HOUSE OF ASSEMBLY

Wednesday 20 April 1994

The SPEAKER (Hon. G.M. Gunn) took the Chair at 2 p.m. and read prayers.

MURRAY RIVER

A petition signed by 1 013 residents of South Australia requesting that the House urge the Government to ensure that water to consumers drawn from the River Murray is filtered was presented by Mr Lewis.

Petition received.

SOUTH ROAD TRAFFIC LIGHTS

A petition signed by 95 residents of South Australia requesting that the House urge the Government to install traffic lights on Main South Road at Old Noarlunga was presented by Mrs Rosenberg.

Petition received.

SEAFORD RISE CROSSING

A petition signed by 29 residents of South Australia requesting that the House urge the Government to install a pedestrian crossing at the intersection of Commercial Road and Main Street at Seaford Rise was presented by Mrs Rosenberg.

Petition received.

LEGISLATIVE REVIEW COMMITTEE

Mr CUMMINS (Norwood): I bring up the eleventh report 1994 of the Legislative Review Committee and move:

That the report be received and read.

Motion carried.

Mr CUMMINS: I bring up the twelfth report 1994 of the Legislative Review Committee and move:

That the report be received.

Motion carried.

QUESTION TIME

ECONOMIC STATEMENT

The Hon. LYNN ARNOLD (Leader of the Opposition): I direct my question to the Premier. Will the Premier or the Treasurer be delivering an economic statement and, if so, when, given that the Treasurer on 30 December stated that he would deliver an economic statement in April following the Premiers Conference and this statement would lay down the principles and directions for the Government's State budget? On 30 December the Treasurer stated that he would deliver an economic statement in April when the State Government had a firm picture of the financial deal that it received from the Commonwealth at the Premiers' Conference. He said:

We want to see how the negotiations proceed with the Premiers Conference and how they translate to the State budget. The statement will give an indication of the goals and directions with the full financial details to be laid down later.

It is reported that the April economic statement was to deal with debt reduction and job creation programs and its release was not contingent on the release of the Audit Commission report. Yesterday, the Premier, after stating that he was not sure whether there would be an economic statement any more, later indicated that he would not be able to deliver the economic statement until he had details of the special purpose grants from the Commonwealth. This is in contrast to comments made by his Treasurer and ignores the fact that these grants have only a relatively minor impact on the budget as most grants are to fund Commonwealth, not State Government, programs.

The Hon. S.J. BAKER: I should like to clear up a number of matters. First, when I originally undertook that there would be an economic financial statement—virtually on day one in Government we made that commitment—it was on the understanding that we would have all the financial details from the Commonwealth available to us. We also understood that by going to the Premiers Conference we would have a clear idea of what our special purpose payments would be and it would not be restricted to the income sharing arrangements with the Commonwealth. As events unfolded, that was a misconception on my behalf and a misunderstanding of what the Commonwealth was attempting to do by bringing forward the Premiers Conference. The facts of life are that we cannot put down a financial statement until we have the material in relation to the special purpose grants. The Leader of the Opposition would—

An honourable member interjecting:

The Hon. S.J. BAKER: I will finish the answer and that will explain. The Leader of the Opposition would well understand that the special purpose payments represent about 50 per cent of the budget allocations to South Australia. We have been negotiating for some time to untie a number of those grants. We were not successful at the Premiers Conference, although we briefly visited the issue of special purpose payments in order to get some undertaking during the debate that we would have the same amount of money in real terms provided through special purpose payments. We received no undertaking at that time and it was deemed to be an inappropriate forum to debate that issue.

Our understanding is that all of that material will be available in the budget statement to be handed down on 10 May. It will then be appropriate for us to incorporate that detail so that we can provide a clear understanding of the financial position. As the Leader of the Opposition would clearly understand, without that detail we cannot give a clear indication of the total finances. In the Meeting the Challenge statement, which was brought down by the former Premier on 22 April 1993, one of the missing key elements to the whole understanding of his process was the impact of revenue.

That was not stated in the Meeting the Challenge statement. We had a preview of forward estimates on outlays, and even at that stage they were fairly sketchy. We intend to do somewhat better than that. It will be necessary to bring that material together. It will not be possible to present that material to Parliament before it rises, because we have had no preview of the detailed information that will be given to us. That information will not be available or assessed until some date after the Parliament rises. In order to ensure that we put the statement together competently (and it will be a financial statement, not an economic statement), we will be making the statement some time later when we have all the material put together, possibly in June.

It will cover the issues of recurrent expenditure and revenue, recurrent and capital outlays and capital revenue items that are on a recurrent basis. It is important that we give a clear indication to the departments and financial markets of what is our financial position and what detail about Commonwealth allocations is available for the forthcoming year. When that material has been put together and assessed and we have gone back to the various agencies and gained their responses, we will deliver that very important statement. At this stage we intend to produce it during June.

ADELAIDE AIRPORT

Mr LEGGETT (Hanson): Will the Premier report to the House on the latest developments in the Government's efforts to secure Commonwealth support for an extension of the Adelaide Airport runway?

The Hon. DEAN BROWN: I thank the honourable member for that question. It is appropriate that I outline to the House the basis on which the Government is proposing to undertake this process, because it is a very important step for South Australia. First, we need to secure the extension of the runway; secondly, we need to secure privatisation of the airport; and, thirdly, we need then to secure additional international flights into Adelaide and thereby achieve a significant lift in the air freight capacity going out of Adelaide as well becoming much more competitive as a place to which international tourists come.

One of the fundamental problems at present is that, if you are a tourist coming to South Australia from Japan, the first place your plane will land is Cairns. The plane then flies on to Sydney, where you will change onto a domestic flight which eventually will end up in Adelaide. How many Japanese tourists on one week's holiday are prepared to go through three airport stops to get to Adelaide? The answer is none or very few, and that is one reason why there has been a such a dramatic drop-off in tourists coming to Adelaide, particularly from countries like Japan.

Therefore, I have written to the Prime Minister and put the following case to him. First, there needs to be a major upgrade of facilities at Adelaide Airport—both the terminal facilities and the runway. It has been estimated that the total cost of that is $89 million, of which $68.5 million must be spent on upgrading as a matter of urgency. The Federal Airports Corporation has estimated that it is prepared to put $29 million into that process, which leaves a shortfall of $39.5 million. I have therefore put a case to the Federal Government that in the budget we would seek a special allocation for South Australia of $40 million. Secondly, we are asking that the airport be allowed to be privatised. I understand that the Federal Government is currently looking at privatisation of airports as part of its industry statement. Earlier today I spoke to the Prime Minister about this matter, and he has guaranteed that he will take it up with his Federal ministerial colleague to see whether Adelaide Airport can be included on the list of airports to be privatised this coming year—the 1994-95 year.

Our objective is, first, to secure additional funds over and above what funds are forthcoming from the FAC. We are hoping for $29 million from the FAC and $40 million from the Federal Government. Once the airport has been brought up to international standard, we can go ahead and privatise it. It is also important that we be included in the privatisation of airports, which is currently being considered by the Federal Government. As I said, the Prime Minister has guaranteed that he will take up this matter with his ministerial colleagues, and I hope that the Federal Government will respond. I acknowledge the offer made by the former Labor Government of South Australia to put $10 million into the extension of the runway.

I was able to reassure the Prime Minister that, in addition to the $10 million allocated by the previous Government, funds are to be allocated by the new Liberal Government for the extension of the runway, which includes dealing with Tapleys Hill Road and which will cost about $20 million. It is a matter of putting Tapleys Hill Road under the runway or around the end of the runway, but my preferred option is under the runway.

Mr Foley interjecting:

The Hon. DEAN BROWN: I'm not worried about the golf course. I am more worried about the major realignment of roads that would need to take place in the Glenelg area if Tapleys Hill Road was diverted around the end of the runway. We have a plan that we have put to the Federal Government, and it is now up to the Federal Government to respond adequately to that program.

ECONOMIC STATEMENT

The Hon. LYNN ARNOLD (Leader of the Opposition): In the light of the Treasurer's reply to my previous question, can he explain why Moody's was advised by the Government that it would now be releasing an economic statement in May? In answer to my previous question, the Treasurer in one instance said that the economic statement would be released possibly in June. He later said, 'It is intended to produce that statement during June.' In discussion with Moody's Investor Services today, the company indicated that the Government has advised it that there would now be an economic statement in May.

The Hon. S.J. BAKER: I am not sure what advice the Leader of the Opposition has on this matter. So far as I am aware, and I could be corrected, the original timetable as the Leader of the Opposition correctly points out was in April. That was set at the beginning of government, when we locked ourselves into a program virtually from day one. We tried to live with that, and I discussed with Treasury officials the need to put in indicative estimates. We decided that that was not an appropriate way to travel. We wanted to get a great deal more accuracy, so it has been a matter of discussion for some time.

It is an ongoing process that has already started in terms of how we address the budget. As the former Treasurer would know and as the Leader of the Opposition would clearly understand, the process of negotiation starts well back in March, in some cases, and follows through until June and it ultimately involves the handing down of the budget. The process that we are now going through is no different from the process that has been travelled in previous years. Clearly, the statement will be issued in June. It will be put to bed as much as possible during May, but the important point is that we have to get these things right. Given that that time frame precedes the start of the new financial year, we believe it is consistent with our direction and is appropriate in the circumstances.

MOTOROLA

Mr WADE (Elder): Will the Minister for Industry, Manufacturing, Small Business and Regional Development

explain the involvement of the Economic Development Authority in the move to establish a Motorola software centre in South Australia, and what factors were critical to Motorola in making its decision?

The Hon. J.W. OLSEN: The establishment of Motorola in Australia—in South Australia—as announced by the Premier yesterday, is a very significant breakthrough for this State. Attracting Motorola to South Australia will put investment in this State back on the radar screens of the investment rooms in this country and overseas. Over the past 10 years, whereas we had 80-odd listed companies with their head offices in South Australia, during the period of the Labor Administration that was whittled away to some 30-odd left in South Australia. That meant that the major capital investment decisions affecting this State were being made other than in South Australia—on the eastern seaboard of this country and overseas.

What Motorola will do by its decision is identify to those boardrooms why Motorola came to Adelaide. It will make those investment decisions focus on the reasons why Motorola has identified Adelaide. Therefore, there is a drag effect of the decision of Motorola to come here. I am sure that in the next week or 10 days we might well see further significant announcements about investments in South Australia.

I would like to compliment officers of the Economic Development Authority who worked extraordinarily hard with a lot of professionalism and diligence on this proposal. It first came to our attention on 21 December last year. It is fair to say that a number of officers have worked non-stop during that period, focusing the investment package to the customer. We deliberately looked at what Motorola wanted in its location. We then targeted our investment package to meet its specific unique needs. In doing so, it was recognised by Motorola that South Australia made the best presentation of any of the States in Australia. In addition, despite the fact that other States came back and back and kept bidding—as the Premier said, up until Sunday morning of this last week—we were able to hold the ground in negotiations with Motorola, because we had put the foundation down properly and effectively for the investment package that we had offered.

Mr Quirke: How much are you slinging to them?

The SPEAKER: Order!

The Hon. J.W. OLSEN: That interjection from the honourable member will ensure that he makes no progress along that side of the bench. What an inane suggestion! It would suggest that all that member is interested in is cheap political point-scoring, rather than the fact that what we have achieved is a significant breakthrough and major investment attraction for South Australia, and I understood most of his colleagues were proud of it for South Australia's sake, not trying to score cheap political points in relation to 'How much did you pay them?'

We could look at some of the specific deals put in place by the former Government. One could talk about the Submarine Corporation and, for example, the special WorkCover levy that was struck for the sub corp deal. But nobody made political mileage out of that on the basis of the Submarine Corporation and its deal for South Australia.

It is a good investment and a good incentive package. The beneficiaries will be not only Motorola but also the people of South Australia, the 400 who get a job, the $64 million of gross State product that will be generated from it, and the other investment decisions that will flow as a result of this decision by Motorola, a world leader in its field, which has located in Adelaide, South Australia. For goodness sake, stand up and be proud about the achievement for South Australia rather than trying to put it down.

There are a number of reasons why Motorola established and located in South Australia. The highly skilled and relevant research base at our three universities, the DSTO and the Signal Processing Research Institute were all factors which we identified and which attracted Motorola to look at Adelaide. Further, there is a significant pool of highly skilled software systems engineers already within South Australia. Clearly, our lifestyle was high on the agenda for its decision to invest in South Australia.

In relation to the pool of graduates that it would be requiring, I would like to acknowledge the help and the support of the universities in South Australia and the way in which they assisted and facilitated the Government in putting proposals to meet, once again, the specific needs of Motorola in terms of graduates to take on employment. Professor David Robinson, Vice-Chancellor of the University of South Australia and Chairman of the South Australian joint decision making body for those three universities, has said that he and his fellow Vice-Chancellors are enthusiastic about working with Motorola to develop and offer new joint programs designed to increase the output of suitably credentialled graduates.

This was unique to South Australia. It was a unique component of the package we put: we have an undertaking on behalf of multiple academic institutions that they will meet the needs of Motorola by providing graduates out of the system for Motorola's employment needs in the future. I acknowledge the way in which Professor Robinson and the universities participated with us in the development of a package that included a range of commitments such as that.

An honourable member interjecting:

The Hon. J.W. OLSEN: It is not waffle, because Motorola has acknowledged the reasons why it has selected South Australia over the other States. This was one of the reasons that was on the agenda. It is a package targeted specifically to customer needs—Motorola's needs. There are institutions and individuals in this State who participated with the Government. If the Opposition does not want to participate with this Government in getting major investment in South Australia, let it be on its head. We will not wait for you. We will go ahead and get investment, job creation and economic growth in South Australia without you. We have achieved it with Motorola, with ACI ($90 million) and a range of other measures. Do not hold your breath, because in the next week or 10 days we will have another one to throw at you.

TAB BOARD

Mr FOLEY (Hart): My question is directed to the Minister for Recreation, Sport and Racing.

Members interjecting:

The SPEAKER: Order! The Chair cannot hear the question.

