T.G. ROBERTS: Broken Hill West! The area does need to be considered for planning purposes, but it does not necessarily mean that those planning purposes do not take into consideration the history of West Beach and the fact that it has been under the care and control of a trust of this nature which has preserved it in a state that is almost unique.

It has not had large investment strategies developed for it, and it will be part of a geographical area that will provide environmental solutions to complement some of the engineering solutions that are unavoidable in dealing with our waste water problems associated with our open drains that have carried water from the Mount Lofty Ranges through the Adelaide Plains down to the—

The Hon. M.J. Elliott: They used to be creeks.

The Hon. T.G. ROBERTS: That is right— they changed from creeks to cemented drains. I was going to say sewers, but that may be a little harsh; however, they are not far off. These were engineering mistakes made particularly in the late 1950s, during the 1960s and into the 1970s. And it was not until the 1970s that governments were made aware of the problems that were starting to occur along the coastline with the death of a lot of our seagrasses. Certainly, the Democrats have been in the forefront of those discussions and arguments. Subsequently, there is a broader knowledge and understanding of what is required. Natural solutions to a lot of the problems need to be considered for that area, while providing the services that are required for recreation and accommodation in the hospitality industry.

Some wide-ranging issues are involved here. I notice that the Hon. Robert Sneath has indicated his preparedness to go on this committee. I told him that the cemeteries committee would run for only two or three weeks, and that it would be wound up prior to Christmas. However, it went for six months. So, I am glad that the whip convinced him to go on this committee because this West Beach Trust committee might not look as if it is significant, but, because of the issues involved, I think it will run for some considerable time and that much evidence will be taken from a lot of people. Hopefully, we will be able to complete the deliberations in a reasonable time frame. However, I would not be looking for an easy select committee or easy recommendations for the government to accept. There will be a lot of competitive use pressures coming from the various communities.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank honourable members for expeditiously addressing this bill and acknowledging that it

will be referred to a select committee, because it is a hybrid bill. I trust that the committee will meet to hear evidence and expeditiously deal with the select committee proceedings, as we have since it was introduced just two days ago.

Bill read a second time.

The PRESIDENT: I rule that this is a hybrid bill and must be referred to a select committee pursuant to standing order 262.

Bill referred to a select committee consisting of the Minister for Transport and Urban Planning, the Hon. Mike Elliott, the Hon. Terry Roberts, the Hon. Robert Sneath, and the Hon. Legh Davis (of whom four shall form a quorum).

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

A quorum having been formed:

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

That standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

Motion carried.

The Hon. DIANA LAIDLAW: I move:

That the Council permits the select committee to authorise the disclosure or publication as it thinks fit of any evidence presented to the committee prior to such evidence being reported to the Council.

Motion carried.

The Hon. DIANA LAIDLAW: I move:

That standing order 396 be suspended to enable strangers to be admitted to the select committee when the select committee is examining witnesses unless the committee otherwise resolves that they shall be excluded when the committee is deliberating.

Motion carried.

The Hon. DIANA LAIDLAW: I move:

That the select committee have powers to send for persons, papers and records to adjourn from place to place, have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

[Sitting suspended from 1.05 to 2.15 p.m.]

QUESTION TIME

STURT STREET PRIMARY SCHOOL

The Hon. CAROLYN PICKLES (Leader of the Opposition): I seek leave to make a brief explanation before asking the Treasurer a question about the future of the Sturt Street Primary School.

Leave granted.

The Hon. CAROLYN PICKLES: The Treasurer will remember the announcement he made on 11 April 1996, when as Minister for Education he announced his decision to close the Sturt Street Primary School against the wishes of the community. The Treasurer will also remember how he justified the closure by announcing that the Sturt Street buildings would be considered for use as the department's curriculum centre. Of course, that part did not eventuate. Now the community has made a submission to keep the heritage listed buildings for public use but has been told in a letter from the current Minister for Education, dated 28 June this year, that the government has decided to go ahead with the sale of the property. The opposition has also been told that instructions for the sale have not yet been issued. My questions to the Treasurer are:

1. Will the government agree to withhold issuing sale instructions for the Sturt Street property and consult with the community on proposals for future community use of the school?

2. What restrictions have been placed on the future development or use of the buildings under a conservation plan developed by the Minister for Education?

3. Is it true that the building contains significant amounts of asbestos and, if so, what are the details, particularly, for removal?

4. How much has the government spent on this property, including security and maintenance, since the school was closed in 1996?

5. Can the Treasurer provide an estimate of costs to restore the building to provide for community use?

The Hon. R.I. LUCAS (Treasurer): Obviously, this question will need to be referred to the Minister for Education: it is his responsibility now and no longer mine. The detail on most of the questions will need to come from the minister. It is true to say that, when I was minister, we considered the option of Sturt Street becoming the curriculum centre but, for a variety of reasons—one in particular being access to parking (teachers wanted parking facilities the same as or better than they previously had at the Goodwood Orphanage site)—the curriculum centre option at Sturt Street did not prove to be viable.

The government has now, as the member will know, developed a state-of-the-art education development centre at the Port Road precinct in Hindmarsh. I was talking to teachers only in the last week some of whom were strong opponents to the closure of the orphanage who have now conceded that the difficult decision taken at the time has meant that there are vastly improved facilities for not only teachers but, with the Technology School of the Future collocated there, also outstanding facilities for students as well. So, you often hear criticism at the time when these difficult decisions are taken but rarely hear the end result of those difficult decisions, which have been—

The Hon. Carolyn Pickles: Sturt Street has been empty since—

The Hon. R.I. LUCAS: I am saying that the member, in her explanation, said that I had indicated, as the previous minister, that we were looking at it as a curriculum centre, and I am giving an answer to that, because that is when I was the minister. We considered it but, in the end, for the reasons that I think are now apparent, we believed that the Hindmarsh site was the better site and I think the passage of time has shown that that was the correct decision.

In relation to the other detail, I know the community opposed the decision. I attended a number of meetings of protest at the school. Half of the West Adelaide Football Club, of which I am a proud supporter, evidently went to Sturt Street Primary School at some stage in the past 60 years—including Doug Thomas, Ken Cunningham, and one of my Liberal colleagues, Steve Condous, and a number who happen—

The Hon. Carolyn Pickles: Nick Xenophon.

The Hon. R.I. LUCAS: I was not aware that Nick had been there, but certainly it had very strong support from the West Adelaide community. At its peak—I am going on memory now—I think there were close to 1 000 students on that site. I think when it was closed down—again, I am going on memory—it had probably just over 100 students or so. How you could squeeze approximately 1 000 students onto

that site is beyond comprehension but, clearly, it happened and that was the system of the time.

So, yes, there was strong opposition. In referring the question to the minister, I will be very surprised if the minister does not come back and indicate that there have been many years of consultation with the community, and I would be surprised if he would indicate that he would, again, now further delay the decision that he has evidently taken in relation to this particular site. Nevertheless, I will refer the honourable member's question to the minister and bring back a reply.

ELECTRICITY, NATIONAL MARKET

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

Leave granted.

The Hon. P. HOLLOWAY: Yesterday, in response to the release of the government's task force report, the Premier stated:

> The report suggests that the government should review the arrangements adopted in Victoria and New South Wales when they move to full contestability in 2002. We will do this and, I stress, South Australia will not be committing to the timetable of 2003 unless we are fully satisfied that customers will not be adversely affected.

When the government negotiated an increase of 16 per cent in electricity prices for government agencies, the Treasurer described that outcome as 'good'. My question to the Treasurer is: precisely what level of electricity price increase for households does the government consider will be acceptable before the government commits to full contestability? For example, would a 16 per cent increase in household electricity tariffs be regarded as a good outcome, and would that meet the Premier's test that customers will not be adversely affected?

The Hon. R.I. LUCAS (Treasurer): I do not mind the honourable member misrepresenting occasionally what I have said but, when he continues to do it, it does get a little tiresome. I will repeat the comments I made at the time of the contract negotiations that my colleague the Hon. Mr Lawson, on behalf of the government, so admirably conducted in the interests of the taxpayers of South Australia. The result was a good one in the context of the market as it was then. If the retailers are saying that we have an average of 30 per cent to 35 per cent for business customers at the moment and Minister Lawson has negotiated a contract with an increase of 16 per cent or net present value, I think he indicated over five years, of 13.5 per cent or so, in the context of the market as it exists today, you would have to say that was a good result.

No-one is saying—let us be clear about this—that that is the sort of result that the government wants to see. As I have said before on many occasions, when the market was first conceived by Keating and co. in the 1990s they would have wanted to see a competitive electricity market with downward pressure on prices and they, together with Liberal governments that have supported them since, would not be supportive of a market which is seeing significant increases in electricity prices. I say, again, that in no way at all has the government, or indeed have I, described a 16 per cent or 13.5 per cent net present value over five years as a good result and something with which the government is satisfied. The government is saying, as governments before us have said, that we want to see a competitive market with downward pressure on prices. We do not want to see significant increases in price.

In the context of the market as it exists today, that is mid year 2001, when the retailers are reporting that their average increases have been 30 to 35 per cent, for Minister Lawson and his team to have negotiated in the interests of taxpayers a contract significantly less than that, everyone would have to acknowledge that is a good result for the taxpayers of South Australia. It is not a good result in terms of the overall level of prices in the marketplace.

The Hon. P. HOLLOWAY: I have a supplementary question. The Treasurer did not answer the question. What is an acceptable level of price increase for householders that would satisfy the Premier to not commit to the timetable for full retail contestability? What is the level?

The Hon. R.I. LUCAS: The government will not be putting numbers into the marketplace in terms of what the position—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Holloway has asked his supplementary question.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order, the Hon. Mr Redford!

The Hon. R.I. LUCAS: That will be a judgment made closer to the time. As the Premier indicated in response to questions yesterday, he is not in a position in mid 2001 to be able to predict 18 months down the track what the level of prices in the marketplace will be, and the government—

The Hon. A.J. Redford interjecting:

The Hon. R.I. LUCAS: As the Hon. Mr Redford points out, the Labor Party has made no commitment either. If and when we see one—

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: No, the Premier did not say that he is going to nominate a price.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: That does not put a price. It just says that he will have to make a judgment. In the end you have to make a judgment about these things. So, until we see the position from the Labor Party in South Australia indicating what level of prices it will deliver under its supposed alternative, it is a bit rich for the Labor Party to be critical of the Premier because he has not listed a specific price level that might exist in the marketplace for the year 2003—in almost two years.

The Hon. P. HOLLOWAY: Given the Premier's equivocation on the timetable for full retail contestability in 2003, does the Treasurer acknowledge that any delay to full retail contestability would require legislation to impose price control beyond 31 December 2002 and, given that the Treasurer insisted during debate on the electricity sale and lease legislation that the electricity pricing order which expires on 31 December 2002 be in place prior to any sale or lease contract being signed, does the Treasurer concede that any alteration to the pricing order, which would be required if full retail contestability is to be delayed, could expose the state to litigation from generators?

The Hon. R.I. LUCAS: In responding to the member's question, I note that the Labor Party's policy is not to support price control or price caps. The shadow treasurer, Mr Foley, made that quite clear in a keynote policy presentation, as he called it, to the electricity industry just two or three weeks ago. Then, when asked questions afterwards, he repeated that

the Labor Party position was not to support price control and price caps in South Australia.

