LEGISLATIVE COUNCIL

Thursday 4 October 2001

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

STANDING ORDERS SUSPENSION

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

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

Motion carried.

STATUTES AMENDMENT (PUBLIC TRUSTEE) BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Administration and Probate Act 1919, the Aged and Infirm Persons Property Act 1940, the Guardianship and Administration Act 1993, the Legal Practitioners Act 1981, the Public Trustee Act 1995 and the Trustee Act 1936. Read a first time.

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

That this bill be now read a second time.

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

Leave granted.

The background to this Bill includes a competition policy review of the *Public Trustee Act*, and the Government's decision that the Public Trustee should, while remaining a public entity, be more closely assimilated to the position of a private business enterprise. The Bill would therefore apply to the Public Trustee, as far as appropriate, the provisions of the *Public Corporations Act 1993*.

The competition review of the *Public Trustee Act* identified some barriers to competitive neutrality between the Public Trustee and other trustees. The intention is to remove such barriers. For example, the Public Trustee is proposed to be relieved of regulatory roles over other administrators and managers, and is to compete directly with other trustees, with the assistance of a business advisory board. Of course, this is not intended to compromise the continued effective delivery of its community service obligations and the performance of the role expected of it by the community.

As a public corporation covered by the *Public Corporations Act*, the Public Trustee would remain under the control and direction of the Minister, but would act in accordance with a Charter to be laid before the Parliament pursuant to s. 12 of that Act. The Charter would stipulate the nature and scope of the commercial activities to be undertaken by the Public Trustee, as well as the nature, scope and funding arrangements for its non-commercial activities. The person holding the office of Public Trustee would be bound by s. 14 of the Act to oversee the operations of the body corporate so as to secure continuing improvements of performance while protecting its long term viability. The liabilities of the body corporate would be guaranteed by the Treasurer in accordance with s. 28 of the Act. The Public Trustee would continue to pay taxation equivalents as a result of the operation of s. 29 of the Act, and any dividend determined by the Treasurer, as a result of s. 30.

The Public Trustee will of course continue to provide its community service obligations. These obligations arise because the Public Trustee is intended to be an administrator of last resort so that there will be no South Australian estate which cannot be administered. They include an obligation to manage estates of small value where the real cost of administration cannot be recovered. It is unlikely that any trustee would take on this work on a commercial basis, but there would be great inconvenience to the community if no administrator could be found. It is intended that the Minister for Human Services will contract with the Public Trustee for the provision of these services.

In addition to providing community service obligations, however, the Public Trustee will compete in the marketplace with other trustee companies, subject to the provisions of the Charter about the nature and scope of its commercial activities. At present, the Public Trustee offers some services which are also offered by other trustees. For example, it draws wills, acts as executor of deceased estates, prepares and acts under powers of attorney, and manages the affairs of persons under guardianship where appointed to do so by the Guardianship Board. Like other trustee companies, the Public Trustee operates common funds in which estates under its management may be invested. It is also able to offer investment in the common funds to classes of persons approved by the Minister under s. 29 of the *Public Trustee Act*.

Under the Bill, there is scope to extend these business activities, subject to the approval of the Minister and the constraints of the Charter. It is proposed, for example, that the Public Trustee will be able to offer new services. It is proposed that it be able to charge for making a will, even though it is not appointed as the executor of that will and even though the will is not drawn by a legal practitioner. At the moment, the *Legal Practitioners Act* prevents this, and the Bill would remove that limitation. Since the Public Trustee already prepares wills, and may if acting as executor, prepare the will other than by a legal practitioner, it is not considered that there is any additional risk in permitting it to sell this service separately from the service of acting as executor. This may enhance competition between the Public Trustee and solicitors, with beneficial effects on the price of wills. It is also proposed that the Public Trustee be able to offer expanded document safe-keeping services, including the safe-keeping of documents not prepared by the Public Trustee. Expansion of the business activities may enhance competition in the trustee industry in this State.

Certain provisions of the *Public Corporations Act*, however, are not appropriate to be applied to the Public Trustee, because it is to remain a corporation sole. It is not intended that there be an accountable board of management. Instead, the person holding the office of Public Trustee from time to time is the person accountable to the Minister for compliance with the law and the Charter. References in the *Public Corporations Act* to 'the board' or to 'the corporation', are to be regarded as references to the Public Trustee , and references to a 'director', will be treated as references to the person holding the office of Public Trustee. However, the Public Trustee is to be assisted in relation to its commercial activities by a business advisory board. The board will keep the business activities of the Public Trustee under review and provide advice to the Public Trustee and to the Minister on the general management duties of the Public Trustee as set out in s. 14 of the *Public Corporations Act*. Its members have general duties of honesty and disclosure of interest but are not civilly liable for acts or omissions in good faith in the performance of their duties. Because the board is only advisory and not the governing body, its members do not have either the powers or the obligations of accountable board members.

Under this Bill, the staff of the Public Trustee, who are presently public service employees, will become employees of the Public Trustee. Existing entitlements such as leave and superannuation are carried over as if the employee had continued as an employee in the public service, however. This is achieved by transitional provisions in clause 39 of the Bill. There has been consultation with the staff of the Public Trustee and with the Public Service Association on this issue.

This proposal for more direct competition between the Public Trustee and other trustees also necessitates some changes to other Acts which confer particular supervisory or regulatory roles and responsibilities on the Public Trustee. Under the *Administration and Probate Act*, at present, an administrator of an estate is required in certain situations to enter into a bond with the Public Trustee as security for the due administration of the estate. If there is a default, an interested party can apply to have the bond assigned to him or her, and can then sue on it. Also, an administrator must account to the Public Trustee for his or her administration of the estate. In the case where there is a minor, or any other person not *sui juris*, entitled to share in the estate, the administrator is obliged to pay the estate over to the Public Trustee for long term management. As the Public Trustee is proposed to become more directly a business competitor with other trustees, it is no longer appropriate that the Public Trustee retain these roles. It is intended that the Public Trustee be simply one administrator among others, rather than an authority over them.

Accordingly, the Bill would remove the requirement for administrators to enter into a bond with the Public Trustee under sections 17 and 31 of the *Administration and Probate Act*. Instead, where an administrator is required by the Court to give security for the due administration of the estate (for example, where there is a beneficiary who lacks legal capacity to manage his or her own

affairs), the Bill provides that the administrator will be required to furnish one or more surety guarantees. The guarantee is to be in the amount of the value of the South Australian estate. This should provide similar protection, but without the need for any involvement of the Public Trustee. However, the Court will be able to dispense with this requirement, or to reduce the amount of the surety guarantee, in certain circumstances. The Bill also makes clear that the Court can protect the interests of minors and others under disability by the appointment of more than one administrator.

It is noteworthy that in recent years there has been a trend away from administration bonds in other jurisdictions. For example, in Western Australia and in Victoria, bonds have been replaced by surety guarantees. In Tasmania, there is no bond and a surety guarantee is only required if the Registrar so directs. In Queensland, administrators are not required to furnish either bonds or guarantees, but are placed in the same position as executors appointed by the testator. In the United Kingdom, bonds are not required and the High Court may in its discretion require sureties. The Government does not propose to go so far as to abolish the requirement for any security. Rather, sureties will generally be required, but it is left to the Court to determine whether one or more sureties will be required in any particular case, and also whether to reduce the amount of the surety in its discretion. Also, a person interested in the estate can apply for an order requiring further or additional guarantees.

Instead of the present automatic requirement that every administrator account to the Public Trustee for his or her administration of the estate, the Bill would provide that the Court on its own initiative may require an account, and any properly interested person can apply to the Court for an order requiring an account. Thus, there will still be an avenue of scrutiny of the administration of the estate, but without putting the Public Trustee in the position of examining the accounts of other administrators, who may include its business competitors. It should be noted that in no other Australian jurisdiction are administrators required to deliver accounts to a Public Trustee. Most Australian jurisdictions do not require accounts as a matter of course at all, but provide, as is proposed in this Bill, that the Court may require an account, either of its own motion or on the application of an interested person. The exceptions are New South Wales and the Australian Capital Territory, which require accounts as a matter of course from certain administrators (though not all of them). In Tasmania, an administrator must file an account if he or she wishes to obtain protection by advertising for claims.

The Bill would also abolish the present requirement that administrators must transfer the property of minors, and others lacking legal capacity, to the Public Trustee for management. It seems that this requirement is unique to South Australia and it is not considered that this role is appropriate if there is to be direct competition of the kind proposed by the Bill. The provision reduces choice, since no other person can undertake the management of the property. It may also be inconvenient where, as is common, the administrator of the estate is the parent or other close relative of the minor and is well able to administer the property in the minor's best interests. It may mean that the minor's property is liable to management fees despite the fact that a parent or other responsible adult is willing to administer the property for nothing. Under the Bill, it is proposed to remove this obligation. Instead, the administrator may continue to hold the property on trust for the minor. As trustee, the administrator is under the obligations of the *Trustee Act* and the general law obligations of trustees. It is still possible, under the *Trustee Act*, to make payments for the maintenance, education or advancement of the minor.

In addition, the Bill would provide that where the minor's interest in the estate is not more than $5 000, the administrator is to be at liberty to pay this money over to the parents or guardian of the minor. That person then holds the money on trust for the minor, and once again is subject to the obligations of a trustee in respect of the money. This will mean that very small estates need not be held in the long term by a person who is not the minor's parent or guardian.

The Bill would also amend the *Aged and Infirm Persons Property Act 1940*. It is under this Act that the estates of protected persons may come to be managed by the Public Trustee. In the interests of competitive neutrality, the present provision which exempts the Public Trustee from being required to give security for the due performance of the duties of a manager of an estate is to be amended to treat the Public Trustee similarly to other managers. That is, the court can require security if it sees fit. The present role which the Act gives to the Public Trustee to scrutinise the accounts of managers of estates is taken from the Public Trustee and given to the Public Advocate. This is consistent with the Public Advocate's statutory function of protecting the interests of mentally incapacitated persons. It will thus be the function of the Public Advocate to receive and scrutinise these accounts, and as appropriate to have them audited.

Similarly, the Bill also amends the *Guardianship and Administration Act 1993* so that in future administration orders would be forwarded to the Public Advocate and not the Public Trustee. The amendments to these two Acts do not reduce the statutory protections to persons under disability, but deliver them in other ways, consistently with the aim of competitive neutrality between the Public Trustee and other trustees.

Of course, certain essential features of the role of Public Trustee will be unchanged under this Bill. The Bill will not relieve the Public Trustee of the obligation to act as a trustee, administrator or manager of last resort, when required by law to do so. It will not permit the Public Trustee to decline appointment, regardless of the fact that an estate may be too small or too demanding to be profitable. These essential features of the Public Trustee's role will continue unaffected.

Neither is the Government to be relieved of its responsibility for the liabilities and the effectiveness of the Public Trustee. The *Public Corporations Act* by s. 29 ensures that the liabilities of a public corporation are guaranteed by the Treasurer. Section 12 of that Act makes clear that a public corporation is under the control and direction of its Minister, as is the case for the Public Trustee at present. However, as under the present law, that control and direction do not extend to giving a direction which would interfere with the proper discharge of the Public Trustee's duties at law or in equity. Also, the *Public Corporations Act* specifically provides by s.13 for the preparation and annual review of performance statements setting the targets which the corporation is to pursue.

The intention of this Bill is to remove existing barriers to competition between the Public Trustee and other trustees, including removing the regulatory or supervisory role of the Public Trustee resulting from the *Administration and Probate Act* and the *Aged and Infirm Persons Property Act*. Instead, while continuing to discharge the essential obligations expected by the community, the Public Trustee will be a market participant along with other participants. It is hoped that this will enhance the effectiveness of the Public Trustee, to the benefit of the community as a whole.

I commend the Bill to honourable Members.

Explanation of clauses

PART 1
PRELIMINARY

Clause 1: Short title
Clause 2: Commencement
Clause 3: Interpretation

These clauses are formal.

PART 2
AMENDMENT OF ADMINISTRATION AND PROBATE ACT 1919

Clause 4: Substitution of s. 18
18. Administration guarantees may be required before administration sealed

Sections 18 and 31 of the *Administration and Probate Act* currently provide for administrators to enter into bonds with the Public Trustee for the proper performance of their duties in the administration of estates. Section 18 deals with bonds in relation to the sealing by the Supreme Court of administration granted by a non-South Australian court. Section 31 deals with bonds in relation to administration granted by the Supreme Court. Proposed new sections 18 and 31 similarly relate to the situations of the sealing of a foreign grant of administration and the local grant of administration, respectively. The new provisions contain matching requirements for a surety to guarantee any loss that a person interested in the South Australian estate of the deceased may suffer in consequence of a breach of the administrator's duties in administering the South Australian estate. Such a guarantee will be required where the administrator is not resident in South Australia or has a claim against or interest in the deceased's estate or where a beneficiary is not legally competent or where the court decides that the circumstances are such that a guarantee is required.

The requirement for a guarantee does not apply to the Public Trustee or any Crown agency or trustee company.

The Court is empowered to dispense with the requirement for a guarantee or to order that the guarantee may be with respect to a sum less than the full value of the South Australian estate.

Clause 5: Insertion of s. 23

23. Power to appoint joint administrators

Proposed new section 23 is intended to make it clear on the face of the Act that the Supreme Court may grant administration to more than one person. The inclusion of this provision is in the context of proposed new section 31 which contemplates that the grant of administration to more than one administrator might constitute a basis for the Court to dispense with the requirement for a surety.

Clause 6: Substitution of ss. 31 to 33

31. Administration guarantees

See the explanation above relating to clause 4.

Clause 7: Amendment of s. 46—Land to vest in executor or administrator of owner

This clause amends section 46 so that it is clear that where there is more than one executor or administrator, land passing in the deceased's estate will vest in the executors or administrators jointly.

Clause 8: Repeal of s. 56

Section 56 currently requires an administrator to deliver to the Public Trustee a statement and account of the administration of an estate. The clause provides for the repeal of this section.

Clause 9: Amendment of s. 56A—Court may order delivery of statement and account

Under the amendment proposed by this clause, a court-ordered statement and account by and administrator as to the administration of an estate will be delivered to the Supreme Court rather than the Public Trustee.

Clause 10: Repeal of s. 57

The repeal of section 57 is consequential on the change from the requirement for administration bonds to the requirement for a surety described above in the explanation relating to clause 4.

Clause 11: Amendment of s. 58—Proceedings to compel account

The amendments proposed to this section are consequential on the removal of the Public Trustee's supervisory role in relation to administrators and the change from administration bonds to sureties.

Clause 12: Substitution of ss. 65 to 67

65. Payment to person responsible for another who is not sui juris

The repeal of sections 65 to 67 is also similarly consequential. Proposed new section 65 will avoid the need for a surety in the case of administration of an estate where the value of the estate or share passing to a person lacking legal competence does not exceed $5 000. In the case of gifts of that order, the administrator or executor or trustee may pay the value of the estate or share to the person's guardian or a person having the care or custody of the person lacking legal competence to be held on trust for the person lacking legal competence.

Clause 13: Amendment of s. 70—Commission may be allowed to executors, administrators or trustees

This amendment is consequential on the repeal of section 56.

Clause 14: Substitution of s. 128

128. Power to institute proceedings for attachment of administrator

This rewording of section 128 is consequential on the removal of the Public Trustee's supervisory role in relation to administrators.

Clause 15: Transitional provision

This clause contains transitional provisions related to the reduced role of the Public Trustee.

PART 3

AMENDMENT OF AGED AND INFIRM PERSONS PROPERTY ACT 1940

Clause 16: Amendment of s. 3—Interpretation

This clause inserts a definition of the Public Advocate for the purposes of sections of the *Aged and Infirm Persons Property Act* amended by subsequent clauses.

Clause 17: Amendment of s. 10—Appointment of manager

Section 10(3) empowers the court to require a manager appointed under a protection order to provide security for the due performance of the manager's duties. The clause removes the special exception made in relation to the Public Trustee as manager of a protected person's estate. Under the clause, copies of protection orders are now to be given to the Public Advocate rather than the Public Trustee.

Clause 18: Amendment of s. 19—Filing of statement

Section 19 of the *Aged and Infirm Persons Property Act* currently gives the Public Trustee a role of examining the statements periodically filed with the court by managers of protected estates reporting on the estates and their condition. The Public Trustee is also currently empowered to appoint an auditor to audit the accounts relating to a protected estate. The clause proposes amendments transferring these powers to the Public Advocate. The clause also includes in the section a power for the Public Advocate to recover a fee fixed by regulation and any auditor's fees in connection with the exercise of these powers in relation to an estate. Such fees will be payable out of the estate.

This matter of fees is currently dealt with in section 20 of the principal Act which is repealed by the next clause of the Bill.

Clause 19: Repeal of s. 20

As mentioned above, this section is repealed and the matter of fees is now to be dealt with in section 19.

Clause 20: Amendment of s. 22—Proceedings

This clause amends section 22 so that the Public Advocate rather than the Public Trustee will have ongoing capacity to make application to the court in the interests of a protected person.

PART 4

AMENDMENT OF GUARDIANSHIP AND ADMINISTRATION ACT 1993

Clause 21: Amendment of s. 3—Interpretation

This clause inserts a definition of 'trustee company'—a term that is used in the *Guardianship and Administration Act* without currently being defined.

Clause 22: Amendment of s. 35—Administration orders

This amendment is consequential on the new definition of 'trustee company'.

Clause 23: Amendment of s. 38—Copy of order must be forwarded to Public Trustee

Section 38 currently requires the Guardianship Board to forward a copy of an order appointing an administrator of a mentally incapacitated person's estate to the Public Trustee. The clause amends this section so that a copy of such an order will instead be forwarded to the Public Advocate.

Clause 24: Amendment of s. 44—Reporting requirements for private administrators

Section 44 currently requires an administrator of a protected person's estate to forward periodically to the Guardianship Board and the Public Trustee a statement of the accounts of the estate. The role of the Public Trustee to examine such statements will, under the clause, be transferred to the Public Advocate.

Clause 25: Repeal of s. 45

The repeal of this section is consequential on the transfer of the Public Trustee's supervisory role in relation to protected persons' estates to the Public Advocate.

PART 5

AMENDMENT OF LEGAL PRACTITIONERS ACT 1981

Clause 26: Amendment of s. 21—Entitlement to practise

Section 21 of the *Legal Practitioners Act* is amended to allow the Public Trustee to prepare a will or other testamentary instrument for fee or reward.

PART 6

AMENDMENT OF PUBLIC TRUSTEE ACT 1995

Clause 27: Amendment of s. 3—Interpretation

This clause adds to the interpretation clause of the *Public Trustee Act* definitions of various terms introduced by subsequent amendments to the Act.

Clause 28: Amendment of s. 4—Public Trustee

Under this clause the positions of Public Trustee and acting Public Trustee cease to be public service positions.

Clause 29: Substitution of ss. 5 and 6

Sections 5 and 6 of the *Public Trustee Act* which deal with the functions and powers of the Public Trustee and Ministerial control of the Public Trustee are substituted.

5. Conditions of office

Proposed new section 5 provides for a maximum term of office of 5 years for the Public Trustee and makes the usual provisions for removal from office and vacancies of office.

6. Functions and powers

6A. Public Trustee may act in same matter in different capacities

Proposed new sections 6 and 6A deal with matters previously dealt with by section 5. The current functions and powers of the Public Trustee are repeated with the additional functions of acting as a custodian and providing services contemplated by the Public Trustee's charter under the *Public Corporations Act 1993* or determined by the Minister.

6B. Application of Public Corporations Act

Proposed new section 6B applies the *Public Corporations Act* to the Public Trustee and makes exceptions and adjustments

necessary to deal with the fact that the Public Trustee, as a corporation sole, does not have a board of directors.

6C. Relationship with Minister

The *Public Corporations Act* subjects a public corporation to Ministerial control and certain reporting requirements. Proposed new section 6C makes it clear that, despite this, the Public Trustee is not to be given a direction that affects the proper discharge of the Public Trustee's duties at law or in equity and is not to disclose information in breach of a duty of confidence owed to a client.

6D. Conflict of interest

Proposed new section 6D deals with the Public Trustee and conflict of interest. The provision is closely based on section 19 of the *Public Corporations Act* but with adjustments to reflect the absence of a board of directors.

Clause 30: Substitution of s. 8

Section 8 of the *Public Trustee Act* currently provides for delegations by the Public Trustee. This matter will now be dealt with by section 36 of the *Public Corporations Act*. Accordingly, section 8 is proposed to be repealed and replaced by a new section.

8. Staffing and operational arrangements

Proposed new section 8 provides for the Public Trustee's staff to be now comprised of employees appointed by the Public Trustee rather than, as at present, public service employees.

Clause 31: Insertion of Part 2A

A new Part is inserted providing for a Public Trustee Business Advisory Board.

PART 2A

PUBLIC TRUSTEE BUSINESS ADVISORY BOARD

8A. Establishment of business advisory board

The Public Trustee Business Advisory Board is established.

8B. Membership of business advisory board

The Board is to have 6 members. The Public Trustee will be a member *ex officio*.

8C. Conditions of membership

This proposed new section deals with the conditions of membership of the Board.

8D. Remuneration

An appointed member is to be entitled to remuneration, allowances and expenses determined by the Governor.

8E. Business advisory board proceedings

This proposed new section deals with the procedures of the Board.

8F. Functions of business advisory board

The functions of the Board will be to keep the business activities of the Public Trustee under review and—

(a) at the request of the Public Trustee or the Minister, to provide advice to the Public Trustee or the Minister on any question relating to the business activities of the Public Trustee or any matter in connection with the general management duties of the Public Trustee set out in section 14 of the *Public Corporations Act 1993*; and

(b) if, in the opinion of the business advisory board, it should provide advice to the Public Trustee or the Minister of a kind described in paragraph *(a)*—to provide that advice even though a request has not been made by the Public Trustee or the Minister.

8G. Members' duties of honesty

This proposed new section creates offences relating to the honest performance by Board members of their official duties, the misuse of official information and the misuse of office to gain an advantage or cause detriment to the Public Trustee.

8H. Disclosure of interest

This proposed new section deals with conflict of interest in relation to Board members.

8I. Immunity from liability of appointed members

The usual immunity from liability will apply to Board members.