Mr FOLEY: Did the Minister mislead the House yesterday when he stated that he had asked members of the TAB board to resign because of concerns about the operation of the TAB and because they failed to provide him with financial details about radio station 5AA? In a statement released today, TAB Chairman, Mr Bill Cousins, said that the

Minister telephoned him on Thursday 14 April asking him if he would consider resigning because he had been—

The Hon. S.J. BAKER: I rise on a point of order, Sir. That question may need examining. My understanding is that any accusation, that is, an implied accusation that a Minister or any member has misled the House should be a matter of substantive motion.

The SPEAKER: Order! I cannot uphold the point of order, because as I understand the question the member asked, 'Did the Minister'. I point out to the House that it is contrary to Standing Orders to make improper accusations or impute improper motives towards any member or Minister. I will permit the question to continue, but I suggest to the member for Hart that he be particularly careful in his explanation of the question.

Mr FOLEY: Thank you, Mr Speaker. My explanation is as follows. In a statement released today, TAB Chairman Mr Bill Cousins said that the Minister telephoned him on Thursday 14 April asking Mr Cousins if he would consider resigning because he had been appointed under the previous Government. Mr Cousins states that he was given an assurance that there were no other reasons for this request.

The Hon. J.K.G. OSWALD: Yesterday I gave a very lengthy explanation to the House in the form of a ministerial statement—

Members interjecting:

The SPEAKER: Order! This is an important question and I intend to see that the Minister is heard in silence.

The Hon. J.K.G. OSWALD: —which I thought spelt out in single syllables for the honourable member exactly what were the circumstances which lead to my approach to the respective Chairmen. It set out exactly the sequence of events. It set out exactly the reasons for discussions with the TAB board. It set out exactly the background to the information I was attempting to seek on behalf of the taxpayers of this State, to whom I have absolute responsibility in trying to establish financial information so that we know the correct questions to ask. All of that was clearly spelt out in the ministerial statement, followed by a series of very lengthy questions put to the House and answered, I would have thought, in a very precise manner. There should be no doubt whatsoever in the mind of anyone in this building—except perhaps the honourable member (there is certainly no doubt in anyone's mind in the public arena)—

An honourable member interjecting:

The SPEAKER: Order! The member for Spence.

The Hon. J.K.G. OSWALD:—as to why the Government found it necessary to take the action it took. No-one has been misled on this issue. Certainly the board members will continue. In the media and on the radio this morning the same questions have been raised with me as to how much information had been offered to me by the Chairman of the board. In fact, it was only half the story, because everyone knows that I was seeking additional financial information. It is all very well to come forward and say that I was given all the information I had sought. That was not the case. I sought additional information so that we could frame the questions required to be asked. It is a nonsense now to turn the matter around and suggest that it was misleading the House. The fact of the matter is that since yesterday—

Members interjecting:

The SPEAKER: Order!

The Hon. J.K.G. OSWALD:—the Opposition has attempted to turn the whole issue around and make it a political issue. We have had orchestrated appearances on radio of former Premier Des Corcoran. There is no mistake about the way it was set up, with the holier than thou allegations about being stabbed in the back.

Members interjecting:

The SPEAKER: Order!

The Hon. J.K.G. OSWALD: I ask members to examine the motivation for this and the reasons behind the appearances of Des Corcoran in the media. When I telephoned Des Corcoran—let us be clear—I invited him, for the reasons I gave yesterday, to stand aside. He talks about being stabbed in the back: he rang me back within the hour and asked what sort of negotiated payouts could be available.

Members interjecting:

The SPEAKER: Order!

The Hon. J.K.G. OSWALD: I do not need to say that outside because he admitted to it on ABC radio this morning. Keith Conlon's staff rang back, and he admitted it. I said to Keith Conlon, 'Ask the next question—what else did we say?' The conversation flowed on from there. I was asked whether there would be any negotiated payouts, and I replied, 'No'. He said, 'Would you take that to a higher authority?' I said that I had foreseen that I would be asked for negotiated payouts and had already taken it to a higher authority, namely, the Premier, and that he had said 'No'. So, there will be no further payouts. He then said to me, 'I'll have to take that into account when I make my decision on Monday when I contact you.'

We now have an orchestrated holier than thou beating of the chest and the statement being made, 'I've been stabbed in the back.' When I telephoned Mr Corcoran he said, 'John, I'm not surprised that you're ringing me', so it was not a surprise to him. It was not a surprise, because the convention is that, every time a Government changes, the incoming Government has the right to look at key boards and committees and, if there are problems in the industry concerned, as we know there are in the greyhound and racing industry, the incoming Minister has the opportunity to appoint people who know the industry and thereby bring about a fresh approach to the matters involved.

You cannot say, at the moment, that the harness racing industry is a happy industry: it is not a happy industry at all because of the style of leadership it has had and some of the decision making processes occurring. Returning to the original question: no, I have not misled the House. I am not in the business of misleading the House.

5AA

Mr FOLEY (Hart): My question is directed to the Minister for Recreation, Sport and Racing.

Members interjecting:

The SPEAKER: Order!

Mr FOLEY: Will the Minister table in the House the letter he wrote to Mr Bill Cousins, Chairman of the TAB, requesting information relating to radio station 5AA and the reply that he has since received from 5AA? I am advised that the Minister has received a written response from the board of radio station 5AA outlining financial and operational information relating to that station.

The Hon. J.K.G. OSWALD: I would imagine that the honourable member probably has the letter on his desk in front of him. If he does not have it in front of him , I would be most surprised if it was not on his desk upstairs. That letter, as far as I am concerned, is a piece of correspondence from me, as Minister, to the Chairman of the board, and I

have no intention at this stage of releasing it to the House. I intend meeting with the Chairmen of both 5AA and the TAB this afternoon to try to progress this matter to some sort of conclusion and to facilitate access to the information we are seeking. I trust that, at the end of the day, we will have access to that information so that that aspect of the incident which has been reported in the media over the past few days may be drawn to a conclusion.

Two issues are involved: the provision of information, and the future of board memberships. I doubt whether we will discuss the second issue this afternoon, but we will most certainly be canvassing the availability of information and ascertaining whether these reports will be provided.

Mr FOLEY (Hart): Will the Minister for Recreation, Sport and Racing advise the House whether the Chairman of the TAB suggested to him a means by which the board of 5AA could provide all the information the Minister was seeking about the radio station at least one week ago before he called for the resignations of board members for not supplying such information?

I understand the Minister was advised at least one week ago by Mr Bill Cousins that the TAB Chairman was unable to provide all the information that the Minister wanted without breaching his fiduciary duty under company law. However, Mr Cousins said that a simple solution was to issue a direction under the Racing Act requesting that information, and the board would be required to provide it, but allowing for protection for the directors from legal liability for breaches of confidentiality.

The Hon. J.K.G. OSWALD: I would need to have the correspondence in front of me. I think that the honourable member is mistaken about his dates. At the meeting with Mr Cousins I had that information well before he gave it to me. I was acutely aware that I had the power to direct because I had already received legal advice well before Mr Cousins wrote to me and set out this new information on how it could be done. I knew well before that because I had already taken advice and I knew that I could direct the board, and I knew when Mr Cousins was in my office—

Mr Foley interjecting:

The Hon. J.K.G. OSWALD: Listen—you might get some information.

The SPEAKER: Order!

The Hon. J.K.G. OSWALD: I knew when Mr Cousins was in my office that I had that power to direct, but at that point it should not have been necessary. The relationship should be such that I should be able to request information from the board Chairman. I should not have to direct because the effect of directing him—

Mr Foley interjecting:

The SPEAKER: Order! I warn the member for Hart. He has been given more than a fair go. Any repetition of interjections and he will be named.

The Hon. J.K.G. OSWALD: The effect of directing the Chairman of the TAB would be to then set in motion this procedure of calling a shareholders meeting to obtain the information from the board of 5AA, and that absolves 5AA board members of any responsibility. Because of my advice that the type of information I was receiving was such that it would not jeopardise the confidentiality and fiduciary responsibility of the board members, it was my belief that the information should have been provided without having to direct the board.

Mr Cousins most certainly did write to me, saying, 'This is an option open to you to try to get the directors around the problem', but I already had that knowledge. In fact, I had my letter drafted and decided at that stage to see if we could still resolve this problem, which I have responsibility to resolve. I will not antagonise the situation; my role as Minister is to try to resolve it. I do not want to take that final step of calling a shareholders meeting, which is ludicrous. Everyone would agree that such action would be ludicrous when you are asking for basic information, which at no time would be any more detailed than the information contained in the annual report that I receive at the end of the year anyway.

The member is off at a tangent again, as much as he was on radio this morning, when he was trying to explain the differences in the boards, their powers and responsibilities, and saying who appoints those boards. I would have thought that he would be better off this afternoon spending some time in the library, reading the Racing Act and trying to understand what the issue is all about, rather than coming in here and making a fool of himself, trying to inflame the issue with furphies.

TRAM BARN

Mr CUMMINS (Norwood): My question is directed to the Minister for the Environment and Natural Resources. The tram barn at the old Hackney bus depot is a heritage significant building, which is adjacent to my electorate. As residents are concerned about the fate of the barn, has the Minister made any decision about retention of the tram barn and, if so, will he say what it is?

The Hon. D.C. WOTTON: Members of the House will be aware that debate on the future of tram barn A has been raging since the early 1980s. It has reached a stage where a decision needs to be made, and I have made that decision. I am anxious that a compromise be reached regarding the future of the building. I have therefore determined that tram barn A will remain but that the size of the building will be reduced. I have also announced this morning that steps will be taken to ensure that the demolition of tram barn D, which is the old tram barn adjacent to the Botanic Park—

Members interjecting:

The SPEAKER: Order! There are too many interjections. The honourable Minister.

The Hon. D.C. WOTTON: Demolition will commence on tram barn D before the end of this financial year. Tram barn A, as all members should know, is on the State, national and local heritage registers. There are problems involving the size of that building and the considerable impact it has on the views obtained from inside and outside the Bicentennial Conservatory, and that is the matter that needs to be addressed. I believe that some, if not all, of the southern annexe can be removed and a reasonable portion of the end of the building nearest the conservatory can also be removed. I have asked the Botanic Gardens Board and the National Trust to work together, which they are happy to do, and to advise me on how tram barn A can be reduced in size, but not to the extent that the historical significance of the building or reasonable options for its future are lost. I do not believe that the resolution of this issue demands an all or nothing decision or response. Unfortunately, that is the way—

Members interjecting:

The Hon. D.C. WOTTON: I might point out that for the past decade the previous Government sat on its backside and refused to make a decision regarding this matter. It is about time that a decision was made, and I have made that decision.

Members interjecting:

The SPEAKER: Order! The Minister will resume his seat. I warn the member for Spence for the second time. Too many interjections have been coming from him.

The Hon. D.C. WOTTON: I am pleased to inform the House that a number of suggestions have been put to me regarding the future use that can be made of the building. Options for its use include holding horticultural and floricultural shows and using the building to house the National Trust's horse-drawn vehicles collection; and many other commercial suggestions have been made about the future use of this building. I believe that the decision that has been made is appropriate, and I look forward to the building being retained on the heritage list in the way that I have determined.

HIV TESTING

The Hon. M.D. RANN (Deputy Leader of the Opposition): Is the Minister for Health satisfied that South Australian dentists and doctors are now complying adequately with recommendations that they sterilise surgical instruments in an autoclave to prevent cross-infection with HIV and, if not, does he believe that there should be legislation to make the use of autoclaves compulsory in this State? The Minister will be aware of the *Four Corners* program last year which found that many dentists in Sydney were not properly sterilising surgical instruments, such as drills and dental handpieces, in an autoclave, despite the recommendations of the National Health and Medical Research Council.

Since then professional associations have again been encouraging the use of autoclaves to sterilise surgical instruments between each patient in order more effectively to minimise the transmission of HIV. The *Four Corners* investigation followed reports in the United States and Britain that the HIV virus could survive and then be transmitted from patient to patient if dentists' and doctors' instruments were not autoclaved. In evidence before the Social Development Committee, dentistry was acknowledged—

The Hon. S.J. BAKER: I rise on a point of order, Mr Speaker. We are being subjected to a second reading speech. The question is quite clear. Indeed, we have an agreement to allow 10 questions by the Opposition. That privilege is being abused at the moment and, if it continues, we will have to review that decision.

Members interjecting:

The SPEAKER: Order! The explanation was particularly long. There have been long explanations of questions and long answers. I believe that the honourable member has adequately explained his question. The Minister.

The Hon. M.H. ARMITAGE: I thank the Deputy Leader of the Opposition for his newfound interest in AIDS. The two questions that he asked me yesterday increased the number of questions I have been asked relating to health by 100 per cent in one day. I am thrilled that we have another question so quickly. Reverting briefly to the measures for AIDS control about which the Deputy Leader of the Opposition spoke yesterday, he mentioned an article in the Sunday *Age*, and, by super slippery slick smoothness of interposing two things relating to South Australia on either side of the *Age* article, he implied that the surgeon, Dr Westmore, had made assertions about South Australia.

The Hon. M.D. Rann: Read the question.

The Hon. M.H. ARMITAGE: I have indeed read the question and I have spoken to the surgeon whom you mentioned yesterday. I spoke to him first thing this morning and he said, 'I have absolutely no idea of what happens in South Australia.'

The Hon. M.D. Rann interjecting:

The SPEAKER: Order!

The Hon. M.H. ARMITAGE: Getting down to the issue of doctors, dentists and autoclaves, there is no doubt that a number of issues in the past couple of years have focused the attention particularly of dentists on the need to autoclave instruments. I saw in a medical journal the other day a headline, which I did not bother to read because I felt I knew what the article was about, 'Rush on autoclaves, say dentists.' Of course, dentists and doctors, being professional people who have no desire to cross-infect patients, are taking proper infection control measures. That is what the whole problem of AIDS revolves around, and that indeed is what the whole article from the Australian Association of Surgeons in the Sunday *Age* was talking about. The only way that people will stop HIV and any other infection, such as Hepatitis B, Hepatitis C and so on, from spreading is to utilise proper infection control measures.

The Deputy Leader of the Opposition asks whether we should legislate for this. What will legislation achieve? Absolutely nothing, unless the Deputy Leader of the Opposition is expecting us to have an infection control monitor sitting in the corner of every surgery to make sure that the dentist or the doctor takes an instrument out of the autoclave before using it on a patient. What a farce! That is the only way it will work. What is important in the control of HIV, hepatitis and other infections is the professional person recognising the danger and taking appropriate infection control measures.