Over recent weeks the Premier has indicated the state government's position in relation to these issues. As I indicated in the estimates committee, we have taken some initial legal advice in relation to these issues. We will further consider not only legal but also commercial advice over the future periods and, when we have to, we will make a judgment. At this stage there is no concluded legal view in relation to these issues. We will continue to consider the advice that we receive over the coming weeks and months.

BEACHPORT BOAT RAMP

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about the Beachport boat ramp.

Leave granted.

The Hon. M.J. ELLIOTT: A few questions have been asked in this place about the Beachport boat ramp, and the most recent one that I have found was from the Hon. Angus Redford on 15 March. The impression I have from the answers that the minister has given in relation to the Beachport boat ramp so far is that, whilst planning approval had been given for the ramp, it could not proceed without funding, and the impression I gained was that the minister would not part with funding until after some assurances had been provided by the council as to whether or not it would accept all the risk should things go wrong in the construction of the Beachport boat ramp.

I have in recent days been contacted by residents of Beachport who are expressing a great deal of concern about the ramp. I indicated at that stage that I was under the impression that things had been approved and were going ahead. They were still uncertain as to the current position.

The Hon. A.J. Redford: They've dumped heaps of rocks on the foreshore—

The Hon. M.J. ELLIOTT: Yes. I am seeking to ascertain whether or not at this stage the minister has received assurances from the council that it will accept full liability and responsibility for anything that might go wrong as a consequence of the construction of the Beachport boat ramp, particularly in the light of what we have seen happen at Glenelg and West Beach, and also what we saw when a breakwater was constructed at Port Macdonnell. They thought they did not have any sand at all and then found out that a great deal was going past. Will the minister say whether or not she has received assurances from the council and that, in the absence of such assurances, she will not give funding to facilitate the construction of the works? Is my understanding correct that, whilst the advice upon which the planning approval was granted was that the construction of the ramp would be okay, more recently some of the experts within government have been expressing concern in relation to its construction?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I am sure I provided this advice in answer to a question from the Hon. Terry Roberts, if not the Hon. Angus Redford, that the council had finally signed off in very specific terms, both in words and on a map, the area that it would accept responsibility for, and those terms were agreed by me as being appropriate and therefore advice was provided to Transport SA that the hold on the funds, that I had asked some time earlier to be placed, could be lifted.

The Hon. M.J. ELLIOTT: By way of supplementary question, will the minister tell us whether those terms and conditions are public and, if not, is she prepared to make them so?

The Hon. DIANA LAIDLAW: I am completely relaxed about making those terms and conditions public as I suspect the council, if you made a similar inquiry, would say the same.

The Hon. A.J. REDFORD: By way of supplementary question, has the Wattle Range Council done a risk assessment in relation to sand replenishment, in particular, an assessment of the cost and, if so, has the council provided a copy of that risk assessment to the minister?

The Hon. DIANA LAIDLAW: I will refer the first question to the Wattle Range council. As to the second question, I did not ask it to seek the risk assessment but asked it to accept the responsibility and it did.

BUSES, FOOTY EXPRESS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation prior to asking the Minister for Transport and Urban Planning a question on Footy Express bus services.

Leave granted.

The Hon. J.S.L. DAWKINS: Members may be aware of my interest in Footy Express bus services.

The Hon. Diana Laidlaw: Have you used it?

The Hon. J.S.L. DAWKINS: I am going to tell you that. Along with my family I have been a regular user of the service from Gawler to Football Park for Crows matches. These services were previously provided by TransAdelaide but have been taken over very capably in 2001 by the Barossa-Adelaide passenger service.

All Footy Express services, as well as other near city and country bus services to Football Park, have been aided by the development of the new terminal adjacent to the arena as well as the dedicated bus lane, which is a great boon to traffic movements in the area. Is the minister in a position to indicate the current levels of bus patronage of Crows and Port Adelaide supporters and indeed supporters of other AFL clubs for matches at Football Park?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): The honourable member asked me about these services recently and I suggested that he ask a question so we could put this into *Hansard*. I seek leave to incorporate a table outlining the results for weeks 1 to 13 and the total percentage of the crowd related to the Footy Express bus services.

Leave granted.

Week	Teams	Time	Total journeys	Passenger Nos.	Crowd	Total of crowd
1	Port v Bears	7:10	2 740	1 370	26 000	5.3
2	Crows v Melbourne	7:10	4 538	2 269	38 000	6.3

Week	Teams	Time	Total journeys	Passenger Nos.	Crowd	Total of crowd
3	Crows v Port	1:40	6 442	3 221	42 000	7.7
4	Port v Saints	7:10	3 142	1 571	27 000	5.8
5	Crows v Roos	7:10	5 530	2 790	36 700	7.5
6	Port v Bulldogs	7:10	3 251	1 728	30 197	5.7
7	Crows v Fremantle	7:10	5 491	2 937	38 292	7.7
8	Port v Collingwood	7:10	3 939	2 270	34 232	6.0
9	Port v Melbourne	1:40	2 081	1 183	22 432	5.2
10	Crows v Geelong	1:40	6 040	3 236	40 466	8.0
11	Crows v Bulldogs	7:10	6 119	3 411	38 829	8.8
12	Port v Carlton	1:40	3 582	1 914	35 805	5.4
13	Crows v Collingwood	7:10	5 427	2 981	39 010	7.6

The Hon. DIANA LAIDLAW: This table should be seen in the light of an average of 2.5 per cent of patrons using bus services to Footy Park last calendar year. For the first match, the Port-Bears match, this year, 5.3 per cent of the crowd used the service, but that has increased over time up to 8.8 per cent for the Crows-Bulldogs match and, last week for the Crows-Collingwood match, 7.6 per cent used the service.

So, 7.6 per cent of all people who attended the match travelled by bus. That is important not only for encouraging people to use bus services for the first time and realising that our bus services are clean, affordable, frequent and service their needs well, but it is also important in terms of repeat business for Crows and Port matches at Football Park and across the board use of the public transport system. It is important also that people have become used to catching the bus to Football Park before the extra capacity grandstand opens later this month. One of the reasons why the council and the local member, Mr Wright, were so supportive of this effort is that we have seen fewer vehicles in the area, fewer parking problems for local residents and less congestion overall for people departing.

I asked whether the honourable member used the services because, in addition to providing services across the metropolitan area, our country bus service operators are also involved. Last week, of the people who travelled on the Footy Express service to Football Park, 130 were from Gawler, which is terrific—and I assume that the honourable member and his family were one (or five) of those numbers.

The Hon. J.S.L. Dawkins: I'm not that prolific.

The Hon. DIANA LAIDLAW: We would encourage that for patronage. Some 79 people also travelled from Murray Bridge and 19 from Angaston, and that amounts to a total of just under 10 per cent of all people who used Footy Express bus services. So, that is great news.

DISTINGUISHED VISITOR

The PRESIDENT: I would like to acknowledge in the gallery on my left one of our colleagues from the New South Wales parliament, the Hon. Mr Chesterfield-Evans. I welcome him to the Legislative Council. Our members here must be wondering whether a Democrats convention is being held in Adelaide this week. The Hon. Mr Chesterfield-Evans is the second distinguished Democrat to appear before us.

LOCHIEL PARK

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Administrative and Information Services a question about Land Management Corporation new works in relation to Lochiel Park (and I refer to Budget Paper 6, Capital Investment Statement, page 31).

Leave granted.

The Hon. CARMEL ZOLLO: As a resident of the city of Campbelltown, I know that several groups have expressed an interest in this parcel of land and holdings. The Italo-Australian community also has expressed an interest in purchasing the holding as a centre where services to that community could be offered. It is envisaged that welfare services to the aged can be coordinated in such a centre as well as housing a number of other services, including cultural and language. I note that the total cost to the Land Management Corporation of consolidating the site is $2 643 000. Given the interest in this holding, will the minister outline what processes will be put in place for its disposal post consolidation?

The Hon. R.D. LAWSON (Minister for Administrative and Information Services): The Land Management Corporation comes under the portfolio responsibilities of the Minister for Government Enterprises, to whom I will refer the honourable member's question and bring back a response.

TAFE TRAINING

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer, representing the Minister for Employment and Training, a question about TAFE training.

Leave granted.

The Hon. R.R. ROBERTS: Today I received some correspondence from the Mayor of the District Council of Port Pirie, who was pleased, I am sure (as would be most people living in Port Pirie), to welcome the announcement today that the environmental impact statements in respect of the SAMAG magnesium project have been confirmed.

This news is not only welcomed by the people living in the region but, indeed, by every major party that is supporting

the project. However, as the mayor points out, we have reached a critical stage because the Development Board has been working very hard to try to secure this major project for our region and, to hear today that the environment impact considerations have been met, it is very keen to ensure that every opportunity, within reason, is given to the proponents of the magnesian plant (SAMAG) in its requirements for trained employees for the construction stage and, obviously, for the running of those plants.

Whilst we are, unfortunately, not in a position to say that we have secured the project, the Development Board and the council need to do certain things to ensure that those trained employees can be provided. In this respect, I understand that a number of approaches have been made to government to ensure that TAFE training facilities be improved to allow this training to take place so that, instead of starting the project and trying to get trained workers, trained workers could be made available, not only for the SAMAG project but also for other businesses in the area, including BHAS. My questions to the minister are:

1. Is the government in a position to give any firm advice that assistance is being given with respect to the training of employees in the skills required for the construction and the maintenance of the SAMAG project?

2. At what stage are those considerations and, hopefully, will the minister provide some sort of timetable so that the Development Board and the District Council of Port Pirie can get on with their planning to try to achieve this very worthwhile project for our region?

The Hon. R.I. LUCAS (Treasurer): At the outset, I indicate that the government has been delighted at the level of support that the leadership of the local council and the Development Board, through the leadership of the board and the executive officer of the board, have shown in terms of their commitment in trying to attract the SAMAG project to Port Pirie. I must also say that—and I know that the Development Board and the local council know—in Rob Kerin, as their local member and Deputy Premier, the region has had an extraordinarily powerful advocate within government and working with government departments, agencies and other ministers, in particular, in supporting this project for the Port Pirie region.

I know that I have said it personally to a number of people, and I do so publicly again today, but the people of Port Pirie, probably at this stage, do not appreciate that, without the support of Rob Kerin, in particular, we would not have been able to progress the SAMAG development to the present stage. I know that, as the local member, Rob Kerin is personally committed, obviously, to seeing the project develop. Obviously, he has ministerial responsibilities in his own portfolio area but he is also wearing the hat as the local member and he has worked and is continuing to work most assiduously on behalf of the residents of Port Pirie and surrounding areas to try to get this project up.

Having said that, there is no doubting—and, again, credit to Rob Kerin in this area—that the government has given a very firm commitment to the SAMAG group in relation to training and development should the decision be taken to proceed with the SAMAG project. The proponents are in no doubt as to the commitment from the government in relation to training opportunities, in particular, and, once the critical decisions are taken by the proponents to proceed, the government is committed to undertaking its role in terms of the critical needs for training. I think that, as the honourable member will know, given some of the statements that have been made by Mr Rick Horn and other representatives of the company in recent times (which have received great coverage in the local media in the Port Pirie region), the proponents have not finally decided on the location for the SAMAG plant.