Clause 32: Amendment of s. 10—Public Trustee need not give security

Section 10 of the *Public Trustee Act* ensures that the Public Trustee will not be required to enter into a bond or give any security on obtaining administration. The reference to entering into a bond is removed in view of the replacement of bonds by sureties under the amendments to the *Administration and Probate Act* contained in Part 2 of this Bill.

Clause 33: Amendment of s. 20—Public Trustee must require delivery or transfer of property to which Public Trustee is entitled

This clause converts a penalty provision from a divisional penalty to a stated maximum penalty.

Clause 34: Amendment of s. 29—Common funds

Common funds may currently be established by the Public Trustee for the investment of estate money or on behalf of classes of persons approved by the Minister. The Public Trustee's charter under the *Public Corporations Act* will now deal with the various kinds of common funds that may be established by the Public Trustee.

Clause 35: Repeal of s. 43

Section 43 of the *Public Trustee Act* authorises the Public Trustee to engage in various land and other transactions. The section is to be repealed and left to the general powers of the Public Trustee subject to the Public Trustee's charter.

Clause 36: Repeal of ss. 46 to 51

Sections 46 to 51 of the *Public Trustee Act* are to be repealed. These sections deal with matters that will now be governed by the *Public Corporations Act* provisions.

Clause 37: Substitution of s. 52

The power of the Public Trustee to receive documents for safekeeping is widened.

Clause 38: Transitional provision relating to Public Trustee's appointment

The current Public Trustee is continued in that office for a term and on conditions determined by the Governor.

Clause 39: Transitional provisions relating to employees of Public Trustee

Provision is made for the transfer of Public Trustee staff employed in the public service to the employment of the Public Trustee and for the preservation of their entitlements.

PART 7

AMENDMENT OF TRUSTEE ACT 1936

Clause 40: Amendment of s. 4—Interpretation

The definition of 'trustee company' in the interpretation section of the *Trustee Act* is updated.

Clause 41: Amendment of s. 84B—Records to be kept by trustee

Section 84B of the *Trustee Act* is amended to remove the supervisory function of the Public Trustee in relation to the administration of trust property by trustees.

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

STATUTES AMENDMENT (STALKING) BILL

Adjourned debate on second reading.

(Continued from 26 September. Page 2241.)

The Hon. SANDRA KANCK: The Democrats support this legislation, which deals with electronic media harassment, and I believe it is important legislation. It might be small but particularly for women, because it is mostly women who are subjected to any of the forms of harassment that we dealt with in the 1994 stalking legislation and now with this measure, it is the sort of action that can lead to women leading a life of some apprehension, if not living in fear of their lives. If a woman is already being harassed in some way, usually by a former partner but sometimes by an admirer, the use of electronic means to continue that harassment is simply another burden for the woman to bear and it is important that this behaviour be reined in.

I understand that we are doing this as a state on our own and I think it is very positive that South Australia is taking a lead like that. I would be interested to know from the Attorney-General whether he has had any discussions with his counterparts in other jurisdictions and whether there is any intention for something similar to happen in other states, because it is important that other states should follow our lead. The upshot is that the Democrats are very pleased to support the bill.

The Hon. T.G. CAMERON: This bill amends the Criminal Law Consolidation Act, the Domestic Violence Act and the Summary Procedure Act and provides that the offence of stalking shall be extended to electronic stalking.

SA First supports this bill. Stalking in any form is unacceptable and the bill adequately addresses any concerns of SA First about electronic stalking. I commend the Attorney-General for introducing the bill. As the Hon. Sandra Kanck has pointed out, South Australia is the first state to walk down this path, and that is to our credit.

Stalking is an offence which is primarily directed towards women and, as members of parliament would be well aware, with the advent of computers, email, the internet and various other electronic wizardry that is available these days, a popular medium for stalking, usually directed against women, is electronic equipment. It is an offence, and the remedy of a restraining order is available under this bill if, on two or more occasions, a person communicates offensive material or places it so that the other can see it. Clause 4(b) provides:

> communicates with the other person, or to others about the other person, by way of mail, telephone, facsimile transmission or the internet or some other form of electronic communication in a manner. . .

My concern, and the question that I would direct to the Attorney, is that, although I do not know what other members are having placed in their mailbox here at work, I have had a lot of material placed in my parliamentary mailbox that I consider to be quite disgusting and disgraceful, if not defamatory. It is unsigned material.

The Hon. T. Crothers: Defamatory?

The Hon. T.G. CAMERON: I guess that the Hon. Trevor Crothers is quickly becoming an expert in the law of defamation, and I wish him well. But the campaign that is being waged against Fran Bedford is disgraceful, and what makes it disgraceful is its anonymity. I have always taken the view that, if people are not prepared to identify the material that they are distributing, the best place for it is the rubbish bin. Would the use of the word 'mail' cover the placing of offensive material in the mailbox of a member of parliament?

If that is the case, then it would be somewhat of an irony, I suspect, if the first person prosecuted under this bill happened to be a member of parliament. Quite clearly, some of the stuff coming through my mailbox at times is certainly offensive, certainly defamatory, and I am just wondering whether that practice is picked up by this bill or is already covered by some other bill. SA First supports the legislation.

The Hon. K.T. GRIFFIN (Attorney-General): I thank members for their indications of support for this bill, and I refer first to the remarks of the Hon. Carolyn Pickles. In the course of her contribution she asked two questions, and I am pleased to be able to address them in this reply. First, she cited the example of the Victorian man alleged to have used the internet to stalk a Canadian victim, and asked about the jurisdictional problems involved in such a case. I regret to inform members that the legal complexities of criminal jurisdiction are truly appalling.

While this parliament attempted to address them legislatively some years ago, in legislation that is now section 5C of the Criminal Law Consolidation Act, that legislation, which was a product of the Standing Committee of Solicitors-General, has not been a success in a number of areas. That fact was demonstrated by the lengthy decision of the High Court in a South Australian case, Lipohar v Winfield (2000) 168 ALR 8. That case involved a conspiracy in Victoria and other places to defraud South Australian corporations. Happily, the High Court reached a decision in that case in favour of this state, but there is no majority on the reasons for that decision.

As a result, the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General has developed some recommendations on the subject in a report released by the Standing Committee of Attorneys-General in January 2001. I have sent a copy of that report to the honourable member and would be pleased to supply a copy to any honourable member who would like one. I assure members that the government is examining the recommendations of the committee with expedition and will produce a bill on the subject as soon as possible.

The honourable leader also referred to a submission received by her office from Electronic Frontiers Australia and asked whether my office had received a similar submission and, if so, whether we had considered it. I was unable to locate any correspondence from that organisation and am grateful to the honourable member for supplying me with a copy. Electronic Frontiers Australia is concerned about the definition of offensive material proposed to be inserted by the bill. The wording in question matches the existing definition in section 33(4) of the Summary Offences Act. That definition was enacted in 1995 after the decision of the Court of Criminal Appeal in Phillips (1994) 75 Australian Criminal Reports 480.

That was a case in which a man was charged with offences relating to offensive material when he was found to have an extensive collection of video footage of men and boys urinating in public toilets, the footage having been taken surreptitiously. The court held that this material was not offensive. The resulting amendment was very carefully worded to trim as much ambiguity as possible out of a very slippery notion. The 1995 legislation appears not to have caused problems, and consistency demands that the definitions remain consistent. I therefore support the wording that we have proposed.

The Hon. Sandra Kanck asked whether there had been any discussion in and with other jurisdictions. I cannot answer that off the cuff but I will obtain the information and let the honourable member have it by way of written reply. My recollection is that, if not consultation, there has at least been communication, and I think it is an issue that has been taken up in at least one other jurisdiction. I think that Victoria currently takes the use of electronic forms of communication into account in its stalking legislation, but that is the only jurisdiction that does. If that is wrong, I will make sure that the honourable member has a reply.

The Hon. Terry Cameron raised a question about offensive material. Offensive material is, of course, quite relevant in the context in which he refers to it. The question, though, is whether it creates fear and apprehension in the Hon. Terry Cameron. I suspect that it probably does not, but he may care to enlighten us on that later. If one looks at the current provisions, the critical factor is the causing of serious apprehension or fear, because material might be offensive but not have that effect. And that is the distinguishing factor in so far as commission of the offence is concerned.

It is an important piece of legislation. I appreciate that members have given consideration to it and that they are prepared to indicate their support.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

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

> Page 3, line 21—After 'telephone' insert:
> (including associated technology)

All the amendments seek to achieve the same purpose. Modern mobile phone technology is rapidly evolving. Members may be aware that mobile phones can now be used to carry SMS messages. In addition, the technology allows the sending of pictures known as text art. Obviously the mobile phone will continue to evolve. For example, there will soon be a generation of phones which link to the internet (if not already). It is therefore suggested that the words 'including associated technology' be added to the word 'telephone'.

Although the existing proposed general phrase 'or some other form of electronic communication' may catch the problem, it is thought that there is no harm in the addition of some public good in signalling clearly to the public the intent to catch all this new technology in the legislative net.

The Hon. SANDRA KANCK: The Democrats will support this amendment. It is a sensible move. It is anticipatory obviously, but at the rate at which technology is advancing it is a very sensible move.

Amendment carried; clause as amended passed.

Clause 5.

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

Page 4, line 10—After 'telephone' insert:
(including associated technology)

The reasoning for this is as per the amendment I moved in relation to clause 4.

Amendment carried; clause as amended passed.

Clause 6.

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

Page 4, line 32—After 'telephone' insert:
(including associated technology)

This amendment is moved for the same reasons as the amendments to clauses 4 and 5.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

EQUAL OPPORTUNITY (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 27 September. Page 2277.)

Clause 4.

The Hon. P. HOLLOWAY: On behalf of the Leader of the Opposition, I move:

Page 5, line 9—Leave out proposed paragraph and insert:
(e) the carrying of a bacterial or viral infection (and without limiting the generality of this paragraph, includes infection with the HIV virus),;

The opposition acknowledges that including HIV is a significant improvement in the bill, but what this amendment does is recognise that there are other diseases and illnesses in addition to HIV such as the various strains of hepatitis, which are as deadly and as dangerous and perhaps much more common than HIV, and so they should also be covered in the bill. Essentially this amendment extends that definition from HIV to other similar forms of bacterial or viral infection.

The Hon. K.T. GRIFFIN: This does replicate the commonwealth law, but it goes far beyond the scope of the amendment recommended by Mr Martin QC. It has not been covered in the consultation process, but I would suggest that the amendment fails to deal with the situation where it is necessary and reasonable to take action to deal with a risk of the infection being spread to others.

For example, if this passes, an organisation which offers accommodation, such as a nursing home or a hostel for frail, elderly residents, could not refuse a place to a person who was suffering from a dangerous infectious disease, even if this posed a danger to the health of other residents. Neither could the home provide the accommodation on less favourable terms such as segregation from other residents. Likewise, a facility for the accommodation of migrants or refugees who might come from countries where diseases such as tuberculosis or typhoid are prevalent would not be able to treat persons infected with those diseases in a less favourable manner, for example by requiring that they be quarantined or spend longer in the facility than non-infected residents. The organisation would then be placed in an impossible position as between its duty under this act not to discriminate against the applicant for accommodation and its general legal duty of care towards the other residents and, perhaps, the wider community. It is my view that the law ought not to create such a dilemma.

It may be helpful to point out that the exemption provisions in the legislation relating to the ability to respond adequately to emergencies and carry out duties without posing a risk to others relate only to the context of discrimination in employment. They do not cover discrimination in the context of accommodation, education or the provision of goods and services; they will not therefore provide sufficient protection to the situations that I have mentioned. It is also important to recognise that the Public and Environmental Health Act does not overcome the problem. The legislation confers certain powers on the Health Commission and on local authorities, that is, councils; however it does not give power to private citizens to impose restrictions on others for the control of infection and, therefore, should not be seen as a solution. The government is very concerned that this amendment has not been thought through and the need to protect the community from communicable diseases has not been properly weighed in framing this amendment. It is for those reasons that the amendment is opposed.

The Hon. SANDRA KANCK: The Democrats will be supporting the ALP amendment. It is rather interesting to look at the wording in the bill and to look at what is proposed, particularly in the light of the discussion that has gone on in this chamber and is going on behind the scenes in relation to the Medical Practice Bill. I find it quite offensive that in many ways we single out people with HIV when, in fact, there are plenty of other infections that are more infectious than HIV. We talk about HIV because it is often used as the basis for some sort of discrimination when it comes to sexuality. I certainly support what the ALP is doing in widening this.

The Hon. K.T. GRIFFIN: I am disappointed to hear that. HIV was specifically referred to because of its particular concern to the broader community; and also because there are those in the community with the HIV virus and their supporters who were particularly anxious, because of the nature of the publicity given to HIV, that there should be some provision in the legislation against discrimination on the ground solely of a person having the HIV virus.

The real problem with the amendment proposed by the opposition is that it casts the net so broadly that, as I have said, you cannot take precautions to protect the community either generally or in locations such as homes for older citizens and so on. I think that is a nonsense. We have to be very careful that we do not so broaden this law that it is brought into disrepute; it has to mean something, it has to

work and it has to be practical and I would suggest that this amendment does not achieve those objectives.

The Hon. T. CROTHERS: I do not support the ALP's amendment on this. I have just had a talk with the acting leader of the Labor Party in the upper house, Paul Holloway, and, as I understand what he has told me, the impact of the amendment would, in fact, be to exclude all people who have a bacterial infectious disease. It would widen it just from HIV to that. I cannot support that because I know that there are bacteria, particularly in diseases that are prevalent among younger children, which are very infectious indeed. So I cannot support this, unless the ALP can explain to me that its amendment has no impact—I think it has and I think it has a detrimental impact because it is too wide. I understand what it is trying to do but it is too wide. The Attorney's could have been a little wider, but the ALP's amendment is too wide. So, at this stage I am inclined, unless the Labor Party can convince me differently in this committee hearing, to support the Attorney's position.

The Hon. K.T. GRIFFIN: Could I make, hopefully, some more helpful comments—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: Well, staphylococcal, meningococcal, Ebola virus, tuberculosis, influenza—what the opposition's amendment does is to broaden the range of bacterial and viral infections as grounds upon which one cannot discriminate. So, for example, in accommodation if you had tuberculosis, you would have to treat a person who applied for accommodation in exactly the same way as you treated a person who did not have that particular infection or virus. Does that mean that you could not isolate them? With respect to the Hon. Paul Holloway's amendment, it is just so broad that you cannot take sensible precautions to protect.

I know that reference to HIV might be rather narrow, but that was the particular issue which was raised with the government through the Martin report because that has been the constant source of concern, that people are being discriminated against even though they can take their place in the work force alongside others if they do not have full-blown AIDS. There was a lot of fear about HIV infection as well as AIDS. So, when Martin considered that, it was considered in that context. I think that is still the case. If we start to broaden it out to all bacterial and viral infections, we are opening the box—

The Hon. T. Crothers: Pandora's.

The Hon. K.T. GRIFFIN: I was avoiding the use of the word Pandora but, if the honourable member says that it is Pandora's box, that may well be the case. In my view it is impractical and not a proper basis upon which one should extend the protections afforded by this legislation.

The Hon. T. CROTHERS: I want to add something to what I have already said. The Americans have an established team that is endeavouring to identify and find treatment for new bacterial diseases such as Ebola. We still do not know what causes Ebola, but we do know that for two people out of three—or more, it may even be higher—who are infected with Ebola, the disease is mortal—they die.

In this age of globalisation where diseases are more easily spread than ever on a worldwide basis, of course, the Attorney makes the point about Ebola, but there are other diseases which this team of specialists, in order to obtain information, at the drop of a hat fly to any area of the world where diseases which cannot be diagnosed according to any current medical knowledge present themselves. I will make one case in point, which I constantly refer to. When I was union secretary here, we took on the third workers compensation case that had ever appeared in Australia on Ross River fever. That was at the Waikerie club in the Riverland. The Attorney may well recall this case which, after several years, we won.

Last year, I think it was, in one hit, 10 people contracted Ross River fever in Hawker. I think the Hon. Ron Roberts referred to this yesterday.I have repeatedly risen to my feet about Ross River fever. It is transmitted by a particular mosquito which now has mutated and there is another mosquito that can transmit this disease. Complaints such as dengue fever, swamp water fever and Ross River fever were always found in the Northern Territory and the north of Queensland. They travelled down river valleys and came to us via New Guinea and probably via the Macassar traders who had some early contact before European knowledge of and settlement in Australia.

So, for all of those reasons and a lot more, I think this is a step too far. You can talk to any medical practitioner, particularly those who deal with these particular complaints. For instance, there is a complaint over here called sleeping encephalitis. The point I wish to make is that it is too wide. I understand what the Labor Party is endeavouring to do, but it is far too wide and far too dangerous for us to be involved in legislation that does not enable the government to put people in infectious diseases places such as what used to be called the Fairfield Hospital. To me, this is something that cannot be worn. We remember the outbreak of meningococcal disease amongst young children here and the fatalities that occurred. Our authorities have a better working knowledge of that than they do of HIV, Ebola or other infectious diseases which are easily and readily transmitted.

The Hon. P. HOLLOWAY: I understand the point that the Attorney makes. Unfortunately, my colleague the Leader of the Opposition who is handling this bill and who has done the preparation is not here. She would have much better knowledge of the background to the amendment than I. I will not seek to divide on the clause, but if it is carried we will look at the implications of it before it goes to another place.

The committee divided on the amendment:

AYES (7)

Cameron, T. G.	Elliott, M. J.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S. M.	Roberts, R. R.
Sneath, R. K.	

NOES (8)

Crothers, T.	Griffin, K. T. (teller)
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Schaefer, C. V.
Stefani, J. F.	Xenophon, N.

PAIR(S)

Pickles, C. A.	Redford, A. J.
Zollo, C.	Dawkins, J. S. L.
Roberts, T. G.	Davis, L. H.Davis, L. H.

Majority of 1 for the noes.

Amendment thus negatived.

The Hon. P. HOLLOWAY: I move:

Page 5, lines 14 and 15—Leave out proposed definition and insert:

'potential pregnancy' of a woman means—

(a) the fact that the woman is, or may be, capable of bearing children; or

(b) the fact that the woman has expressed a desire to become pregnant; or

(c) the fact that the woman is likely, or is perceived as being likely, to become pregnant.

This amendment would broaden the definition of 'potential pregnancy'. I understand that the definition is based largely upon the Commonwealth Sex Discrimination Act definition. At present, under the proposed government amendment, '"potential pregnancy" of a woman' means that the woman is likely, or is perceived as being likely, to become pregnant. The broader definition proposed by the opposition would not only include that but also would provide:

'potential pregnancy' of a woman means—
(a) the fact that the woman is, or may be, capable of bearing children; or
(b) the fact that the woman has expressed a desire to become pregnant

We believe that that broader definition is desirable, because one might have a situation where, for example, if an employer wanted to discriminate against a woman on the grounds that she may become pregnant, they might, for example, base it on the age of the person as to whether or not the woman was likely to bear children. That is why we believe that this broader definition is much more desirable in terms of achieving the objectives of the legislation, that is, that there would not be discrimination against any woman on the grounds that she might become pregnant.

The Hon. K.T. GRIFFIN: The government is prepared to support the amendment. We believe that 'potential pregnancy' is already covered by the act, but we see no harm in covering it explicitly. On one of those rare occasions of bipartisanship, I indicate that the government supports the opposition's amendment.

The Hon. T. CROTHERS: I indicate that I will also support the opposition's amendment. I am a person in this committee who can be fairly proud of supporting matters of meritorious substance rather than on the whims and fancies of the moment. I will be supporting the amendment moved by the Labor Party.

The Hon. SANDRA KANCK: I indicate that the Democrats will also support the opposition's amendment. I will relate a personal anecdote to indicate why. When I was 24 years of age, I applied—

The Hon. K.T. Griffin: That was not that long ago.

The Hon. SANDRA KANCK: That is right—it was only yesterday. At the age of 24, I applied for entry to a college of advanced education as a mature age student. It was the first time that this college had taken mature age students into its embrace, and all applicants had to be interviewed by the college board. I was asked whether I was intending to have more children. I told them that I did not know whether I would, but that it was a possibility and I was certainly not ruling it out. Subsequently, I did make a decision not to have more children.

When they phoned to say that I was accepted, I was told that it had been lineball at the end because of the answer I had given. So, I was not likely to become pregnant—as in the bill—but there was simply an outside chance that I would. When the decision was being made as to whether or not I would be included in the group of students to be admitted the following year, my answer that it was a possibility that some way down the track I might have another child was used to include me in the bottom ranking group accepted into the college. So, I have had that personal experience. I believe that sort of example fits very much with the amendment that the Hon. Paul Holloway has moved.

I also remind members of the recent decision by a Catholic college or university to extend paid maternity leave to any women in their employ. I have certainly said that such a move is a good idea, but it has to be funded by taxpayers, otherwise you would find employers discriminating against women purely on the basis that they are of child-bearing age. So, it is important that the opposition's amendment is supported.

The Hon. T. CROTHERS: I confirm that I will be supporting the amendment, but a concern that I have just thought of is: is there anything in the Industrial Relations Act that might run contrary to this amendment in respect of some award making provisions contrary to what we are now trying to do in the Equal Opportunities Act? Would there be a problem?

The Hon. K.T. GRIFFIN: No special search has been made to determine whether anything is contained in an award or industrial legislation. I would be surprised if that were so, because the focus has been on—

The Hon. T. Crothers: What about the Metropolitan Fire Service?

The Hon. K.T. GRIFFIN: For a long time, even in the Metropolitan Fire Service, it has been unlawful to discriminate on the grounds of sex and pregnancy. There are some exceptions. Situations of danger are certainly relevant, and whether or not the woman is able to undertake the genuine responsibilities of the job. However, generally speaking, I think in the industrial relations area, from all that I have heard and seen, there has been sensitivity towards discrimination on the grounds of sex, marital status and pregnancy. We still find that such acts of discrimination occur. Of course, if there was something in a specific law which allowed discrimination—occupational health and safety might have a bearing—that would override the general provisions of this legislation. However, it is designed to work in a way which is consistent with our general theme of outlawing unlawful discrimination.

Amendment carried.