As I indicated to the Deputy Leader of the Opposition yesterday, I have spoken to the Doctors Reform Society, the ADA and the AMA and, after those discussions, they are sending a circular to all their members indicating the relevance of infection control measures, and they are focusing the attention of their members on proper infection control measures, which is the way people will be protected—not by senseless legislation.

MINING

Mrs PENFOLD (Flinders): Will the Minister for Primary Industries explain what progress has been made in negotiations on access to the Pitjantjatjara lands for the purpose of mineral exploration, given that the lands have been made available for oil and gas exploration via the Anangu Pitjantjatjara communities?

The Hon. D.S. BAKER: I thank the honourable member for her question and interest in the subject, which abounds in her electorate. It is a good news story. Very sensible negotiations have been going on for quite some time to allow seismic surveys to be carried out within Pitjantjatjara lands and, of course, Maralinga lands. Recently, for exploration purposes, the Department of Mines and Energy released quite a big document about exploration going on in the Officer Basin. However, these negotiations with the Aboriginal communities, with the full knowledge of the Minister for Aboriginal Affairs, have been conducted in a very sensible and productive way to make sure that those lands were sensibly and sensitively explored under seismic survey. However, seismic surveys are one thing; exploration is another.

It is with much pleasure that we announce that the first exploration licence to Delta Gold has been signed with the Pitjantjatjara lands and Maralinga people for exploration to

go ahead. In releasing the Officer Basin for exploration, we hope that the announcement of this licence will encourage other people to go to those lands and explore the mineral wealth that we believe is there. The Aboriginal people were very helpful all the way through these negotiations. In fact, they are participating in providing scouts to make sure that those sensitive areas are explored in a manner which is acceptable to the Aboriginal people. So, it is with much pleasure I announce that Delta Gold has an exploration licence and has come to an agreement with the Pitjantjatjara lands people. I hope that many more explorers will follow the lead given by Delta Gold and will explore those lands for South Australia's sake.

HIV TESTING

The Hon. M.D. RANN (Deputy Leader of the Opposition): Does the Minister for Health believe that compulsory random and regular inspections should be made of dentists' and doctors' surgeries in South Australia to ensure that safe standards of practice are being used in relation to HIV cross-infection control measures, that surgical equipment is being autoclaved between each patient use and that autoclaves are checked to make certain that they function properly?

The Minister will be aware that the Social Development Committee of this Parliament has recommended regular infection control audits of dental surgeries and, indeed, that the committee was informed that in some States of the United States and elsewhere there are compulsory spot inspections of dental surgeries to check infection control measures, particularly in relation to equipment sterilisation. The Minister should also know that while the self-regulation approach has been recommended in Australia and this State and that the industry establish its own inspection teams—

The SPEAKER: Order! The honourable member is continuing to give long and unnecessary explanations. I would suggest to him and other members that the practice should cease. The Minister for Health.

The Hon. M.H. ARMITAGE: I am now up to a 200 per cent increase in questions. The Deputy Leader of the Opposition is apparently confusing compulsory inspections with regular inspections, and of course they are different. I have no dilemma with machinery for the control of infectious diseases being inspected on a regular basis. As I have said to the Deputy Leader and I will repeat, it is one of the things that the Australian Dental Association, the Doctors Reform Society and the Australian Medical Association—in other words, people who are doing the work on the patients—are in favour of themselves.

Despite what the Deputy Leader appears to be leading up to, they are trying not to infect their patients. Let us be quite clear about this: doctors and dentists do not want to give their patients any infectious disease. Therefore, if we want the autoclaves (and I repeat what I said in the previous answer: there has been a rush on those, so many more practices have decided they need them) and if we want compulsory inspections, we have to decide whether they work. That is easily done.

We then have to decide the only other important question: are they being used before each intervention? There is no point in having an autoclave with a certificate saying it works if it is not used. The only way it will work is on the goodwill of the people who are doing the tests. As I have said, they do not want to infect their patients; apart from anything else, they have very large insurance claims to pay. Every time there is a large insurance claim, doctors' and dentists' professional indemnity insurance goes up. They do not necessarily want to give their patients a disease and pay more money, and they do not want their patients to suffer, so of course they are utilising proper infection control procedures. Of course, they are happy to have regular inspections, which they are doing on a voluntary basis. As I have said on about five occasions, there is no doubt that this is the only way that patients will not get the disease. If the people—

The Hon. M.D. Rann interjecting:

The SPEAKER: Order!

The Hon. M.H. ARMITAGE: The Deputy Leader is quite clearly not listening to my answer. The only way to stop the risk of patients contracting disease is for the person doing the procedure to utilise proper infection control procedures, and that is what is occurring.

PORTS

Mr VENNING (Custance): Will the Premier inform the House of what action the Government is taking to make South Australians ports more competitive? Over recent years I have heard much about the so-called inefficiencies of South Australian ports. In particular, our ports have been seen as a problem in the efficient export of our major primary products—cereal grains, wool and manufactured products—and they have had the effect of adding costs to industry generally.

The Hon. DEAN BROWN: This morning I had the privilege of handing over the keys for four straddle carriers at the new container port at Port Adelaide. This is the container port operated by Sea-Land, and I think it is worth outlining some of the radical changes taking place there. First, the State Government has reached a decision to transfer the straddle carriers and the cranes to Sea-Land. It is buying all this equipment for over $12 million. The first of those transactions was completed this morning. The new rail link, which was funded under the One Nation statement, has now been completed in the container port area. The new State Government has extended the area for holding containers down there, and we are now negotiating, with the objective of establishing a regular shipping service into Adelaide on a specific day each week. As a result of that, through Sea-Land we are also hoping to have dedicated trains, under the CSX Corporation, which is part of the Sea-Land group.

Those dedicated trains will leave Melbourne or Sydney on a specific day, about two days before the ship arrives in Port Adelaide. The train will carry a much larger number of containers than is currently carried, because of the standardisation of the rail link, particularly from Melbourne, and the installation of heavier rails. As a result of that, with a turnaround of only about two days, the one company will be able to receive shipping containers in Melbourne or Sydney, bring them to Adelaide, load them straight onto a dedicated ship and take them straight to a hub port in Singapore.

The one company will handle that shipping container right through, from Melbourne and Sydney through the Port of Adelaide and to the final destination in the United States of America, Europe or Asia. This is a huge breakthrough, which contributes to bringing the container port of Adelaide up to the best in Australia; it is now heading towards being without a doubt the best inter-nodal container port in Australia.

Already we have lifted the number of containers going through that port on a monthly basis from the equivalent of 41 000 containers in 1991-92 to the equivalent of 60 000 containers this year, with the objective of getting to 100 000

shipping containers by 1997. So, in a five-year period the number of containers will increase from 41 000 to 100 000. The honourable member can see that these are very significant changes, particularly now that the State Government is withdrawing from the operation of that facility and handing it all over to Sea-Land. Today in another place we are introducing significant legislation to set up the South Australian Ports Corporation, and that corporation will operate all South Australian ports on a strictly commercial basis. It is probably the most radical change in the operation of our ports that this State has seen for at least 50 years, if not 100 years.

PUBLIC SECTOR COMPUTERS

Ms STEVENS (Elizabeth): My question is addressed to the Premier. Who will conduct parallel competitive negotiations for the outsourcing of Government computer requirements and, in the absence of usual competitive tendering procedures, how will offers be assessed and how will the public interest be protected? A minute dated 5 April for the Office of Information Technology reveals that the Information Technology Committee of Cabinet has decided that the Government's computer requirements will be outsourced through a process of parallel competitive negotiations with EDS and IBM.

The Hon. DEAN BROWN: First, I congratulate the member for Elizabeth on her election to this House and on her first question in this House. We wish her a very long future on those benches. I point out that, right from when this Government came into office in December, it started to implement its policy. It started to work through a whole range of IT companies, with two specific objectives. I have detailed this previously in the House, and I refer the honourable member to previous answers I have given. In a nutshell they are, first, to secure significant cost savings and improved efficiencies in the processing of the Government's own data and, secondly, to achieve at the same time significant economic development for South Australia out of that process.

The benefit of that sort of program can be seen through Motorola's having established in Adelaide as a result of a similar program initiated under the Federal Government. That is exactly the same sort of objective that we are trying to achieve here in South Australia. They went through an initial assessment of what the individual companies could offer the Government in terms of out-sourcing and economic development. Through that refining process it has now got down to two companies, EDS and IBM. That ongoing process is expected to take about three months before a final contract is signed.

In terms of protecting the interests of South Australians, including, I point out to the honourable member, the smaller South Australian companies that want a share of the action, they will be protected by the contract signed by the company that is selected. Specific requirements in that contract will require work for the smaller South Australian based companies. Their interests are being protected, as are the overall interests of the State.

Ms HURLEY (Napier): My question is directed to the Premier. Why has the Government forfeited its negotiating position in its bid to out-source information technology services by instructing departments to provide EDS and IBM with detailed costings for the operations of Government computer services? Usual practice requires Government contracts to be let after inviting tenders or quotes for work detailed by specification—

An honourable member: Says who?

Ms HURLEY: It is usual practice. However, in this case the Government has reversed the process by supplying EDS and IBM with details of what it costs Government departments to carry out these services before they commence parallel competitive negotiations for this work.

The Hon. DEAN BROWN: Obviously, the honourable member does not understand. How can the companies put in a knowledgeable bid to carry out this work unless they understand exactly what the Government has and what requirements must be met to carry out the Government's data processing? I draw a clear comparison between what this Government is doing and what the former Government did over a four year period, when it literally wasted hundreds of millions of dollars.

It is widely accepted in the information technology area that savings of about 20 per cent in the processing of Government data can be achieved through out-sourcing and a much more efficient system. All we are doing is allowing the two companies that are in the final bidding process, after a much wider selection process, to have knowledge about what they would have to provide through their out-sourcing facilities, therefore allowing them to put in an informed bid. I would have thought that that was a pretty natural sort of process that anyone would go through. I stress to the honourable member that I am only too willing to sit down and discuss the situation in more detail; in fact, I invite her to attend a seminar that we are having next week where she can hear in more detail what the Government is proposing.

DAYLIGHT SAVING

The Hon. FRANK BLEVINS (Giles): My question is directed to the Premier. What consultation took place with the public of South Australia, particularly those living outside the metropolitan area, prior to the Premier's decision permanently to extend daylight saving by four weeks?

The Hon. DEAN BROWN: The honourable member forgets that there has been considerable discussion on this matter with many organisations expressing their points of view to me in person, in writing or over the telephone. I would have thought that that was an appropriate sort of process to go through. It was publicly known that the Government was looking at trying to achieve uniformity. In addition, I acknowledge that we cover over 80 per cent of South Australia in population as a Liberal Party Government through our own Party room and, in terms of the area of the State, I suspect that we cover about 97 per cent. The Deputy Leader thought it was about 95 per cent, but I suspect it is more than that. Our own members have been out there widely discussing this with the community.

I stress that there have been dozens and dozens of letters and I suspect hundreds of phone calls. My office carefully monitors those phone calls and records the views expressed in those calls to me as part of our consultative mechanism. In fact, the people have appreciated—and I bring this to the attention of the House—that we have actually gone back to them since the decision was taken and explained to them why we took that decision. The people have commented on how they had not heard any Government being as courteous as that: after having expressed a view by telephone call and letter, they have had the Government go back to them in some

detail after the decision and outline how it will operate. I point out that there has been agreement between the States for uniformity, for those States to go to Eastern Standard Time to the extent negotiated, and that has been widely applauded.

WORKCOVER

Mr CONDOUS (Colton): Is the Minister for Industrial Affairs aware of public criticism of his recent statements on sporting injuries and WorkCover claims by a Mr John of the law firm Duncan and Hannon, and what is the Minister's response to this criticism?

The Hon. G.A. INGERSON: It is—

The Hon. S.J. Baker: Is that Peter Duncan?

The SPEAKER: Order!

The Hon. G.A. INGERSON: It is an interesting combination—Duncan and Hannon, and previously Groom. I am aware of the letter in this morning's *Advertiser*, and I thought that I might put on the record what WorkCover thinks of this issue. In September 1989 a council worker, while playing basketball at a pre-work morning fitness session, collided with another participant and injured his left hand. The time of the injury was 7.45 a.m. and the worker was not on the employer's premises at the time. The cost to WorkCover was $1 440.69.

In 1992 a Correctional Services officer was injured playing squash during his lunch break. The injury occurred when the worker's opponent accidentally let go of his racket. The racket flew across the court and hit the worker in the head injuring his right eye. The time of the injury was 12.20 p.m. during the lunch break. The claim was accepted and the cost to the scheme was $3 000. In August 1993 a council officer sprained his right ankle before work while performing gym activity in a morning fitness class. The cost of that claim was $521.60. In August 1990 a council officer sustained injuries to her nose and lip whilst playing racketball. The cost of the injury was $41.15.

This Government is not willing to be intimidated by has-been Labor members of Parliament, by Labor lawyers, by any Democrat or by any member of the Opposition. We believe that many sporting injuries are currently being claimed under the WorkCover scheme, and we do not accept that. I reject the comment of Mr John and I will have great pleasure in writing to the *Advertiser* tomorrow and sticking it exactly where it should be put.

GRIEVANCE DEBATE

The SPEAKER: The question before the Chair is that the House note grievances.

Mr BASS (Florey): I see that the member for Hart is not in the House. That disappoints me, but I ask his colleagues whether they will pass on my comments today. Much has been said about the replacement of the Hon. Des Corcoran as Chairman of the Greyhound Racing Board. On 5AA the member for Hart said there had been no problems in the industry as far as he was concerned. I would advise the member for Hart to get out of the office of the Hon. Des Corcoran and speak to people involved in the greyhound racing industry. It is one code that really needs a big shakeup, to say the least.