They have indicated publicly that they are considering New Zealand as an option. From the South Australian government's view point, we very strongly believe that the best location for it is not in New Zealand but in the Port Pirie region, and the South Australian government will do all that is humanly possible to ensure that the SAMAG project, if is to proceed at all, does so in South Australia rather than in New Zealand.

Obviously, until that critical decision is taken, it will not be possible to start spending taxpayers' money in any form at all, if there is any doubt at all that the project might be proceeding in the Port Pirie region. I am sure that the honourable member will understand the need for the government to ensure that taxpayers' money is spent wisely, and so at least a step or two will need to be taken by the proponents of the scheme before the government will be able to move too far down the path of implementing some of the commitments it has given in relation to training for this project.

From discussions that the local member Rob Kerin has had with me and also with the Minister for Education, I know that this issue of training opportunities for the SAMAG project is one on which he is keeping a very close watch, and he will continue to advocate very strongly the position that has been put by the Port Pirie community in relation to this issue within the cabinet and within all the other forums of government to which he has access.

The Hon. J.S.L. DAWKINS: As a supplementary question, I ask the Treasurer in his capacity as the Minister for Industry and Trade whether the efforts of the Port Pirie Regional Development Board in relation to the SAMAG project are indicative of the work done by other regional development boards throughout regional South Australia?

The Hon. R.I. LUCAS: A very good question from the Hon. Mr Dawkins, who has some knowledge of the activities of regional development boards throughout regional South Australia. Without going into all the detail, the simple answer to the question is yes. The activities of this regional development board are indicative of the tremendous work that is undertaken by regional development boards throughout South Australia. The Department for Industry and Trade, to its credit and the credit of the officers involved, works very closely with the regional development boards; and certainly, from our travels as ministers through the community cabinet meetings that we have been conducting for the past two to three years, we have been constantly impressed at the level of activity, expertise and commitment of the regional development boards and the staff who work for them.

Finally, I acknowledge the tremendous number of hours that the volunteers, as they are—business people and community representatives who serve on these regional development boards—give for the benefit of their regional communities. It is something which is understood and appreciated by the government, and it is something that I on behalf of the government am happy to publicly acknowledge in response to the question from the honourable member.

WESTERN MINING CORPORATION

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, a question regarding exit medical examinations for workers at WMC's Olympic Dam operation?

Leave granted.

The Hon. SANDRA KANCK: My office has been approached by Mr Garry Terry, who was employed by Peabody Resources from March 1997 until December 1998 as a miner digging tunnels at Olympic Dam. As such, Mr Terry was a designated radiation worker and consequently potentially exposed to dangerous levels of radiation. In August 1997, Mr Terry received a letter from WMC stating that as a designated radiation worker he would receive a six monthly personal radiation summary, an annual medical and, upon termination of employment, an exit medical. The letter states that the exit medical is a legal requirement.

Mr Terry received just one six monthly radiation summary, no annual medical, nor an exit medical when his employment was terminated. He made numerous inquiries regarding the need for an exit medical, and eventually engaged the services of a solicitor to pursue the matter. This led to an exit medical being arranged at the expense of Western Mining in May this year. I believe that Mr Terry's experience is not an isolated incident. Correspondence to Mr Terry from Peabody Resources Technical Services' coordinator states:

> It has come to our attention that not all employees have completed exit medicals.

It has been suggested to me that hundreds of designated radiation employees did not receive exit medicals upon termination of their contracts at Olympic Dam. My questions are:

1. What are the legislative requirements for exit medicals for designated radiation workers in South Australia?
2. Is Western Mining responsible for ensuring that all designated radiation workers at Olympic Dam receive exit medicals; if not, who is responsible for their provision?
3. What action will be taken as a consequence of the failure to meet the legal obligation to provide exit medicals?
4. How many designated radiation workers have been employed at Olympic Dam during the life of the operation?
5. How many exit medical reports for former employees at Olympic Dam are held by the Radiation Protection Branch?
6. What attempts have been made to ensure that any outstanding exit medicals have been conducted?

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

MOOMBA ACCIDENT

The Hon. R.K. SNEATH: I seek leave to make a brief explanation before asking the Minister for Workplace Relations a question about a recent industrial accident at Moomba.

Leave granted.

The Hon. R.K. SNEATH: Sadly, another worker has died.

An honourable member interjecting:

The Hon. R.K. SNEATH: Well, someone has to be concerned about workers dying on the job. If you have a look at the statistics you might find that there are more dying on the job than those who died in some of the wars that we have had, and we do not seem to be doing too much about it. Sadly, another worker has died whilst performing his duties and making a living to provide for his family—at Moomba, working for Santos, I understand. My questions are:

1. Has the minister received any reports on the accident, visited the site or met with Santos?
2. Is the minister familiar with the type of work that was being carried out at the time of the accident?
3. Has the government any statistics on industrial accidents and deaths that have occurred in respect of companies with WorkCover exempt status?

The Hon. R.D. LAWSON (Minister for Workplace Relations): In his introduction, the honourable member said that someone has to be concerned about worker safety. I assure the honourable member that this government is concerned about occupational health, safety and welfare issues. I have not personally visited Moomba following this terrible incident in which one worker lost his life and three others were injured, but not seriously. However, I did have an extensive interview with the inspector from Workplace Services who went from Port Pirie to the Moomba gas fields very shortly after the incident and interviewed those involved and who is in the course of preparing a report for Workplace Services.

In view of the fact that there was a fatality, an inquest will be conducted by the Coroner and, in accordance with usual practice, the police are preparing an extensive report for the Coroner. As a result of the preliminary report that I received from the inspector—who, I might add, is very experienced—I am advised that, when this explosion occurred, a fairly complex procedure was being undertaken as part of the maintenance program on a pump station.

I have been assured that the manuals and other procedures laid down by Santos are highly developed. This explosion occurred presumably because there was some ignition source in the vicinity of the maintenance work that was being undertaken and highly explosive vapours accidentally escaped from the system.

The inspectorial activities will continue. However, it is not the practice when the police are undertaking an investigation for the Coroner for Workplace Services to seek to duplicate that, but our inspectors will cooperate with the police and will ensure that, first, the Coroner establishes the cause of death and the cause of this incident and that he will examine, obviously, the systems that the company had adopted which, as I say, were, on the face of it, sophisticated and complex systems.

I should say, however, in response to one of the comments made by the honourable member about workplace fatalities: of course I agree with him, as I am sure all members would, that one fatality in any workplace is one too many and there is absolutely no reason for complacency. However, there is some misunderstanding in the community about workplace fatalities because of the way in which statistics are collected. For example, a heart attack at work which might not in any way be caused by the work being undertaken or by any want of a safe system provided by the employer may be, notwithstanding, counted as a workplace fatality. Likewise, there are accidents on the road which occur not as a result of the particular work being undertaken but as a result of the exigencies of the road.

The Hon. Nick Xenophon interjecting:

The Hon. R.D. LAWSON: The Hon. Nick Xenophon says, 'What about a truck driver who is injured in conse-

quence of a particular danger arising on the road?' Now, that is a complication; I would regard the example given by the honourable member as truly a workplace fatality because the work itself has contributed to the fatality. But, of course, there are too many incidents where workers fall off roofs or scaffolding or where electrocutions unfortunately occur far too often, and Workplace Services, together with the WorkCover Corporation, is constantly seeking to educate both workers and employers about safe systems, and the message cannot be sufficiently reinforced. We at Workplace Services are maintaining our efforts to better educate both workers and employers.

The Hon. A.J. REDFORD: I have a supplementary question. Following the implication in the Hon. Mr Sneath's question about exempt status, does the mere fact that a corporation has exempt status in relation to WorkCover compensation issues obviate its responsibilities to provide a safe workplace, a safe system of work and a high of level of occupational health and safety?

The Hon. R.D. LAWSON: That question goes directly to the system of exempt employers under the WorkCover legislation which is, of course, the responsibility of my colleague the Minister for Government Enterprises and I do not seek to, in any way, intrude on his territory in that regard. I will refer that matter to him for comment and an appropriate answer.

The Hon. NICK XENOPHON: My supplementary questions are: can the minister indicate whether current workplace death statistics discern between those deaths caused directly as a result of unsafe work practices or other causes at work? The minister gave the incidence of heart attacks at work: can he indicate whether there are steps to provide further specific information in relation to the cause of death, particularly with respect to unsafe work practices?

The Hon. R.D. LAWSON: Yes, and I can provide the honourable member with details on that matter. Last year, there were 20 fatalities in South Australia. I think it is appropriate that we examine very briefly the way in which they are categorised, because statistics are collected on a proper statistical basis, notwithstanding the fact that some people tend to aggregate the two types of fatalities together. They are those notifiable under the Occupational Health, Safety and Welfare Act (namely where there is some causal connection between the work and the death) and that amounted to some 10 fatalities last year. However, another 10 fatalities were accepted as workers' compensation claims under the Workers Rehabilitation and Compensation Act where, of course, there is no causal connection between the death and the work but there is a temporal connection: for example, I am advised that journey accidents are included.

The Hon. A.J. Redford: What about someone dying of a heart attack on the job?

The Hon. R.D. LAWSON: Someone dying of a heart attack on the job would be a workers' rehabilitation and compensation issue but would not be a fatality notifiable under the occupational health and safety legislation. As I have mentioned, one workplace death is too many, but the number of fatalities each year is statistically low. I should say that in this state, fortunately, our figures are considerably better than those in some other jurisdictions.

HIH INSURANCE

The Hon. NICK XENOPHON: My questions to the Attorney-General are:

1. Can he indicate what steps the government has taken to publicise the existence of the HIH victims hotline, established by the department of consumer affairs, since its inception last month, and can he indicate in due course how many calls have been received?
2. What level of training and expertise do Consumer Affairs officers have to distinguish between claims that are and are not covered by the federal government assistance package?
3. What level of liaison exists between the department and the South Australian HIH victims support group? For instance, does the department advise callers of the existence of that group as a support group for victims?
4. Finally, further to the minister's previous answers on this issue, is the government in a position, and, if not, when will it be in a position, to indicate the likely quantum of claims under builders' warranty claims affected by the collapse of HIH?

The Hon. K.T. GRIFFIN (Attorney-General): When questions were asked of the Treasurer yesterday, he gave a comprehensive—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: It might have been a different question but the issue is the same. The Treasurer gave a fairly full statement about where this issue happens to be in government at the present time. From the perspective of the Office of Consumer and Business Affairs, as far as I am aware, there have not been many calls to the hotline. I can get the detail of how many there have been, but I think it is relatively close to only a handful. In terms of the quantum of claims, certainly of those where people have contacted the hotline and have been prepared to identify the extent of their claim, there is an aggregate sum, I think, of around $400 000 at the present time, but that does not mean that will be the limit. Of course, the other difficulty is that there is no central register of claimants or those who might be claimants. This is largely done through insurers rather than even involving builders, because, obviously, the builders would have gone bankrupt or died, or are no longer carrying on business.