The Hon. P. HOLLOWAY: I move:

Page 5, lines 16 to 18—Leave out proposed definition and insert:
'putative spouse' of a person, means—
(a) a person who is cohabiting with the person as his or her de facto husband or wife; or
(b) a person of the same sex who is cohabiting with the person in a genuine domestic relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristic of being of a different sex and other characteristics arising from that characteristic);;

The amendment changes the definition of a putative spouse to include 'a person of the same sex who is cohabiting with the person in a genuine domestic relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristic of being of a different sex and other characteristics arising from that characteristic)'. The amendment seeks to alter the definition to ensure that same sex couples have the same entitlement as opposite sex couples. I notice that there are other amendments standing in the name of the Hon. Terry Cameron and the Hon. Sandra Kanck. The opposition believes that it is important that changes should be made to give recognition to same sex couples and, given that there are a number of amendments before us, I indicate that the opposition would be content if the Hon. Terry Cameron's amendment is carried, should that be the compromise position that has the numbers in the committee.

The Hon. SANDRA KANCK: I move:

Page 5, lines 16 to 18—Leave out proposed definition and insert:
'putative spouse' of a person, means—
(a) a person who is cohabiting with the person as his or her de facto husband or wife and—
(i) has so cohabited continuously over the last preceding period of 1 year; or

(ii) has had sexual relations with the person resulting in the birth of a child; or

(b) a person of the same sex who is cohabiting with the person in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristic of being of a different sex and other characteristics arising from the characteristic) and he or she has so cohabited continuously with that person over the last preceding period of 1 year;;

We are working on variations to a theme. When I spoke during the second reading debate—and I refer particularly to paragraph (b) of my amendment—I gave the example of two Democrat senators, one being Meg Lees, who married in December, and the other being Brian Grieg, who has been in a same sex relationship for about 15 years. The point I made was that, if something had happened to Meg Lees on the night after she and Matthew married, Matthew would have inherited all of her superannuation and death benefits. If something happened to Brian at about the same time, after 15 years in a steady relationship his partner may have been able to get his superannuation but certainly would not have been able to get his death benefit.

I looked at the definitions under the Family Relationship Act and, on the basis that it is okay for someone to be married for a few hours and be able to get a death benefit but someone else after 15 years cannot get a death benefit, I tried to figure what would be a reasonable amount of time which should elapse to gain an entitlement, and I chose the period of one year. I note that the opposition's amendment has no time period, and I thought that this will, at least, act as a compromise.

As I say, we are doing variations on a theme here and we will obviously be voting on one version, then another, then another. If it happens to be that the Hon. Terry Cameron's version gets up, although 5 years still seems to me to be a long time compared to 5 minutes, I would accept that as an improvement on the existing words in the bill.

The Hon. T.G. CAMERON: I move:

Page 5, line 16 to 18—Leave out proposed definition and insert:
'putative spouse' of a person, means—

(a) a putative spouse within the meaning of the Family Relationships Act 1975, whether or not a declaration of the relationship has been made under that Act; or

(b) a person of the same sex who is, on a certain date, cohabiting with the person in a relationship that has the distinguishing characteristics of a relationship between a married couple (except for the characteristic of being of a different sex and other characteristics arising from that characteristic) and—

(i) he or she has so cohabited with that other person continuously for a period of 5 years immediately preceding that date; or

(ii) he or she has during the period of 6 years immediately preceding that date so cohabited with that other person for periods aggregating not less than 5 years.

I have already spoken to this amendment, and I will leave it at that.

The Hon. K.T. GRIFFIN: This raises issues similar to those that were raised on the issue of marital status. The government's view is that, whichever of these amendments is preferred, as with the issue of marital status focusing upon same sex relationships, this is not the bill in which to overturn a long established body of law through the Family Relationships Act and other determinations and practices about same sex relationships.

It is a substantial issue. There are differing views in parliament on it, and it is a matter of conscience, at least for some members. The real concern is that, whilst it has not been the subject of consultation in the context of this bill, it has ramifications beyond this bill and, therefore, it ought to be the subject of debate—public debate as well as debate here—on the substantive issue in stand-alone legislation. I suggest that the Family Relationships Act is the appropriate vehicle for that to be considered.

I suggest that it does not make sense to make this sort of change by ad hoc amendment to legislation. I think it will lead to confused and inconsistent results. If a majority in both houses supports such a move to recognise same sex relationships as being no different from those of heterosexual relationships—whether in a marriage or in a de facto relationship—then it is a matter that should be considered in respect of all of the law.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: Well, I am not, but my successor might—who knows? To be fair, the issue of same sex relationships in the context of this bill has been raised only relatively recently. It has only been raised in the Hon. Sandra Kanck's amendments and the opposition amendments which went on file in July. So, all of the amendments would substantially alter the definition of putative spouse and the term would, for the purposes of equal opportunity law—though not for any other purposes—include both a de facto and same sex partner. The amendments, apart from the Hon. Terry Cameron's, remove the present requirement of five years cohabitation for de facto couples, and putative spouse would no longer be defined by reference to the Family Relationships Act which, as I said on the last occasion that we debated this, has been adopted by reference to the Family Relationships Act in well over 50 pieces of legislation in this state.

As for the inherent defects, this amendment is problematic in a number of ways. It removes the certainty given by the use of the Family Relationships Act. I think it will necessitate an inquiry in each case as to whether a couple were de facto husband and wife or, in the case of a same sex couple, in a genuine domestic relationship that has the distinguishing characteristics of a relationship between a married couple. That could require detailed examination of the couple's way of life, including how their finances are structured, how domestic tasks are shared, how their relationship is regarded by their friends, their long-term intentions towards each other, and so on. Some would certainly regard that sort of inquiry to be unacceptably intrusive, and that has relevance particularly in relation to the yet to be proclaimed superannuation provisions in the principal act.

I raised earlier the question in relation to a same sex couple as to what are the distinguishing characteristics of a relationship between a married couple, except for the characteristic of being of a different sex and other characteristics arising from that characteristic. Once one takes out the fact that, in a marriage, the parties are of opposite sex and could have children, it is difficult to identify universal characteristics which distinguish marriages from other relationships. Different marriages entail different arrangements. Some couples pool their finances while others keep them separate. Some couples adopt a gender based division of labour while others share tasks equally. In some couples, one person is financially supported by the other and in others not. When one takes account of different cultural and religious norms, diversity is magnified.

The court has given very little guidance as to how it will determine which relationships now qualify as putative spouse relationships, and I suppose that there will be a number of cases and gradually a body of law will develop to identify

clearly what are the limits of the relationship covered by the definition. In the opposition amendment, there is no specific time requirement, so even brief or transient partnerships would be covered. The Democrat amendment adds the requirement for a year's cohabitation or, in the case of a de facto couple—

The Hon. T. Crothers: Are you saying that presently there is no time limit?

The Hon. K.T. GRIFFIN: In the opposition amendment, there is no time limit. It can be just a transient relationship. The Democrats have one year and the Hon. Terry Cameron has five years. To a small extent, the Hon. Sandra Kanck's amendment addresses the objection that very short-term relationships would qualify for protection under the act. Her amendment also relates the provision to the sort of criteria applied by the Family Relationships Act in defining putative spouse, but the fundamental objections to which I have referred remain.

The Hon. Terry Cameron's amendment is one which incorporates the provision in the Family Relationships Act but adds also same sex relationships which meet the cohabitation criteria of that act, which is five years' continuous cohabitation or five out of the last six years, but the amendment retains the requirement that the relationship have the distinguishing characteristics of the relationship between a married couple except for the characteristic of being of different sex and other characteristics arising from that characteristic.

On the fundamental issue of the appropriateness of dealing with quite a significant change in the way in which relationships are recognised by the law, in respect particularly of equal opportunity legislation, the government takes the view that none of the amendments should be supported.

The Hon. T. CROTHERS: At the outset, let me say that I have no particular axe to grind in this matter because I am not married and live on my own. If anything happens to me, my superannuation just dies, apart from moneys I have paid in.

The Hon. K.T. Griffin: Some benefits go to your family.

The Hon. T. CROTHERS: I didn't know that; that is interesting to know. We have had a case in point in my time when a member had some problem over superannuation because of a relationship he lived in, and I am glad to say that we managed to sort it out. It has happened here to my knowledge at least once, perhaps even twice.

I cannot support the Cameron amendment but I can support the amendment moved by the Hon. Sandra Kanck. One of the reasons why I cannot support the Cameron amendment is that, in my view, that five-year period could lead to other litigation where you might have someone who was not monogamous and might have had three or four same sex partners in that period of five years, and I could see buckets of litigation following in respect of any moneys that accrued from the deceased partner's estate from four or five sources. It might well be a bonanza for the legal profession but nonetheless I can see that is a weakness. I understand what the Cameron amendment seeks to do but I can see arising from that a weakness along the lines that I have stated.

On the other hand, the Kanck amendment recognises that which is, and what the Attorney suggests, we should wait until a body of law has developed when people are suffering loss now, is rather like the saying that used to be around: 'Live old horse and you may eat some grass.' I think that the Kanck amendment is a very proper one with the provision for 12 months. It recognises that which is currently. I do not agree with same sex relationships, but I always vote with the most liberal interpretation one can put on that which is a fact of life today. It saddens me somewhat.

Rather than wait for a body of law to develop, with many hundreds of thousands of dollars probably spent on litigation which will form case law, the time to act is now. The amendment that I will act on and support, because it makes absolute common sense to me, is that of the Hon. Sandra Kanck, and that is the amendment that I shall support for the reasons that I have outlined, and I suppose for other reasons that other people have in mind, as well, if they are supportive of the Kanck amendment.

The Hon. P. HOLLOWAY: I want to address a couple of points that were raised by the Attorney. He spoke about transient relationships and said that our amendment refers only to transient relationships. The definition provides that it is a person of the same sex who is cohabiting with a person in a genuine domestic relationship that has the distinguishing characteristics of a relationship between a married couple—

The Hon. K.T. Griffin: What are the distinguishing characteristics?

The Hon. P. HOLLOWAY: That has to be determined but I would have thought that the advantage of that flexibility is that, in the case that the Hon. Sandra Kanck mentioned of superannuation relating to a partner, that could be assessed in the situation that applied in that case. Under that definition it is much less likely that anomalies would arise than if we have some prescriptive measure of time. Is the situation really fair if you are one day short of the threshold rather than one day afterwards? I know that we have to have thresholds in these situations, but they can give rise to injustice. The trade-off for taking an approach like ours is that it makes it more litigious but at least it allows protection in certain cases.

However, we have four approaches before the committee. The government's approach does not recognise same sex relationships whereas the other three amendments do. We will have to see how the debate evolves on that. In our view, any one of those three amendments would be better than what the government is doing. The other point I want to make relates to consultation. The opposition has consulted widely on this matter and—

The Hon. T. Crothers: You did not consult me, again.

The Hon. P. HOLLOWAY: In relation to same sex couples, we discussed the putative spouse clause in the context of the Dental Practice Bill, and we are also still debating the Medical Practice Bill, which involves a similar issue. The government's approach is that it does not want to deal with each of these 50 or so bills where putative spouse is a factor. The government says that we should deal with the issues all together in a separate bill, but under the Equal Opportunity Act, which we are debating now, the government says that we should deal with the bills individually.

The only point I wish to make in the context of this debate is that, on a number of occasions, we have had discussions about the issue of putative spouse. We will see which of the alternatives gets up, but I hope that it is one that broadens the definition to same sex relationships.

The Hon. K.T. GRIFFIN: I did interject a question to the Hon. Paul Holloway and perhaps I will direct it to him first. I have raised the question: what is a genuine domestic relationship that has distinguishing characteristics of a relationship between a married couple, except for the characteristic of being of a different sex and other characteristics arising from that characteristic? It is a key part of the definition. It is important to identify what it means, and I

intend to ask the movers of the three amendments the same question; that is, whether they can identify for me what that really means.

First, I refer to the Hon. Paul Holloway's amendment, because in talking about same sex relationships he refers to a genuine domestic relationship that has the distinguishing characteristics of a relationship between a married couple, except for the characteristic of being of a different sex and other characteristics arising from that characteristic. The Hon. Terry Cameron and the Hon. Sandra Kanck use that description, and I would like to get a feel for what that actually means.

The Hon. P. HOLLOWAY: It means that a range of matters would apply. Surely, the context in which this clause is important would be if a court were passing judgment in, say, the case to which the Hon. Sandra Kanck referred. If you had a same sex couple that had had a relationship and one of the partners had died, and if there was a question of superannuation, then I guess that a court would determine whether a genuine domestic relationship had existed.

I would have thought that in such a context the lawyers for the people making the claim would have to find those distinguishing characteristics, and I guess it would be argued out and determined in that context. Is there anything so bad about that? Certainly, it might make it easier if you just have a time limit and say that, if they have lived together for one year, that is it. If it is 364 days, too bad; if it is 365, that is fine. It may have been a relatively short relationship but if, for example, the people had shared their finances and the other characteristics to which the Attorney himself referred earlier—if there had been all that evidence that heterosexual married couples had entered into with their financial and other arrangements—if that could be established, then I guess the court would determine that, for the purposes of the particular act, the matter should be settled. I do not see that this is really all that different from a number of other areas of the law where judgments ultimately have to be made by the courts.

The Hon. SANDRA KANCK: When I spoke in my second reading contribution I raised the question of what my preferred definition of interdependent relationship was; that that is ultimately what I prefer. That is what we are talking about: we are talking about interdependency and sharing. Certainly, the definition that I have for putative spouse is more restricted than the interdependent relationship that I wanted to have. As I see it, a putative spouse—and this is something that to me always begs the question—does imply interdependency and sharing but it also implies a sexual relationship, either that one has occurred or will occur in the future, or that there is an intention that there be a sexual relationship.

The Hon. T.G. Cameron interjecting:

The Hon. SANDRA KANCK: I believe that, when we are talking spouse, when we are talking marriage, when we are talking de facto relationship, inherent in that is an expectation of a sexual relationship, past, present or future. That is why, for me, 'interdependent relationship' is a better definition, because it does not require that expectation of sexual relations. That to me is one of the key distinguishing characteristics of what the relationship between a married couple is about.

The Hon. P. HOLLOWAY: I wish to add one point that I omitted earlier. It is my understanding that the question of what is a genuine domestic relationship has been tested in other jurisdictions.

The Hon. K.T. Griffin interjecting:

The Hon. P. HOLLOWAY: A genuine domestic relationship that has the distinguishing characteristics of a relationship.

The Hon. K.T. GRIFFIN: I think the debate reflects just how difficult it is to address this. The point that I made earlier is one to which I adhere; that is, that it is recognised that the issue is one of considerable interest to many members. There are differing views, and there are conscience issues to be addressed by individual members where the party recognises that, ultimately, it will be a conscience vote. We adhere to the view that it is a complex issue, it has wide-ranging ramifications, and it ought not to be implemented incrementally by picking off each piece of legislation as it comes before the parliament.

There ought to be a substantive debate about it, and that substantive debate ought to be in the context of all its ramifications right across every aspect of the law: industrial relations, superannuation, administration and probate, and a range of other areas of the law. Incidentally, this particular definition largely does not address the issue of superannuation, because superannuation is largely a matter for the feds and not for the state, except to the extent where the majority of members in a superannuation fund are in South Australia. Even that will not yet apply because that particular provision in the principal act has not been proclaimed to come into effect, because there were difficulties in its application as well as questions of inconsistency between state and federal legislation.

As I say, there are considerable difficulties in identification of the relationship. We have always known in relation to heterosexual de facto couples that there are differing views. As the Hon. Paul Holloway has said, courts have actually looked at the indicative factors that identify a de facto relationship or a genuine domestic relationship. The focus in my questioning was: what are the distinguishing characteristics of a relationship between a married couple, except for the characteristic of being of a different sex and other characteristics arising from that?

I do not suppose we can really take that much further at this stage. The opposition is prepared to leave it to the courts, and I am pleased that the courts will get a guernsey. Putting aside the facetiousness, if this becomes law it will need to be a matter that is ultimately resolved in the courts.

The Hon. T. CROTHERS: I would like to make some comment about what has been expressed by the Attorney. He is right that, at the moment as things stand, the waters surrounding these matters are very muddy relative to having something definite. It reminds me of a case that Liberace in his earlier stage career took against a journalist, an Irishman, working for the *Daily Express* in Britain, called William Connors, whose pen name was Cassandra (who, as we all know, was the Greek prophetess of doom), where he determined to call Liberace neither male, female or even neuter gender and called him this big jingling jangling bundle of claptrap. Of course, he took him to court and got something like $9 000 in damages, but the *Daily Express* circulation went up about 300 per cent, so interesting did the readers find this particular avid and juicy court case which would attract absolutely no attention whatsoever today and, in fact, would not even get to court.

The Kanck amendment removes some of the uncertainty that the Attorney-General has referred to from the matter. It does not remove it all, but it removes some of it, which I think will be a good thing in so much as many people will be

saved plenty of money in respect of some type of litigation undertaken against them. For instance, I remember the ALP being left money by a Whyalla person, whom we did not know and who was not a member—it was $100 000 as a matter of fact—and relatives of his took us to court. I was pleased, as President of the ALP at the time, that we won the case and the $100 000. That is the sort of thing that can go on.

Maybe the Kanck amendment does not totally clarify the matter, but it certainly removes a lot of stings from a lot of bees that are currently floating around the hive of this matter. I put those things with respect to what the Attorney has just said. I understand what he is saying, but I think the Kanck amendment does assist in clarifying the matter.

The Hon. SANDRA KANCK: I would point out to members that in my amendment—and we are talking specifically about paragraph (b)—it states 'and he or she has so cohabited continuously'. The cohabitation is inherent in the definition and it does spell it out. The Attorney-General has said, 'Okay, you will leave it up to the courts.' I refer to the De Facto Relationships Act as a comparison where de facto relationship is defined as 'the relationship between a man and a woman who, although not legally married to each other, live together on a genuine domestic basis as husband and wife.' The act fails to further elaborate with a definition on what a 'genuine domestic basis' is.

In that case, this parliament has also left it to up to the courts to make that determination should it be challenged. We have done it in regard to relationships between people of the opposite sex. It seems to me reasonable, if there is any sort of opening here, that the court would also be able to make that decision in regard to relationships between people of the same sex.

The CHAIRMAN: The question is that all words in lines 16 to 18 stand as printed.

The committee divided on the question:

AYES (5)

Dawkins, J. S. L.	Griffin, K. T. (teller)
Lucas, R. I.	Schaefer, C. V.
Stefani, J. F.	

NOES (7)

Cameron, T. G.	Crothers, T.
Gilfillan, I.	Holloway, P. (teller)
Kanck, S. M.	Sneath, R. K.
Xenophon, N.	

Majority of 2 for the noes.

Question thus negatived.

The Hon. P. Holloway's amendment negatived.

The committee divided on the Hon. Sandra Kanck's amendment:

AYES (6)

Crothers, T.	Gilfillan, I.
Holloway, P.	Kanck, S. M. (teller)
Roberts, R. R.	Sneath, R. K.

NOES (7)

Cameron, T. G.	Griffin, K. T. (teller)
Lawson, R. D.	Lucas, R. I.
Schaefer, C. V.	Stefani, J. F.
Xenophon, N.	

Majority of 1 for the noes.

The Hon. Sandra Kanck's amendment thus negatived.

The committee divided on the Hon. T.G. Cameron's amendment:

AYES (7)

Cameron, T. G. (teller)	Gilfillan, I.
Holloway, P.	Kanck, S. M.
Roberts, R. R.	Sneath, R. K.
Xenophon, N.	

NOES (6)

Crothers, T.	Griffin, K. T. (teller)
Lawson, R. D.	Lucas, R. I.
Schaefer, C. V.	Stefani, J. F.

Majority of 1 for the ayes.

The Hon. T.G. Cameron's amendment thus carried.

Progress reported; committee to sit again.

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

GENETICALLY MODIFIED FOOD

A petition signed by 35 residents of South Australia concerning genetically modified organisms and praying that this Council will do all in its power to impose a moratorium on the introduction of GMOs to the South Australian environment, therefore protecting the people of this state from the possible harmful effects such modifications may have in the long term, was presented by the Hon. Ian Gilfillan.

Petition received.

RECONCILIATION FERRY

A petition signed by 355 residents of South Australia concerning a vehicular passenger ferry to be known as the reconciliation ferry and praying that this Council will provide its full support to the ferry location proposal and prioritise the ferry service on its merits as a transport, tourism, reconciliation, regional development and employment project and call for the urgent support of the Premier requesting that he engage, as soon as possible, in discussions with the Ngarrindjeri community to see this exciting and creative initiative become reality, was presented by the Hon. Sandra Kanck.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

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

Annual Report for SA Police 2000-01.

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

Annual Report of Dental Board of SA for the year ended 30 June 2001.

Annual Report of Home Start Finance 2000-01.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. J.S.L. DAWKINS: On behalf of my colleague the Hon. Legh Davis, I bring up the annual report of the Statutory Authority Review Committee 2000-01 and move:

that the report be printed.

Motion carried.

FESTIVAL OF ARTS

The Hon. DIANA LAIDLAW (Minister for the Arts): I seek to make a ministerial statement about the Adelaide Festival.

Leave granted.

The Hon. DIANA LAIDLAW: The article in today's *Advertiser* headed 'No scrutiny of Festival's $3 million bailout' is wrong, both in its headline and in the content attributed to Miss Sue Nattrass, general manager of the Festival. The facts are that each and every person working towards the 2002 Adelaide Festival has been put on notice regarding the need to contain costs, and I am advised by Miss Nattrass that all of them accept this responsibility. In addition, new members appointed to the board since April this year were specifically selected for their financial acumen and they were all told by me of their responsibility to scrutinise every dollar. Indeed, this message has been delivered to the entire board.

Further, on 6 May, I wrote to the Chairman of the Adelaide Festival Corporation Board requiring the Festival's acceptance of a number of terms and conditions relating to overall financial performance and scrutiny, which include close monitoring of the organisation by Arts SA. The Chairman agreed to these terms in writing later that month. In the meantime, the new financial controller of the corporation project manages the budget process within parameters approved by the board, and this officer is responsible for the control of all the project spending. This process is undertaken on a continuous basis.

Subject to the approval of the financial controller, I also advise that the head of each department within the corporation and the project managers of each project within the Festival program for 2002 authorise spending within each approved budget line. Further, I advise that, in advance of each board meeting, financial reports detailing the month to month and year to date actuals versus budgets, the variances to budgets and a balance sheet are provided to the finance subcommittee of the board. This subcommittee, in turn, reports to the board. Finally, I advise that the accounts of the Adelaide Festival Corporation are, of course, subject to the scrutiny of the Auditor-General.