Let us look at some of the problems with the greyhound racing industry. There is a track in South Australia called Kulpara, a straight racing track. Sometime ago a dog was killed and the accident was attributed to the track. No problems. It was unfortunate for the dog, but he was killed. Recently, another dog called Moonliner was racing on the track and, lo and behold, he was killed. The accident was attributed to the same problem with the track. The owner of Moonliner was upset, so he took the Greyhound Racing Board to court. When the owner and the manager of the Greyhound Racing Board arrived at court, there was an out of court settlement. Obviously, it was easier to settle out of court than to fix the track. Two dogs were killed because of the inaction of the Greyhound Racing Board.

With respect to the track at Gawler, since 1 January this year, six greyhounds have had to be put down because of the Gawler greyhound track. That does not include the dogs that have been injured because of that track.

Mr Atkinson: What makes you an expert?

Mr BASS: I am not an expert. I am just giving you facts. Let us look at Angle Park. On average, about six dogs a year are killed at Angle Park. In four months, six dogs have been killed. How many more dogs will be killed in greyhound racing because of the inaction of the Greyhound Racing Board? In 1989-90, $15 000 was spent by the Greyhound Racing Board to look at the Gawler track, $10 000 by the Greyhound Racing Board and $5 000 by the Gawler club. On my information, the present manager of the Gawler club still has not seen this report. A total of $15 000 was spent on what? Is there a report? If there is, why has it not been given to the greyhound racing club at Gawler? What does the report say? This board is led by Mr Corcoran. The member for Hart says there is nothing wrong.

Prior to the 1993 election, the then Premier and a Mr Michael Wright—and I do not know why he was there—had a meeting with the representatives of the three racing codes. The then Premier was told of the problems. The greyhound racing person went on the *Greyhound Show* on 5AA shortly after, and he was ordered not to make any comment about the meeting he had had with the then Premier and Mr Michael Wright, and he was not allowed to bring up any of the problems associated with greyhound racing. I have also received information that in 1992 and 1993 the greyhound racing people had meetings with Mr Greg Crafter, the then Minister, and of course nothing was done. I ask this House and anybody else who is interested: how many dogs have to be killed in greyhound racing before the Greyhound Racing Board gets off its backside and does something?

Mr Atkinson: And it is all to do with the track?

Mr BASS: Yes, definitely all to do with the track.

Mr Atkinson: Says who?

Mr BASS: Says the Bede Ireland report, if we could get a copy of it, and the greyhound racing people who go up there, but they cannot get any action, because the good board, under the leadership of the Hon. Des Corcoran, sits on its hands and will not do anything. I say it is an absolute disgrace. The member for Hart had better go outside and speak to the people involved. There are problems and it is about time something was done about it.

The Hon. M.D. RANN (Deputy Leader of the Opposition): I refer to an issue that I raised in Question Time in relation to HIV infection control measures. The simple fact

is that this Parliament on this very serious issue has been treated in a cavalier and remarkably ignorant way in terms of the Minister's own recollection of the recommendation of the South Australian Parliament's Social Development Committee. Yesterday the Minister for Health explicitly ruled out compulsory pre-surgery checks for HIV which would be designed to protect surgeons, health workers and nurses, following the release just last week of the report of the Royal Australian College of Surgeons, which stated that six Australian health workers had been infected as a result of needlestick and other ways of contracting HIV virus from patients.

Today, I make the point that random checks should be made on dentists' and doctors' surgeries in South Australia to ensure that surgical instruments are being properly sterilised to prevent HIV infection. I believe that compulsory random and regular inspections to check infection control measures in South Australian surgeries are an absolute must. Today I simply asked whether the Minister believed there should be legislation to make the use of autoclave sterilisers compulsory in South Australia if there was inadequate compliance by dentists and others in terms of the sterilisation of surgical instruments.

The use of autoclaves to sterilise surgical instruments after use on each patient is now considered essential to effectively minimise the transmission of HIV. Last year the ABC program *Four Corners* reported that many dentists in Sydney were not properly sterilising surgical instruments such as drills and dental hand pieces in an autoclave despite the recommendations of the National Health and Medical Research Council and various professional bodies. The *Four Corners* investigation followed reports in the US and Britain that the HIV virus could survive and then be transmitted from patient to patient if dentists' and doctors' instruments were not autoclaved.

In evidence to the Social Development Committee of this Parliament, several witnesses acknowledged dentistry as having been slow to recognise the disease transmission potentiality associated with dental procedures. A survey of over 1 000 Australian dentists in 1990 found that only 12 per cent sterilised hand pieces between patients. Obviously, there has been considerable improvement since then, but in evidence to the Social Development Committee which reported on AIDS last year, it was revealed that, whilst dental surgeons performing invasive oral surgery regularly autoclaved hand pieces, most South Australian dentists who practised routine dentistry did not autoclave hand pieces between patient use. I am told again that this situation is improving and that the Australian Dental Association is currently holding discussions about establishing an accreditation committee. It seems to me that the Minister is extraordinary ignorant of what is actually going on.

The fact is that in some US States and elsewhere there are compulsory spot inspections of dentists' surgeries to check infection control measures, particularly in relation to equipment sterilisation. These checks are considered vital to ensure that autoclaves are being used and are functioning properly. In the US, reports have revealed sterilising failure rates of between 15 and 21 per cent in dental surgeries that did not routinely monitor the performance of their sterilisers. In Australia, self regulation has been promoted with the industry to establish its own inspection teams to monitor standards.

I certainly believe that the Minister has a responsibility to spell out what external scrutiny measures will be put into place to ensure adequate monitoring and the highest standard of HIV infection control. I think most South Australians would believe that the public must be assured that compulsory and random checks will occur to ensure that safe standards of practice are being used.

Mr CUMMINS (Norwood): I refer to a concept called a sensory garden. One might ask members of the House when they last walked in the Adelaide parklands and whether in fact they have been there with disabled or elderly people, people in wheelchairs or blind people. I ask: where are the facilities in the parklands to help the elderly and the infirm—the smooth paths and handrails instead of gravel paths in the Botanic Gardens, the steps of Veale Gardens and the uneven grassed paths of Rymill Park? Where, in fact, are the facilities for the blind? Where are flowers that have very strong bouquets so the blind can appreciate them? Where are the Braille signs so they can read and understand what the plants are about?

In relation to people in wheelchairs, why are there no gardens where plants are at such a height that people in wheelchairs can actually lean over and smell the bouquet? Why are there no plants that the elderly and infirm, who cannot bend down, can smell? I raise this matter because for the past 16 months one of my constituents in Norwood, Mr Roger Hooton, who himself is disabled and on a supporting pension, has been trying to have 18 acres of south parklands developed into a sensory garden that is accessible to all people. A sensory garden, as I said, has raised flower beds, plants that give off a very strong bouquet for blind people, and also Braille, print and audio signs to describe features of the garden.

There is no reason why Adelaide, which is called the 'garden city', cannot do this. It seems a great pity to me that we do not have a sensory garden. Indeed, people including the Governor (Dame Roma Mitchell), the Director of the Adelaide Botanic Gardens (Dr Brian Morley) and the Lord Mayor (Mr Henry Ninio) have supported it. As I understand, it has been on the City Council's agenda for five years but nothing has been done about it. It could be a major tourist attraction for South Australia. Some members may know that Toowoomba in Queensland has had a sensory garden for some 13 years, and it seems rather farcical that Adelaide, known as the 'garden city', does not have one. It is about time that we took more care of our elderly, disabled and blind people so that they can enjoy the things that we in this House take for granted.

I put to this House that we should at some stage establish a development committee to ensure that an Adelaide sensory garden concept comes about. Also, it could be an important feature for South Australia when it celebrates its 160th birthday in less than two years. We should be not only the State with the 'garden city' but we should also be a caring State for disabled, blind and infirm people. It is not good enough to say that there are facilities in other States: they should also be provided in this State, particularly when we make the claim to be the 'garden city' of Australia.

Mr QUIRKE (Playford): In Question Time yesterday I asked the Minister for Housing a question about developments at the East End Market. I asked what were the basic financial arrangements in that locality, who was involved as the principal developer there, who was holding the land and at what point land would be transferred to that developer. The Minister said that he would obtain a report on this matter, in

which he knows I have a considerable interest. I take this opportunity to say that I will be addressing this issue on a number of occasions. The Economic and Finance Committee had a close look at the East End Market last year, but because of the election and other agendas that item fell off the end of the table. I have an interest in it because an enormous amount of taxpayers' money has already gone into that project and, alas, all of it, at this stage, to no avail.

We all saw the grandiose schemes. When the Economic and Finance Committee last year called for a number of papers and briefings on this matter we found that in 1988 alone the land had been revalued four times—surprise, surprise, each revaluation following a remortgage of the land to raise more and more funds. Throughout the entire period that that holding operation was in existence the value of the land went from something like $19 million to about $70 million. The money was borrowed from various institutions all with a guarantee from Beneficial Finance and the State Bank at the back of it. When the project fell through the floor, the safety net of the State Bank picked it all up at a cost to taxpayers of South Australia. There are a number of questions associated with that matter, one question, in which I was very interested, being how one man could chair the board of Beneficial Finance, the State Bank and the holding company of the East End Market and also do most of the conveyancing. That is something on which the Auditor-General has commented.

I now want to refer—and this is why I asked the question yesterday in the House—to some issues which need to be resolved in respect of this development. Firstly, the Government has already, in one form or another in South Australia, picked up that entire project development and paid an enormous amount of taxpayer funds into it. Secondly, we now have a development project, the details of which I would like to know for the following reasons: firstly, on a quick look at the whole matter it seems to me that one of the key issues here is at what point this land will be transferred to the new development. It is at that point that stamp duty, rates, taxes and a whole range of other charges become applicable.

It appears that the point of transfer is at the end user sale of that development. In other words, the developers will be developing this area without any holding charges whatsoever, and it will be at the expense of the taxpayers of South Australia. It would appear that stamp duties and all the other charges will come into effect—not to the developer because that will not happen—only when the actual retail sale of that transferred land takes place. I am committed to seeing a fair deal for all developers here in South Australia, and I think that is one issue that needs to be looked at. There are a number of other issues involved, not the least of which is car parking and the actual development itself. I do not have the time in this debate to go into those two issues but I will do so at some stage in the future.

Mr LEWIS (Ridley): There are three matters I wish to draw to the attention of the House today. The first one is the unfortunate circumstance in which we find ourselves in South Australia at present in coping with the very dramatically expanded demand for the seeds of native plants, particularly woody plants, namely, bushes and trees. I refer to the expansion in the practice of growing seedlings in tube stock and other forms for the purpose of revegetating areas under such programs as Landcare, whether it involves private individuals who wish to make a contribution to revegetation within as well as beyond our State and nation or farmers who are personally seeking to place under permanent vegetation some area of their farm, for instance, for the purpose of providing shelter belts, soil stabilisation, water table reduction or general improvement in one form or another.

There is an additional, rapidly expanding demand for seeds of Australian native species which arises from people's interests in eating our seeds in the same way as did those human beings who occupied this continent for thousands or years prior to the arrival of Europeans. It is no coincidence that in their tribal state Aborigines in this country had very low levels of cholesterol: they ate animals, the meat from which contained very low levels of cholesterol, and also extensive quantities of the seeds of native plants, whether they were wattles or seeds of the tussock grasses from various places, depending on what was available in the areas in which they lived. At present, the price being paid, for instance, for wattle seed in the manufacture of biscuits is so high that propagators cannot afford to buy it.

Much of the seed collected, under licence I presume in many instances, that was otherwise intended for use as seed for propagation is finding its way onto the dining table after having been milled into flour for the purpose of baking in one form or another. We need to do two things about that urgently, the first involving accreditation and certification of seeds collected for the purpose of propagation alone. We need to treat them with some kind of chemical that makes them unfit for human consumption which we, by coincidence, do with our cereals, pure seed, set aside for the purpose of propagating particular varieties of oats or wheat, for example. We do that for disease control. That is not necessary in the case of native seeds. In the case of cereals, the pickling prevents them from being consumed. They are very valuable genetic stock and therefore find their way, for the purpose for which they were primarily produced, to the market place.

The second thing that we need to do is make lawful, indeed encourage, the development of the production of Australian native seeds for oil and flour production to meet consumer demand for that purpose. If we do not make it lawful to do that and do it very soon, we will find ourselves in an awful mess with some of the species preferred for human consumption in short supply for tube stock and other forms of vegetation needed for Landcare programs. The time to act is now, if not yesterday! The benefits to the country will be enormous. Did you, Mr Acting Speaker, know that we import over 90 per cent of the native trees and shrubs, which we propagate for planting out, from such places as Pakistan, India and Israel? That means that we have no knowledge of, or control over the genetic diversity of the plants obtained from using that kind of seed. This is particularly true in the case of eucalypts.

Mr BROKENSHIRE (Mawson): I would like to bring a few issues before the House relating to the dairy industry and its deregulation in South Australia, along with the consequences which are very concerning to me as a dairy farmer and as a local member who represents dairy farmers. Quite a few dairy farmers have contacted me in recent times expressing concern about the ramifications of this deregulation. Milk vendors have also contacted me in recent weeks very concerned about whether or not they will have a job. In my electorate, which is rather diverse, we have a lot of elderly people as well as young mothers with children who need milk available early in the morning. We have not had a problem in the past with distribution of milk. In fact, everyone to whom I have spoken in the District of Mawson has been delighted with the way milk vendors have been

servicing them. It seems that instead of milk companies saying that they would have to be part of the big field and that there are opportunities through deregulation—

Mr Atkinson interjecting:

Mr BROKENSHIRE: No, I am not reading it, Michael. I do not need to read like you do. An opportunity exists, if deregulation is handled properly, for everyone to be a winner. If we have a situation, as we have in South Australia, involving only two milk companies in any case, rather than looking at increasing the overall market sales of milk product they will try to take it from one company to another and we will only see a lot of people put out of work. I quote from a press release put out recently by National Dairies, as follows:

> The existing dual vending system, where vendors distribute and sell competing processors' products will cease on 30 June. National Dairies SA Limited sales and distribution manager, Peter McKinnon, said today that National Dairies would contract up to 40 per cent of the 300 vendors in the existing system.

With 40 per cent of 300 vendors in the existing system, many vendors will not have a system to work under. He says that the current system has operated virtually unchanged since September 1978 when National Dairies (then Farmers Union and Dairy Vale) replaced Amscol as the suppliers of milk to homes and shops. That system has worked well and I question the rationale, notwithstanding any possible legal ambiguities, of starting to talk about sole agency marketing of their product only.