So, the difficulty we still have is that it is not easy to find out how many claims there are or could be. There has been consultation with the liquidator but even the liquidator is not able to identify that so easily. As the Treasurer indicated, we are still gathering information, and that hopefully will enable us to make some decisions about what we should be doing, if anything, as a government to move into an area of private sector collapse. That has some significant consequences not just for government and its taxpayers but also for builders and their customers. Ultimately, whatever the state does will have to be passed on to consumers, builders, the taxpayers, or some of each.

The Hon. NICK XENOPHON: By way of a supplementary question, what level of consultation or, indeed, liaison is there between the Office of Consumer and Business Affairs with the Master Builders Association and the Housing Industry Association in relation to builders' warranty claims?

The Hon. K.T. GRIFFIN: The consultations are close. I have met personally with Mr Stewart of the Master Builders Association and Mr Gardner of the HIA. Their difficulty also is that until recently they could not identify what the extent of difficulties might be. We know that the HIA has been saying that it has no difficulties with respect to the HIH collapse—or it is certainly giving that impression. As for the Master Builders Association, we know there are some delays by the prospective insurer in the processing of new

applications, and representations have been made to me by other members and by builders and others in respect of trying to speed up the consideration of applications for insurance. Again, that is in the hands of the private sector. Nevertheless, we are trying to assess what, if anything, the government can do to try to have that accelerated. Ultimately, it comes back to the insurer taking the appropriate steps to ensure that there are adequate skills within the organisation, as well as resources, to progress the applications for insurance expeditiously.

VOLUNTEER INSURANCE

The Hon. IAN GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General, representing the minister for volunteers, a question about volunteers' insurance.

Leave granted.

The Hon. IAN GILFILLAN: The issue was raised in a personal way with a group on Kangaroo Island who organises flora and fauna awareness walks which are very much cherished by older members of the community on Kangaroo Island. However, their group virtually feels that it cannot continue because the cost of insurance just to run such an organisation is prohibitive.

An honourable member interjecting:

The Hon. IAN GILFILLAN: I will get the figure. The state relies on volunteers to carry out a great number of important tasks. These tasks are sometimes more than merely important: volunteers can be the difference between life and death in situations such as bushfires, medical emergencies and even the delivery of Meals on Wheels. However, many volunteers are putting themselves at considerable risk by offering their services free of charge. The potential risks are of many different types. Volunteering SA has identified the following types of risks to which volunteers may be exposed:

1. legal liability to members of the public;
2. personal accident and injury;
3. directors' and officers' liability;
4. professional liability for expert advice which may turn out to be incorrect;
5. motor vehicle accident liability; and
6. loss of income while performing volunteer duties.

Many volunteer organisations carry comprehensive insurance to protect volunteers from one or more of these risks. Volunteers working with government agencies such as the CFS also have a statutory protection from legal liability, as do elected members of councils. However, this sort of protection is not available to all volunteers. There are probably very few volunteers who are adequately protected from all six types of liability identified by Volunteering SA.

When one considers all the potential risks, it is apparent that many of the people who enrich our community with their volunteer services are actually risking everything they own to do so. This is considered as an unacceptable situation. The state government has recently issued two discussion papers on the topic of volunteering. There is a discussion paper on the proposed so-called volunteer alliance, and there is also a separate discussion paper on proposed volunteer protection legislation.

However, neither of these discussion papers adequately addresses the issue of insurance for volunteers. The unstated premise of the discussion paper on volunteer protection legislation is that, if such legislation is passed, insurance for volunteers will not be necessary. However, this is plainly not the case. A volunteer protection bill, which has not yet been prepared, may offer some protection for some volunteers from some of the risks that I have specified. However, it is apparent from the scope of the discussion paper that the government is not even thinking about offering a comprehensive immunity to all volunteers from all of the potential risks they face. It is likely that such a blanket protection may be prohibitively expensive. Nonetheless, volunteers in this state are entitled to know—and, therefore, I ask on their behalf—which of the risks identified by Volunteering SA does the government believe should be borne by volunteers personally; which of the risks should be borne by the community as a whole; and does the government accept the insurance risk management standards being developed by Volunteering Australia and backed by Volunteering SA?

The Hon. K.T. GRIFFIN (Attorney-General): The issues raised by the honourable member are important. I will refer them to my colleague in another place and bring back a reply.

GOVERNMENT RADIO NETWORK

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Government Enterprises, a question on Government Radio Network (GRN) and television interference.

Leave granted.

The Hon. CARMEL ZOLLO: No-one will contest the necessity of an effective emergency services paging service, especially in rural South Australia. However, this government's radio network continues to be plagued with problems, as flagged by an additional $10 million announced in the budget. The latest in the line of mismanagement is interference to television reception in Kadina caused by the GRN paging transmitter. The problem commenced in January this year when the transmitter was activated. Whilst transmitting within Australian Communication Authority guidelines, the GRN established in Kadina East is affecting TV reception within a kilometre radius of the tower. Constituents have informed me that interference is occurring every few seconds when watching free to air television, making it almost impossible to continue viewing.

Signal amplification devices—called mast head boosters—are installed on many rural South Australian antennae to boost the reception of Adelaide signals. The mast head amplifier is a catch-all device, amplifying many signals—including the strong Kadina GRN pager signal, which is a source for the interference. Since the activation of the GRN, many Kadina residents will need to install costly filters which help to filter the GRN frequency to the mast head amplifiers—reputedly costing between $70 and $300 each—in order to continue to watch free to air TV from Adelaide. Residents have had good signal reception for many years, only to have it taken away by the Government Radio Network.

My questions are: what measures does the government propose to minimise the impact of the GRN paging transmitter on TV reception in Kadina; and will the government assist residents in the installation of filters to mast head boosters to provide them with better quality reception, as was the case before the GRN transmitter was installed?

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

bring back a reply.

WEST BEACH RECREATION RESERVE (REVIEW) AMENDMENT BILL

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

That the Select Committee on the West Beach Recreation Reserve (Review) Amendment Bill 2001 have permission to meet during the sitting of the Council this day.

Motion carried.

CRIMINAL LAW (SENTENCING) (SENTENCING PROCEDURES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1958.)

The Hon. A.J. REDFORD: In rising to support this bill, one can only echo the comments made by the Hon. Ian Gilfillan earlier this morning that it is a pity that we do not deal with this legislation in a less passionate environment than the one which led to the promulgation of the bill—and I refer to the Liddy matter. This bill deals with two issues: first, whether or not the defendant ought to be required to be present during the course of sentencing in criminal proceedings; and, secondly, the status of vulnerable witnesses during the course of the sentencing process in a criminal trial.

In relation to the issue of vulnerable witnesses, I understand that the most commonly used process is the screening of the vulnerable witness from the accused during the course of the giving of evidence by that particular vulnerable witness. I understand that, notwithstanding that screening process, the vulnerable witness is subjected to cross-examination and the same processes to which they would be subjected if they had not sought the use of a screen. I am not sure what specific rationale is in place to ensure that vulnerable witnesses, as they are called, secure the same protection during the course of the sentencing process. One might think that, once a person is sentenced, or during the course of sentencing if that person is convicted, the likelihood or prospect of an accused person bringing some form of fear to a vulnerable witness would be much more diminished.

At the end of the day, it has been a fundamental principle of our criminal justice system that a person who is accused of a criminal offence, or indeed of criminal conduct, should be able to see and confront their accusers. That is an important principle and one should tread carefully before seeking to undermine it. I note that there has been little criticism of the process to date, to my knowledge. My only concern, and one might think that we can monitor this over the course of the next few years, is that proper consideration be given concerning court resources, particularly whether or not it may or may not affect the timing of the sentencing process and the expedition of the sentencing process. My understanding is that there are only—and I will stand corrected by the Attorney-General—two courts which have video facilities available. I have not had the time since the introduction of the bill some three days ago to make inquiries as to whether or not those resources are adequate.

One of the other issues that does cause some concern is the status of the verbal or written victim impact statements and what status ought to be given to them by the court during the course of the sentencing process. It is the sort of information that comes to a court that sits in no-man's-land, to some extent, given that such evidence is not the subject of cross examination. Indeed, one might place it in the category of information provided by accused people in the guise of unsworn statements in the 1980s, before the former Attorney-General brought legislation to the parliament abolishing unsworn statements. I must say that I agree with the abolition of the unsworn statement on the part of the accused, despite significant warnings given at the time by the Law Society.

However, I am not sure (and I have not had time to research) how the courts deal with this information in relation to whether or not it is treated as evidence. I am also not sure what effect the provision of this information to the court has on the sentencing process and in particular on the process of plea negotiation. I would hope that over the next couple of years we will have an opportunity, either by examination of particular court cases or by some other process, to determine precisely how the courts value the information that is provided to it by way of a victim impact statement, particularly one that is not subjected to cross-examination.

I would also be interested to hear—not in such a way as to hold up this bill—whether or not it has had any impact on the process of plea negotiation. At the end of the day, in my experience when I practised in this area, plea negotiation was the subject of some pretty controlled processes. I am not sure whether this process of victim impact statements has had either a positive or negative impact on the process of plea negotiation.

On the second issue in relation to the requirement of the presence of the defendant, I was away when this attracted significant media attention. It never happened in my experience and I never saw it happen, although I am aware that on some occasions some accused were sentenced in their absence, whether it be as a consequence of ill health or as a consequence of those people absconding following their conviction and prior to their being sentenced.

I would flag a couple of concerns of a practical nature in relation to these provisions. First (and I am talking about serious indictable offences), it has been my experience that the courts generally do not sentence people until such time as their principal appeal rights are exhausted. For those members who are not aware of how the appeal process works, you have 28 days within which to lodge an appeal following the finding of guilty on the part of a jury. Generally speaking, the courts (and I refer in particular to the District Court and the Supreme Court) do not embark upon the sentencing process until such time as the Court of Criminal Appeal has dealt with the appeal, so that the question of guilt or innocence has finally been determined one way or the other.

There are occasions where matters go on appeal to the High Court. To explain that process is quite complex but, in very brief terms, an appellant in that sort of case must obtain leave of the High Court to be able to appeal, and it is in very rare cases that the High Court grants appeals. The basic principle that most litigants have in this area is to convince the High Court that the matter that the litigants wished to agitate before the High Court is a matter of public importance and involves an important legal policy issue.

That in my experience is where most applications for appeal fail. So it is not surprising that the Supreme Court and the District Court tend to embark upon the sentencing process expeditiously following the disposal of the appeal by the Court of Criminal Appeal. I would suspect that the promulga-

tion of this legislation will tend to consolidate that rule of practice of the District and Supreme Court judges in the sense that they will be more inclined not to sentence a person who has been convicted by a jury until the disposal of the appeal before the Court of Criminal Appeal.

In relation to clause 3 of the bill, I note that the exceptions to the requirement that a defendant be present are extremely limited. There is certainly no provision that there can be an exception based on parties' consent. By that I mean the consent of the Director of Public Prosecutions on the one part and the accused and/or his or her advisers on the other part. I would be interested at some stage—and I do not want to hold up the bill—if the Attorney would explain why there is no such provision. Secondly, there does not appear in the case of a dispute to be any discretion on the part of the court to proceed to sentence in the absence of a convicted person, notwithstanding in the absence of consent or notwithstanding the exceptions set out in section 3 of this bill. Again I would be interested to hear the Attorney's comments on that.