The *Advertiser* report also fails to distinguish the amounts of money provided to the Adelaide Festival Corporation over recent times. The amount of additional investment in the 2002 Adelaide Festival is $2 million, and I outlined in a ministerial statement on Tuesday this week the background to that investment decision. A quite separate amount of $1 million was provided to the Adelaide Festival Corporation by way of cash flow advance in respect of the deficit on the 2000 Festival. That amount is required to be repaid by the Adelaide Festival over a four-year period from 2003-04 to 2005-06. This sum has no impact on the 2002 event.

Finally, in relation to the comments reported today by Ms Nattrass in the *Advertiser*, it is important that all honourable members note that the remarks were not put in quotation marks. What Ms Nattrass answered in terms of a series of questions is that no special arrangements had been made to contain costs because the management of costs is already extremely important in the arts and to the Festival generally. In the earlier part of this statement, I have outlined the way in which those costs are being managed by the Festival management and board.

The processes are in place for thorough management and regular scrutiny of the Festival finances and I take exception to the way in which the article was prepared today and to the headline, suggesting that the government or I, in particular, would be prepared to seek further funding from taxpayers' sources and not insist on thorough scrutiny as well as an outstanding program delivery arising from that investment.

QUESTION TIME

HINDMARSH SOCCER STADIUM

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Attorney-General a question about the final report of the Auditor-General on the Hindmarsh Soccer Stadium.

Leave granted.

The Hon. P. HOLLOWAY: I refer the Attorney-General to page 24 of part 1 of the report, and I quote the Auditor-General as follows:

> In the April 1995 memorandum of understanding and the October 1996 funding deed inadequate mechanisms were agreed with the Soccer Federation to address issues of fundamental importance to the government (ie the grant of a mortgage over the Soccer Federation's lease and a charge over the bank account into which levies were to be paid). Those mechanisms were chosen even though a better mechanism had been recommended by the Crown Solicitor's Office.

My questions to the Attorney are:

1. Why were inadequate mechanisms employed in the April 1995 MOU and the October 1996 funding deed to address issues of fundamental importance to the government when a better mechanism had been recommended by the Crown Solicitor's Office?

2. Why and how did the Attorney fail to ensure that the recommendations of the Crown Solicitor's Office were followed?

The Hon. K.T. GRIFFIN (Attorney-General): It is important to recognise that the Crown Solicitor gives advice based upon instructions. The Crown Solicitor does not have a police role to make sure that its advice is complied with. The Crown Solicitor's Office has a lot of experience in a range of different areas of public administration and public law and is called upon for advice in relation to a variety of issues. In this case, it has to be remembered that, whilst advice may have been given, there may also have been other reasons why it was not agreed with. It is not for the Attorney-General of the day to be in there making sure that every piece of advice that the Crown Solicitor gives to myriad agencies across government is complied with. That is just not the function of either the Crown Solicitor or the Attorney-General.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No, I think the honourable member misunderstands the role. The Attorney-General is the chief law officer of the crown. The Crown Solicitor delivers the services to government, but that does not mean that the Attorney-General of the day is aware of every piece of advice that has been given. The Attorney-General is not. The Attorney-General may be informed from time to time of particular issues. The Attorney-General may from time to time ask questions when a bit of information comes to him, but it is not the role of the Attorney-General to monitor and observe every piece of advice that is given or to become involved in every transaction of government.

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Attorney-General a question about the Auditor-General's report into Hindmarsh Soccer Stadium.

Leave granted.

The Hon. P. HOLLOWAY: I refer the Attorney to page 307 of part 3 of the report, and I quote the Auditor-General as follows:

> There were repeated instances where the Crown Solicitor's Office was not given adequate instructions, undermining its ability to fulfil the due diligence duties that fell upon it.

Further, the Auditor-General states on page 316 of the report:

> The manner in which Minister Ingerson and the Office for Recreation, Sport and Racing utilised the services of the central agencies (ie the Crown Solicitor's Office and the Department of Treasury and Finance) and Services SA undermined the effectiveness of those agencies to protect the government's interests. It meant that those agencies were unable to ensure that the government's objectives. . . were achieved cost effectively. This was a serious failure of due diligence.

My questions are:

1. Does the Attorney agree with the Auditor-General's repeated assertions that a serious failure of due diligence occurred in the provision of necessary and relevant information to the Crown Solicitor's office?

2. Given that the Attorney-General was intimately involved with the project as a member of the cabinet subcommittee overseeing the project—we were told that by then Minister Ashenden in answer to a question in another place on Thursday 24 July 1997—what actions, if any, did the Attorney take to ensure that due diligence did take place and why did he fail?

The Hon. L.H. Davis interjecting:

The Hon. K.T. GRIFFIN (Attorney-General): That is an important interjection by Mr Davis.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: There is an issue about what is due diligence and there has been a contentious issue in the context of this Auditor-General's examination and report, and I do not think it has yet been adequately resolved as to what was required of the so-called due diligence process to which the Auditor-General refers. The first paragraph to which the honourable member referred in his explanation (page 307) really underlines the point I made earlier; that is, that the Crown Solicitor acts on instructions. There is no adverse reflection upon the Crown Solicitor in the context of that—

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: The Hon. Mr Holloway has a fundamental misunderstanding. The committee did not give instructions. It met relatively infrequently. It was a cabinet committee that was brought together to endeavour to resolve a number of issues and to share experience and also resources. It was not the job of a member of the committee (and in this instance the Attorney-General) to give instructions to the Crown Solicitor. The instructions always came from the instructing agency. The Auditor-General seven years later is now saying—

The Hon. P. Holloway: What was the point of having a cabinet subcommittee?

The Hon. K.T. GRIFFIN: You might well ask about cabinet subcommittees. A cabinet subcommittee does not have all the responsibilities—

Members interjecting:

The PRESIDENT: Order! Only one person is on their feet.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: We got nothing out of the State Bank. At least with this we have a stadium.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: Yes, $800 million.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: That is a pretty important part of history, too, I must say. In relation to the extract on page 307, it just underpins what I said earlier; that is, the Crown Solicitor acts on instructions and they are instructions given by the instructing agency. The committee was not the instructing agency to the Crown Solicitor in this instance. I do not know of any cabinet committees which are the instructing agencies to the Crown Solicitor.

The Crown Solicitor is essentially part of a central agency. It provides advice. It has additional responsibilities over and beyond those that lawyers or legal practitioners have in the private sector, particularly in relation to public administration, but it is not the watchdog or police officer charged with the responsibility of riding shotgun on every carriage that seems to have been the subject of some form of instruction or advice. Now, in relation to page 316, again the reference to serious failure of due diligence is not about the Crown Solicitor, and I make no comment on the actual assertion which obviously relates to then Minister Ingerson and the Office for Recreation, Sport and Racing, but it does not refer to a serious failure of due diligence on the part of the Crown Solicitor.

The Hon. P. HOLLOWAY: I have a supplementary question. Did the Attorney-General at any time when he was a member of the cabinet subcommittee ask any questions in relation to due diligence matters relating to the Hindmarsh Soccer Stadium?

The Hon. K.T. GRIFFIN: It depends very much on what you mean when you talk about due diligence. I am not going to tell you what was or was not talked about in cabinet or in cabinet committees. That is inappropriate. The whole point—

The Hon. R.R. Roberts interjecting:

The PRESIDENT: The interjection is out of order.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.T. GRIFFIN: It is not just out of order, it is incomprehensible because one does not know what the Hon. Ron Roberts is talking about.

Members interjecting:

The PRESIDENT: We can have only one answering.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: The decline and fall of the Labor empire! I do not intend to embark upon a consideration of what was or was not said at particular committees, whether they are cabinet committees or otherwise. The fact of the matter is that there was advice given. I was aware of some of that advice but, ultimately, the report speaks for itself.

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question concerning the Auditor-General's Report into the Hindmarsh Soccer Stadium.

Leave granted.

The Hon. P. HOLLOWAY: This morning the former Treasurer, Stephen Baker, told ABC radio that he was told by then Deputy Premier Graham Ingerson when he raised questions about the direction of the soccer stadium development to 'mind your own business.' On page 370 of the final report of the Auditor-General, in the section dealing with acquittals from the Departments of Premier and Cabinet, Attorney-General and the Treasurer, the Auditor-General refers to the Treasurer's letter dated 22 May 1998 which was referred to the Public Works Committee. The letter refers to

a study into the Hindmarsh Soccer Stadium by the South Australian Centre for Economic Studies. The Auditor-General informs us that the Treasurer's letter did not point out the substantive defect in the report—that is, the report from SACES—that the Department of Treasury and Finance had identified, that is, that one of the criticisms is:

> that the analysis does not cover the reasonable alternatives to the proposed option. As a result it is not clear whether the proposal is the cost-effective option. However, this is more a criticism of the brief provided to the consultants rather than the analysis itself.

The Auditor-General then goes on to say:

> In my opinion, the Treasurer should have included this criticism in his letter to the Public Works Committee.

My questions to the Treasurer are:

1. Why did he supply incomplete information to the Public Works Committee?

2. Was he minding his own business and not the business of the South Australian public?

The Hon. R.I. LUCAS (Treasurer): I do not accept the criticism of the Auditor-General in relation to the letter that went to the Public Works Committee in 1998. For the benefit of the Auditor-General, the cabinet had already made a decision many months before, I think back in 1997 at some stage—the report highlights when—it might have been in August. So, it was probably six to eight months before that. During that period, it made its decision as to what scope of project it would support.

What then happens under normal cabinet processes—again, for the benefit of the Auditor-General, who does not sit around the cabinet table—is that, having received approval, many months later the agency comes forward with a brief for the Public Works Committee. That brief highlights the reasons why the cabinet and the agency gave the approval some months earlier. Whatever the date was in 1998, at that time, various agencies were then asked to do an acquittal.

So, Treasury and Finance did an acquittal—and I think the Crown Solicitor does an acquittal from the legal viewpoint and Premier and Cabinet does an acquittal from its viewpoint. At that stage of the process, the role of Treasury and Finance is to check the numbers. The Treasury made it clear when this process first started that it cannot go back and reconstruct the numbers in terms of an agency's proposition. It checks the submission to ensure that, in essence, the methodology that has been used is appropriate in relation to what is seen to be the cost of the project. It also provides advice as to whether or not, if it is a capital works project, appropriation has been provided for that particular project. That is the role of Treasury officers at that stage, and that is the role that was undertaken at that stage. So, it did provide an acquittal.

That is not the stage of the process in government where the whole project of some six or eight months earlier is revisited to determine whether or not the government goes ahead with the project. It is a fundamental misunderstanding of the Auditor-General of the processes that are followed in government. That is understandable, as he does not sit around the cabinet table. Therefore, perhaps he is not aware of how that process operates.

I will need to refresh my memory again, but when this issue was first raised with me I was given a brief by Treasury. I was also given for signature the acquittal letter that goes to the Public Works Committee. I signed the acquittal letter. The particular paragraph, which was evidently contained in the advice provided by Treasury as a separate memo, was not included in the letter that Treasury provided to me, because all Treasury has to do is provide an acquittal to the Public Works Committee: that is, has the appropriate methodology been followed and is there appropriation for it? It did that, and that was the purpose of my letter to the Public Works Committee. As I have said, if the Auditor-General has not understood that particular part of the process, having reflected on my illuminating reply, he may well wish to reconsider his view.

BUSINESS NAMES

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about business names.

Leave granted.

The Hon. J.F. STEFANI: On page 60 of Tuesday's *Australian Financial Review* there is a story on identity theft. One section of this article particularly caught my attention, as the person quoted in the story said:

> We are now starting to see offenders fraudulently register business names that are very similar to existing, legitimate business names, say with one letter missing or added. . . then they are opening up bank accounts under those business names and starting to intercept cheques which are destined for the legitimate business.

My question is: will the minister inform the Council whether this sort of fraudulent registration of business names is possible in South Australia?

The Hon. K.T. GRIFFIN (Attorney-General): The short answer is that it is not possible to register a business name in South Australia in the sort of way cited by the honourable member in his example.

The Hon. T.G. Cameron: They knock it back.

The Hon. K.T. GRIFFIN: They knock it back. In South Australia, a subjective names test is applied.

The Hon. T.G. Cameron: And they're pretty tough, too.

The Hon. K.T. GRIFFIN: Yes. In other jurisdictions, they rely on the Corporations Law index. Of course, under the Corporations Act (previously the Corporations Law), you can register a company with the same name. The only distinguishing characteristic is the Australian company number. That is not quite how it is done in some of the other jurisdictions, but they certainly do not go to the same exhaustive lengths that we do to subjectively identify whether or not a name that is sought to be registered is similar to a name that might already be on the register. The method of determining the availability of a name varies from state to state. In some cases, the Australian business number is the key feature of the registration test, and the subjective names test is not as strongly emphasised as it is in South Australia.

As the Hon. Terry Cameron interjected, our Business Names Act requires a fairly strict test to be applied. There is quite extensive checking, and the subjective decision is taken that a particular name may or may not be similar to or confusing with another. If it is, the application for registration will be refused.

LIQUOR AND GAMING COMMISSION

The Hon. NICK XENOPHON: I seek leave to make a brief explanation before asking the Treasurer a question in relation to the Liquor and Gaming Commissioner's annual report.

Leave granted.

The Hon. NICK XENOPHON: In his annual report, the Liquor and Gaming Commissioner has referred to complaint resolution procedures. Page 11 of the 2000-01 report, under

the heading 'Player disputes', refers to the commissioner's continuing role in addressing a range of issues arising from the day-to-day conduct of gaming operations, including the handling of complaints and the conduct of investigations arising from disputed gaming machine payouts.

In his report, the commissioner states that he is:

> . . . pleased that the number of calls received by this office relating to disputes or conflict situations remains relatively low.

My questions are:

1. What budget is allocated to publicise the fact that the commissioner's office can handle complaints about disputes involving gaming machines and the practices of some venues?

2. What procedures are in place at the commissioner's office to deal with and adjudicate on a complaint?

3. How many complaints were received in the last financial year? Will the Treasurer provide a breakdown of the nature of the complaints and the results of the investigations of the commissioner's office?

4. What role does the commissioner's office have in liaising with the newly formed Independent Gambling Authority in informing it of complaints in the context of policy formulation and implementation of measures to reduce problem gambling?

The Hon. R.I. LUCAS (Treasurer): I will take up the honourable member's questions with the appropriate minister, or ministers, and bring back a reply.

SCHOOLS, STUDENTS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Treasurer, representing the Minister for Education, a question in relation to suspensions in schools.

Leave granted.

The Hon. M.J. ELLIOTT: I refer to an article in the *Australian* of 14 June on page 3. It is a report on the findings of research that more than 100 000 children were banned from public and private schools nationally last year. The research found that school suspension was linked to juvenile crime, reporting that 80 per cent of children in detention centres were suspended from school during their education. It also found that last year average suspensions grew to be one child a class nationally, and that in New South Wales there was a 15 per cent increase in school suspensions over the previous 12 months. The chief researcher, psychologist David West, commented on the findings of the study. He said:

> . . . suspension is being used as the first response in schools, instead of the last. It is being used to cover up problems for students which could be better solved by managing them in school.

I note that there are no statistics in relation to South Australia in the article. My questions are:

1. How many students were suspended in South Australian public schools last year, and how does that compare with the suspension rates of previous years?

2. How does South Australia compare with the national average?

3. What strategies does the state government have in place to help teachers deal with problems in classrooms, given that this research shows that where there are fewer suspensions there is an increase in retention rates and reduced juvenile crime?

4. Why will the state government not commit to providing a school counsellor in every South Australian primary school so that counselling can be used as one of the routes to handle behaviour?

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

EDS CONTRACT

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for Administrative and Information Services a question about EDS.

Leave granted.

The Hon. CAROLINE SCHAEFER: In yesterday's *Australian* there is an article by Miss Carol Altmann under the heading 'IT giant overcharged state $10 million'. It claims that the Auditor-General has found that EDS has overcharged the state government by $10 million and that its services are overpriced. Further to that, there is a follow up article in today's *Australian* which states, in part:

> Such whole-of-government outsourcing contracts were outdated licences to print money and taxpayers could continue to be short-changed by multi-national companies.
>
> These warnings were issued yesterday by Adelaide University Centre for Labour Research executive director John Spoehr.

My questions are: Are the reports in the *Australian* correct? In particular, are the comments and warnings of Mr John Spoehr correct? If so, what are we doing about it? If not, what is the true position?

The Hon. R.D. LAWSON (Minister for Administrative and Information Services): I saw the article in Wednesday's *Australian*. 'IT giant overcharged state $10 million' is a prominent headline. It is worth saying that, in regard to the market price review of the EDS contract, the Auditor-General in Volume 1, Part B on page 18 states:

> This review process assessed the prices charged by EDS for the Mainframe and Wide Area Network segments of agency services in consideration of market price availability.
>
> This important review has resulted in a positive material gain to the State (in the order of millions of dollars). The gain has principally involved a one off payment and credit charge adjustments to the State in respect of the years 1999-2000 and 2000-01, and certain segment reduced charges applicable to the future life of the contract.

There is no allegation of EDS overcharging the state government or the state government paying more than the appropriate contract price. The reporter in this item and the reporter in the item in today's *Australian* failed to report that the contract entered into between the state government and EDS in 1995 provides for market price reviews. The contract envisages that the prices charged will be reviewed because of commercial pressures, because of new technologies and because of new usage patterns, and it is entirely appropriate that there be that review, which is a protection for the taxpayer.

There is no suggestion of overcharging in either the Auditor-General's report or in any of the discussions that we have had with EDS. I think it is regrettable that the *Australian* seems to have taken upon itself to embark upon a campaign against the government's EDS arrangements, which have delivered very significant savings and economic benefits to this state.

I do not suppose I would be surprised to hear Mr John Spoehr, of the Adelaide University Centre for Labour Research, today saying the words which the honourable member quoted, that this whole-of-government outsourcing contract is an outdated licence to print money. Mr Spoehr, by

this statement, has further discredited himself as an objective commentator. He is a disgrace to the institution and to the university which represents him. He has thrown all academic objectivity out of the window and he is simply barracking for a particular political line, ever ready to grab a media headline.

I see, according to the *Australian* report—not that it is all that reliable—that he has been promoted to Professor Spoehr and, if that is true, that is a depressing revelation. It is interesting to see that Mr Spoehr says that EDS appears to have overcharged the tax office and the South Australian government and, as I say, the Auditor-General does not attribute any such practice to EDS. Mr Spoehr, or perhaps I should say Professor Spoehr, states:

> The warning signs were there some time ago and clearly strategies have not been put in place to contain the blow-outs.

The very mechanism about which I am speaking, namely, the market price review, is designed to ensure that this state continues to enjoy the savings that were envisaged at the time the contract was entered into. It is worth mentioning the economic development benefits that have been achieved, and the fact that EDS, which had a very small employment base in South Australia when it won this work in a competitive tender process, now employs over 800 employees. The very large proportion of government employees who went over to work in EDS have remained with the company and are enjoying the opportunities that has provided. EDS is about to expand its work force in this state to over 2 100 employees when it takes over Westpac's data processing.

It is disappointing that the reporters from the *Australian* appear to have swallowed the old union line that IT services should be provided by public servants—government employees—rather than specialist firms, even where it can be shown that the specialist firms can do it more efficiently, at less cost and with greater economic benefits to the state and the wider community. I also deplore the fact that the report in today's *Australian* quotes Labor's federal IT spokeswoman, Kate Lundy, as follows:

> 'EDS exploited the situation, but governments were dopey and ill-informed for purchasing this style of contract,' she said.

It seems extraordinary that the reporters from the *Australian*, a reputable newspaper, should once again repeat these lines from Mr Spoehr and the Labor Party spokesperson and not provide a balanced report which sets outs the facts.

ROAD FUNDING

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

Leave granted.

The Hon. J.S.L. DAWKINS: I noticed a small report in yesterday's edition of the *Advertiser* relating to commonwealth government funding for outback roads in South Australia. The report was entitled '$4 million for roads' and stated:

> Motorists in Copley, Andamooka and Oodnadatta in the Far North will soon have better roads.
>
> A federal government grant announced yesterday will see $4 million go towards improving outback roads. The money will be allocated at $1 million a year for four years to upgrade roads in unincorporated areas in South Australia.

I understand that the funding referred to in this report is part of the federal Roads to Recovery Program. My question is: will the minister provide the Council with details of the benefits to outback communities as a result of this funding?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): This funding represents a big breakthrough in terms of federal contributions to South Australian roads. In addition to the information that the honourable member just provided to the Council, I suspect that all members appreciate that, unlike most other states, a very large proportion of South Australia is unincorporated, that is, it is not in council areas, and therefore a large part of our remote north has never received federal funding for its roads, other than the national highway system.

In fact, this state government has substantially increased funding to our remote outback roads up to some $14.4 million a year, but we have never had any support from the federal government until now, when it is providing this $1 million for each of the next four years. So, it is a big breakthrough in thinking by the federal government for our outback communities.

The allocation of those additional funds to areas that are unincorporated or not in Aboriginal land areas will go principally to population bases, the local towns, for their roads. There are a lot of towns in the outback, such as Marla, that do not have a sealed road system. The police officer and the health worker both found that they were imprisoned in their houses by flood waters earlier this year because of the road system being under flood and severely damaged. When you have key emergency workers such as the police officer and local nurse trapped in their houses and unable to do perform their duties in times of flood, you have problems. And we do, in terms of the roads in many of our outback areas, particularly in our towns.

This money for Andamooka, Copley and Oodnadatta in 2001-02 will be invaluable, and Transport SA is now working with the Outback Areas Community Development Trust, Tourism SA and the local townships to work out the allocations for the next three financial years. Marla will need to be a priority in that area. I have recently been to the far north, and one of the issues which I became highly aware of and which was pointed out to me by many people was how we can improve the floodways to ensure that they can take traffic more often when the roads are closed for such long periods after rain. Much of this investment from the federal government and Roads for Recovery will be dedicated for that purpose on, say, the Strzelecki Track, the Oodnadatta Track and the Birdsville Track.

The Hon. J.S.L. Dawkins: There is a good federal member up there.

The Hon. DIANA LAIDLAW: Barry Wakelin has been pushing this issue of the allocation of state funds but, now that he has been successful in gaining federal funds for this purpose, we will certainly make the floodway issue a priority in terms of the allocation of these federal funds this financial year and over the next three financial years.