Some people in the food industry have come to me and said that milk companies have approached them and tried to do a deal whereby they will supply milk only to those people concerned and, in return, possibly work to support the food outlets as well. I do not believe that that is in the best interests of the consumers or employment. We know how hard dairy farmers and milk vendors work—they are up early in the morning until late at night working in all weather conditions. At least directly 2 000 people are currently employed in South Australia through the dairy industry. It is a fully value added industry and has seen a lot of growth over the last five years, ranking third or fourth in terms of gross exports on the agricultural ladder for the nation.

South Australia has been doing fairly well. What is the point of looking at sole agencies if we are going to put people out of work and find it more difficult to get the distribution network to operate? How will we increase the market share if we are cutting the number of milk vendor suppliers by about 60 per cent? That is an impossibility. We will propose a sole agency scenario, reduce the number of milk vendors by 60 per cent and maintain market share. It does not add up.

In conclusion, I appeal to the milk companies to stop fighting each other, to stop trying to buy each other's share, to look at the big picture and at the potential for markets in South Australia, Australia and overseas. They should consider the jobs of the people working in the milk factories, the milk vendors and the people who to supplement their incomes work with them part-time, and say, 'We have some niche areas in our processing plant that we can enhance. Let's look at the positive side and not make a mistake that could cause hundreds of people to lose their jobs in South Australia.

SUPERANNUATION (MISCELLANEOUS) AMENDMENT BILL

The Hon. S.J. BAKER (Deputy Premier) obtained leave and introduced a Bill for an Act to amend the Superannuation Act 1988 and to make a related amendment to the Superannuation (Benefits Scheme) Act 1992. Read a first time.

The Hon. S.J. BAKER: 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.

This Bill seeks to make amendments to the *Superannuation Act 1988*.

While most of the amendments are of a technical nature, there are several new provisions which are proposed to be introduced into the State Superannuation Scheme which provides superannuation benefits for government employees.

In respect to the technical amendments, if approved by the Parliament they will provide clarification to certain provisions, and improve the operation of the scheme. The more major technical amendments are in the area of investment activities and through the adoption of simpler early retirement formulas for certain groups of contributors. The amendments will also remove some minor inconsistencies, overcome some technical deficiencies, and make some modifications in order to comply with Commonwealth requirements.

The Bill also seeks to streamline the invalidity provisions by providing benefits for contributors who are not totally and permanently incapacitated for all employment. These are persons who are only partially disabled but medically unable to continue with their employment within the public sector.

New provisions are also introduced in respect of contributors who take extended leave without pay. It is also proposed to introduce new provisions that will provide for the Governor to appoint a person to fill a casual vacancy in an elected position on the Superannuation Board or the Investment Trust.

Overall the proposed amendments will improve the operations of the main State Superannuation Scheme.

I now wish to refer to some of the more specific changes proposed in the Bill.

An amendment is proposed to the provisions in the *Superannuation Act* in order to provide clarification in the situation where a contributor has his or her employment terminated on the ground of incompetence. In such circumstances, the proposed new clause will specify that such a person will be deemed to have resigned. Other minor amendments are included in the Bill to make it clear that where a person leaves the scheme for any reason (other than invalidity, retrenchment or death) and the member is over the age of 55 years, the normal early retirement benefits are payable. The person under the age of 55 years who has his or her services terminated because of incompetence will be able to preserve the accrued benefits.

The Bill also contains proposed amendments that deal with the investment of the fund by the South Australian Superannuation Fund Investment Trust. The existing wording of section 19 of the *Superannuation Act* is to be amended. In respect of investment in property outside Australia and in real property outside the State, it is proposed that the Minister be able to approve of a class of investment in addition to specific investments. This amendment will enable much quicker and more efficient investment switching to occur within approved parameters.

The Bill also includes a proposed general provision that will limit the level of pensions payable under the State Scheme at seventy five per cent of final salary. As some existing formulas in the Act will in future years, and in certain circumstances, enable a benefit to exceed this level, it is proposed to include a general limiting clause in the scheme's provisions. The Commonwealth's superannuation standards also set a maximum limit of seventy five per cent of salary for pensions.

An amendment is also proposed to the interest factor that is applied to the compulsorily preserved Superannuation Guarantee benefit that is determined under the Act in circumstances where a contributor resigns and elects to take an immediate refund of his or her own contributions (plus interest) paid to the scheme. In order to comply with recently issued Commonwealth standards in relation to the Superannuation Guarantee benefit, it is proposed to pay interest

on these accrued benefits at an average of the South Australian Financing Authority 10 year bond rate. This rate of interest will then also be consistent with the rate of interest applying in the Superannuation (Benefit Scheme) Act.

The Bill also introduces a revised formula for calculating the benefits payable to State Scheme contributors who resigned before 1 July 1992, and elected to preserve their accrued benefit. In order to calculate benefits for this group of contributors, reference is currently required to be made to the early retirement formula that existed before the Act was amended under the *Superannuation (Scheme Revision) Amendment Act 1992*. The administration of the scheme will accordingly be enhanced by incorporating back into the provisions of the existing Act, a simplified formula that is based on the benefit structure that applied before the restructuring occurred for persons who were contributors on 1 July 1992. The benefit structure is based on a maximum pension of 45.5% of final salary being payable at age 55 years. The lower level of maximum pension is because these contributors are entitled to or have received a separate productivity benefit which was not retained for scheme enhancements.

Due to a technical error in the application of the existing section 39(7), a minor amendment is proposed to the way in which this provision is applied to the retirement benefits payable after age 55 and invalidity benefits. The technical error occurred as a result of the amalgamation of the productivity benefit under the *Superannuation (Scheme Revision) Amendment Act 1992*. Without this amendment contributors would receive unintended higher levels of benefits.

An amendment is also proposed to be made to subsection (9) of Section 39 of the *Superannuation Act*, which currently excludes employees of Australian National Railways Commission from the option to preserve their accrued pension on resignation. The modification proposed will enable an employee of Australian National who resigns to take up employment with the new National Rail Corporation, to elect to preserve the accrued benefit. This will overcome potential difficulties created where, in particular, freight locomotive driver operations are effectively being moved from Australian National to the National Rail Corporation. In most cases the locomotive drivers are only resigning to apply for what is seen as their own job but with a new employer. In order to ensure that this provision covers all contributors who have already transferred to the National Rail Corporation, it is proposed to have this provision operate with effect from 5 June 1992 which is the date upon which the Corporation commenced operations. This proposed amendment also fulfils a commitment given to AN employees by the previous Government.

Clause 20 of the Bill deals with a technical deficiency in the existing formula under Clause 6 of Schedule 1 of the *Superannuation Act*. The amendment seeks to incorporate the productivity benefit enhancement into the existing formula as has already occurred with other formulas under the Act. The Bill also brings back into the provisions of the Act, the early retirement formula which is to apply to the small group of contributors who are still active members of the scheme but are not entitled to receive the benefits under the enhanced early retirement formula introduced under the *Superannuation (Scheme Revision) Amendment Act 1992*. The group referred to are the employees of the Australian National Railways Commission who are still contributing to the State Scheme. The formula being inserted into the Act is a simplified version of the old formula that applies to this group of employees.

The Bill also seeks to amend the *Superannuation Act* and a similar provision in the *Superannuation (Benefit Scheme) Act* to clarify the position that since both these Acts deal with the incorporated productivity superannuation benefit, no employer covered by these Acts can be bound by any award provision dealing with award superannuation.

A casual vacancy on the Superannuation Board or the Investment Trust can occur for example where a member dies or is forced to retire due to ill health. Where the person is an elected member, there is currently no option to fill the casual vacancy other than to have an election. Obviously the calling of an addition election is quite expensive and accordingly the Government believes it would be more appropriate to appoint a person to fill the vacancy until the next election is due. The Bill therefore proposes a facility for the Governor to appoint a contributor's representative where a casual vacancy occurs in an elected position where an election is due to be held within 12 months.

I now turn to the new provisions proposed in this Bill.

The Bill introduces a new lump sum benefit which is payable to contributors who, for medical reasons cannot continue with their current public sector job, but are medically assessed as having an incapacity for all kinds of work of less than 60 per cent of total incapacity or their incapacity is unlikely to be permanent. In other words it is proposed to introduce a partial disablement benefits provision into both the lump sum scheme and the pension scheme. Most schemes in the private sector have benefits for persons partially disabled and the Police Superannuation Scheme introduced partial disablement benefits in 1990. The benefit that will be paid under these new provisions will be a lump sum based on the contributor's accrued benefit calculated to the date of cessation of service. The new benefit structure will ensure that the insurance benefit based on future service until retirement age is not paid to a contributor who has been medically assessed as being able to work in other occupations or fields of employment.

The leave without pay provisions under the Act are being modified under this Bill to prevent some individuals from receiving unintended benefits. For example, under the present legislation some individuals are receiving a very high level of insurance cover for death and invalidity without making actual employee contributions to the scheme. This situation occurs in some instances notwithstanding the fact that the contributor had made a commitment to make such contributions when seeking approval for leave without pay. It is also proposed to tighten the provisions so that persons who take leave in excess of 12 months can only continue to contribute during the extended period of leave without pay where the costs of the full accruing liability are paid to the Treasurer. Such an amendment will prevent contributors from "double dipping" in employer benefits when working for another employer during the period of leave, and also increasing the liability on the State's taxpayers when not being actively engaged in employment by the State.

In order to comply with Commonwealth standards, the Act is also proposed to be amended to make it quite clear that a contributor or beneficiary who believes he or she has been unfairly dealt with by a Board decision, can appeal to the Board for a review of that decision.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 1 is formal.

Clause 2: Commencement

Clause 2 provides that the Act (except for clause 14*(i)*) will come into operation on proclamation. The effect of clause 14*(i)* is to enable a former employee of the Australian National Railways Commission who resigns to take up employment with the National Rail Corporation to preserve his or her benefits. The provision will come into operation retrospectively from the date on which the National Rail Corporation commenced operations.

Clause 3: Amendment of s. 4—Interpretation

Paragraph *(a)* amends section 6(4) of the principal Act to make it clear that a contributor whose employment terminates because of incompetence will be entitled to benefits applicable on retirement or resignation. Subsections (8), (9) and (10) inserted by paragraph *(b)* deal with the problem that arises when a contributor who is on leave without pay fails to pay his or her contributions. This problem does not arise in relation to contributors in receipt of a salary because contributions are deducted before the salary is paid. The penalty for failure to pay on time is that the contributor will be regarded as a non-active contributor and as a consequence will lose the insurance component of benefits under the Act until his or her contributions are brought up to date.

Clause 4: The Board's Membership

Clause 5: The Trust's Membership

Clauses 4 and 5 amend sections 8 and 13 respectively to enable a casual vacancy in the office of an elected member of the Board or the Trust to be filled by a person appointed by the Governor. Subsection (5) of both sections provides that the appointment can only be for the balance of the original term.

Clause 6: Amendment of s. 19—Investment of the Fund

Clause 6 replaces section 19(3) of the *Superannuation Act 1988* with two new subsections. These subsections will enable the Minister to authorise a class of investments by the South Australian Superannuation Fund Investment Trust and to vary or revoke such an authorisation.

Clause 7: Amendment of s. 23—Contribution rates

Clause 7 makes two amendments to the provisions of section 23 allowing contributors on leave without pay to contribute to the Scheme. The first is a requirement that the Minister be satisfied with arrangements for reimbursement to the Government of the cost of

benefits in respect of the period of leave without pay and the second (subsection (6a)) is designed to prevent circumvention on the restrictions limiting contribution while on leave without pay by people who take leave without pay for a series of periods of 12 months or less connected by periods of paid leave.

Clause 8: Amendment of s. 28—Resignation and preservation of benefits

Clause 8 amends section 28 to provide that the amount payable under subsection (1d) attracts interest instead of being adjusted to reflect changes in the Consumer Price Index.

Clause 9: Amendment of s. 31—Termination of employment on invalidity

Clause 9 amends section 31 of the principal Act by reducing the invalidity benefit for a contributor whose employment is terminated on the ground of invalidity but whose incapacity for work is assessed by the Board as being less than 60 per cent of total incapacity.

Clause 10: Amendment of s. 34—Retirement

Clause 10 amends section 34 of the principal Act. Paragraph *(a)* amends the definition of "B" in subsection (2) to make it clear that "B" does not include a period when the contributor was not an active contributor. New subsection (5) added by paragraph *(b)* limits the amount of retirement pensions to 75 per cent of final salary. Subsection (6) sets out the circumstances in which an old scheme contributor will be taken to have retired.

Clause 11: Amendment of s. 35—Retrenchment

Clause 11 amends section 35 of the principal Act. A contributor to the pension scheme who is retrenched but who is under 45 years of age or has been a contributor for less than five years is entitled to a reduced benefit which may be less than the benefit to which he or she would have been entitled to on resignation. This amendment enables such a contributor to elect to receive benefits as though he or she had resigned in these circumstances.

Clause 12: Amendment of s. 37—Invalidity

Clause 12 amends section 37 of the principal Act to reduce the benefit payable in the pension scheme to a contributor whose employment is terminated on account of invalidity and whose incapacity for work is assessed at less than 60 per cent of total incapacity. The reduced benefit may be less than the benefit that the contributor would have received if he or she had resigned. The Bill inserts new subsection (3c) into section 37 to give the contributor the option of electing benefits on resignation in these circumstances.

Clause 13: Amendment of s. 38—Death of contributor

Clause 13 amends section 38 of the principal Act. At the moment benefits for the spouse and children of a contributor whose employment is terminated by death and who has not reached the age of retirement are based on full contribution points credited to the contributor up to the age of retirement. This is not appropriate if the contributor has been employed part time during part or all of his or her period of employment. The new provision inserted by this clause reduces the number of contribution points to be credited in respect of future years of service where the contributor had been employed on a part time basis in a way that mirrors the basis on which contribution points are extrapolated under section 24(4).