Finally, I am mindful that the significant fact that brought this matter before the attention of the public was the Liddy case, which is still before the courts. I know that certain complaints have been made and that certain reports have been made by the media, but I do not wish to go down the path that others might have gone until such time as this matter is finally disposed of. However, it is disappointing to note that when one examines the transcript of the hearing on 15 June this year and the subsequent media reports there appear to be quite significant differences of emphasis on their part. I hope it is not a trend on the part of the media to put their own slant on the reporting of matters before the court.

The courts are a vital part of our democratic process and it is vitally important that the work they do and the processes that take place within those courts are open to public scrutiny and they can only be open to public scrutiny if they are fairly reported. I am not saying that has happened in this case, but we need to be extraordinarily mindful, at all costs, in a civilised and sophisticated society, such as the one we live in, not to allow the growth of trial by media. That is not to say that these matters should not be open to public scrutiny, but it is to say that there needs to be a great deal of care and responsibility applied by journalists in the reporting of matters before the court.

Numerous comments have been made by various courts. In particular one comment that springs to mind was made by Lord Justice Goddard back in 1949, where he alluded to trial by media and went into some detail about why that might cause some concern about the difference between living in a society which is free and a society where we might resort to trial and judgment by the media. I would hope that the media, and individuals within the media, would eschew the process of trial by media and recognise the importance of the rule of law and the processes that have been developed by the courts in dealing with our criminal justice system over many hundreds of years. I commend the bill.

The Hon. NICK XENOPHON: I indicate my support for this bill and commend the Attorney for the prompt way in which he has acted to deal with community concerns. I commend the government for introducing this bill, and I support it.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their indications of support for the bill and for dealing with the matter expeditiously. When the bill was introduced on Tuesday, I certainly put no requirement in place that it be dealt with expeditiously. But, as we are coming to the end of the session, I think it was obvious to everyone that we should endeavour to deal with the bill in the Council this week so that it can be resolved by the House of Assembly in the last sitting week of the session, and that is what I hope will now happen.

I want to address several remarks made by the Hon. Mr Redford. He made an observation, as did the Hon. Mr Gilfillan, that they would prefer not to have to deal with this issue in circumstances where it is related to a highly emotive matter currently before the courts. Equally, I would prefer not to have to deal with this sort of legislation quickly. However, when the issue was raised in court, I took the view that we ought to seek to address it on the basis that, if the matter did go to the Court of Criminal Appeal on a case stated and the decision was adverse to what was believed to be the position under the current law, we would have to wait until at least the end of September before legislation could be introduced. The last thing we wanted was to have, in a sense, a vacuum about the approach to be taken towards the sentencing process in respect of defendants.

There will now be a period of two weeks between when this bill passes the Legislative Council and when it is considered in the House of Assembly. If there are any criticisms of substance to the bill in the intervening period, I will undertake to give consideration to them and to endeavour to resolve them before the matter is dealt with in the other house. So, I invite members who might find something in this bill which causes them concern, or which may be drawn to their attention, to ensure that those matters are communicated to me as urgently as possible, in the event that we need to give further consideration to it. However, I do not believe that we will. There has been some consultation on the bill, including consultation with the courts and, so far, we have not been able to find any flaw in the approach.

I know that the Hon. Mr Redford has some concerns about shielding the witness, or the victim, from the gaze of the defendant. When we introduced vulnerable witness provisions into the law, and that must be now eight or nine years ago, there were reservations about it, particularly in the context of the accused having a right to see who his or her accuser might be and to face that person in an open courtroom. I must say that, for a much longer period than has been the practice in South Australia, in the United Kingdom witnesses, particularly children, have been able to take advantage of closed-circuit television facilities to avoid that face-to-face contact between the defendant and the child witness.

We do know that, in the United Kingdom, that procedure has generally worked well. There have been some issues about the technical administration of it, but not serious issues. In fact, the UK is now going much further than we are by, I think, admitting as evidence-in-chief a videotaped statement from a child where there is an allegation of sexual or other abuse of that child. Certainly, the UK was contemplating that and my recollection is that that is being done. We do not intend doing that here. The Hon. Mr Redford does raise the question of resourcing, particularly for closed-circuit television. I think that it is installed in only two courts but, so far, that has not caused any problem. I will check that information and ensure that the honourable member is informed about the current facilities that might be available, particularly for closed-circuit television screening.

The other issue is the monitoring of the resources required for the vulnerable witness provisions of the law. That is constantly being monitored. I am not aware that it has caused any concern in respect of resourcing but, again, if there is concern I would certainly welcome information about that. The status of the victim impact statement has been raised by the honourable member. The law is quite clear. We had this debate last year, or the year before, about the status of an oral victim impact statement and whether or not the victim was liable to be cross-examined on the statement, and all that now is clearly set out in the law which governs victim impact statements.

With respect to the other part of the bill, that is, the presence of the defendant being required during the sentencing process, the Hon. Mr Redford asked why a defendant and the Director of Public Prosecutions could not agree that the defendant may be absent. I may have missed the honourable member's point, but the—we are not in a division. You do that only when you are in a division.

The Hon. T. Crothers interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. K.T. GRIFFIN: Mr Acting President, I may have been—

The ACTING PRESIDENT: Order! The Attorney-General will resume his seat. I am advised that the honourable member should not be wearing a hat at this time.

The Hon. T. CROTHERS: Sir, I would ask you to check that. The standing order permits me to wear a hat. If that is not so, sir, after you and the Clerk have checked it, I will not wear it.

The ACTING PRESIDENT: I will check the standing order, but in the meantime I would ask the Hon. Mr Crothers to remove his hat.

The Hon. T. CROTHERS: You will check the standing order, sir?

The ACTING PRESIDENT: I will.

The Hon. T. CROTHERS: I have a cold in the head, you see.

The Hon. K.T. GRIFFIN: I may have misunderstood the point made by the Hon. Mr Redford but, if he looks at clause 3 of the bill, new section 9B(1) provides:

> Subject to the following exceptions, a defendant who is to be sentenced for an indictable offence must be present when the sentence is imposed and throughout all proceedings relevant to the determination of sentence.

Then there are two exceptions:

> 1. The defendant may, with the prosecutor's consent, be absent during the whole or part of the proceedings.

I think that covers the point which the honourable member was raising, and I can understand that, in the haste to deal with this, he may have overlooked it. I think that covers all the issues raised by members. Again I thank them for their prompt consideration of the provisions of the bill.

The ACTING PRESIDENT: In response to the Hon. Mr Crothers, standing order 163 provides:

> Every member shall be uncovered when he enters or leaves the Chamber, or moves to any other part of the Chamber during a debate; and shall make obeisance to the Chair on so entering or leaving the Chamber.

We understand that is very old language, but that means that a member does not wear a hat—

The Hon. T. Crothers: I cannot wear it if I stand up to speak or if I stand up to—

The ACTING PRESIDENT: Mr Crothers, if you are going to make a point, I would like you to stand.

The Hon. T. CROTHERS: I will take a point of order—and I am uncovered, sir, as you would notice. I will take a point of order with you and the Clerk. As I understand the matter now before the chamber, which I did not want to make an issue but which I will in respect of legal niceties and traditions of this chamber, if I come in uncovered—and I did uncover when I made obeisance to the chair and I sat here with my hat on—and I am not speaking and I remain seated in this chamber, I can be covered. If I get up to speak, or if there is a division, I think I have to be uncovered, sir. If I am wrong it is because the book of standing orders is wrong and that obviously two mentions are made as to whether one should be covered or not.

The Hon. CAROLYN PICKLES: Mr Acting President, I rise on a further point of order.

The ACTING PRESIDENT: Would the leader like me to rule on that one first, or does she want to make a further point of order?

The Hon. CAROLYN PICKLES: It is contingent upon your ruling, sir. I have often wondered what the terminology 'uncovered' means. The mind does boggle at what it might mean.

The ACTING PRESIDENT: I will give the ruling on this matter. My advice, in addition to the standing order, is that the use of a hat is in the case of a division when members are moving around a chamber and crossing the floor, or whatever, and that the use of a hat was done to attract the attention of the chair when raising a point of order. My advice is that, when a member is seated in the chamber, he should be uncovered.

The Hon. T. Crothers: That is not my view.

The ACTING PRESIDENT: Does the Hon. Mr Crothers have another point of order?

The Hon. T. CROTHERS: I will accept what you have said, sir, but I think that both you and the Clerk are now in breach of standing orders. I do not say what the original meaning was, but how it reads now. However, to facilitate the progress in this chamber, I will uncover, but I do believe that, on the advice the Clerk has given you, you have given me an unfair ruling in accordance with what the standing orders are. I am not interested in what the traditions and practices were—try doing that in a court of law. I am interested in how the standing order is worded, but I will accept your advice. I do not wish to make much of it, but I do feel very badly wronged on this matter, sir.

The ACTING PRESIDENT: I asked the honourable member to remove his hat whilst the standing orders were checked. He did so, and I appreciate that. I am prepared to take further advice but, to this point, my advice is as I have stated it. If there is further advice to be looked at, I am sure that the President will do so in consultation with the Clerk.

The Hon. T. Crothers interjecting:

The ACTING PRESIDENT: I am speaking. As the current occupant of the chair, I have made a ruling. I appreciate the assistance of the honourable member by uncovering his head. I think that covers the situation—no pun intended.

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

CRIMINAL LAW (LEGAL REPRESENTATION) BILL

Adjourned debate on second reading (resumed on motion).
(Continued from page 1950.)

The Hon. K.T. GRIFFIN (Attorney-General): Again, I thank members for their contribution to this bill. The bill was introduced three months ago (on 11 April), and it has been the subject of very close scrutiny since then by a variety of people. Members might remember that—I think about two years ago—we introduced an earlier form of legislation to deal with the Dietrich decision of the High Court. So, it is not as though the issue comes to the parliament without having been the subject of some scrutiny.

The bill is a much needed solution to the unintended consequences of a High Court decision that set out to safeguard the interests of accused persons who through indigence were unable to secure legal representation in serious criminal trials. In the years since the decision some defendants have manipulated this principle to engineer an indefinite stay of serious criminal charges against them. This bill will ensure that every person who is accused of a serious criminal offence under state law will be legally represented if he or she chooses to be so represented. It will no longer be possible to challenge a trial of a serious criminal offence as unfair for want of representation.

There are a couple of points—and they are only minor points of clarification—in relation to the comments made by the Leader of the Opposition. The first is to explain that legal aid granted under this bill may be terminated by the commission in a wider range of circumstances than the honourable member indicated. These are:

1. Where the defendant is able to arrange private representation—as the honourable member pointed out.
2. Where the defendant tells the commission that he or she no longer wants legal representation.
3. Where the defendant does not comply with the condition of aid and the court authorises termination.
4. Where the defendant will not cooperate with his or her assigned lawyer and the court authorises termination.
5. Where the offence charged is a minor indictable offence and aid was granted on the basis that it would be heard in the Supreme or District Court but it now appears that the offence will be heard in the Magistrates Court. I think the honourable member alluded to this.