ELECTRICITY, PRIVATISATION

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Treasurer questions regarding the report of the Auditor-General.

Leave granted.

The Hon. T.G. CAMERON: I will quote from page 15 of the Auditor-General's report. I find that the terminology and the language he uses at times is quite inflammatory and inclined to exaggeration.

The Hon. Sandra Kanck interjecting:

The Hon. T.G. CAMERON: I am quite happy to give you some examples of it. However, on page 15—

The Hon. Ian Gilfillan interjecting:

The Hon. T.G. CAMERON: I do not happen to be a fan of the Auditor-General. You are quite welcome to be, but I have my own views about what he is doing and what he is up to, and I will not be silenced. I will state it in here in the Council. In paragraph three on page 15, the Auditor-General states:

> Electricity assets disposals have brought immediate reductions in net debt. Total net proceeds from disposals amounting to $4.9 billion were used for debt retirement. As a consequence there are reductions to interest rate risks and other risks.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: It sounds almost like a compliment for the government. He could not have been feeling well that day. He then goes on to say—

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. CAMERON: I am surprised; that is about the only complimentary thing I can find in here about the government. He then went on to say:

> These are regarded as improving the State's financial position.

I will do a Legh Davis here. I am wondering whether the Treasurer could comment as to whether or not he considers—

The Hon. R.R. Roberts interjecting:

The Hon. T.G. CAMERON: There is a question in here, all right, as to whether or not—

The Hon. R.R. Roberts interjecting:

The Hon. T.G. CAMERON: Well, you won't let me finish. If you'll keep your trap shut, I'll finish my question.

The PRESIDENT: Order, the Hon. Mr Cameron!

The Hon. T.G. CAMERON: I am just seeking some protection from the chair from the interjectors, Mr President.

The PRESIDENT: I will give you some protection. The honourable member will be seated if he does not get on with his explanation.

The Hon. T.G. CAMERON: I will when they have finished.

The PRESIDENT: Please get on with it.

The Hon. T.G. CAMERON: I will repeat my question. I will do a Legh Davis and I will seek some comment from the Treasurer on the statement that has been made. In particular, will the Treasurer comment on whether or not he thinks the Auditor-General's statements are correct?

The Hon. R.I. LUCAS (Treasurer): I thank the Hon. Mr Cameron for his question, and in doing so I might indicate that I am about to sign off on a letter (which will not be ready today) to the Hon. Mr Cameron in response to some earlier questions he asked about the Auditor-General. I suspect that he might be interested in the reply that I am about to convey to him in response to—

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: I will be tabling a copy of the reply as well when we come back again. I am sure we will all be interested, but in particular I suspect that the Hon. Mr Cameron might be interested in the reply that the parliament has received from the Auditor-General in relation to the questions the Hon. Mr Cameron has asked.

In relation to the Hon. Mr Cameron's question today, the simple answer is that we are pleased to see in amongst all the other commentary from the Auditor-General an acknowledgment (at least so it would appear anyway on the surface) of the significant progress in terms of the reduction of state debt, but more particularly in terms of the comment to which the Hon. Mr Cameron has referred in relation to the reduction of interest rate risk.

That is an issue that the government has been trying to hammer home for almost three years. As I have said on a number of occasions, and I repeat, albeit briefly, today, in some respects we have been protected by the historically low interest rates that we have seen in Australia and South Australia in recent years. I think the finance pages today are recording 30 year lows in home mortgage interest rates and the benchmark rate at some 4.5 per cent, with further speculation that soon after the federal election there might be a further reduction by the Reserve in the benchmark rate in Australia. There is also further speculation that the Federal Reserve in the United States may drop its benchmark rate below 2.5 per cent by at least another 25 points or possibly 50 points in the next month. I think 6 November is the next meeting of the Federal Reserve, or around that time.

We have been protected to a degree. As I said, and let me again repeat the figure, just an average 2 per cent increase in interest rates would see the taxpayers of South Australia having to find, if we had not significantly reduced our debt, some extra $150 million to $200 million a year in extra taxation, emergency services levy, payroll taxes, stamp duties, death duties, gift duties or land taxes.

The Leader of the Opposition and the shadow treasurer have shown an unwillingness, should they be elected, to rule out further tax increases. In those circumstances, at which of those would they be looking? Or, if we had not repaid the debt, perhaps there would have been a significant reduction in expenditure in education or in human services, given that they comprise almost 60 per cent of total state spending. That gem within the Auditor-General's report to which the honourable member has referred is an explicit acknowledgment of the importance to the state of having significantly paid down the state's debt.

HINDMARSH SOCCER STADIUM

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Treasurer a question concerning the Hindmarsh Soccer Stadium.

Leave granted.

The Hon. P. HOLLOWAY: On ABC radio this morning, the Hon. Julian Stefani said the following:

> . . . I raised the issue in January 1999 with the Premier, my concerns were reflecting the concerns of the community. And so with that in mind I set about to try and get a result, to try and resolve the issues, to try and work through what I found out to be a very messy and very inordinate matter.
>
> And, in fact, I was just staggered by the lack of competence in some of the issues that were dealt with by the Government.

In light of those comments, does the Treasurer agree with the Hon. Julian Stefani's assessment of the government's performance on this issue, and does he accept any responsibility at all for the mismanagement identified by the Auditor-General and confirmed by his colleague?

The Hon. R.I. LUCAS (Treasurer): All members will know that the Hon. Mr Stefani has raised his concerns about this issue in this chamber and publicly. He has not been a shrinking violet in relation to this issue and I am sure that, in addition to raising this issue publicly, he also would have raised the issue on occasions with either the Premier or senior ministers in private. It is not for me to revisit today all of the issues that were raised by the Hon. Mr Stefani. He would have been a supporter of the fact that eventually an Auditor-General's inquiry was established.

The Auditor-General has now brought down his report. My frank view of the Auditor-General's report is that one can acknowledge that there are some criticisms of process and procedure of government which the government has taken into account. I think that, whilst it has not been publicised at all, the Auditor-General has at least acknowledged somewhere in those 600 pages that a number of his criticisms which relate to three or four years ago have already been corrected by changes in government process and procedure. They have been acknowledged previously and action has been taken. Of course, no publicity has been given to that acknowledgment.

If there are any remaining areas of criticism of government process and procedure, the government will, of course, address them. Nevertheless, as I have said in relation to the electricity report, whilst we might agree with a good number of things that the Auditor-General raises, I personally have some significant concerns about aspects and judgments that the Auditor-General has made in this particular report. I think that in some cases he is seriously wrong. I have pointed out one of those examples today where I do not believe that his criticism in relation to that particular issue is an accurate reflection of how government processes work in relation to Treasury acquittal of the Public Works Committee submissions of the government.

There are other areas where I have a view that the Auditor-General is seriously wrong. I am sure that the future weeks will allow both me and others to absorb all of the 600 pages and check back with the documented records of the time. As I said, we are going back three, four and five years, almost, with some of these documents. In fact, I think the first important decisions taken by the cabinet were in 1996, and we are now in the year 2001.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: Well, I think the Auditor-General's processors have to accept some of the responsibility for that. One cannot just blame the government for that, as the deputy leader is seeking to do. As the member for Bragg has indicated in the other place, he went along to his first discussion thinking that he was going to talk to the Auditor-General, only to find that he was confronted by three lawyers, the Auditor-General and sundry others. He had no legal representation and he did not know what he was being accused of: he was not aware of the allegations made against him.

The Hon. P. Holloway interjecting:

The Hon. R.I. LUCAS: The member for Bragg has raised an issue about the processes here, and governments (both Labor and Liberal) need to look at them. Let me assure the Hon. Mr Holloway and members opposite that, with all the smugness and arrogance that the Labor Party has, should they ever be in government, I will be delighted to see the same standards being run over in relation to all decisions. Should there be an Auditor-General's inquiry, exactly the same circumstances would apply to, say, the Hon. Mr Holloway. The member for Bragg was not given the transcripts of evidence from people who made accusations about him. He was not told what those accusations were when he presented evidence, and he had no legal representation whilst the Auditor-General had three—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! Interjections are out of order.

The Hon. T.G. Cameron interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: As I said, over the coming weeks, time will permit us to highlight those areas with which we might agree and, more importantly, any areas with which we might have significant disagreement.

SUSTAINABLE ENERGY

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: On a point of order, Mr President, my colleagues advise me that, whilst I was speaking, the Deputy Leader of the Opposition said that the member for Bragg should be in gaol.

The Hon. Diana Laidlaw: He said it three times.

Members interjecting:

The PRESIDENT: Order! There is only one member on his feet.

The Hon. R.I. LUCAS: I ask that the Deputy Leader of the Opposition, a member of the leadership of the opposition, be asked to withdraw that comment and apologise.

Members interjecting:

The PRESIDENT: Order!

The Hon. P. Holloway: I didn't use those words.

Members interjecting:

The PRESIDENT: Order! If the Hon. Paul Holloway said those words, he should apologise and withdraw them.

The Hon. P. HOLLOWAY: I did not use the phrase that the leader alleges.

The Hon. J.S.L. Dawkins: What did you say?

The Hon. P. HOLLOWAY: I'm not going to repeat what I said.

The Hon. L.H. Davis: You can't remember.

The Hon. P. HOLLOWAY: I did not say those words.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I did not say them.

Members interjecting:

The PRESIDENT: Order!

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! I have called for order about four times.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order, Minister! You cannot expect the chair to hear comments when there is so much audible interjection. I certainly did not hear the comment. The Hon. Mr Holloway did not say it and will not apologise. The Hon. Sandra Kanck.

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Minerals and Energy, a question about renewable energy.

Leave granted.

The Hon. SANDRA KANCK: Last week, the *Advertiser* reported that the state government had broken its promise to establish a sustainable energy authority with an annual budget which would have been up to $6 million and that, instead, it will allocate just $1.29 million to a renamed agency, Energy SA. In defending the broken promise, in an interview on 5AN, Minister Matthew claimed that the government had looked at the models of other states and decided that we were better off going this way. SEINS (Sustainable Energy Industry National Survey) paints an entirely different picture.

SEINS indicates that, of all the states, South Australia, which does not have a sustainable energy authority—

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order, the Hon. Ron Roberts!

The Hon. SANDRA KANCK: —has the least number of businesses benefiting from government programs for sustainable energy. It should be noted that much of this money comes in the form of federal grants. Hence, South Australia is missing out on its fair share of this federal development money. Other damning statistics of South Australia's performance include the fact that the average wage bill for South Australian sustainable energy firms was $462 100 in 1999-2000 compared to a national average of $774 000. That expenditure on research and development by such South Australian firms averaged just $65 000 in 1999-2000, well below the national figure of $350 000, and the average number of full-time equivalent employees in South Australian sustainable energy firms was just 4.4 compared with the national average of 15.6.

By way of contrast, New South Wales, with the oldest sustainable development authority in Australia, SEDA, has the lion's share of the sustainable energy market. Kim Yealdon, the New South Wales Minister for Energy, has released figures indicating that 40 per cent of all sustainable energy firms are based in New South Wales. Thus, New South Wales snares $16 billion of the $33 billion in economic benefits generated by the industry in Australia, and it has 11 500 full-time employees compared to the 380 employed in South Australia. My questions are:

1. Did the minister receive a report on the matter before making a decision to ditch the concept of a sustainable energy authority?

2. If so, will the minister release that report?

3. If no report was produced, on what basis did the minister decide that South Australia would be better off without a sustainable energy authority?

The Hon. K.T. GRIFFIN (Attorney-General): I will refer the question to my colleague in another place and bring back a reply.

MENTAL HEALTH

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

Leave granted.

The Hon. R.R. ROBERTS: For some time now, members would be aware of my concern for the provision of mental health services in country areas. A number of inquiries, including one by the Social Development Committee of this parliament, have reinforced not only my concern but also that of people living in country areas about the provision of medical services. There have been dedicated beds at Glenside for country services based on regions. Honourable members would also remember that, some time ago, I raised concerns in relation to the overflow from the prison system and James Nash House which, on a number of occasions, resulted in first presentation juvenile clients admitted to Glenside mixing with hardened criminals and people with psychiatric disorders and which, in some cases, had led to their incarceration. However, there has been some movement in that area.

Recently, my colleague, the Leader of the Opposition, Mr Rann, wrote to Phillip Ruddock MP in respect of matters associated with the refugee camp that is to be built at El Alamein. I was interested in the following paragraphs of Minister Ruddock's reply:

> In addition, discussions have taken place between senior officials of the South Australian Department of Human Services and my Department and also at the local level between staff of Glenside and the Woomera IRPC. Negotiations have commenced on a protocol in relation to the provision of mental health services to immigration detainees in South Australia.

I was particularly interested in the following:

> Full primary health services will be available on site at the new centre, as in all the current immigration detention facilities. Medical facilities operate 24 hours a day, seven days a week and are staffed by nurses, general practitioners and other fully qualified medical staff including clinical psychologists and counsellors. Where a medical condition may require hospitalisation or referral to a specialist, full costs are paid either by my Department or the detention services provider.

My questions are:

1. What has been the effect of the provision of some of Glenside's mental health services to Woomera refugees in respect of the provision of beds for country patients?

2. What services has the minister provided to general practitioners and fully qualified nurses, including clinical psychologists and counsellors, to entice them to go to these regional country areas? It is quite clear that these services are severely deficient in many areas of South Australia and we cannot get that sort of person to go there.

3. Why is it that the federal government can provide resources and inducements to those people but not to the people who normally reside in country South Australia?

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

GOVERNMENT PARTNERSHIPS PROGRAM

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement issued today by the Minister for Local Government on the subject of a memorandum of understanding on the government Partnerships program.

Leave granted.

ELECTRICITY, SUPPLY

In reply to **Hon. P. HOLLOWAY** (11 April).

The Hon. R.D. LAWSON: In addition to the answer given on 11 April 2001, the following information is provided:

1. The decisions regarding the timing of the government seeking proposals for contestable sites were made following consideration of the views and advice of a number of experts and participants in the electricity market. Their views were proved to be correct, viz, that after the peak summer period, market studies established there would be a greater generation capacity available to a number of retailers and as such would lead to greater competition.

2. During the selection and negotiation process, an analysis was made of arrangements for a number of terms, including one, three and five year terms. The later was recommended by contract services and accepted by government.

3. The government issued a request for proposal on 12 April 2001, with responses due by 11 May 2001. Following evaluation and negotiation processes, the government announced the award of the contract to successful tenderer AGL on 12 June 2001.

4. Approximately 300 sites were initially deemed contestable. As agencies continue to assess the benefits of the reporting and energy management arrangements additional sites may be added over time. The final number will not be known until individual sites have been considered by the appropriate agencies. Up to 320 sites were under contract as of September 2001.

ELECTRONIC RECORDS

In reply to **Hon. CARMEL ZOLLO** (25 July).

The Hon. R.D. LAWSON: In addition to the answer given on 25 July 2001, the following information is provided:

1. The principles of good records management practice apply to all types of official records, paper-based and electronic. Such principles are outlined in the records management framework currently being developed by State Records.

Within such an overarching framework State Records also is developing a number of policies and guidelines that relate specifically to electronic records.

In August 2000, a project plan for the development of a set of policies and guidelines on electronic records was submitted to and approved by the Whole of Government Information & Records Management Strategy Group. This group has executive-level representation from each of the portfolio groupings.

In March 2001, State Records distributed (via the strategy group) a survey on the management of official electronic records. The responses to this survey will inform the future policy development priorities for State Records.

At this stage State Records has already developed two documents—*Introduction to Electronic Records*, *Management of Email as Official Records: Policy, Guidelines and Technical Considerations*, and earlier this year I approved the *Document and Records Systems Standard* for release as a formal standard under the State Records Act.

2. Until recently, archival institutions (including the National Archives of Australia) promoted a policy of 'distributed custody' whereby agencies maintained in-house their electronic records, including websites, rather than transferring them to the archives. However, this is changing, as is evident by recent initiatives from the national archives.

In March 2000, the national archives announced a reversal from its 1995 policy, and that it would accept archival records of any format into custody. The national archives currently is developing a policy for taking electronic records into its custody (and the necessary technological infrastructure to enable this). In January 2001, the national archives released a revised policy for managing commonwealth websites, and amplified this with guidelines in March 2001. These guidelines extend from the creation of records to decisions about which should be retained. Coverage extends beyond public websites to intranets and records of web-enabled activity, including electronic commerce. Issues raised in the guidelines include planning for technological obsolescence and choice of storage media.

At this stage, State Records is not taking physical custody of websites and other online government records. As with the national archives, there are resourcing implications (in terms of IT infrastructure) in doing so. In reviewing this position over the coming year, State Records will liaise closely with the State Library of South Australia given the Library's role in the 'legal deposit' holding of copies of publications. For the commonwealth, the national archives and the National Library have carefully defined their respective needs and interests.

3. 'E-permanence' is a new approach or framework with regards to recordkeeping by the Commonwealth Government. Such an approach is meant to apply to all records, both paper-based and electronic (though it is intended to be particularly suited to the digital environment), and assist Commonwealth Government agencies in improving their recordkeeping.

State Records has been developing a similar approach with regards to recordkeeping by the South Australian Government (including local councils) in the form of the records management framework. As with the commonwealth model, this framework will provide policy, standards and guidelines applicable to records, irrespective of format. It will also include a component dedicated specifically to electronic records and particular associated issues.

EMERGENCY SERVICES PAGING SYSTEM

The Hon. K.T. GRIFFIN (Attorney-General): I seek leave to table a ministerial statement on the emergency services paging system made this day by the Hon. Robert Brokenshire, Minister for Police, Correctional Services and Emergency Services in the other place.

Leave granted.

ABORIGINAL HERITAGE SITE

The Hon. SANDRA KANCK: I seek leave to make a personal explanation. I have been misrepresented by the Hon. Dorothy Kotz, Minister for Aboriginal Affairs.

Leave granted.

The Hon. SANDRA KANCK: Last week in this Council, I raised the issue of the destruction of a potentially immensely important archaeological site, which occurred during the extension of the airstrip at the Port Augusta aerodrome. I stated that an area of 200 metres by 500 metres was surveyed by archaeologists and representatives of the Aboriginal groups associated with the site, and permission was granted for destruction of the area. At this point the minister and I see eye to eye.

I also stated that quaternary dunes outside of the surveyed area were destroyed in the airstrip extension and included archaeological opinion that those dunes may have been as important as Lake Mungo. The following day, by way of a ministerial statement titled Port Augusta Aerodrome Site Clearance, the Hon. Dorothy Kotz labelled my suggestions of the unauthorised destruction as a concoction, yet correspondence from Dr Keryn Walshe, of the Flinders University Department of Archaeology, who conducted the survey of the area, states:

> [The] area measuring 500 x 200 metres. . . was given clearance by the Port Augusta Working Party representatives. In the end this area was not destroyed by extending the runway, and instead the area shown in photo 1 was destroyed. This area was not given clearance.

Further, Dr Walshe states:

> It is strongly recommended that the remaining campsite concentrations located within the dune complex between the existing runway and Sandy Creek to the west be preserved, fully recorded and advice on appropriate management and protection of the remaining site complex be sought from the Heritage Section, Division of State Aboriginal Affairs.
>
> This recommendation was not carried out and the site complex was destroyed without any further investigation or site recording.

This is the area I was referring to, yet the minister claimed in her ministerial statement:

> There has been no destruction of sites, outside the authorisation granted by me with the approval of the Aboriginal people, as a result of the runway extension.

Today, I have in my possession two statutory declarations, one from Dr Keryn Walshe and the other from Mr Jim Bramfield, an elder of the Nukunu people and chairperson of both the Nukunu People's Council and the Nukunu Heritage Committee. Both state:

> I believe The Hon. Dorothy Kotz's ministerial statement—Port Augusta Aerodrome Site Clearance of the 27th of September 2001—to be factually incorrect in its assertion that 'there has been no destruction of sites outside the authorisation granted. . . with the approval of the Aboriginal people, as a result of the runway extension'.

The statements from the doctor of archaeology and the Nukunu elder, both of whom were involved in the survey of the aerodrome, back me up and they cannot stand alongside the minister's allegation that I concocted this. In short, it is the minister who has misled parliament and, under the conventions of the Westminster system, she must resign or be sacked.

WEST BEACH RECREATION RESERVE (REVIEW) AMENDMENT BILL

In committee.

Clause 1.

The Hon. DIANA LAIDLAW: I want to clarify that there is no other motion on the *Notice Paper* to note the select committee report and, therefore, can I speak to it at clause 1?

The CHAIRMAN: Yes.

The Hon. DIANA LAIDLAW: I acknowledge the contribution of all members of the select committee, which I chaired. The membership included the Hon. Legh Davis, the Hon. Mike Elliott, the Hon. Terry Roberts and the Hon. Robert Sneath. In doing so, I thank them for the time that they devoted to considering the bill that I introduced on behalf of the government to amend the West Beach Recreation Reserve Act.

The committee met on nine occasions and received written submissions plus presentations from the three adjoining councils and other people with an interest in both the bill and the conduct of the reserve. I was not able to attend a meeting arranged at the reserve to see the range of facilities for which the trust is responsible—the sporting and accommodation facilities—but all other members did so, and report most favourably on the management by the trust of the facilities to date.

I will highlight but will not go over all the reasons why the government introduced the bill in the first place. I indicate that, like every other piece of government legislation, the act had to go through a review as part of national competition policy. It is also true that the trust is responsible for assets worth some $41 million, and it is the government's wish that those assets continue to be well managed, not only in the local interest but as a state and national tourism asset. It is for that reason that the trust was encouraged to prepare a master plan outlining the intentions for development at the site for future years, and that master plan has been released for public comment.

It has been very important from my perspective as minister responsible for the trust and the reserve areas that, first, there was forward thinking about how the trust wanted to use the land in the best interests of the local community and the state as a whole, but to do so in harmony with the reasons why the reserve has become such a popular venue, providing an affordable range of accommodation as well as top-class facilities for local team use but also from time to time for national competitions in a variety of sporting endeavours. It was important that the trust thought through those issues and then was quite clear in providing that information to the wider community so that they could participate in the development of those plans and anticipate how the site would be developed in the future.