Clause 14: Amendment of s. 39—Resignation and preservation of benefits

Clause 14 amends section 39 of the principal Act. Paragraph *(a)* makes it clear that the voluntary termination of employment by a contributor before 55 is to be regarded as resignation. This ties in with earlier amendments that provide that voluntary termination of employment after 55 is to be regarded as retirement. Paragraph *(b)* limits the value of "M" in the formula in subsection (1d)*(a)* to the number of months of the contribution period occurring before 1 July 1992. Paragraphs *(c)* and *(d)* provide for interest to be paid on the amount referred to in subsection (1d)*(b)* instead of that amount being adjusted to reflect changes in the Consumer Price Index. Paragraph *(e)* rectifies an error in subsection (4). Paragraph *(f)* makes the technical adjustment in relation to subsection (7) already referred to. Paragraph *(g)* is consequential. Paragraph *(h)* makes subsection (8c) subject to other provisions of the Act—in particular clause 15 of schedule 1 and clause 15a of that schedule to be inserted by clause 20 of the Bill. Paragraph *(i)—see the notes to clause 2*.

Clause 15: Amendment of s. 39a—Resignation or retirement pursuant to a voluntary separation package

Clause 15 amends section 39a of the principal Act. This section was originally inserted on the basis that a contributor was able to resign from employment up to the age of retirement. Earlier amendments made by the Bill make it clear that voluntary termination of employment by a contributor after 55 is to be regarded as retirement. The amendments to section 39a are consequential on this change.

Clause 16: Amendment of s. 43a—Percentage of pension, etc., to be charged against contribution account

Clause 16 adds a subsection to section 43a to remove any doubt that different proportions of a pension can be charged against a contributor's contribution account in respect of different periods during which the pension is payable.

Clause 17: Amendment of s. 43b—Exclusion of benefits under awards, etc.

Clause 17 amends section 43b of the principal Act by inserting a new subsection (2) which prevents an award operating retrospectively to provide additional benefits to those included from 1 July 1992 by the *Superannuation (Scheme Revision) Amendment Act 1992*.

Clause 18: Amendment of s. 44—Review of the Board's decision

Clause 18 amends section 44 of the principal Act to allow a person who is dissatisfied with a decision of the Board to apply to the Board for a review of the decision.

Clause 19: Amendment of s. 45—Effect of workers compensation, etc., on pensions

Clause 19 is consequential on an amendment to the regulations under the principal Act which will allow a retrenchment pensioner to commute part of the pension on attaining the age of 55 years instead of having to wait until 60. Section 45 provides for reduction of pensions where workers compensation or other income is received before the age of 60. Section 45(1)*(d)* compares the aggregate of the pension and other income with the contributor's notional pension and it is important that the amount of the pension before commutation is used in this comparison.

Clause 20: Amendment of schedule 1—Transitional provisions

Clause 20 amends schedule 1 of the principal Act. Paragraphs *(a)*, *(b)* and *(c)* insert a new formula and definitions in clause 6 of the schedule. Paragraph *(d)* is consequential. Clause 15(3) inserted by paragraph *(e)* underlines the fact that when benefits under the PSESS scheme are paid into an account in the name of the contributor under section 28 of the *Superannuation (Benefit Scheme) Act 1992*, the contributor will have received those benefits. Paragraph *(f)* inserts a new early retirement formula for contributors who resigned and preserved their benefits before 1 July 1992 and for contributors referred to in clause 15(1) who are old scheme contributors and who retire early.

Clause 21: Amendment of Superannuation (Benefit Scheme) Act 1992

Clause 21 amends section 19 of the *Superannuation (Benefit Scheme) Act 1992* for the same reasons as clause 17 amends section 43b of the *Superannuation Act 1988*.

Mr ATKINSON secured the adjournment of the debate.

CROWN LANDS (LIABILITY OF THE CROWN) AMENDMENT BILL

The Hon. D.C. WOTTON (Minister for the Environment and Natural Resources) obtained leave and introduced a Bill for an Act to amend the Crown Lands Act 1929. Read a first time.

The Hon. D.C. WOTTON: 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 limit the liability of the Crown in relation to unoccupied Crown land.

Land in South Australia falls into three broad categories: land alienated from the Crown in fee simple, land subject to Crown leases (perpetual, pastoral, irrigation and miscellaneous) and unalienated Crown land. Unalienated land is made up largely of land for which Western culture has little use. It forms a very large proportion of the land mass of South Australia and it is mostly unoccupied. Because of its size and the fact that it is unoccupied it is not possible for anyone, including the Government, to know of the dangers waiting to trap the unwary visitor. Even when the dangers are known there is no effective way of protecting people in remote areas. Employing staff to patrol danger spots is prohibitively expensive. Fencing is also too expensive and impractical for other reasons. Many of the dangers in remote areas are caused by the use that people make of the land. Trail bike riding is a good example. If an area of bike trails is fenced off trail bike riders are likely to look for another area. The other

weakness of fencing is that it is easily destroyed by bolt or wire cutters or by other means. Warning signs are also of little use because of a minority who are prepared to remove or deface them.

The Bill before the House limits the liability of the Crown in respect of injury, damage or loss occurring on or emanating from unoccupied Crown land. The effect of the Bill is that the Crown is not liable in respect of a naturally occurring danger or a dangerous situation created by someone else. The Crown will remain liable however for any danger created or contributed to by the Crown.

The limitation of liability provided by the Bill only applies in respect of unoccupied Crown land which the Bill defines to be land that is not used by the Crown for any purpose. The Crown will continue to be liable for failure to take reasonable care to protect people from dangers on land that it uses. For example the Crown will be under the normal duty of care to warn members of the public of a slippery floor in a toilet block in a national park or to lay out walking trails in safe areas or with adequate safety measures.

The Bill recognises that although technically the Crown has control of unalienated Crown land simply because the land has not been alienated to anyone the Crown does not have control of that land in a practical sense because of its size and remoteness. Under the new provision to be inserted into the *Crown Lands Act 1929* by the Bill members of the public who venture onto unalienated Crown land are responsible for their own safety and cannot expect the Government to have been there before them to identify and protect them against every danger.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 1 is formal.

Clause 2: Insertion of s. 271f—Liability of Crown in relation to Crown lands

Clause 2 inserts new section 271f into the principal Act. Subsection (1) limits the liability of the Crown on unoccupied Crown land to injury, damage or loss caused by the Crown or by an agent or instrumentality of the Crown or by an officer or employee of the Crown (see the definition of "the Crown" in subsection (2)). The definition of "Crown land" excludes alienated land from the definition (see paragraphs *(a)*, *(b)* and *(c)*) but includes reserves under the *National Parks and Wildlife Act 1972* and wilderness protection areas and zones under the *Wilderness Protection Act 1992* (paragraph *(b)*). The reason is that although reserves, areas and zones are constituted principally of unalienated land they may include land alienated to a Minister, body or other person. The effect of the definition of "unoccupied Crown land" is that land will be taken to be occupied if it is being used by the Crown for any purpose. Subsection (3) prevents an argument being raised that the Crown is using land simply because it has leased, or granted a licence or easement over, the land or has dedicated the land for a particular purpose or constituted it as a reserve, area or zone referred to in subsection (3)*(d)*.

Mr ATKINSON secured the adjournment of the debate.

AGRICULTURAL AND VETERINARY CHEMICALS (SOUTH AUSTRALIA) BILL

The Hon. D.S. BAKER (Minister for Primary Industries) obtained leave and introduced a Bill for an Act to apply certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of South Australia; and for other purposes. Read a first time.

The Hon. D.S. BAKER: 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 Government is pleased to be supporting the *Agricultural and Veterinary Chemicals (South Australia) Bill 1994*. This Bill embodies three years of work and negotiation by State and Commonwealth officers throughout Australia, and is the culmination of a vision held by industry and Government alike. That vision is of a single, national system for evaluating and registering agricultural and veterinary chemicals before they are sold for use in any State or Territory of Australia.

The National Registration Scheme, as it is known, will replace the separate schemes for evaluating and registering chemicals existing in each individual State. These State schemes emerged during the late 1930's to mid-1950's. The purpose in those days was primarily to protect farmers from those unscrupulous enough to try to sell ineffective products by claiming them to be remedies for any number of infestations or diseases.

The need to ensure that the public is not deceived about the chemicals available on the market has not changed. However, the technology, use and role of agricultural and veterinary chemicals is vastly different from those early days. Agricultural and veterinary chemicals such as pesticides and herbicides, are used in homes and home gardens, as well as in commercial primary production. The technology going into the development and manufacture of chemical products is increasingly sophisticated and costly. And we now have a greater understanding of the way chemicals work and their potential impact on human beings, animals, plants and the environment. For all these reasons, the whole community has an interest in the chemicals available for use around homes and in the production of food and fibre. And the community, quite rightly, demand a high level of scrutiny before chemicals products are released onto the market.

That level of scrutiny is realistically beyond the resources and expertise of any one organisation and, for all practical purposes, possession of the necessary resources and expertise is beyond the means of any one State. Departments of Primary Industries, who have generally been responsible for administering each State's registration scheme for agricultural and veterinary chemicals, have been co-operating with other State and Commonwealth agencies for over 20 years in order to share resources and/or gain access to expertise. Furthermore, the development and marketing of chemical products by the chemical industry has little to do with State boundaries, or even national boundaries. All this goes to making a national system for the evaluation of agricultural and veterinary chemicals a logical and practical step to take.

The Bill before us is almost identical to the Bills that will be considered by the Parliaments and Legislatures of each State and the Northern Territory. The National Registration Scheme will be created by a complementary adoptive system of State and Commonwealth laws. The Commonwealth has agreed to legislate to create the Agricultural and Veterinary Chemicals Code, known as the Agvet Code, which contains the detailed provision for the evaluation, registration and sale of agricultural and veterinary chemicals. Each State and the Northern Territory must legislate to adopt the Agvet Code, and so make the scheme a national one. The Commonwealth Government have created an independent statutory authority, known as the National Registration Authority or NRA, to administer the National Registration Scheme. The Commonwealth Parliament has already considered and passed the *Agricultural and Veterinary Chemicals Code Act 1994* containing the Agvet Code. The purpose of the Bill is to adopt the Agvet Code and so make South Australia a party to the National Registration Scheme.

It is not appropriate to list all the details of the National Registration Scheme, however, the important features of the Scheme should be noted. The National Registration Scheme will evaluate, register and control the sale of agricultural and veterinary chemical products, and the active constituents that go into formulating those products. In so doing, the National Registration Scheme maintains the controls that already exist in South Australia at the same time as it contains several significant new features. As far as evaluating chemicals is concerned, the Agvet Code explicitly specifies that regard must be had to human health, animal and plant health, the efficacy of the product, impact on the environment, and implications for international trade. The Scheme will incorporate a formal program for reviewing old chemicals to ensure they meet contemporary safety and performance standards, and will be able to de-register those products which do not meet those standards. In fairness to the research and development costs associated with providing the data for product reviews, the National Registration Scheme contains a mechanism for enabling the original provider of data to be compensated by other manufacturers who wish to use that data to support their own products. The NRA will have the ability to issue notices recalling stocks of unregistered products, products which are improperly formulated, improperly labelled, or contaminated, and any product which has been found to be too dangerous to public health or a risk to international trade. Under certain circumstances, the NRA will also be able to issue permits for the use of chemical products in ways which would normally be an offence. The sorts of permits envisaged are, for example, those allowing persons to

conduct research trials using products which are unregistered, or allowing the use of a product in a way which is not on the product label.

It only remains to be said of the National Registration Scheme that our intention is that no one will be disadvantaged by the changeover from the State registration scheme to the new National Registration Scheme. Companies with chemical products registered under the current State laws will have their products transferred to the National Registration Scheme with full registration status. Primary producers and householders can expect the products they rely on to continue to be available.

In addition, South Australia (and all other States and Territories) will continue to be involved with the NRA and the National Registration Scheme. The use of chemicals after they are sold will be a matter for State law, and several mechanisms will exist to maintain communication between States and the NRA. The most important of these, in terms of day-to-day operations, are the officers in each State and Territory who have been designated as Chemicals Co-ordinators, and the network that these Co-ordinators will form for advising the NRA on the practical aspects of the Scheme's operation.

Before moving on to describe specific aspects of the Bill, it is worth pointing out the high degree of support that exists for the National Registration Scheme. Firstly, it is acknowledged that much of the work in developing the National Registration Scheme took place under the previous Government. The previous Government, like the new Liberal Government, recognised the benefits to this State of participating in a national scheme for evaluating and registering agricultural and veterinary chemicals. Secondly, the chemical industry is fully supportive of the National Registration Scheme. This is an important point, since it is the chemical industry that will be subject to the regulation contained in the Agvet Code and who will, within 5 years, be fully funding the cost of running the National Registration Scheme. Thirdly, the Scheme is fully supported by the primary production sector, who are the major users of agricultural and veterinary chemicals. Environmental and public advocacy groups did express some criticisms that the Agvet Code did not go far enough in some areas. However, the Commonwealth Senate Standing Committee on Rural and Regional Affairs, to which these criticisms were presented concluded that the Bills did not need amendment. A harmonised scheme of this significance is an achievement in itself; it already embodies the most up-to-date knowledge on the management of agricultural and veterinary chemicals, compared to the schemes of some States. Nevertheless, all parties to the National Registration Scheme recognise that adjustment and fine-tuning may need to take place after the Scheme has been running for a while. In fact, the NRA has already undertaken to review the Scheme's operations in about 18 months time, with particular regard to public access to information, cost recovery, third party appeals, and control of use after sale. Finally, the National Registration Scheme obviously has the support of all the State and Commonwealth agencies involved in its conception and development, evidenced by the fact that all States will be legislating to adopt the Scheme. It should also be noted that the *Agricultural and Veterinary Chemicals Code Act 1994* passed through both Houses of the Commonwealth Parliament without amendment.

Turning to the provisions of the Bill, it is worth reiterating that the Bill is in most part a model Bill which will be used by all States and Territories for implementing the National Registration Scheme, and that it follows a complementary adoptive format. Clauses 5 and 6 of the Bill adopt the Agvet Code and its associated Agvet Regulations, as established by the Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994*, as laws of South Australia. Much of the rest of the Bill is designed to ensure that, although each State and the Northern Territory has separately legislated to adopt the Agvet Code into its own laws, the Code nevertheless operates as though it were a single national Code administered by the NRA.