The second point is that the commission already has power to take into account the assets of a person who is financially associated with an applicant when determining the applicant's eligibility for legal aid. Every commission in Australia does so, applying the same test. If the combined assets of an applicant for aid and a financially associated person exceed the means threshold, the applicant will not get aid. The commission cannot compel the financially associated person to pay for the applicant's legal representation; it just refuses aid.

The bill requires the commission to fund the defence of some defendants who would not otherwise be eligible for aid on means. For this reason, it needs powers, which it does not have in respect of ordinary applicants, to use the assets of people who are financially associated with these defendants, as well as the defendant's own assets, to pay for the costs of their defence.

To the extent that the bill gives the commission these greater powers, it also builds in protections for financially associated persons in this situation. For example, the commission is required to apply to the court for orders dealing with the assets of financially associated persons. It cannot simply take action without court authorisation. Financially associated persons are able to appeal against any decisions made by the commission, first to a panel of commissioners, then to a master of the court, then to a single judge and, ultimately, to the Full Court of the Supreme Court. That is their right under the Supreme Court Act and the District Court Act. With these protections, it is highly unlikely that unfairness or undue hardship will be caused to people whose financial association with a defendant is such that it is reasonable to regard their resources as being potentially available to the defendant for legal costs. I think that covers all the issues which have been raised both on the record and off the record, and I look forward to the bill passing through this Council.

Bill read a second time.

In Committee.

Clause 1.

The Hon. IAN GILFILLAN: I do apologise to the committee, but the pace of change from one subject to another has left me floundering. There was some debate as to whether I would contribute to the second reading debate—I thought that I had but, in fact, I had not. In effect, I am now using clause 1 as an opportunity to speak rather critically to the bill as a whole. We believe that the bill is a phoenix. It was originally unveiled by the Attorney-General in August 1998, and after savage criticism in September 1998 was withdrawn. At that time it apparently died a quick and painless death and was cremated. But now in 2001, it has risen phoenix-like from the ashes but, unfortunately, it appears not to have been any better thought through than it was in its first incarnation.

The Law Society's criminal law committee has produced a comprehensive catalogue of complaints about this bill to which I will refer shortly. Although I do not share all of the Law Society's concerns, I certainly share one of them. In fact, I would put the Law Society's last concern first. I can do no better than quote what I said about this bill when it was released for consultation more than three years ago. At that time, I issued a news release headed 'Ex-wives liable for former husbands criminal law fees', in which I said:

> Men who commit serious crimes may soon be able to get their ex-wives to pay their lawyers and court costs.
>
> The State Government's proposed new Criminal Law (Legal Representation) Bill contains draconian provisions which may produce some of the harshest effects on women this century.
>
> The Bill treats the assets of a spouse, as 'belonging' to the defendant in a criminal trial.
>
> That sort of presumption was abolished decades ago, in all civilised countries, but this Bill goes much further than that.
>
> Anyone who was in a relationship, even up to five years ago, may be ordered to contribute to the costs of an ex-partners criminal trial. Even someone who receives child support, from an ex-partner now charged with a crime, is at risk from this Bill.
>
> And anyone who bought or sold property, borrowed or loaned money in deals with such a person would be at risk of having the transaction set aside. At the very least, these people would have to prove to a Court why they should not be targeted.
>
> The Bill is designed to stop defendants falsely claiming they are too poor to be legally represented in a criminal trial, thereby postponing the trial indefinitely. However there have only been 8 cases in five years where successful applications have been made to stay a trial, and the Government is not suggesting now that any of these applications were fraudulent. In these circumstances, the Government's proposed 'solution' is gross overkill.
>
> In the very rare cases where defendants cannot get Legal Aid, are too poor to defendant themselves, and have not intentionally

diminished their assets for that purpose, then the government should simply pay for an adequate defence.

The South Australian Government currently contributes less to Legal Aid, per capita, than any other State or Territory Government in Australia. It now wants to make up the shortfall from those who are unfortunate enough to be the partners, spouses, children and business associates of alleged criminals.

That was the news release issued in my name on 15 September 1998. I have not had the opportunity to check whether the figures quoted in 1998 are still accurate in 2001. However, I note that the Attorney-General in his second reading speech does not even suggest that there has been any rise in the number of trials that have stayed indefinitely because of a lack of legal representation. Indeed, the Attorney has cited no figures at all to justify this massive intrusion into the rights of persons who are not charged with any crime.

The Law Society says 'very few' trials have been stayed. In view of the Attorney's lack of information on this matter, I can only assume that the Law Society is correct. Why, therefore, is the government proposing to force innocent people into court to protect their assets when former associates or partners are charged with a crime? The old metaphor 'using a sledgehammer to crack a nut' is inappropriate in terms of this bill which proposes a bulldozer to crush a problem the size of an ant. The bulldozer will crush the lives of innocent people alongside the ant sized problem.

Apart from the bill's savage effects on those who are unfortunate enough to have been associates of alleged criminals, the Law Society has identified more problems with this bill. For the sake of brevity, I shall paraphrase the Law Society's other concerns. This bill does not protect those who are facing up to two years' gaol on a charge of a non-indictable offence brought in the Magistrates Court. No matter how poor they are, this bill would take away the Dietrich presumption that they are entitled to a fair trial. This bill perpetuates the present 'funding cap' problem, whereby legal aid is not available for appeals, no matter how meritorious an individual appeal might be. The bill requires lawyers at a very early stage of proceedings to give an undertaking that the accused will be represented 'for the duration of the trial', and this is an undertaken that cannot be given at that stage.

It is not possible for a lawyer to guarantee to continue to represent an accused. There are many reasons why representation might need to end. Under the arrangements in the bill, an accused is not entitled to a lawyer of his or her choice. Forcing an accused to accept an unwanted or not trusted lawyer will not assist justice or even the chance of obtaining a guilty plea. Clause 18 (which on my copy of the bill has been crossed out) raises issues of conflict of interest for the Legal Services Commission and the Attorney-General in relation to 'case management plans' for particular defendants. Defendants have no rights to appeal against any unfavourable decision of the Legal Services Commission. Clause 11 fetters the discretion of the courts in considering whether a trial has been unfair.

Finally, the Law Society goes into greater depth than I have done in examining the potential unfairness of targeting persons who are deemed to have been 'financially associated' with an accused. On this point, I quote from the Law Society's submission, as follows:

There are a number of problems in relation to the power to set aside transactions entered into by either the defendant or any financially-associated person on the one hand, with any third party on the other hand.

The number of such transactions that may be entered into during the specified 5 year period is of course vast. To require an innocent third party who has entered into a normal transaction to establish—no doubt at his or her expense—that the transaction was entered into in good faith and for value has the potential of considerable unfairness and inconvenience to numerous third parties.

Accordingly the Law Society considers that the burden of proof should be as normal—namely the person asserting that such a transaction should be set aside should bear the onus of establishing that it was NOT entered into in good faith and for value.

In summary, the bill is ill thought out. As I said before, it is using a bulldozer to crush a problem the size of an ant and it has a potential to expose, particularly women—but not exclusively women—to draconian penalties and assumptions which were displaced in South Australia many decades ago. So, it is our intention to oppose the bill. I will not be involved in the committee stage, as it is my opinion that the bill is so obnoxious that there is no point attempting to amend it, and I will oppose it and seek to divide on the third reading.

The Hon. K.T. GRIFFIN: The bill is a different bill from the one which was originally introduced several years ago. It has undergone quite significant change since then—I think change for the better—as a result of quite an extensive consultation process.

The Hon. Ian Gilfillan interjecting:

The Hon. K.T. GRIFFIN: Well, the Law Society got itself all uptight about this, and I have responded at length to issues that the Law Society has raised with me—and I think that those issues have also been raised with other members. I have a four page letter which I sent to the Law Society on 4 July. I made it available to the honourable member as well as to the Leader of the Opposition. There is no secret about it. It refutes the assertions made by the Law Society. I do not think it is necessary to go into those now but, as I say, there is nothing secret about the response I made to the Law Society. It is just plain wrong on a number of issues. In the end, for the first time, here is a piece of legislation which grants to every defendant on an indictable matter the right to be represented. It puts constraints on them in terms of representation but it gives them the right to be represented, and that is a particularly important development.

I make a couple of other observations. There was some reference made to former wives, I think. They are not financially associated. The definition of 'financial association' is different under this bill than under the Legal Services Commission Act. The definition is the same across Australia.

The eight applications are those where stays were granted. In many other cases stays were avoided by the government paying the extra cost on an ad hoc basis. This, for the first time, brings into play a comprehensive scheme where the roles of the respective participants are clearly identified. The point is that there are many applications for stays, and for every stay that is granted the interests of the public and the state in prosecuting serious crime are defeated. This bill is designed as a disincentive to abuse the process. Had the bill been in place when those eight cases came before the court, all eight defendants would have faced trial.

So, I resist strongly the arguments put by the Law Society. I think they are wrong. It has a right, of course, to put them, but I would hope that honourable members, when they read my letter to the Law Society, will see that there are very strong and persuasive arguments against what the Law Society puts.

The Hon. T. CROTHERS: I rise to support the remarks made by the Attorney in respect of this matter. I understand full well what the Hon. Ian Gilfillan is endeavouring to do.

He is endeavouring to ensure that all people, particularly people who are among the poor people of our society, have legal representation when they have to confront the courts on a serious matter. We have had decisions, as he said, where learned judges on a number of occasions refused, in fact, to proceed with a case because a defendant did not have legal representation.

However, I see the lawyers in this matter as a bit like doctors in matters relevant to euthanasia where, when they speak out against euthanasia, we find that when we blow away the covers many of the doctors have vested interests in nursing homes. I am assured by a triple certificated sister—and I notice I could be making a more appropriate remark at the moment, given the presence in the gallery of one who may know better than any of us—that in respect of some private nursing homes that are owned by members of the medical professional there are some people, for instance a South African doctor (about whom the triple certificated nurse from Sturt College told me), who wanted to die. She was a medical doctor who wanted to take euthanasia and she was prevented from so doing. They have a vested interest, and we should listen to what some of these doctors have to say with a grain of salt.

Likewise, with the Law Society, unfortunately, it is not the guardian with the noblesse oblige, which is solely defending the rights of humanity in this state relevant to seeing justice done. That may be part of it for some of them, but for many more of course the rationale that underpins their intervention is the fact that it is less money—less bikkies—in the coffers for them if in fact Legal Aid and other sources of funds from which members of the Law Society draw part of their living is in fact rendered in such a way not to be as huge and magnanimous as some lawyers would like.

When I was a trade union secretary, we looked at the matter of workers' compensation in this state. We found that, when a worker with respect to civil action, in other words the law of torts, got a huge lump sum of compensation, on average 30 per cent of it was going to the legal profession and 10 per cent to the medical profession. As members know, I had a son-in-law who was genuinely off work—he was 40 per cent incapacitated—and on four occasions the workers' compensation people and their lawyers in this state forced him to get another specialist's opinion at $400 a strike, thinking full well he would not be able to pay it. Of course, his old father and I were funding him. When they sent him in the final analysis to the four specialists, the others had found a lesser figure—I will not name—but a person from a famous football family who is now an orthopaedic specialist found that my son-in-law was in fact 40 per cent incapacitated, but each specialist's report was at $400 a pop.