One of the most interesting features for me from the consultations undertaken and submissions received as part of the consideration of the bill by the select committee was the strength of feeling about the value of the reserve land, the character of the accommodation, the variety of accommodation, the affordability of the accommodation, and, in addition, the respect for the sporting assets. Clearly, there is strong feeling that the character of the reserve must be maintained longer term and not overdeveloped, thereby ruining what is such an asset for the state. The strength of submissions on that front is reflected in the recommendations that the select committee has brought to this place today.

I also highlight that the government, in introducing this bill, wanted to see not only a master planning process and up-front business plans but also that further funds were sensitively pursued and further income earned so that the trust could invest increasingly in maintaining and sensitively developing its facilities. It is quite clear that adjoining councils, while they are very strident in their wish to be involved at the board level and in the conduct of the trust in the future, are equally adamant that they do not want to make any financial contribution to maintaining and developing the product—the reserve—in the short or longer term.

My starting point in introducing the bill was to reduce the size of local government representation on the board, where there is majority representation today with adjoining councils having four out of seven members. The bill proposes only one member from local government, nominated by the LGA, and I have to say up-front that that was rejected unanimously by everyone who wrote to the committee or gave presentations, and the select committee has recommended change to what is contained in the bill.

In saying that, and I will not elaborate on this matter because there will be a chance to speak to various amendments to the clauses, essentially the committee supported the government's contention that there should be less local government representation on the board but was equally firm that there was a case for retaining one representative from each of the three adjoining councils—Holdfast Bay, West Torrens and Charles Sturt. That membership is retained according to various conditions that are outlined in the report, and I will speak to them when the amendments are before us.

One point I must stress today was my alarm at public comments in the local paper by council representatives and community groups that this bill facilitated the sale of reserve land. I am very pleased that, in the report, it is made very clear that this bill does no such thing. In fact, this bill continues the practice in the act, and that is to make the strongest possible provision for no sale of land under any circumstances. That is the highest order of protection that any legislative approach can provide. I would say that, in the National Parks and Wildlife Act, no similar unqualified protection is afforded to parks and reserves. So, first, I say adamantly that the bill prohibits the sale of any reserve land and, secondly, it actually extends the area of reserve land that is protected in the act. The bill provides an extension of that protection to include an area that embraces the boat harbour parking area.

The committee believes that the issue of the sale of land and the misunderstandings that have developed and have been reported locally may arise from a different reference in the bill in relation to land, and that is to land that the trust may purchase in the future—not land that the trust owns but may purchase in the future. Because of these misunderstandings, I give credit to the committee, and to myself as chair and proponent of the bill, for going to some length to clarify and reinforce the distinctions between the land that the trust owns now, which is prohibited from sale, and land that may be purchased in the future where various processes would be required for the sale or lease of that land.

Out of an abundance of caution, in relation to the leasing or licensing of land or other real property in the future, the select committee has recommended to council for its consideration that terms exceeding 20 years must be approved by resolution of both houses of parliament. On behalf of the government I have been happy to go along with and sign off on that measure. I do so on the basis that this area of land in the western suburbs of Adelaide, on the foreshore, has in the past and again in the bill before us provided protections without qualifications that prohibit the sale of the land. Therefore, to reflect that prohibition it is wise to have the precautions of any lease or licences for periods extending 20

years added to the bill with such an approach requiring the resolution of both houses of parliament.

Various other amendments are recommended, but I will address those during the committee stage. Finally, I thank all members who participated in this select committee. I thank Ms Noeleen Ryan for her assistance in arranging all the meetings, for making sure that all the procedures and processes were correctly followed, and even for humouring me from time to time. I thank our executive officer Mr John Barker from Planning SA, who was diligent in noting issues that the committee wanted to research further, in helping us with the preparation of the report and in liaising with Parliamentary Counsel on our behalf on the amendments that are before us today.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: I know that one is not meant to respond to interjections, but the Hon. Mike Elliott has reminded me that I was a bit of a mean chair and at one stage sought to deny Mr Barker a long-planned break of two days. The committee overruled me and Mr Barker had his break, and we finally got our report. So, everyone was happy. Mr Barker's interests were championed by all members but me on the committee at one stage but, again, I bowed to their wisdom, Mr Barker had his holiday and we got our report.

The Hon. M.J. ELLIOTT: I support the report that has been put before the Council. At the outset I must say that I am not sure that much of the original bill that came in was really horribly necessary but, nevertheless, we were required to look at it all since it was before us. It is fair to say that probably no one member got everything they wanted. This, as so often happens in these committees, is a matter of compromise. I will comment on some things that I still have some lingering doubts about but acknowledge that many other things of those sorts were also achieved. Other members will be in an identical position: all done in seeking consensus.

The Hon. Diana Laidlaw: The chair was very accommodating.

The Hon. M.J. ELLIOTT: Yes, I thought the chair was extremely accommodating. The first issue I want to address is the role of local government. As the minister noted, there were not an awful lot of submissions in support of changing the role of local government in the way the bill proposed. When I say 'not an awful lot' I mean none, to be precise. There were previously four members of local government, one from each of the three abutting local government areas and one floating member. I understand that it was on a rotational basis: each time there was a vacancy it rotated to the next of the three councils.

The practice most often seemed to be that elected members took the council positions and the floating member was often an officer of council. That appeared to be the practice, although I may stand corrected. There really was not a great deal of evidence that the composition of the trust was causing a great deal of difficulty. The trust appears to have been functioning well in recent years with four representatives of local government. I, for one, was very keen to see not only that there be local government representation but that it actually be from adjoining councils, for a couple of reasons.

First, while this area is important as a tourism resource that attracts people both from interstate and from overseas, it is also an extremely important local resource. Probably the heaviest users of the recreational facilities will be people who live in the nearer vicinity, as one would expect and, as I understand it, an amazing number of locals actually use the camping grounds and cabins. They have a holiday away from home not very far from home at all. I guess that at least the number of square metres of floor that has to be swept and mopped goes down and a bit of sand that comes off the beach is acceptable when you are on holidays. So, it is heavily used by locals even though it is also a state resource.

Even in terms of caring for a state resource there are enormous advantages in having people who live next door to something looking after a property, rather than people who live somewhere else. Certainly, if you want your house looked after, there are some advantages (if you trust your neighbour) to asking your neighbour to do it rather than asking someone else, with the best will in the world, who lives in the next town. They know and understand the sorts of problems and they often share the problems. The waterways that run through these other council areas eventually run into this area, as one example.

Two of the councils share the beaches, so they bring a lot of local knowledge and understanding, which is very useful when you are seeking to manage something. For many reasons, I think it is important that local government representation be there. Also, with local government being just a bit closer to the people, the chances of the interests of the little people, if you like, being cared for are a little greater. They are not guaranteed but they are a little greater.

Where I disagreed with the proposal was that, rather than each council nominating a single person, there is to be a panel of three nominated from each council and the minister will choose which of the three from each of those councils is the actual representative. I have opposed that in other pieces of legislation and I think that, if the nominee is to represent a particular area, then that area should be doing the choosing. That is an area where I have some disagreement but, in terms of the compromise reached all round, I accepted the report as it was.

Perhaps some gain picked up along the way was that there were a number of different skills hoped for among the nominees. I am pleased to say that, along with the business, tourism and accounting sorts of skills that were already present in the bill, environmental protection and/or management have also been included. If you are to talk about the care of waterways which are running through the area—the beaches, the sand dunes and so on—then having someone with those sorts of skills within the trust will be very important.

We also recommended that the nominees need not be councillors or staff. In fact, the council could choose someone else—it is almost certain to be a local—who they believe has skills and local knowledge which would be of benefit to the trust. We thought that it was important that that option was spelt out. There were some other minor changes in relation to the schedule. The schedule was referred to in clause 8 at one stage, and it was described as the area marked in black. Of course, anyone looking at the schedule would see that there were many black lines. However, it was the bold black lines that were referred to, so that change has been made to remove any confusion. It was only a technical change but worth doing.

There were proposals earlier about the establishment of subcommittees. The changes we made reflected the changes which were made in the composition of the trust, or a reversion to something similar to the original trust and, as such, the amendments originally proposed in the bill were seen as being redundant. We have also tried to ensure that it was clear that sale of property was not possible within the

designated area, but we have also gone further in looking at leasing. We all know that a lease when long enough is a de facto sale, and we have had examples of that. If it is the view of this place that it should not be possible to sell land without the approval of parliament, because the act prohibits sale and you have to come to parliament to carry out a sale, then it would be a nonsense to allow a long-term lease which was a de facto sale.

There are a couple of amendments. One notes that, if a lease or licence is to exceed 10 years, it would require ministerial approval and, if it goes beyond 20 years, it will require the approval of both houses of parliament. To some extent, it mimics the National Parks Act in that, if you want to make substantial changes to the boundaries of national parks, you need the approval of both houses of parliament. It has been given some protection in terms of leasing which might be even stronger than what is provided for national parks and which is also certainly every bit as strong in terms of sale.

I believe that I have covered all the important areas. I make one final comment in relation to the West Beach Trust as a whole. If one looks at the accommodation offered at present it is very diverse, ranging from camping—where people sleep in pup tents, or whatever you want to call them, very small one person tents—to cabins of various levels of luxury. It is a place where almost anyone could find accommodation which they could afford and which they would enjoy. We have on the land a public golf course which is readily accessible to anyone in Adelaide who decides they just want to have a hit.

There are a few other public golf courses around Adelaide. I have one near me in the Belair National Park. It should never have been allowed in the national park, but at least it is fully public. As with the Belair National Park, the golf course also has a club attached to it, but that club has right of use for only a relatively short period. What I would be afraid of is if, over time, there is a gradual alienation from something which is genuinely public to something which becomes private. There is now a proposal for building what is pretty close to resort accommodation, quality accommodation, on the golf course site.

No-one will stay in that sort of accommodation on a golf course unless their use of the golf course is guaranteed. It is not just the rich people who can afford to stay in this place during holidays who will use the golf course, but perhaps the lower income people from the western suburbs who are also on holidays. During holiday times the golf course will be in maximum demand and the danger would be that the people staying in the resort type accommodation on the golf course will get first call on the site. I believe that it would be an outrage if anything such as that was allowed to develop.

As I said, these things can happen gradually. If we are not very careful what is a genuine public asset, available to everyone regardless of income and means, by gradual creep and upgrade could slip away before people notice. It is similar to the analogy so often given of the frog being put in cold water which is gradually heated. It never notices the rise in temperature and eventually it boils to death. If we are not forever vigilant there is a danger that the golf course, the accommodation areas and so on will be slowly, almost imperceptibly, upgraded to the extent that it becomes less accessible to some parts of our community. If that ever happened, it would be an enormous shame. It is one thing about which I will certainly be very vigilant.

The Hon. R.K. SNEATH: The opposition was represented on the committee by the Hon. Terry Cameron and me. The opposition supports the bill. I do not intend to comment any further at this stage, but I will make comments as the amendments are moved.

The Hon. L.H. DAVIS: I express my support for the report. The committee had the benefit of visiting the West Beach Trust area. It is a very impressive site and the facilities that are available to the campers or to those who use the permanent accommodation are of a superior quality. In fact, the thousands of people who use West Beach Trust, locals, interstate and overseas people, are testimony to the quality of the facilities that have been developed over the years and also the trust's reputation. It is obviously an attractive family resort being adjacent to the sea. In addition to that facility, the trust provides amenities on a highly subsidised basis to a number of sporting groups, including baseball clubs and the South Australian Softball League. There is also a driving range and two golf courses.

I must say that, having been to the West Beach Trust, taking evidence at the trust, I was impressed with the quality of the management. The presentation of the annual report was superior. The chairman of the trust, Mr David McArdle, and the board deserve to be congratulated for the way in which they play their role. The select committee also recognised that, notwithstanding previous views that may have been held, there was a distinct benefit in having the input of the three adjacent councils which, in their various ways, have a significant role to play with the West Beach Trust.

One of the important recommendations that the select committee made was that the three councils continue to have representation on the seven member board but that the membership from the council should not necessarily be restricted to a councillor but could also be an employee, or indeed someone else nominated by the council who had the requisite skills and experience. Again, the select committee process was seen in good light. A unanimous decision was arrived at after taking evidence from the stakeholders and other interested parties, and I support the findings of the select committee and the consequential amendments to the bill.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. DIANA LAIDLAW: I move:

Page 3, lines 22 to 31, page 4, lines 1 and 2—Leave out subsection (1) and insert:

(1) The Trust consists of seven members appointed by the Minister, of whom—

(a) one must be a person from a panel of three persons nominated by the City of Charles Sturt; and

(b) one must be a person from a panel of three persons nominated by the City of Holdfast Bay; and

(c) one must be a person from a panel of three persons nominated by the City of West Torrens; and

(d) the remainder will be selected by the Minister.

(1a) For the purposes of subsection (1)—

(a) any person nominated by a council, or otherwise selected by the Minister for appointment, must have qualifications or experience in—

(i) business or management; or

(ii) tourism; or

(iii) accounting and financial; or

(iv) environmental protection and management; or

(v) the provision or operation of regional recreation facilities; or

(vi) government; and

(b) a council, in constituting a panel—

(i) must nominate at least one woman and one man; and

(ii) must give reasonable consideration to nominating persons to provide a range of the qualifications and experience referred to above; and

(iii) need not nominate persons who are members or employees of the council.

I think that all members who have spoken to the report have referred to the matter of the composition or membership of the trust. The amendments that I move provide that the trust continues to be a maximum of seven members but that one member must be a person from a panel of persons nominated by the City of Charles Sturt, one by the City of Holdfast Bay, and one by the City of West Torrens, with the remaining four members to be selected by the minister.

I highlight that the amendments provide for a range of skills that the council must consider in terms of the nominations that they send to the minister for consideration for appointment. Essentially, what this amendment provides is that the three adjoining councils each have one person appointed to the trust. That is on the condition that they submit a panel of three persons with any one of a particular range of skills, that the nominations must include at least one man and one woman and they must not necessarily be limited to either councillors or council staff. This was an issue that was raised by the Hon. Bob Sneath and he may wish to refer to that in speaking to this amendment.

The Hon. R.K. SNEATH: The Opposition supports this amendment. I think that it is a very good amendment. It would be rather strange if the three councils involved were disappointed with the end result. It gives them all the opportunity to have their areas represented and it also gives the opportunity for the minister to have more expertise on the board. For example, you should not end up with three lord mayors, all with business backgrounds.

The Hon. T.G. Cameron: Or three trade union officials.

The Hon. R.K. SNEATH: That is right—or three trade union officials, as the Hon. Terry Cameron says. It does give the opportunity for the minister to give the board the extra expertise. It is a good amendment. The remaining member to be selected out of those four by the minister is also a good addition. It then allows the minister to look at the structure of the board and to make a further selection to the board of a person who perhaps has the expertise that the board might lack after the other nominations have been made. The opposition supports the amendment.

The Hon. T.G. CAMERON: I also rise to support the amendment. In my opinion, the amendment is a significant improvement on what was originally set out in the bill under clause 7. I think the move by the government to have one person from each of the three main councils involved is a welcome improvement compared to clause 7(1)(a), which would have meant that one member must be a person with practical knowledge and experience selected from a panel nominated by the Local Government Association of South Australia. I have always thought that a far better approach to these matters is to get the interested or affected councils to directly nominate the persons that they want to have represent them. This sorts out possible problems within the LGA.

I also support the move by the government to have three members of the board, one from each of the councils. And, in this case, I also support the fact that the government will be selecting one person from a panel of three persons. At present, some council meetings almost look like a Labor sub branch meeting, and one would not like to think that a Labor controlled and dominated council would make a deliberate decision if it had to put forward only one nominee and give the government someone it did not want. This gives the government a little bit of flexibility and, in my opinion, puts some onus back on councils to ensure that the people that they put forward are balanced and possess the various skills.

If we look at paragraph (a), we can see that any person nominated by the council or selected by the minister must fall within a range of qualifications, and that is to be welcomed. My personal experience with the West Beach Trust goes back something like 20 odd years when I was the industrial advocate for the Australian Workers Union and I looked after the West Beach Trust over a 10-year period, saw many changes, held many meetings down there and had a number of discussions with the board and its various officers.

I must say that, from time to time, I did have concerns about the composition of the West Beach Trust board. This goes back a long way, so I am not casting any aspersions or reflecting on the current composition of the board. But if you go back 10 or 15 years ago, appointments to the West Beach Trust board were made on a political basis, I think, rather than going out and looking for people who have the necessary experience and skills to do the job. I think that the taxpayers of South Australia have suffered enough over the years as a result of decisions that have been made by boards that were chock-a-block full of political appointments; people appointed who had little or no experience in the industry in which they were expected to act as a director and sit on a board. Do we need any better example than the State Bank, when something like $3.1 billion was shot off?

I like the proposition in the amended version put forward by the government. I think it has balance and I think that the overall mix, or recipe, if you like, that has been adopted should ensure that we get a good balance on the council, and I am looking forward to seeing just who the seven members are. I do hope that when the government appoints its four members—and I am not suggesting that you have done it—it takes on board that what we are looking for is people who have the skills and the experience, not somebody who will do the right thing by the party. We want people who will do the right thing by the taxpayer and put their interests first rather than those of the political party that they belong to.

Amendment carried; clause as amended passed.

Clauses 5 to 7 passed.

Clause 8.

The Hon. DIANA LAIDLAW: I move:

Page 5, line 23—Leave out paragraph (c) and insert:

(c) by striking out from subsection (2)(a) 'subcommittees' and substituting 'committees';

This amendment reinstates the trust's ability to establish committees to provide advice on any aspect of its functions.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 5, line 24—Leave out paragraph (d) and insert:

(d) by striking out from subsection (2)(b) 'subcommittee' and substituting 'committee';

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 5, line 27—Leave out 'may' and insert 'must'.

This amendment relates to real property and sale of land issues to which I referred when noting the report. The committee at large wanted to make it very clear that there is a distinction from land that is in the reserve now. This

amendment serves to make that distinction. So, subclause (4) will provide:

Despite any other provision of this act, the trust must not sell any of the land bounded in black in the schedule.

Further amendments define more clearly the land bounded in black comprising the reserve area.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 5, line 28—Leave out 'in black' and insert 'by bold black lines'.

This amendment arises from the committee's view that we need to define more clearly in the schedule the land which is in the reserve now and which is prohibited from sale.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 5—

Line 29—After 'Despite any other provision of this act' insert '(but subject to subsection (7))'.

Line 30—After 'real property' insert '(being real property not within the ambit of subsection (4)).

The amendments relate to real property issues and land that cannot be sold.

Amendments carried.

The Hon. DIANA LAIDLAW: I move:

Page 6, after line 7—Insert:

(6) Despite any other provision of this act (but subject to subsection (7)), the trust must not grant a lease or licence over the reserve, or a part of the reserve, for a term exceeding 10 years (not being a lease or licence to which subsection (5)(b) applies) without the approval of the minister.

(7) If the trust proposes to grant a lease or licence over the reserve, or a part of the reserve, for a term exceeding 20 years, the trust must not do so except in pursuance of an approval granted by a resolution passed by both houses of parliament (and subsections (5) and (6) will then not apply with respect to the lease or licence).

(8) Notice of a motion for a resolution under subsection (7) must be given at least 14 sitting days before the motion is passed.

(9) A lease or licence that is subject to the operation of subsection (5), (6) or (7) must be consistent with the trust's strategic and business plans (as applying at the time that the lease or licence is granted).

This is an important set of subclauses relating to the lease of land. The amendment requires the trust to obtain ministerial approval for leases exceeding 10 years as is contained in the West Beach Recreation Reserve Act 1987. So, we are reinserting a provision that was omitted in error in terms of leases exceeding 10 years requiring ministerial approval.

In addition, the committee determined that extra scrutiny is required for any leases exceeding 20 years. Accordingly, the committee considered that a resolution passed by both houses of parliament is required for any lease or licence exceeding 20 years over any part of the reserve. To ensure that all leases and licences are compatible with the functions of the trust, the committee also agreed that any such lease or licence granted under proposed sections 13(5), (6) and (7) must be consistent with the trust's strategic and business plans applying at the time that the lease or licence is granted.

The Hon. R.K. SNEATH: The opposition supports this amendment. It takes into account the position in which many sporting clubs in the area find themselves, and it should satisfy them as well. I do not think that any lease over 20 years exists in this area at the moment. As members might be aware, there are quite a few sporting clubs in this area with wonderful grounds and amenities which are probably of great benefit to the local councils which surround the West Beach Trust area, because if those facilities were not there they would have to be found within those council areas. It is an important amendment, and the opposition supports it.

Amendment carried; clause as amended passed.

Clause 9.

The Hon. DIANA LAIDLAW: I move:

Leave out this clause.

This amendment deletes references to a statutory advisory committee. The select committee considered that this was no longer necessary and recommended the insertion of the power of the trust to appoint generalist subcommittees as required.

Clause negatived.

Clauses 10 to 12 passed.

Clause 13.

The Hon. DIANA LAIDLAW: I move:

Page 11, line 24—Leave out 'in black' and insert 'by bold black lines'.

Amendment carried; clause as amended passed.

Remaining clauses (14 to 17), schedules and title passed.

Bill read a third time and passed.

SURVIVAL OF CAUSES OF ACTION (DUST-RELATED CONDITIONS) AMENDMENT BILL

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

Clause 2, page 3, lines 7 and 8—Leave out 'act referred to in the heading to the part in which the reference occurs' and insert 'Survival of Causes of Action Act 1940'.

Consideration in committee.

The Hon. NICK XENOPHON: I move:

That the amendment be agreed to.

This is a consequential amendment which was, I understand, suggested by the Attorney to tidy up the name of the bill, given that workers compensation amendments were not eventually passed. For that reason, it is a drafting amendment to tidy up the provisions of the bill.

Motion carried.

CONSTITUTION (PARLIAMENTARY TERMS) AMENDMENT BILL

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

STATUTES AMENDMENT (GOVERNOR'S REMUNERATION) BILL

Adjourned debate on second reading.

(Continued from 2 October. Page 2297.)

The Hon. R.I. LUCAS (Treasurer): I thank honourable members for their indications of support for the bill. I indicate that there will be an amendment to clause 7, and I will highlight the reasons for that in committee.

Bill read a second time.

In committee.

Clauses 1 to 6 passed.

Clause 7.

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

Page 4, lines 8 and 9—Leave out subclause (b).