This will be accomplished, firstly, by interpreting the Agvet Code and Regulations of South Australia (and every other State and Territory) using the Commonwealth *Acts Interpretation Act 1901* so that a uniform interpretation applies across all States, and by providing for the review of decisions and for public access to information to be governed by Commonwealth administrative laws such as the *Administrative Appeals Tribunal Act 1975* and the *Freedom of Information Act 1982*, so that these matters are also dealt with uniformly across the nation. These are the matters dealt with in clauses 7 and 8, and in Parts 3 and 5 of the Bill.

Secondly, administration of the Agvet Code is delegated to the NRA. In other words, although the Agvet Code has become a law of South Australia, the NRA will administer those laws along with the Agvet Code adopted under the laws of each other State and Territory. This is accomplished in Part 7 of the Bill. It is also logical that, with a Commonwealth body administering the Code, and a need to ensure the Code operates uniformly across all States, that Part 10 of the Bill gives the Commonwealth Director of Public Prosecutions the ability to carry out any prosecutions under the Code. Similarly, administration of the Agvet Code as a single national scheme will be enhanced by ensuring that civil or criminal matters arising out of the Agvet Code can be heard by the court best placed to deal with the matter. Accordingly Part 6 of the Bill ensures that the jurisdiction of State courts, and cross-vesting arrangements that already exist, are not diminished, and that the Federal Court is empowered to deal with civil matters.

Although the administration of the National Registration Scheme is in the hands of the NRA, it is still the case that State officers may be best placed to deal with certain aspects of the Scheme's operations. Clause 28 enables State officers to become inspectors for this purpose.

Chemical products currently registered in South Australia under either the *Stock Medicines Act 1939* or *Agricultural Chemicals Act 1955* will transfer to the National Registration Scheme, and the National Registration Scheme will then be responsible for the registration of those chemicals. Clause 30 of the Bill enables the Department of Primary Industries, where necessary, to release to the NRA documents or samples which have been received and held by the Department in connection with registering chemical products in South Australia.

As previously mentioned, the National Registration Scheme includes a mechanism for issuing permits relating to the use of chemical products. The use of chemicals is a matter for State law. However, there are obvious benefits in having the body which registers chemical products, and therefore possesses considerable information on those products, also able to consider permits for using those chemicals. The purpose of section 33 of the Bill is to enable certain State laws to be designated as 'eligible laws' and so allow the NRA to issue permits where appropriate.

A particularly noteworthy aspect of the Bill is the arrangements for the safeguarding of the State's existing health and safety laws from inconsistency with, or any other unintended interference by, the Agvet Code or Regulations. Acts such as the *Controlled Substances Act 1984*, *Dangerous Substances Act 1979* and *Occupational Safety, Health and Welfare Act 1986* contain provisions relating to the possession, use, handling and storage of various drugs, poisons and chemicals, and at some time in the future there may arise a point of overlap with the Agvet Code. This is the purpose of clause 36 of the Bill. This clause allows for regulations to be made, where necessary, which prevent provisions of the Agvet Code from over-riding or otherwise disrupting the laws of this State. There may also arise emergency situations where the use of a chemical is a necessary part of managing the emergency and where a rapid local response is required. For example, last year's mouse plague necessitated the use of strychnine baits, under strictly controlled conditions, to prevent huge damage to crops and agricultural lands. The State must be able to respond quickly to these situations as they arise.

The fact is also that the Agvet Code and Regulations are contained in Commonwealth law and administered by a Commonwealth body. Whilst various mechanisms will exist to ensure that all parties to the National Registration Scheme are involved in policy and decision making on issues of importance, clause 36 also enables South Australia to take action if the Agvet Code or Regulations were ever considered to prejudice the policies of this State, as contained in the laws of this Parliament. I emphasise that all these situations are contingencies; we do not expect them to occur and, especially in the case of emergencies, we hope they do not occur. However, it would be irresponsible to set up a situation in which the State could not act.

Finally, the Schedule to the Bill contains consequential amendments to the *Agricultural Chemicals Act 1955*, *Stock Foods Act 1941* and *Stock Medicines Act 1939*. Each of these Acts is to be amended to make it clear that, where the evaluation, registration and supply of an agricultural or veterinary chemical product is dealt with by the National Registration Scheme, the sale of that product is exempt from further regulation under the *Agricultural Chemicals Act 1955*, *Stock Foods Act 1941* and *Stock Medicines Act 1939*. Nevertheless, where a chemical product is not covered by the National Registration Scheme, for example in relation to its use, the provisions of the existing laws will apply.

The *Agricultural Chemicals Act* is also to be amended to allow the registration period which would normally end on 30 June 1994

to be extended if necessary. The purpose of this clause is to prevent the need to renew the registration of agricultural chemicals in South Australia should the National Registration Scheme not commence exactly on 1 July 1994 as planned. Obviously, the exercise of renewing the registration of agricultural chemicals when the national scheme is imminent would be an unwarranted inconvenience to all concerned. However, in the unlikely event that the commencement of the National Registration Scheme was going to be delayed for some time, we may need to renew registrations. In that case, the Government would review fees payable and, if appropriate, vary the relevant fee regulations. The registration of stock medicines under the *Stock Medicines Act* do not expire until June 1995. No extension is considered necessary since the National Registration Scheme should have commenced by then.

In summary, it is expected that this measure will lead to advantages for all interested parties—for the chemical industry through the introduction of an National Registration Scheme; for the primary production sector through greater scrutiny and information on chemical products; for the environmental protection sector through greater emphasis on proper assessment of chemical products; and for the public sector through a more efficient and rational administration system.

The Government is pleased to support and promote this Bill.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause provides for the citation of the proposed Act.

Clause 2: Commencement

This clause provides for the proposed Act to commence on a proclaimed day (or days).

Clause 3: Definitions

This clause contains definitions of expressions used in the Bill.

Clause 4: Jervis Bay Territory

This clause provides that the Jervis Bay Territory is to be taken to be part of the Australian Capital Territory for the purposes of the Agvet scheme.

Clause 5: Application of Agvet Code in this jurisdiction

This clause applies the Agricultural and Veterinary Chemicals Code set out in the schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth, as in force for the time being, as a law of the State. The Code, as applying, will be cited as the Agvet Code of South Australia.

Clause 6: Application of Agvet Regulations in this jurisdiction

This clause applies the regulations in force for the time being under section 6 of the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth as regulations in force for the purposes of the Agvet Code of South Australia.

Clause 7: Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

This clause provides that the *Acts Interpretation Act 1901* of the Commonwealth will apply as a law of the State for the purposes of the Agvet Code and Agvet Regulations. The State *Acts Interpretation Act 1915* will not apply. This approach will assist in the uniform interpretation of the Code throughout Australia.

Clause 8: Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

This clause applies certain Commonwealth laws with respect to offences against the Agvet Code or Agvet Regulations.

Clause 9: References to Agvet Codes and Agvet Regulations of other jurisdictions

This clause recognises references to the Agvet Code and Regulations of other jurisdictions.

Clause 10: References to Agvet Codes and Agvet Regulations

The object of this clause is to help to ensure that the Agvet Code and Regulations of this State, together with those of other jurisdictions, operate, so far as possible, as if they constituted a single national law applying throughout Australia. The Agvet laws of the other jurisdictions will have the same provision. The interlocking of these provisions will enable (in most instances) persons and companies to rely on a uniform scheme applying across Australia.

Clause 11: Agvet Code of this jurisdiction

The Agvet laws are to bind the Crown in all capacities.

Clause 12: Agvet Code of other jurisdictions

The Crown in right of South Australia will be bound by the Agvet Code of the other jurisdictions.

Clause 13: Crown not liable to prosecution

This clause provides that nothing in these laws renders the Crown in any capacity liable to be prosecuted for an offence.

Clause 14: This Part overrides the prerogative

This clause makes it clear that where the Agvet laws of another jurisdiction bind the Crown in right of this State by virtue of these provisions, those laws override any prerogative right or privilege of the Crown.

Clause 15: Object

It is intended that the Agvet laws of each jurisdiction will be administered on a uniform basis.

Clause 16: Application of Commonwealth administrative laws in relation to applicable provisions

This clause applies the Commonwealth administrative laws as laws of this State in relation to anything arising in respect of an applicable provision of this State (as defined). For the purposes of the law of this State, anything arising under an applicable provision of this State is taken to arise under Commonwealth law, except as prescribed by the regulations.

Clause 17: Functions and powers conferred on Commonwealth officers and authorities

This clause confers the appropriate functions and powers on Commonwealth officers or authorities in connection with the application of Commonwealth administrative laws.

Clause 18: Reference in Commonwealth administrative law to a provision of another law

This is a technical provision that deals with how references in the applied Commonwealth laws to laws of the Commonwealth are to be construed.

Clause 19: Jurisdiction of Federal Court

The Federal Court is to have jurisdiction with respect to all civil matters arising under the applicable provisions. However, this vesting of jurisdiction will not affect the jurisdiction of State courts.

Clause 20: Exercise of jurisdiction under cross-vesting provisions

The cross-vesting laws will still apply.

Clause 21: Conferral of functions and powers on NRA

This clause formally confers on the NRA the powers conferred on it under the Agvet Code. Necessary or convenient incidental powers are also expressly conferred by this clause.

Clause 22: Agreements and arrangements

The State Minister will be empowered to enter into agreements or arrangements with the Commonwealth Minister for the performance of functions or the exercise of powers by the NRA as an agent of the State.

Clause 23: Conferral of other functions and powers for purposes of law in this jurisdiction

The NRA is also to be expressly conferred with the power to do acts in this State in the exercise of functions conferred by the Agvet laws of other jurisdictions.

Clause 24: Commonwealth Minister may give directions in exceptional circumstances

The Commonwealth Minister will be able to give directions to the NRA in relation to functions and powers conferred on it under this national scheme.

Clause 25: Orders

Various orders are to apply in this State as if they were regulations of this jurisdiction.

Clause 26: Manufacturing principles

Various manufacturing principles under the Commonwealth legislation are to apply for the purposes of the Code.

Clause 27: Delegation

The Commonwealth Minister's power of delegation under Commonwealth law is expressed to extend to the delegation of powers conferred on the Minister under these laws.

Clause 28: Conferral of powers on State officers

This clause will allow the conferral of the powers and functions of an inspector on a State officer.

Clause 29: Application of fees and taxes

Fees, taxes and other money payable under the scheme must be paid to the Commonwealth.

Clause 30: Documents or substances held by previous registering authority may be given to NRA

This clause will facilitate the transfer of documents and substances from State authorities to the NRA on the commencement of the uniform scheme.

Clause 31: Exemptions from liability for damages

It is important to protect State authorities and agencies from potential liabilities arising in relation to the administration and operation of the scheme.

Clause 32: Regulations

The Governor will be able to make regulations for the purposes of this measure.

Clause 33: Eligible laws
This is a technical provision relating to the permit system under the Code.

Clause 34: Fees (including taxes)
This clause imposes the fees prescribed by the regulations.

Clause 35: Conferral of functions on Commonwealth Director of Public Prosecutions
The Commonwealth Director of Public Prosecutions will be empowered to initiate and conduct prosecutions for the purposes of the scheme.

Clause 36: Relationship with other State laws
This clause will ensure that action can be taken to give any State law precedence over the Code, or to modify the effect of the Code if necessary.

Schedule
The schedule makes various consequential amendments to the *Agricultural Chemicals Act 1955*, the *Stock Foods Act 1941* and the *Stock Medicines Act 1939*.

Mr ATKINSON secured the adjournment of the debate.

PASSENGER TRANSPORT BILL

Second Reading.

The Hon. G.A. INGERSON (Minister for Tourism): 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 introduction of this *Passenger Transport Bill* in the first week of the first session of the new Parliament confirmed the priority that the Government places on the need to revitalise passenger transport services in South Australia.

The Bill honours undertakings made over the past 18 months that a Liberal Government would regard the delivery of passenger transport services as one of four basic areas for service delivery, together with education, health and personal/public safety.

The Bill provides the framework for implementing the detailed, innovative Passenger Transport Strategy released by the Liberal Party in January 1993—a strategy designed to provide more South Australians with more access to more passenger transport services for every dollar spent by customers and taxpayers.

The Bill also reflects extensive consultation over a number of years—and intense consultation in recent weeks—with all sectors of the industry, owners, operators, deliverers, consumers, conservationists, lawyers and trade unions etc.

The Government, together with the industry at large, is determined to reverse the perception that buses, trains and trams—also taxis and vehicles for hire—are a transport option of last resort.

And we are determined to reverse the drift to ever higher costs and ever less relevance that has characterised our public transport system for too many years.

In essence, this Bill heralds the start of a long haul to win back public confidence in public transport by providing a comprehensive, customer-friendly service that is safe, reliable, relevant, affordable, clean and cost effective.

When considering the initiatives in this Bill, I ask honourable members to consider the following facts—

1. That over the past 11 years alone the State Transport Authority (STA) has lost 30.3 million passenger journeys.

2. That over the same period the government has poured nearly $1.3 billion of taxpayers' funds into subsidising the operations of the STA, with subsidies increasing from $55m in 1981-82 to about $140 million this year.

3. That a further $250m of taxpayers' funds has been spent since 1981-82 for fare concession reimbursements on top of full fares which are already heavily subsidised.

4. That this financial year the STA estimates it will lose a further 800 000 passenger journeys, and

5. Today, the STA caters for only 6% of daily passenger journeys in the Adelaide area—while taxis provide only 0.4% of all trips in the Adelaide area.

Today patronage on STA services is lower than it was in 1970—24 years ago—despite a 30% increase in our population over the same period!

I pose the following challenge to Hon. Members. Do we as a Parliament continue to tolerate the mortgage of both passengers' and taxpayers' funds that has characterised our public transport system over the past decade? Or do we act decisively—and act now—to stop the rot.

For its part, the Government is determined to stop the rot. We embrace this challenge because we believe efficient public transport is vital to a society which cares about its physical environment and the services available to its citizens. We also maintain that with growing environmental problems and an ageing population the need for a cost effective and well designed public transport system has never been more apparent.

I am pleased to confirm that this view—this challenge—is shared overwhelmingly by the industry at large, including the STA, in their responses to this Bill to date.