That is the sort of thing that happens among the higher levels of the professions where one would hope that the sense of justice and fair of play and the sense of non-greed would prevail. But that would be an unreal world, somewhat like the world in which Judy Garland was when she made that great movie for which she is very famous. It does not happen that way. I support the Attorney-General. I hear people say that they want more for this and more for that, but when you have a cake—and there is only so much of a cake to be cut and distributed—it is the responsibility of incumbent governments—and we in opposition can be critical all we want, but at the end of the day it is the responsibility of incumbent governments—whether Labor, Liberal or Democrat—to spend the money of the taxpayers of this state—and we had a dispute over that with the government recently in this place—so as to achieve maximum effort relative to the totality of state expenditure.

As much as I sympathise with the noble principles being espoused by the Hon. Mr Ian Gilfillan, the facts are that you cannot argue, except as verbatim, the advice you get from the Law Society, or indeed from the doctors in respect of euthanasia and other and different matters that they have responsibility for.

In the short space of time I have been speaking I am very pleased to be able to support the Attorney-General on this matter. I know it is not a perfect solution but I think that under all the circumstances it will be as good as we can get at this time if we exercise some financial responsibility for all the citizens of this state. I commend the Attorney's proposition to the committee.

The Hon. K.T. GRIFFIN: I wish to correct one matter. Earlier when I was referring to former wives not being financially associated I said the definition of 'financial association' is different under this bill than under the Legal Services Commission Act. I was quite seriously wrong when I made that statement. In fact, the definition of a financially associated person is no different by virtue of this bill. I said it was different, and it is not. The bill does not affect the definition in the Legal Services Commission Act, and the definition is identical across Australia.

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order! The honourable member should not interject under a hat.

Clause passed.

Clauses 2 to 17 passed.

The CHAIRMAN: I point out that clause 18, being a money clause, is in erased type. Standing order 298 provides that no question shall be put in committee upon any such clause. The message transmitting the bill to the House of Assembly is required to indicate that this clause is deemed necessary to the bill.

Remaining clauses (19 to 22) and title passed.

The Council divided on the third reading:

AYES (13)

Crothers, T.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Holloway, P.
Laidlaw, D. V.	Lawson, R. D.

AYES

Pickles, C. A.	Redford, A. J.
Roberts, R. R.	Schaefer, C. V.
Sneath, R. K.	Stefani, J. F.
Zollo, C.	

NOES (4)

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

Majority of 9 for the ayes.

Third reading thus carried.

Bill passed.

VICTIMS OF CRIME BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1953.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their expression of support for this bill. The Leader of the Opposition asked that I respond to some comments which she quoted from the Victim Support Service and the Law Society. I have also received similar correspondence from these bodies.

As to the Law Society's concern about the Attorney-General's discretion, I consider this concern unfounded. Except in one point the bill simply carries over the existing discretion to reduce an award to take into account other compensation which the victim has received or is likely to receive from other sources. It must be obvious to members that a victim should not be compensated twice for the same loss and therefore that some mechanism is needed to ensure that this does not occur.

Criminal injuries compensation is a last resort where no other avenue is available. Sometimes victims may have entitlements to workers compensation or to payments from disability insurance or other sources. The Attorney-General's discretion exists to make sure that when the time comes to make a payment from the fund these are properly taken into account. The only difference that this bill makes to that exercise of discretion is to provide that it can also extend to the decision whether or not to pay costs. This is intended to discourage claims which it is obvious will bring no benefit to the victim but merely recover some legal costs.

In my experience there are a few occasions where it should have been quite obvious to the legal practitioner acting for the claimant that there would not be any recovery of criminal injuries compensation, so the matter is run up, costs are incurred, and the claim is made for costs when the Attorney-General exercises the discretion to reduce the payment to nil because the amount awarded for criminal injuries compensation has been matched, if not exceeded, by other payments, whether for lump sum under workers compensation or in other contexts.

The practical reality is that, where the compensation has already been paid—for example, where an award of workers' compensation has been made—both the victim and the lawyer well know the amount of this compensation and the components attributable to economic and non-economic loss. They are well aware that the Attorney-General will take this into account and, therefore, that the criminal injuries compensation will be reduced accordingly. I do not see that this gives rise to any difficulty in practice.

Where the other compensation has not crystallised it must still be taken into account, as far as possible, through the exercise of a discretion. Of course, the victim or his or her representatives can, and do, make representations to the Attorney-General as to the likely quantum of that future compensation. And, I should say, it is the practice of some lawyers (which I do not support) to make representations to the Attorney-General, with the knowledge of their clients, and also in the knowledge that there will be no benefit to the client by making that application. They want to shift the responsibility from themselves to the Attorney-General, and I think that that is a particularly inappropriate way in which to behave, particularly where the practice in relation to the exercise of discretion and the provision for the exercise of discretion in this bill are no different from the exercise of discretion in the current law.

The Hon. R.K. Sneath: Can you give me an example?

The Hon. K.T. GRIFFIN: There are plenty of examples. I do not want to give specific examples, and I can't give them—

The Hon. R.K. Sneath: Just give me some idea.

The Hon. K.T. GRIFFIN: They may advise their client to make an application for criminal injuries compensation but in circumstances where, for example, there may have been a substantial workers' compensation payment, or it may be anticipated that there will be, which includes a significant section 43 lump sum payment. The way in which it operates, when the criminal injuries compensation is assessed, the other payment—that is, the section 43 payment—will generally have to be taken into consideration. And, frequently, the section 43 payment exceeds the amount of the criminal injuries compensation. In those circumstances, the payment under the Criminal Injuries Compensation Act, because it is a payment of last resort, is reduced to nil. Yet the lawyers still collect their legal fees, because they have made the claim and, in the end, they get nothing out of it.

Fortunately, there are not a lot of those cases, but it really gets up my nose when I have to exercise my discretion and reduce the amount to nil because other payments have been more than adequate to meet the entitlement of the claimant. The claimant is sent to me to make representations—'Well, the Attorney-General shouldn't have done this. You've got a right to make an application,' with the lawyer knowing full well what the practice has been in the past. This addition to the Attorney-General's discretion is included specifically to deal with those cases where, on all objective analysis, that claim should not have been made—and, if the lawyer had been acting properly, the claim would not have been made.

I get a bit passionate about that, because I do not like reducing people's entitlements. But the law says that that is the way in which it operates. I think it is a proper way for the law to operate because, as I said earlier, it is important to recognise that criminal injuries compensation is a payment of last resort. It is wrongly described as compensation, because it does not equate to what one might regard in common law as an appropriate level of compensation and, in those circumstances, the discretion should be exercised.

It is perfectly proper. My predecessor, the Hon. Chris Sumner, acted in that way and the Hon. Peter Duncan, when he was Attorney-General, acted in that way, as far as I can recollect. There has been a consistency of approach. The Attorney-General of the day happens to be in the gun on occasions when it is suggested that there has been some unreasonable or improper exercise of discretion. As to the matters raised by the Victim Support Service, I point out that this bill is not driven by economic imperatives but rather a desire to refocus the law on the types of offences and injuries which, in the government's view, were always the ones intended to be compensated.

This is the reason for both the proposed three point threshold and also the new definitions of 'victim' and the eligibility criteria. The intention is to exclude claims which are trivial, as well as those which are only remotely connected with a criminal offence, and I have actually referred to them in my second reading explanation when introducing the bill. The Hon. Ian Gilfillan also quoted from these sources but raised specifically a question about clause 20(5) of the bill, which precludes compensation where the claimant was involved in committing an indictable offence which materially increased the risk of injury.

I point out that this provision carries over the present law as set out in section 7(9aa). Members may recall that that provision was added as a result of an amendment moved by the opposition to a portfolio bill before the parliament last year. The bill does not alter the substance of that recent amendment. As to the paragraphing of the bill, that was as prepared by Parliamentary Counsel and I see no difficulty with it. As to the proposed three point threshold, the victims' review, of course, recommended a higher threshold, that is, five points. The bill proposes a figure of three points having regard to matters raised in submissions. I point out that this

threshold has received the support of the Victim Support Service as a fair result.

Among the small claims which are in that category covered by the government's proposed amendment, there are many for minor psychological injury, but some are for temporary physical injuries resulting from minor assaults. However, I should make clear that such claims are not left without remedy. The intention is that they should not get lump sum monetary compensation for non-economic loss. These victims may, however, choose to apply for a payment to cover expenses which are necessary to help them to recover from the effects of the crime. This might include reimbursement of expenses, such as clean-up costs, psychological treatment or security measures to give the victim practical assistance in restoring his or her life to normal.

This is thought to be far more useful than merely handing them a sum of money after a long period of time going through the process, or even after a short time, I might say. Contrary to what members are suggesting, it is far from clear that this will have cost-cutting effects. One way the government could have gone was the way in which the Victorian government went when restructuring criminal injuries compensation, or the ACT when it restructured its criminal injuries compensation. We chose to retain some significant measure of lump sum payments because we believed that that would assist, in some cases, persons to recover from the trauma of a crime, or at least to assist in their rehabilitation and recovery.

We also wanted to ensure that there was other support available to victims, because, as a result of the victim survey, it was clear that there were people who needed support at a very early stage after the offence occurred and there was no immediate mechanism by which that could occur. There were others for whom merely the provision of a security lock on a door would give peace of mind, as a result of their having suffered the trauma of a break-in. What we have been trying to do is get a balance, on the one hand, to ensure that a lump sum is likely to provide some benefit for those concerned; and, on the other, to ensure that the people concerned might be assisted in their recovery by some short-term support in the ways that I have indicated.

The government does not support the indexation of the point scale. The loss to which it refers is not economic in nature, but is an intangible loss of which the payment is a recognition. No-one really believes that pain and suffering can be translated directly into dollars. The compensation is a mark of recognition and a recompense for the person suffering. It does not literally attach a dollar value to human suffering. It cannot therefore be compared with the levy, and it is not an item to be indexed in the way that the levy (which is a purely financial calculation) can be indexed.

The Hon. Nick Xenophon raised the issue of conduct contributing to an offence (or injury) and, in particular, the situation of a person who chooses to walk alone after dark or who goes to the aid of another as a good Samaritan. He asked whether these claims would now be excluded. It is important to understand that the provision to which he refers is identical with the present law (section 7(9))—and let me stress: it has been the law since the inception of the legislation in 1968, 23 years ago, and we have not had any problems with it. The court has always had the power to take into account conduct contributing—and it does so. As far as I am aware, the court has never held that choosing to walk alone at night, or going to assist a person in danger, amounts to conduct contributing such as to reduce an award. There is no reason why this provision would be interpreted differently in the future.