I am advised that this subclause was included in error or mistake. Section 4(1) of the Governors' Pensions Act 1976

sets the formula for pension entitlements of governors and their spouses. Clause 7 seeks to adjust this formula to take into account the fact that the salary of the Governor, on which the pension is based, will, under amendments in this bill to the Constitution Act 1934, be a grossed-up amount to accommodate the Governor's new income tax liability.

Under section 4(1) of the Governors' Pensions Act 1976, the pension of a governor is a percentage of his or her last drawn salary. The pension of the spouse of a governor who dies in office is also a percentage of the deceased governor's last drawn salary. But the pension of the spouse of a deceased former governor (that is, a governor who has retired and has drawn a pension) is a percentage of that pension.

Clause 7(b) would further reduce the percentage of a former governor's pension to which his or her widow or widower is entitled. This is an error, because the percentage of last drawn salary on which that (former Governor's) pension is based has already been reduced by clause 7(a). To retain clause 7(b) would be to double discount the effect of the grossing up of the governor's salary to accommodate the new income tax liability.

I will explain using the salary amounts which will apply under this bill. The Constitution Act presently sets the vice-regal salary at $92 777. Under the Governors' Pensions Act, a retiring governor would receive a pension of $46 388 (50 per cent of this salary). If that governor dies after receiving this pension, his or her spouse is entitled to an annual life pension of 75 per cent of his or her deceased partner's pension, which is $34 791. But, under the bill, the spouse of a future deceased former governor would be entitled to only $21 009, because clause 7(b) of the bill refers to a percentage of pension, which has already been discounted under clause 7(a). Clause 7(a) reduces the percentage from 50 per cent to 30 per cent to achieve a pension of $46 687, based on a grossed-up salary of $155 625. This is as near as possible to the pension a governor in receipt of the tax exempt salary would receive. It is unnecessary to further discount the pension of his or her surviving spouse.

The only way to retain the desired equivalence of pension between spouses of deceased former governors pre and post bill is for the percentage set in section 4(1)(b) to remain as it is in the Governors' Pensions Act (that is, at 75 per cent of the deceased governor's pension). This would result in a pension of $35 015, which is the equivalent of the current pension entitlement. The amendment that the government now proposes—to leave out clause 7(b) of the bill—will achieve this. I commend the amendment to the committee.

The CHAIRMAN: There is a preamble to the question; that is, that it be a suggestion to the House of Assembly to amend the bill by leaving out subclause (b).

Motion carried.

Suggested amendment carried; clause as suggested to be amended passed.

Clause 8 passed.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (OFFENCES OF DISHONESTY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 July. Page 2092.)

The Hon. P. HOLLOWAY: The opposition supports the second reading of the bill. The Attorney's second reading explanation on this matter, which I do not intend to repeat, was particularly detailed. However, I am grateful for the level of detail that has been provided. To sum up, and using the Attorney's own words:

> South Australia has the most antiquated law in Australia regarding offences of dishonesty. These include theft, fraud, receiving, forgery, blackmail, robbery and burglary.

The Attorney continues, and reports that the present law, which essentially dates back to 1861, is:

> . . . unnecessarily complex, difficult to understand, full of anomalies, and a barrier to the effective enforcement of the law.

The bill seeks to address these issues as a result of a review of the criminal law in this area. I understand that there has been widespread public consultation on this bill, although the opposition has not yet had a response from the Law Society. I would appreciate it if the Attorney, if he has any information, could inform us whether the Law Society has commented on the bill and, if so, what its view is. Various recommendations about reform in these areas of the law were made by the Model Criminal Code Officers Committee, which is a committee that reports to the standing committee of Attorneys-General. The opposition is satisfied as to the intent of the bill and we commend its passage through this chamber.

In conclusion, there are many changes to some of the traditional offences such as bribery, receiving, forgery and so on that are discussed in considerable detail: I will leave any comments that are needed about those specific changes to the committee stage. Certainly, we are pleased that there is to be an upgrade of the law in this area. As the Attorney said, it is long overdue, and we look forward to this bill passing the second reading stage and the law being overhauled in this very important area. We commend the bill to the Council.

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

LIQUOR LICENSING (REVIEWS AND APPEALS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 2 October. Page 2297.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their expressions of support for the second reading of this bill. The Hon. Paul Holloway noted that the bill amends section 106 of the act dealing with noise complaints so as to permit the commissioner to be able to determine a complaint, if the parties request this. He noted that the scope may be wider than actual noise and asked that I clarify this.

Under section 106, a complaint can be made about 'an activity on or noise emanating from licensed premises or the behaviour of persons making their way to or from licensed premises' on the ground that such activity, noise or behaviour is 'unduly offensive, annoying, disturbing or inconvenient' to a person who resides, works or worships in the vicinity. This is the present law and the bill does not propose to change it. Members will see that, despite the heading to Division 6 of the legislation, the scope of possible complaint is wider than actual noise and can extend to offensive or disturbing behaviour of patrons or offensive or disturbing activity on the licensed premises.

I stress that the bill does not propose any change to the grounds of complaint but only to the process by which a complaint may be resolved. The Hon. Ian Gilfillan expressed

concern at the possibility that, as a result of the bill, the decisions of the commissioner could become final, an issue which had been raised in correspondence from the Australian Hotels Association. The effect of the bill is that there will be an appeal directly from the commissioner to the Supreme Court rather than a review by the Licensing Court, as now occurs. The appeal will be as of right on the question of law and by leave on a question of fact. To put this in perspective, the present position is that an appeal from the Licensing Court to the Supreme Court requires leave in every case, although it is my understanding that leave is granted in the great majority of cases. So, as a matter of law, the commissioner's decision is not final.

Of course, it is a matter for the parties whether they wish to appeal to the Supreme Court, just as it is presently a matter for them whether they seek a review by the Licensing Court. No doubt it is not a decision that will be made lightly. There will be issues of costs and time to consider. It is true to say that the Supreme Court will have power to award costs against a losing party in these appeals, just as it does now in an appeal from the Licensing Court. It is also the case that, in a review by the Licensing Court at present, parties are protected from costs orders unless they act vexatiously. However, of course, as at present, the commissioner can only determine the matter if both parties consent to this, otherwise the Licensing Court will be the first instance jurisdiction and the appeal lies to the Supreme Court. In the government's view, the decision of the commissioner should carry considerable weight, just as a decision of the Licensing Court does, given that they both equally constitute the authority. However, it should be and will be subject to appeal.

The Hon. Sandra Kanck has raised some issues in relation to not so much the bill but proposals to address issues relating to live music. At this stage I do not intend to respond to her remarks. She has indicated that amendments will be placed on file. I encourage her to get those amendments on file and to me and to other parties in the chamber as soon as possible so that we can facilitate consideration of the bill in committee in the next week of sitting. That is the same message I would give to everybody in relation to all of the bills on the *Notice Paper*, that it is desirable now to try to move them ahead. Most of them have been on the *Notice Paper* for a long time, apart from those introduced only last week and this week. I would certainly be prepared to give any help that is requested in respect of clarification of these bills on the *Notice Paper.*

Bill read a second time.

CLAYTON REPORT

Adjourned debate on motion of Hon. P. Holloway:

That this Council directs the Attorney-General to direct Mr D. Clayton, QC to complete and provide to the Attorney-General his report into issues surrounding Mr J.M.A. Cramond's inquiry regarding Motorola on or before 22 October 2001, and that, further, the Attorney-General shall, on 24 October 2001, or within 48 hours, whichever is the sooner, pass the report to the President of the Legislative Council who shall, within one day of receipt, table the report or, if the Council is not sitting or the parliament has been prorogued, publish and distribute such a report, and that, further, this motion replaces all previous decisions of the Council in relation to the tabling of the Clayton Report.

(Continued from 3 October. Page 2321.)

The Hon. K.T. GRIFFIN (Attorney-General): I move to amend the motion as follows:

Leave out all words after 'That this Council directs' and insert—

1. the Attorney-General to request Mr D. Clayton, QC to complete and deliver his report into issues surrounding Mr J.M.A. Cramond's inquiry regarding Motorola as expeditiously as possible and, if possible, by 22 October 2001, but not so as to compromise the principles of natural justice or to cut short all the work necessary to ensure the presentation of a report with which Mr Clayton is satisfied properly responds to the terms of reference for the inquiry;
2. the Attorney-General to deliver the report to the President within two business days of receiving it; and
3. the President to table the report in the Council within one sitting day of its receipt or, if the Council is not sitting or the parliament is prorogued, and in order to gain the protections afforded by the Wrongs Act, be authorised to publish the report and be required to do so within one business day of receiving the report.

The amendment which has been circulated and which I have now moved has been the subject of consideration by the House of Assembly. My understanding is that the House of Assembly purported to direct me as Attorney-General to do certain things. Of course, I being a member of the Legislative Council, the House of Assembly cannot give me a direction, but this Council can give a direction.

The Hon. R.R. Roberts: We gave you one once but you didn't comply with it.

The Hon. K.T. GRIFFIN: I did comply with it, actually. Be that as it may, regardless of those technicalities, the intention is that, if Mr Clayton is able to report and when he reports, the report will be made public. There are a number of difficulties with the proposal moved by the Hon. Mr Holloway. We have seen what can happen to reports if we put unreasonable time constraints on inquiries. I think the Cramond inquiry was cut short because of inadequate time.

The amendment that I have moved takes into account the exigencies of the matter, acknowledges that Mr Clayton should be requested to present his report, if possible, by 22 October but, having in mind past experiences, it is important to ensure that this request does not compromise the principles of natural justice or cut short all the work that is necessary to ensure the presentation of a report which he is satisfied properly responds to the terms of reference. Then there are directions in relation to presentation of the report to the President and the tabling of that report in the Council. The amendment is an appropriate format, it is already supported by the House of Assembly, and I encourage members of the Council to similarly agree with the amendment.

The Hon. P. HOLLOWAY: As the Attorney has mentioned, the House of Assembly has passed a similar motion. We are happy with the amendments that the Attorney has made and I commend them to the Council.

The PRESIDENT: The question is: that the words proposed to be struck out by the Attorney-General stand part of the motion.

Question negatived.

Amendment carried; motion as amended carried.

The Hon. J.S.L. DAWKINS: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

STATUTES AMENDMENT (ROAD SAFETY INITIATIVES) BILL

Adjourned debate on second reading.

(Continued from 2 October. Page 2304.)

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I thank all members who have

contributed to this important measure. During her second reading contribution the Hon. Carolyn Pickles referred to a letter from the RAA supporting new provisions for unlicensed drivers. The RAA had earlier written to me on the same matter, and stated:

> The association believes that the act should be further amended to remove the opportunity for convicted drink drivers to expiate the offence of driving unlicensed following a period of disqualification, and to provide that such drivers be subject to the same penalty as is proposed for offenders who have not previously held a licence (or do not hold a licence for the class of vehicle they were driving).

I responded to the RAA and advise the honourable member that the distinction between the two approaches to dealing with unlicensed drivers is that drivers who have previously held a licence have demonstrated their knowledge of the road rules and their ability to control the class of vehicle for which the licence is issued. Drivers who have never held a licence have not passed this test and, therefore, are considered to be a greater danger on our roads. A driver who has completed a period of disqualification for a drink driving offence has satisfied the penalty imposed by the court. If that driver has previously held a licence but not renewed it at the expiration of the disqualification period, he or she is in no different a position from any other driver who fails to renew a licence.

Treating that driver differently could be seen as imposing an additional penalty for the drink driving offence. Essentially, the government believes that that would be unfair and certainly beyond the intention of this proposal. When the courts deal with a driver who has not previously held a licence, the driving record (including that for drink driving) would be a matter to be taken into consideration when imposing a sentence. No doubt, a poor driving history would lead to the imposition of a higher penalty.

The Hon. Carolyn Pickles also stated that the feedback she has received from the South Australian Law Society indicates its general support for changes to the provisions relating to unlicensed drivers. However, where there has been a second or subsequent offence, the society believes that the bill should be further amended so that disqualification occurs for a period up to three years rather than the current mandatory period of at least three years. I do not support the Law Society's submission on this matter, for the following reasons.

Minimum mandatory licence disqualification periods apply generally throughout the Road Traffic Act. They are used where a serious offence of the act has been committed and reflect the community's view that the offender should not be entrusted with a licence or be granted the privilege to drive. The minimum disqualification period of three years applies to the second offence. It therefore relates to the second occasion upon which the offender has been detected driving without ever having had an appropriate licence.

The first occasion upon which a person is charged with driving without a licence should be a salutary warning. A monetary penalty applies to this offence and there is no disqualification period. The absence of a disqualification period is to encourage the offender to obtain his or her licence. However, the commission of a second or subsequent offence demonstrates a total lack of regard by the offender for the basic tenet of road safety: that a person should be trained and capable of demonstrating the necessary fundamental skills to operate the vehicle in which the offence occurred.

The fact that 2 per cent of fatal crashes involve an unlicensed driver (and I suspect that may well be the minimum) and an even greater number of unlicensed drivers are involved in non-fatal crashes demonstrates the gravity of this offence. The approach taken in the bill is consistent with that adopted in other jurisdictions and reflects the seriousness with which this offence is viewed. It is also consistent with the monetary or custodial penalty available to the courts for this offence.

The third matter that the Hon. Ms Pickles raised concerned information regarding the policing of unlicensed drivers on Aboriginal lands and whether any special measures have been adopted to assist Aboriginal people to obtain a licence. My answer to both questions is yes, and I provide the following advice. Transport SA, through its Port Augusta office, has established an extensive network to assist Aboriginal people to gain their driver's licence. Four teachers are employed by TAFE to conduct language and literacy skill courses using the road traffic drivers' handbook as one of their tools. In this way, the road rules are taught as part of the curriculum. This enables course participants to sit the written driving test at the end of the course.

The teachers will also provide tuition on the driving laws for anyone who does not have the necessary literacy ability or personal skills to participate in a class learning environment. In such instances they are able to undertake a verbal test of the road rules. One teacher has now qualified as a driving instructor and conducts driving tests as well as teaching people to drive. This work is undertaken within the Aboriginal lands at Port Augusta and other larger centres throughout the area, as follows: for the Pipalyatjara community, located in the far north-western area of the Pitjantjatjara lands, there is the Spencer Institute, Port Lincoln campus; for communities in and around Ceduna, Koonibba, Yalata and Oak Valley, again the Spencer Institute but at the Ceduna campus; and the Amata community has the Spencer Institute at the Port Augusta campus.

Digital cameras have been provided to each of the four teachers to enable them to take photographs for licence purposes. This avoids the need for residents of the Aboriginal lands to travel to Port Augusta or other centres to sit for their licence, undertake their driving test or replace lost, damaged or expired licences. The teachers have regular telephone contact with staff from Transport SA's Port Augusta customer service centre and act as intermediaries to deal with any problems or questions.

Frequent face to face meetings are also conducted at centres such as Marla and, when the teachers are on holidays, they also visit the Port Augusta customer service centre to meet with all staff to discuss problems and seek ways to further improve the service provided to the Aboriginal communities. In terms of driving tests, local police conduct a practical driving test. As mentioned previously, an authorised examiner is appointed to conduct practical driving tests in the Anangu Pitjantjatjara/Maralinga lands. I am advised that the Registrar of Motor Vehicles is not aware of any particular problems experienced by people in remote communities obtaining access to training and a written or oral examination of the road rules.

However, if the honourable member or the Hon. Terry Roberts (shadow minister for Aboriginal Affairs) has more information to give me on this subject, I would certainly be happy to canvass it with the Registrar of Motor Vehicles, and there may be an opportunity to extend the number of authorised persons to conduct training and road rules tests. In addition, the Hon. Caroline Schaefer presented me with what I thought was a good idea to address the same issue, and that would be to offer a restricted licence to drivers in remote

communities, particularly in Aboriginal lands, as an alternative to requiring them to be fully trained and tested.

I think that has some merit. I know that the Registrar does not think it is such a great idea, but I believe that the issue has some merit and, depending on the nature of the issues raised with me by the opposition, we may be able to advance a number of options. Meanwhile, I am advised that in the Northern Territory the Registrar of Motor Vehicles will accept information or advice from a community council in lieu of traditional proof of identity documents, for example, a birth certificate.

Touring private sector driving instructors provide training in remote areas. Some are also authorised to conduct road rules tests. If not, tests are conducted by police. These tests are usually verbal. The test is 'modified' to take account of the absence of things such as traffic, traffic lights, stop signs, give-way signs and so on. These tests are usually covered verbally in discussion between the tester and the applicant and are intended to test basic skills only.

That probably is the basis of the restricted licence which the Hon. Caroline Schaefer proposed and, if those skills are only canvassed verbally and are not part of the competency based training or a test, they could be considered as part of a modified licence to be used just for a restricted access area. I should add though that in the Northern Territory the driver's licence issued as part of this modified arrangement is not subject to conditions other than standard provisional conditions. So, they get a P plate, not a full unsupervised licence.

In relation to excessive speeding, the Hon. Carolyn Pickles also stated that the South Australian Law Society has indicated its support for mandatory loss of licence for speeding in excess of 45 km/h. However, the society believes that the bill should be further amended so that disqualification occurred for a period up to three months rather than the current proposal, which is a mandatory period of three months. I advise that, as I indicated in my second reading explanation, the penalty for excessive speeding has been chosen relative to the penalty for reckless and dangerous driving (section 46 of the Road Traffic Act), which is not less than six months licence disqualification.

Speeding has been proven to be one of the most significant factors in road death and trauma, and it is also intended that the penalty for excessive speeding communicate the seriousness of this offence. I should highlight that, in New South Wales and other states which have excessive speeding or an offence of a similar nature, the limit is set at 30 km/h above the maximum speed limit. In New South Wales and the Northern Territory, they also apply a mandatory disqualification period of three months for exceeding the speed limit by 45 km/h or more, as we propose in this legislation. New South Wales courts also have the option to increase this period should they feel it appropriate.

In Victoria, they apply a mandatory disqualification period of four months for exceeding the speed limit by 40 km/h and up to 50 km/h, and exceeding the speed limit by more than 50 km/h will lead to a mandatory disqualification period of six months. In relation to mobile random breath testing, the RAA advised me as follows:

> For some time the Association has maintained that mobile random breath testing has the potential to significantly increase the perceived risk of detection among drink drivers, particularly those in the country where conventional RBT is less effective in deterring this behaviour. We are therefore pleased to support the amendment, in principle. However we have some concerns surrounding the issue of civil liberties.
>
> We note that the Government has addressed this issue, and agree that there are many examples of similar provisions in the Road Traffic Act. The RAA believes concerns in this area should be further addressed by amending the Bill to require the prescribed periods of operation, outside of school holidays and long weekends, to be made public. This would give the community greater confidence that the Police will not misuse their extended powers, whilst at the same time adding to the deterrent value of the measure.

In response to the RAA, I indicated that the question of civil liberties was very carefully considered during the development of the proposal by the government as we see it before us in the bill.

However, interstate experience with mobile random breath testing suggests that civil liberties have not been an issue. Certainly that was my feedback, and the Hon. Carolyn Pickles in her second reading contribution highlighted the same feedback from the Hon. Michelle Roberts, Minister assisting the Minister for Planning and Infrastructure and also the minister responsible for road safety in Western Australia.

Regarding the publicising of the prescribed periods for the use of mobile random breath testing as proposed in the bill, I advised the RAA that the Minister for Police (Hon. Robert Brokenshire) would extensively publicise the prescribed periods for mobile random breath testing prior to the commencement of the prescribed periods. This publicity would be managed by SAPOL. Further to that advice to the RAA, today I foreshadow that I will be moving an amendment to the bill to provide for the publicity in relation to the prescribed periods to be publicised for not less than two days prior to the period of operation, and that that publicity must be undertaken in newspapers circulating in the state.

In fact, given the way in which the television stations work in this state in terms of speed cameras, I suspect such prescribed periods of mobile random breath tests would be well advertised across television screens as well as radio and the legislated approach that I have proposed for the newspaper—

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: I am dealing with the bill at the moment, not the regulations, but I can make inquiries from our officers. The Hon. Carolyn Pickles has also indicated that she has an amendment on file requiring a report to be brought back to parliament and laid on the table two years after the commencement of the bill. I support this amendment. The Hon. Carolyn Pickles has also asked me to discuss the sensitivities regarding the operation of mobile random breath testing with the Minister for Police and the necessity for police to be very careful about not discriminating against particular drivers. This issue was raised by the Hon. Sandra Kanck in her contribution, and I do highlight that I have raised this matter already with the Minister for Police.

It is not just a matter that arises from this bill. It would be generally, I suspect, a matter of at least anecdotal evidence—I do not know what hard evidence there is—that the police do pick on some people whether by colour, age or by the type of vehicle. As I say, I think it is more anecdotal evidence and it has been around for generations. Certainly I know my friends with hotted-up cars and longer hair, during the period when I was growing up, used to attract more trouble than some of my more conservative looking friends, but I suspect that the former friends were more trouble generally, anyway. I think that sometimes the police may get blamed for picking on people, but, as I say, there is really not any hard evidence to prove it. Of course, as we all know, anyone who feels that they have a complaint against the police has the right to lodge

that with the Police Complaints Authority and have the matter pursued.

In relation to digital cameras and fixed house cameras, the Hon. Carolyn Pickles asked me to provide a figure on how much was collected by the state government from all anti-speeding devices such as speed cameras, laser guns and so on. I have been advised by the Minister for Police that the estimated actual dollar figure for 2000-01 is $42.9 million. In 1999-2000, the actual return was $37.1 million; and the estimated sum for 2001-02 is $38 million. As I say, it is all income coming to the government, of which nobody in the community need pay a cent if they do not speed above the maximum limit. So, it is in the community's hands to deal with it.

In relation to the Hon. Mike Elliott and mobile random breath testing, it is true that he was a member of the Environment, Resources and Development Committee which did question, as part of its assessment of a rural road strategy, mobile random breath testing. The ERD committee stated:

> The committee is supportive of further investigation into the introduction of mobile random breath testing units while noting the concern of the public in relation to the potential infringements of civil liberties. The committee is aware that the current detection methods are NOT working in rural South Australia [that is, in terms of drink driving] and understands that there needs to be a new approach.

Notwithstanding the Hon. Mike Elliott's contribution late last week when he took exception to the Hon. Carolyn Pickles' references to the ERD committee and the Hon. Mike Elliott's involvement in that committee, he did speak, albeit unprepared, to the debate and he did seek to stress the qualifications that he had placed on the ERD committee's report in relation to issues of civil liberty and the introduction of mobile random breath testing. However, I refer the Hon. Mike Elliott to the occasion when he spoke to the ERD report on 9 December 1998, when he stated:

> Advance warning should be given to the use of mobile random breath testing.

I assume that 'advance warning' means the advertising of the dates, which I have now indicated by an amendment that I will make sure that the police minister will publicise at least two days in advance. The Hon. Mike Elliott went on to say:

> As long as there are proper civil liberty protections, mobile random breath testing is really a necessity [and I repeat, really a necessity] if we are to tackle drink driving in country areas.

I strongly endorse that remark and reflection by the Hon. Mike Elliott, so I would ask him to look back at his references in this place to the ERD committee report on 9 December 1998.

In relation to unlicensed drivers, the Hon. Terry Cameron raised the issue of a number of people being pulled over by the police and found not to be in possession of a driver's licence. I am advised that the police are unable to provide statistics on the number of people found to be unlicensed. The Hon. Terry Cameron also asked for clarification on whether it is mandatory for police to check drivers' licences and vehicle registrations when the police pull over someone on the road. I am advised that such checks are not compulsory. Apparently, it is up to the police officer to determine whether he or she will conduct these checks.

For my part, I am very pleased that the Hon. Terry Cameron has raised this matter. I am very keen to pursue this with the Minister for Police to determine the merits of making such inquiries by the police compulsory when they pull a vehicle over. We may well be able to deal more effectively with the number of people unlicensed and/or who have their vehicles unregistered if we implement such an approach.

The Hon. Terry Cameron also outlined situations whereby the police would be able to pull over anyone at any time and to issue them with a warning. As I have previously explained, there is not a general ability in this bill to stop motorists. Police will be able to stop motorists only during specified periods in relation to mobile random breath testing. This will be during periods of maximum on-road vehicle activity which are, of course, also the periods of greatest road safety on our roads. I have already undertaken to introduce an amendment which will require police to publicise these periods.

The Hon. Terry Cameron asks whether I know when these four 48-hour periods will be. Selection of the additional 48-hour periods will be at the discretion of the Minister for Police and Emergency Services. No doubt, they will be invoked at times when there is heavy vehicle traffic and increased danger on our roads when any reduction in drink driving must add to the safety of the motoring public overall. Again, as I have indicated, these periods are to be advertised throughout the state prior to their taking effect for any 48-hour period.

The Hon. Sandra Kanck stated in relation to mobile random breath testing that she intends to introduce amendments of her own with the possibility of moving a sunset clause to this provision. As I said earlier, I understand that the Hon. Carolyn Pickles has an amendment on file to have this provision reviewed within two years. The Hon. Sandra Kanck does not believe that such an amendment as the one proposed by the Hon. Carolyn Pickles goes far enough, that the review should take place after 12 months not two years, and that it should specifically address records of age and race of everyone pulled over by the police. Of course, this matter can be considered when the amendment is on file.

I thank the Hon. Angus Redford for his support of the bill, and I thank him generally for his chairmanship of the transport safety select committee of this parliament. It is not possible for me to get the interstate data that he seeks in relation to the effect of increased or higher penalties in other states. However, I will see what information can be obtained regarding the operation of these measures in other jurisdictions. Regarding excessive speeding, I advise that I have already indicated my acceptance of the Hon. Carolyn Pickles' amendment to review the mobile random breath testing provisions in two years' time. Therefore, I see no reason why a review of the excessive speeding provisions could not also be undertaken at that time, as proposed by the Hon. Angus Redford.

The Hon. Angus Redford also raised the concept of trifling and asked whether I would review the concept of trifling in relation to excessive or dangerous speeding offences. It is true that the issue of trifling is not an easy concept to appreciate. I understand that it has very specific meaning in law and that it is used in relation to a number of other offences under the Road Traffic Act. In this regard, the honourable member would no doubt be aware that reckless and dangerous driving under section 46 of the Road Traffic Act relates not only to speeding but to any driving that is reckless or causes danger—and this can occur even at low speeds. However, I am happy to raise this matter with the Attorney who may well have a view, as he generally does. I will give serious consideration to any amendment to the Road Traffic Act at another time if in the Attorney's view this can be achieved without changing the effectiveness of the act or

otherwise adversely impacting on the court's ability to carry out its responsibilities in administering the law.

Before I conclude my remarks, I indicate that I am considering a further amendment to the Road Traffic Act for possible consideration when we resume debate on this bill. This has arisen from a recent incident involving a young girl outside the Loreto school who subsequently died after being hit by a truck at pedestrian crossing on a day of inclement weather. Over the two week break, I should be able to inform members whether I will pursue such an amendment. If I do advance an amendment, I will canvass it with members during the next two weeks, well before we resume debate on this bill.

Lastly, I have a lot of information to provide to the Hon. Ron Roberts in relation to questions that he raised which are completely unrelated to the bill before us. They relate to the introduction of national common licence classes on 1 November 1998—some three years ago. So, rather than take up the time of the Council now, I put on the record that I have pages of information to give the honourable member. I believe that we will be able to accommodate on a case-by-case basis the limited number of restricted class HC licences not only for farmers' immediate families, as we do now, but we will be able to extend that to include farm workers who may be required to cart grain to silos during harvest time.

I appreciate that this issue has been raised in light of the harvest that will take place in the next few weeks given the extraordinary rains and the bumper season that we are having in South Australia. So, I will get on top of the issue with the co-operation of the registrar and provide these pages of advice to the Hon. Ron Roberts for his information so that he can convey them to his constituents. Finally, I thank all members for their support of this bill in various forms to date and the work which clearly they have undertaken in researching the matter.

Bill read a second time.

EQUAL OPPORTUNITY (MISCELLANEOUS) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 2364.)

Clause 4.

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

A quorum having been formed:

The Hon. SANDRA KANCK: I move:

Page 5, line 21—After 'country of origin' insert:
ethno-religious origin,

This amendment adds the words 'ethno-religious origin' to the definition of 'race' so that, if my amendment is carried, it will read:

'race' of a person means the nationality (current or past), country of origin, ethno-religious origin, colour or ancestry of the person.

I obtained the wording from the New South Wales act, where it defines 'race' as follows:

'race' includes colour, nationality, descent, and ethno-religious or national origin.

Why am I doing this? I think we all know that the situation in Australia changed quite dramatically with the *Tampa* showdown, followed very closely by the unstable political situation that emerged following the bombing of the World Trade Centre in New York. I think we are all aware of people who follow the Islamic faith being vilified and demonised. I must say that the newspaper reports here in South Australia have not been as bad as some places. We certainly had an ethnic school close down because of vandalism and threats. Organisations that represent Islamic people have had some very nasty messages left on their answering machines but, in the main, South Australians appear to have been slightly more civilised than some places. I did note, for instance, a report in the *Advertiser* of 26 September—the day I put my amendments on file—of an incident in New South Wales where a young girl, I gather, had been assaulted and her arm was broken.

The world has changed—as people have observed. When we last dealt with this, a provision such as this was something that I would not even have considered, because it was not something that appeared necessary. At the moment—and over the past few weeks—we have seen fear and ignorance played upon for political gain. As I see it, people are being incited to racial hatred. Some members may have seen a *Stateline* interview where a young woman, who, I think, is a second generation of the Islamic faith and attends the University of Adelaide, said that she was basically being vilified because she wore a scarf around her head.

I noticed that, when we dealt with the condolence motion last week, a similar motion was dealt with in the House of Assembly, where the Premier said:

We must not give ourselves over to the hatred, to their prejudice or to their divisions. We must move on firmly with a sense of justice.

Obviously, we all agree with that sentiment, but not everyone has that same level of consciousness. Just because we want it to be that way does not mean that it will be that way. I see that, by including these extra two words in the definition of 'race', it is a way of ensuring that innocent people, who do not belong to the dominant culture of our society, are protected. I could say more at this point, but I think I will wait until others raise any issues and we can tease this out more as we go along.

The Hon. K.T. GRIFFIN: This has come very quickly, without any consultation. I acknowledge that it is in the New South Wales Anti-Discrimination Act, but it is not defined there. The difficulty is: what does 'ethno-religious' mean? I gather there has been one case in New South Wales, and it certainly does not mean religious discrimination. If one is concerned about persons who, for example, are Muslim and are refused a service because they are Muslim, 'ethno-religious' being added to the definition of 'race' will not help. Before we get into a debate on religious discrimination, I think that is something which needs to be much more carefully thought through. It needs to be exposed publicly, because there is a diverse range of views as to whether or not there ought to be legislation which outlaws discrimination on the ground of religion. Even the definition of 'religion' is one upon which people may have difficulty agreeing.

As I say, it is not clear what the term 'ethno-religious origin' means. It does not appear anywhere else in our statute book at state level. I do not think it appears at the federal level. It appears in the New South Wales Anti-Discrimination Act. I do not know where, if elsewhere, it appears in Australia. It does not appear in the Macquarie or Oxford dictionaries, so it would seem to be an invented term. As I say, there is only one case that we have been able to find which deals with the interpretation of the term in the context of the New South Wales act, and the effect of that case is simply to

distinguish this ground of discrimination from discrimination on the ground of religion.

I think, because of the uncertainty about what the term means, it may be very difficult for the commissioner and the court to apply it in practice. For example, does every person have an ethno-religious origin in the same way that every person has a race or nationality? Or, is it a characteristic belonging to only some people: if so, which ones? The term seems to imply that a person's race and religion will go together but, of course, that is not necessarily the case. And does a person lose his or her ethno-religious origin if he or she discontinues religious practice or adopts some other religious faith? I suggest that the proposed amendment lacks any clear meaning and I think it is likely to cause more difficulties than it resolves. There has been, as I say, no opportunity for consultation and I think it ought to be the subject of consultation before we slip it into the legislation.

I make it clear that, so far as I and the government are concerned, we do not support the sorts of slurs cast upon individuals or groups within our community who might be Muslim or from some other religious background. The Racial Vilification Act will certainly deal with incitement to racial hatred. The events of the last few weeks which have, in a handful of cases, I suggest, resulted in abuse of persons from other racial backgrounds should not be condoned and have certainly not been condoned either by the state government or by the federal government. Both the Prime Minister and the Premier of this state, and other community leaders as well as community representatives, have been, I think, as one in condemning that sort of behaviour.

With respect to the Hon. Sandra Kanck, I do not think her amendment will have any bearing on that behaviour, and if that behaviour is complained about it may be that it is racially based, in which case it can be dealt with already. If it in some way or another is based on religion, her amendment will not cover that and they will still be without a remedy, if a remedy will resolve it.

Having said that, I am not prepared to support the amendment on the run, but one should not construe into that any view that the government might have about the way in which newcomers to our country have been treated in the past couple of weeks. I have already made clear the government's position in relation to that behaviour, which is certainly not condoned by the government.

The Hon. P. HOLLOWAY: The opposition has not had the opportunity to put this amendment to caucus yet. As the Attorney has just said, all of us would abhor the sort of behaviour that we have seen by a few extremists in this country over the past few weeks, particularly in relation to burning a mosque in Brisbane and various other acts that I hope all civilised Australians would find offensive. However, like the Attorney I am not certain that this amendment will do anything to address that problem, if indeed that is what is intended.

Like the Attorney, I have some difficulty understanding exactly what 'ethno-religion origin' means. If we were talking in the current context about Muslims, what does that really mean, given that Muslims come from a great diversity of ethnic backgrounds, for example, Pakistan, Indonesia, various countries of the Middle East and all other countries of the world, including America, native born Australians, and so on? If it is to address that problem I am not exactly sure what it means or how it does it.

I am certainly reluctant to support the amendment at this stage. If after caucus has had some opportunity to consider it, and it believes we can improve the law in that area, I would be prepared to discuss it. However, at this stage I am loath to support the clause as I am not sure exactly what it will do.

The Hon. NICK XENOPHON: I support the Hon. Sandra Kanck's amendment. I understand the Attorney's comments, and he has reiterated the statements of the Premier in relation to the Premier's abhorrence at the vilification we have seen in recent times in the community. I have spoken to an individual who has been involved with the Muslim community, and he verified the extent to which messages of hate and vilification were conveyed to various elements of the Muslim community, including the Muslim primary school, the Islamic school.

The Hon. K.T. Griffin: These amendments will not solve that.

The Hon. NICK XENOPHON: The Attorney says that this amendment will not solve that problem. I am comforted by the fact that this has some precedent in that the anti-discrimination act of New South Wales encompasses 'ethno-religious' in its definition. I accept fully the terms of the opposition and the government that they share their abhorrence of this sort of behaviour, and the Attorney acknowledges that. I accept that fully, as well as the good intentions of the Attorney in relation to his clause, but I believe that the Hon. Sandra Kanck's amendment improves the clause because my concern is that the current definition of 'race' in the act may not cover the sorts of events we have seen in recent times where people have been targeted because of their faith, because of their background or because they have come from the Middle East or a country or region of the world that has for some reason become a target of hatred amongst some extreme elements of the community. I can understand the Attorney's position and that of the opposition but I would have thought that the Hon. Sandra Kanck's amendment is an improvement, it covers the field, and it is a timely amendment in all the circumstances. For those reasons I will be supporting it.

The Hon. SANDRA KANCK: The Hon. Trevor Griffin has asked what ethno-religious means. I quoted to him from the New South Wales Anti-discrimination Act, which includes ethno-religious origin in its definition of race. However, it does not define ethno-religious. We talked about things like this earlier today in relation to putative spouse and the characteristics of a marital relationship, or something like that. At that stage I referred to the De Facto Relationships Act, in which the words 'genuine domestic relationship' are not further defined. That is part of the definition of 'de facto'. It is not further defined. Similarly, we do not define ethno-religious.

If that is the reason for not accepting the amendment then I suggest that we should pass it and, because clause 4 will be recommitted at the end (an undertaking which was given right at the beginning with one of the Hon. Carolyn Pickles' amendments), if getting a further definition of ethno-religious will make the difference, by all means I would be willing to do that.

Just as a bit of background to getting the amendment to this point, I spoke to the Attorney-General a couple of weeks ago to suggest that I was looking at an amendment to deal with some of the discrimination that is presently being directed at people because they belong to the Islamic faith. He gave me a very strong indication that including religion as a ground is something that the government would strongly oppose. So, as I said earlier, I have taken the ethno-religious

origin, as is included in the New South Wales Anti-discrimination Act in its definition of race, and incorporated the same thing into ours.

As to what it means, I see it as being as the word itself implies—a combination of religious and ethnic factors. Although I am looking at it with the current situation in the community, it could, for instance, be applied to a person of Vietnamese origin of Buddhist faith or to a person of Indian origin with Hindu faith. It is not specifically to deal just with the current situation, although that is where I see most of the nastiness that is being directed at the present time.

I do not think that the argument that the Hon. Trevor Griffin has put, that we do not have a definition of ethno-religious, is in itself a reason not to do it. Similarly his argument that it does not appear elsewhere in other acts does not appear to me to be a really strong argument. This morning we dealt with legislation that introduced cyberstalking into the statutes, and none of the other states have that. I have no problem with our doing something if it is part of the nature of South Australia that is moving forward, and this is that sort of amendment.

The Hon. K.T. GRIFFIN: With cyberstalking, I said this morning that Victoria had a provision for electronic stalking. What I said to the Hon. Sandra Kanck in relation to religious discrimination is that I thought that was an issue that was fraught with difficulties and is not something that ought to be done on the run. I do not agree with the Hon. Sandra Kanck when she says that, even though the term is not defined, we should still go ahead because it sounds good and it might address the sort of issues to which she refers. With respect, that is a very inappropriate way to legislate for behaviour that is going to carry civil and even penal consequences. The people who will be bound by this law have a right to know or at least have some idea as to what it means. No-one knows; no-one can tell me what 'ethno-religious origin' actually means.

The Hon. T.G. Cameron: What do you think it means?

The Hon. K.T. GRIFFIN: I don't know what it means; I haven't a clue.

The Hon. Sandra Kanck interjecting:

The Hon. K.T. GRIFFIN: With respect, it was not; there was no definition. So, I do not accept that we ought to be passing it to feel good. We must pass it if it means something, if it will be practical and if it will address the ill or evil to which it is directed. Obviously, we will not finish this bill today. My proposal is the converse of the Hon. Sandra Kanck's, that is, do not pass it. If the bill is to be recommitted she can look at it in the meantime, as can others. If it does not address what members want, they can address it properly when clause 4 is recommitted.

The Hon. P. HOLLOWAY: I indicate that the Opposition thinks that Attorney's suggestion is the best way to proceed, namely, that we do not pass it here. Given that clause 4 is to be recommitted at a later stage, we can re-examine it here and it will give the opposition time to consider it. I have one question: given that we are talking about this 'ethno-religious origin', what impact will that have on religious schools, for example? Would it apply to them? That may not act in the way in which the groups at which this is aimed to protect would want; it might be the complete reverse. For example, if an Islamic school has to take—

The Hon. K.T. Griffin interjecting:

The Hon. P. HOLLOWAY: Exactly. It may have the sort of consequences that the opposition would like to put much more thought into and perhaps discuss with others who are more familiar with it. For those reasons I am a little reluctant to support the measure at this stage, even though, I repeat, all of us would abhor any discrimination of the sort that Hon. Sandra Kanck seeks to avoid by way of this amendment.

The Hon. SANDRA KANCK: Mindful of the fact that the ALP has not yet considered this in its caucus, my suggestion would be that we report progress on it and, in the ensuing two weeks, I can come up with a definition of 'ethno-religious' which I would circulate and ultimately put on file when we return. So, I move:

That progress be reported.

The Hon. K.T. GRIFFIN: I do not agree with that. Let us deal with the clause; we have had a discussion about it. In my view, the way to go ahead is to pass the clause and get on with it. Then, if you want to recommit it, have some discussions about it.

The Hon. SANDRA KANCK: I have moved that we report progress.

Motion negatived.

The committee divided on the amendment:

AYES (4)

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

NOES (12)

Cameron, T. G.	Dawkins, J. S. L.
Griffin, K. T.	Holloway, P.
Laidlaw, D. V.	Lawson, R. D.
Lucas, R. I.	Redford, A. J.
Roberts, R. R.	Schaefer, C. V.
Sneath, R. K.	Stefani, J. F.

Majority of 8 for the noes.

Amendment thus negatived; clause as amended passed.

Progress reported; committee to sit again.

STATUTES AMENDMENT (GOVERNOR'S REMUNERATION) BILL

The House of Assembly agreed to the amendment suggested by the Legislative Council without any amendment and has amended the bill accordingly.

RAIL TRANSPORT FACILITATION FUND BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): On behalf of my colleague the Hon. Diana Laidlaw I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this Bill is to create a Rail Transport Facilitation Fund from which the Government can undertake rail facilitation projects, and to provide specific appropriation authority for the expenditure of the Fund on such projects.

As a consequence of the *Non-Metropolitan Railways (Transfer) Act 1997*, the Minister for Transport and Urban Planning now owns substantial railway land and assets, including railway station buildings at various locations in SA, and rail track infrastructure on the South East, Wallaroo and Leigh Creek lines.

The growth in the freight task across Australia is forecast to continue to increase at a rate greater than GDP. At current growth rates, and in the absence of significant increases in the share of freight carried by rail, the tonnages moved by road are forecast by the Bureau of Transport Economics to increase by 80 per cent by 2015. The South Australian articulated road freight vehicle task is

forecast to increase by 50 per cent between 2000 and 2010, from 12.1 to 18.12 billion net tonne kilometres.

The Government is committed to promoting a modal transfer of more interstate and intrastate freight from road to rail. If the forecast increase in the freight task is addressed only by an increase in heavy vehicles—road use and congestion will also increase, as will road risks and network maintenance costs. From an environmental perspective, over certain routes, rail is able to transport three times the tonnage for the same expenditure of energy and can thereby reduce greenhouse gas emissions, air and noise pollution.

The ability to invest in appropriate railway projects, and the identification of funds for that purpose, will:

- provide a more competitive transport framework for SA primary and secondary industries;
- address safety, greenhouse gas and pollution issues as part of transport infrastructure investment decisions;
- facilitate transport policy and planning across transport modes.

Projects currently approved or under consideration for Government support include the Port River Expressway rail bridge and the South East rail line standardisation. Investment in rail projects will also enhance the commercial ability of the Adelaide to Darwin Railway to attract additional rail freight, thus enhancing the SA Government's investment in that project.

The Rail Transport Facilitation Fund Bill 2001

The Solicitor General has advised that specific appropriation authority is required for the Government to undertake rail facilitation projects. This need is addressed by the *Rail Transport Facilitation Fund Bill 2001*.

The Bill creates a Rail Transport Facilitation Fund which will comprise income derived from the sale and leasing of rail assets (except as excluded by the Treasurer) and any income derived from rail facilitation projects. Other funds can be paid into the Fund, such as Commonwealth funds for a rail-related purpose and, with the Treasurer's concurrence, other monies. The Bill enables any funds currently in the Transport, Urban Planning and the Arts Operating Account for rail facilitation projects to be transferred to the Fund.

The Bill provides appropriation authority for expenditures from the Fund on a broad range of rail facilitation projects targeted at freight and non-metropolitan passenger services. The Bill specifically excludes the expenditure of funds on metropolitan passenger rail services. Projects can range from capital investment through to the purchase of equipment or materials. The Bill allows for funds to be disbursed as grants or loans.

I commend the bill to this House.

Explanation of clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The measure will be brought into operation by proclamation.

Clause 3: Interpretation

This clause provides two definitions for the purposes of the measure.

Clause 4: Establishment of Fund

The Rail Transport Facilitation Fund is to be established. The Fund will consist of money appropriated by Parliament for the purposes of the Fund, income derived from certain rail activities, other money received for payment into the Fund or that should, according to a determination of the Minister after consultation with the Treasurer, be paid into the Fund, and income derived from the investment of the Fund.

Clause 5: Rail facilitation projects

The Minister will be able to apply money from the Fund towards rail facilitation projects, as defined by subclause (2), other than projects for the facilitation of metropolitan passenger rail services.

Clause 6: Appropriation and authorisation

This measure is sufficient authority for the payment of money from the Fund, without further appropriation. The Minister is also given specific authority to carry out rail facilitation projects.

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

ADJOURNMENT

At 6.05 p.m. the Council adjourned until Tuesday 22 October at 2.15 p.m.