I had high hopes that we would be able to deal with this bill, get it through committee and to the House of Assembly this week. Regrettably, that will not be possible. The Council and its members have been sitting for very long hours throughout four days of this week and the commitment has been given that we would complete the business (as much as it was possible to do so) by about 5 p.m. this evening, and I think it is appropriate that we endeavour to honour that commitment after the late nights that we have all had. I should say that I have also—only about half an hour ago—received the amendments put on file by the Hon. Nick Xenophon. They are extensive, even though they might relate only to issues of indexation and exercise of the Attorney-General's discretion, and also deal with a transitional provision.

I do not think it is possible to deal with this issue in a matter of minutes. I think there will be some hours of debate ahead of us. That means that we will have to deal with the committee in the next sitting week. It will be towards the end of that sitting week, which means that, unless something miraculous happens in the next two to three weeks, it would not be possible for the matter to be dealt with in the House of Assembly. Regrettably a lot of the positive things which arise as a result of this bill would not come into effect for some much longer period, and I regret that that is the case. I accept that it will be, unless, as I say, something miraculous happens—and miracles do happen—in the short time we have left in this session. Again, I thank members for their expressions of support for the bill. Notwithstanding my somewhat pessimistic view about its likely progress, I hope that someone may facilitate a miracle.

Bill read a second time.

SOUTH AUSTRALIAN COOPERATIVE AND COMMUNITY HOUSING (ASSOCIATED LAND OWNERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 July. Page 1812.)

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank all members, particularly the Hon. Terry Roberts and the Hon. Sandra Kanck, for their indications of support for the bill. The Hon. Sandra Kanck raised a number of issues. She said that, depending on the reply to those issues, she may move amendments. I have taken the liberty of providing the honourable member with answers that I have received from the Minister for Human Services. It is my understanding—but the honourable member can speak for herself—that no amendments will be moved in committee.

For the record, the honourable member asked a question about the decrease in South Australian Housing Trust stock numbers over the past 10 years. I received the following advice:

> There has been a decrease in South Australian Housing Trust stock numbers over the past 10 years. This has been due in large part to the shrinking Commonwealth-State Housing Agreement funding in that period, which has fallen by $11 million annually over the past decade. Stock decreases have also been a response to the need to redevelop areas of high Housing Trust stock concentrations. However, in the period since 1991:
>
> 1. The combined numbers of Aboriginal Housing Authority and South Australian Community Housing Authority stock have

increased by almost 80 per cent from 2 902 in 1991-92 to 5 210 in 2000-01.

2. Aboriginal Housing Authority numbers have increased from 1 465 to 1 820 over the same period.

3. South Australian Community Housing Authority stock numbers have increased from 1 437 to 3 390.

4. South Australian Housing Trust numbers have decreased from 61 210 to 53 310.

The South Australian government retains its very strong commitment to public housing in this state despite the decline in commonwealth funding.

The second issue raised by the Hon. Sandra Kanck involved alleged lack of consultation with the community—

The Hon. Sandra Kanck: Alleged?

The Hon. DIANA LAIDLAW: —that is my word; the honourable member did not choose to use that word—'alleged'—in inverted commas—lack of consultation with the community about the legislation. The advice continues:

Consultations on the legislation to date have been with the Inter Church Housing Unit, representing seven churches and housing associations, in addition to the broader South Australian Council of Churches. The specific details of future arrangements will be subject to agreements negotiated between individual churches and associated landowners and the South Australian Community Housing Association. Consultation on the implementation of the legislation will be through the appropriate community sector representative associations and will centre on the Housing Council, the membership of which includes Shelter SA, the Community Housing Council of South Australia, the Inter Church Housing Unit, the South Australian Council of Churches, the Multicultural Communities Council, the South Australian Housing Trust, the Council on the Ageing, the Women's Emergency Services Coalition, the Youth Housing Network, the Council to Homeless Persons, the Aboriginal Housing Authority, the South Australian Community Housing Authority, and the Commonwealth Department of Family and Community Services.

Once the minimum requirements are agreed, specific arrangements would be negotiated in commercial confidence with particular churches or associated land owners for particular developments.

I provided that reply to the Hon. Sandra Kanck yesterday and she asked a subsequent question. While she thought that the reply was quite good, she wanted an assurance that the consultation proposed would include consultation on the drafting of the regulations, and the minister has advised that the answer is yes. The community sector will be consulted regarding the regulations, and the minister's office referred me and, in turn, the honourable member, to *Hansard*, page 1621, House of Assembly, 17 May, where the minister specifically said:

Now that it has been widened, in terms of the preparation of the regulations, I give an undertaking to consult widely with the various groups, including Shelter SA, in the preparation of the regulations. I appreciate the support of honourable members. . .

The member for Hanson, Ms Key, who managed the bill on behalf of the opposition, raised a similar issue in the other place. On the same page, 1621, she said:

The minister has already given an assurance that he will include and consult with Shelter with regard to the development of regulations. Will he also make sure that the Community Housing Association is also consulted and involved in some way with the development of those regulations?

The minister, the Hon. Dean Brown, replied:

I can give an assurance that it is our intention to have consultation with a range of organisations.

I trust that confirmation from the minister, on the record, and in addition to the advice that he has provided is sufficient comfort to the honourable member and the organisations generally that are interested in the outcome of this bill. The honourable member also asked what was meant by the term 'appropriate social support'. The reply that I have received is as follows:

The type of support services will be negotiated on a case-by-case basis for each project and will need to be appropriate for the people who are to be housed. In the case of churches, the support services may be professional or non-professional, or a mixture of both, according to the needs of the tenants concerned. A service level agreement will be negotiated by SACHA for each of these projects, and the church or associated landowner will be responsible for the delivery of the agreed support services in the agreed quantity. As the value of the government's interest will be transferred to the church or associated landowner in exchange for the provision of support services, it is important that support services be paid for by the church or associated landowner concerned.

Again, having received a prior copy of that answer, the Hon. Sandra Kanck asked whether these issues would be promulgated as regulations and the community sector be allowed any input. I am advised that the services to be offered to tenants by the churches or associated landowners include support arrangements that will be subject to service level agreements (SLAs) between SACHA and the relevant church and associated landowner. The parameters of the service level agreements will be dealt with in the regulations, for example, the points to be covered by the SLAs, but not the actual detail. So, consultation will happen regarding the content of the regulations, but the SLAs themselves will not be the subject of consultations.

The fourth question was, 'What will prevent profit-based organisations from taking commercial advantage from the legislation?' My reply is as follows. Each partnership proposal will be evaluated on the merits of the SACHA. The legislation is aimed at not-for-profit organisations and, should the minister wish to restrict possible associated landowners to not-for-profit organisations, this can be facilitated. However, currently all options have been left open to include for-profit proprietors to avoid preclusion of possible future initiatives for low-cost housing options.

Administration controls can be included in the regulations concerning outcomes for proprietors and tenants. This will ensure the integrity of low-cost housing programs under this legislation while retaining a flexibility of approach and possible joint venture partners. This is consistent with the welfare reform principle of developing social partnerships between government and private organisations. It must be added, however, that government does not envisage this type of joint venture as an attractive financial option for for-profit organisations. It is difficult to see why a for-profit organisation would want to have its land tied up for 30 years in a social housing program while being obliged to deliver support to tenants, many of whom have complex needs.

The final matter raised by the honourable member related to what guarantees there are that access to the housing will be based on needs. The advice I have received in response is that each project developed under these arrangements will be subject to a comprehensive agreement between SACHA and the church or associated landowner. Each agreement will state that all tenants must be chosen according to the government's community housing eligibility criteria, effective from December 1999.

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. SANDRA KANCK: The minister in her inimitable way already foreshadowed most of the issues that I intended to raise.

The CHAIRMAN: Order! I just say to the photographer in the gallery, it is a good trick to have a big wide lens, but

you are able to focus only on the member on his or her feet and no-one else.

The Hon. Diana Laidlaw interjecting:

The CHAIRMAN: I know it is. We know that. It is good that a wide-angle lens is being used to pick up everything the photographer wants.

The Hon. SANDRA KANCK: I indicated to the minister yesterday further concerns I had, and I am pleased that she has been able to address them. Only one thing remains to be commented on, and I note the answer the minister gave to the question I asked about profit based organisations. I recognise that for the most part a profit based organisation would be unlikely to tie up its resources in this way for 30 years. Nevertheless, it concerns me that even in principle this has been left open for a profit based organisation should it so want to do this, when the whole concept of community housing is that it is not for profit. I do not expect that anything will happen, but it would be good from a philosophical point of view if the government really kept these things together in a coherent way. Apart from that and the general reservations I have expressed in my second reading speech—that this is a creative way for the government to get out of its responsibilities to provide public housing—that will be my final comment on this matter.

The Hon. T. CROTHERS: I rise as someone who now has a little more knowledge than I had on this matter. I am a member of the Statutory Authorities Review Committee—

An honourable member: Put your hat on!

The Hon. T. CROTHERS: No, I cannot put my hat on; I am up speaking, you see. The consequence of the committee was that we had a huge investigation into the Housing Trust and its policies and so forth, including the matter of community housing. I must say that I was absolutely opposed to that, because I had opposed the left of our party when it was first brought in. I must say that the Hon. Carmel Zollo, by dint of some justifiable and accurate comments, changed my mind.

An honourable member interjecting:

The Hon. T. CROTHERS: You did.

The Hon. Carmel Zollo interjecting:

The Hon. T. CROTHERS: Keep going; you are all right. I just heard what the Hon. Sandra Kanck has said, and I cannot agree with that at all in respect of this non-profit position. I understand that the purpose of community housing is to provide housing for those people who really are not wealthy enough to purchase their own home but who have enough money to put some down in respect of their own house and who are able to design it as a custom designed house. I suppose those people would want some return on their money. They would not want to see inflation over a period of 20 years fritter away what had been the value of the money that they had first invested in the community housing project. In addition to that, a lot of the community housing projects have now been taken over by church organisations which, in many instances, are making provision for older people in the community who again have not been able to afford their own home.

We must understand that the problem we have with the Housing Trust is that the federal government, over past years—both Labor and Liberal (and there are reasons for it: I am not being critical)—has cut the tied grants to the Housing Trust with respect to the funding that used to be channelled to the Housing Trust to build new homes, and, of course, some of the Housing Trust homes are getting older. The consequence of that is that the Housing Trust cannot afford to build the same number of houses that it used to and, as some properties have got old, it has started selling them to try to inject fresh money into the Housing Trust. In fact, the land on which those trust homes is built has now been halved in size and the trust is building several houses. You can look at the new project in Elizabeth where I used to live and you will see what I am saying. The Hon. Sandra Kanck is saying that she cannot agree with it for a number of reasons. I have sympathy: I cannot agree with it for a number of reasons, which I have just outlined.

The Hon. Diana Laidlaw: You have just outlined them?

The Hon. T. CROTHERS: That is right: I think I have. I hope people do not think I am being a smart alec, but the only reason I happen to know—and the Hon. Miss Zollo, the opposition whip, will confirm this—is that we have spent many hours on this subject matter before the Statutory Authorities Review Committee taking evidence from all over the area. So, I support what the minister is endeavouring to do in respect of this matter, for those reasons.

Clause passed.

Remaining clauses (4 to 6) and title passed.

Bill read a third time and passed.

ADJOURNMENT

At 5.05 p.m. the Council adjourned until Tuesday 24 July 2001 at 2.15 p.m.