Background

In 1974 the Government of the day thought the answer to public transport was to buy out the private operators and place their operations, along with those of the Municipal Tramways Trust and the metropolitan railways all under a single, heavily subsidised body, the State Transport Authority. In essence, the approach relied on government control and heavy public subsidy.

With the benefit of hindsight we could see that this strategy could provide temporary relief only. Patronage did turn around—but not for long, while the level of subsidies skyrocketed from practically no subsidy in 1974 to $144m last year.

Why has all this money been spent to so little apparent effect?

One answer lies in the inefficiency of a government monopoly. During the 1970s every extra dollar spent by way of subsidy bought only sixteen cents in extra services, that is, extra kilometres on the road. Admittedly this was a time of new depots and of fleet refurbishment. But even if we exclude such factors, the increase in tangible services still represented well under half the increase in subsidy. The rest was swallowed in higher head office costs and inefficient work practices.

But lest this be seen as a damning indictment of the managers of the time, it should be noted that a similar situation applied in practically every city which adopted the strategy. It was the strategy that was at fault, not the people.

A second answer lies in the way our public transport system has failed to adapt to the changing travel patterns of Adelaide's population. The radial network caters for the dwindling proportion of people who work and shop in the central business district. The increasingly localised and cross-suburban nature of our travel has not been catered for. In other words our traditional public transport system has become more and more irrelevant, catering only for the relatively few commuters who find it convenient and for those who are forced to use public transport because they don't have access to a car.

The STA itself recognised this problem. In 1990 it produced a corporate plan which would have the Authority concentrating on longer distance, mass transit services while entering into agreements with a variety of non-SA service providers to complement mass transit with local area and low patronage services—those services for which the SA felt itself ill-fitted to provide. The corporate plan provided for 10% of its services to be provided by non-SA operators in 1994. It was this strategy which produced Transit Link.

But while the SA has been quite able to shift resources into the mass transit the experience since 1990 has demonstrated how difficult it is for an operating authority to be able to change its nature to the extent necessary for a genuine partnership in the provision of public transport to occur. Apart from one or two small projects, there are no complementary services.

Former governments also recognised the need for reform. In 1987 Professor Pete Fielding was commissioned to provide solutions. His main recommendation was to separate the policy and service delivery functions of the SA and make much greater use of competitively contracted services. He proposed a Metropolitan Transport Authority to determine needs and procure services to meet those needs. The MTA would also have responsibility for taxis, hire cars and private buses.

This approach was endorsed by Dr. Ian Radbone, commissioned by the former Government to report on how to deal with the mess of conflicting policies relating to taxis, hire cars and mini-buses. Dr. Radbone recommended, however that the policy body be responsible for passenger transport throughout the State and not just the metropolitan area.

The Government's strategy to reform public transport

The government has adopted the Fielding and Radbone Reports as the basis for our proposed reform to the State's public transport system. Evidence from the United States, Scandinavia and London has bolstered our belief that the reintroduction or private bus companies through competitively tendered contracts is the most effective way to arrest both the decline in patronage and the steady increase in taxpayer commitment.

It is important to note that this approach does not involve the deregulation of public transport. Clearly some who have criticised this Bill have assumed that the Government had in mind deregulation along the lines taken by the United Kingdom or New Zealand. The UK experience has been very valuable because it has demonstrated the general failure of deregulation while at the same time illustrating the success of contracting services. This is because London was excluded from the deregulation policy adopted in 1985. In that city, costs have fallen, services have increased and—most importantly—patronage has increased as well.

Another misunderstanding has been that we intend to return to the situation applying in 1974. While we believe that it was a mistake to nationalise the private bus companies in that year, the Government does not plan a return to the old situation. Private bus companies will once again play a significant part in the provision of public transport in Adelaide but there will be three important features.

Firstly, companies will have to compete for contracts to provide services. Previously there was very little real competition and an operator could assume the licence was permanent.

Second, in 1970 it was expected that both the MTT and the private companies would be financially self-sufficient. The Labor Government elected that year began to subsidise the government network heavily, but did not extend this generosity to the private sector.

This Government recognisees that public transport in Adelaide can no longer be regarded simply as a commercial operation. It is an important social service, essential to our quality of lifestyle. In future, providers of services will be subsidised where necessary, the actual amount being determined through the competitive tendering process.

Third, for the first time we will have a body, the Passenger Transport Board, devoted to passenger transport services, whether publicly owned or private, whether metropolitan or rural. The Passenger Transport Board will co-ordinate, regulate and promote public transport. The integrated metropolitan network that has been established since 1974 will be maintained. Furthermore the Board will have an important role in ensuring that the decisions made enhance the role of public transport.

Relieved of operating responsibilities, the Passenger Transport Board will have a clear mandate. These have been expressed as objectives in the legislation itself. I quote from clause three:

The object of this Act is to benefit the public of South Australia through the creation of a passenger transport network which—

(a) is focussed on serving the customer; and
(b) provides accessibility to needed services, especially for the transport of disadvantaged; and
(c) is safe; and
(d) encourage transport choices which minimise harm to the environment;

and

(e) is efficient in its use physical and financial resources; and
(f) promotes social justice.

Hon. Members will note a distinction has been made between providing accessibility for the transport disadvantaged and the concept of social justice. Of course providing accessibility in this way is an important social justice measure in itself, but the Government also wishes the Board to be aware that if public transport is to result in a transfer of resources from one part of the community to another, it should be from the better off to the worse off and not (as is sometimes alleged about our current system) from the worse off to the better off.

In tendering services the Board will be able to call on the resources of a variety of public, community and private sector organisations to meet Adelaide's public transport needs. For example, arrangements may be entered into with local councils to provide mini-buses to supplement conventional buses in the morning peak, particularly in inner suburban areas. Such an arrangement will be purely voluntary for the council concerned.

The Board will be composed of five persons, plus deputies.

The Passenger Transport Board will be a working Board. The Board's role will not be token. No member will have a financial interest in a transport operation. Members will be selected on the basis of their ability to contribute to the objectives discussed above. Members will have considerable executive responsibility and the Government will hold them accountable for the performance of our public transport system.

The State Transport Authority will continue in existence as TransAdelaide. Relieved of its policy responsibility, TransAdelaide can be expected to become far more efficient and responsive to customer needs in order to meet the competition posed in the new era. Some improvements in that regard have been apparent in recent months. The Government is pleased to record the goodwill that has been extended to it by the STA management in implementing our mandate.

We are confident that this cooperation will continue in the transitional period, though we also expect TransAdelaide to develop a vigorous competitive culture in order to best serve the people of Adelaide. To do so TransAdelaide itself will need the cooperation of the unions. The government is fostering this cooperation by guaranteeing no forced retrenchment of existing STA staff, and by insisting all operators of buses for instance, are accredited and that they comply with the same minimum standard of safety and service.

Regulation of passenger transport

This legislation is not simply about conventional public transport. Like the Fielding and Radbone Reports our Passenger Transport Strategy document highlighted the unsatisfactory, messy arrangements under which small vehicle, demand responsive services are regulation. This legislation will cut through this mess, putting all such services under one authority and one Act. When combined with the competitive tendering practices of the Passenger Transport Board, the taxi and hire vehicle sectors will be presented with a wonderful opportunity to broaden their roles and provide a real alternative to the private car.

Currently commercial passenger transport is regulated under the *Metropolitan Taxi-Cab Act* and Part IVB of the *Road Traffic Act*. Local councils also have power to regulate taxis outside the metropolitan area and of course the *State Transport Authority Act* provides for the provision of conventional public transport in Adelaide.

The intention under the legislation presented to this House today is to repeal the *Metropolitan Taxi-Cab Act,* Part IVB of the *Road Traffic Act* and the *State Transport Authority Act*. Those local councils outside the metropolitan area regulating taxis will continue to do so if they wish, but all passenger operators—including the former STA—will be required to be accredited. (Exemption provisions exist for activities such as car-pooling and community transport). Accreditation will be designed to ensure that everyone providing passenger transport services to the public are fit and proper to do so. Accreditees will be required to abide by a relevant code of practice covering matters such as their attitude to the customer and their ability to provide a safe and appropriate service. Both operators and drivers will require accreditation.

The Government will also require the Passenger Transport Board itself to abide by a charter in its dealings both with the public and those accredited under the legislation.

As noted above, this accreditation will apply to all passenger transport operators and drivers, ranging from motor-bike tours to stretch limousines to large buses, whether chartered or running to a timetable. However, the regular, timetabled services and services provided by taxis are also subject to special provisions.

The regular services will be governed by a service contract between the Passenger Transport Board and the operator winning the tender. These contracts will cover matters such as service specifications, the government subsidy (if needed), tickets used, availability of concessions, fares charged and so on. The contract will normally provide exclusive rights to provide the services on a particular route or in a particular area, in order to maintain stability and financial viability.

Taxis, hire cars and mini-buses

The Government does not propose the deregulation of the taxi industry. Over the years the public has come to expect that if they get into a taxi they will have a safe, comfortable trip and that the fare will not be exploitative because it is controlled by the government. This expectation is a valuable feature of our way of life and it will be maintained and even enhanced under this legislation. Codes of practice, developed in association with industry groups, and embedded in regulation, will be developed to ensure this outcome.

The other important strategy is to require industry itself to take an active role in policing the regulations. For the first time the companies providing radio networks and other booking services will be accredited and they will be expected to ensure taxi operators and

drivers that use their network abide by their respective codes of practice. Nominees of the companies will be given the necessary authority to do this. The companies themselves will have code of practice governing both the service they provide to the public and their dealings with the taxi operators and drivers and with Passenger Transport Board.

In effect a self-supporting framework of mutual obligation between the booking service, the cabbie and the Passenger Transport Board will be created; a framework structured to ensure quality service to the customer. The Board itself will continue to employ inspectors, but in the main it will focus its role on auditing the procedures used by the industry itself to ensure quality.

A particularly vexed issue to be addressed under the new regime will be the respective roles of taxis, hire cars and mini-buses. The legislative arrangements under the *Metropolitan Taxi-Cab Act* and the *Road Traffic Act* have always been unsatisfactory in that they contained potential for confusion and administrative inconsistency. This potential has been realised in the past few years and it is clear that the Government needs to provide clear, well-understood ground rules under which the industry can operate.

Under the Passenger Transport Bill taxis are defined not by the size of the vehicle but by the rights their licence gives them. These rights are: to ply for hire in the streets or a public place, to have a taxi meter, to occupy taxi stands and to promote the service as a taxi service. Mini-bus operators will have these rights if they buy a taxi licence and accept the conditions of accreditation. They will become a maxi-taxi, if you like.

The Government accepts the need to regulate and restrict entry into the taxi industry in this way for three reasons.

Firstly, to allow open slather would be to return to the problems of congestion caused by vehicles slowing cruising the streets touting for business that plagued the Adelaide City Council in the twenties and thirties. No doubt it would be much worse today.

Second, for the sake of public safety and security mentioned before we need to be able to have a industry about which the public (particularly the more vulnerable such as women and the aged) can feel confident. A large industry, with operators entering and leaving more or less at will, would be very hard to control.

Third, the experience of taxi deregulation overseas shows it simply does not serve the customer well. Fares do not go down as is often assumed by the textbook theorists. This is because there are more cars chasing the same (or even less) business. There are fewer customers per cab to cover costs,. so there is greater pressure on the individual cabbie to charge higher fares to cover these costs. In reality what happens is that fares go down for some sectors and up for others. Tourists are particularly vulnerable to being exploited. Because tourists, even more than local customers, are unlikely to ever generate repeat business with the particular cab operator, that operator has no market incentive to provide them with a quality, value for money service. New Zealand provides notorious examples of airport customers being exploited in this way.

This is not to say taxis operators can complacently sit back behind a wall of government protection. For the past three years at least they have faced potential competition from hire cars and mini-buses competing for radio work. Given that radio work does not involve the same hazards as random hail and rank work, this Government will not prevent that potential competition (just as it will not prevent taxis taking regular contract work that some hire car and mini-bus operators regard as their territory). It will, however, ensure that hire cars and mini-buses maintain a quality of vehicle at least as good as that of a taxi. It will be up to the taxi industry to keep that competition at bay by providing a responsive, quality service.

It is important to find an appropriate balance between the unfettered role of market forces and government regulation. It will not be easy but it is to be hoped that with commonsense, fairness and honesty of the part of all concerned, the best arrangements will emerge.

Consultation

In the course of this consultation we have received about 25 formal submissions and had engaged in numerous conversations with private sector operators, consumer and environmental groups, unions and government agencies. A forum held to discuss the Bill attracted almost 100 participants.

As a result of this consultation there have been over 100 changes to the Bill as released in December. While most of these have been drafting matters to clarify the Bill, a number of significant changes have been made to the draft. For the convenience of members and those following the progress of the legislation, I will briefly outline these changes—

- The objectives of the Bill which were discussed above have been added at clause 3.
- The quorum for meetings of the Passenger Transport Board has been raised.
- Under clause 36 a condition has been added requiring that the Board seek Ministerial approval before revoking the accreditation of an operator who has a contract to provide a regular passenger service.
- Appeals are to be made to the Administrative Appeals Court which, in exercising its jurisdiction, would be constituted of a magistrate (clause 38). (The previous draft had appeals to the Magistrates Court.) Conditions have been added to the section dealing with appeals to require the Board to give reasons for its decision.
- The Part dealing with regular service contracts has been both shortened and simplified. In particular the clause dealing with distinction between commercial and non-commercial contracts has been deleted as it is not necessary. (Now see clause 40).
- The requirement that taxi licence holders must have third party property insurance has been deleted. It was pointed out to us that it was discriminatory against that sector of the passenger transport industry.
- A clause has been added to outlaw services being promoted as taxi services unless they are accredited as taxi services (clause 52).
- The name Transit Adelaide has been changed to TransAdelaide. An existing operator has a proprietary interest in a similar name. (See Schedule 2).
- The Part dealing with TransAdelaide has been removed to the Schedules. It was considered inappropriate that TransAdelaide, which would be one amongst a number of competitors for contracts, should appear in the body of the legislation.
- The clause providing that the staff of TransAdelaide be subject to the *Government Management and Employment Act* has been deleted, restoring the current situation. It is considered particularly by the STA itself, that the staffing arrangements provided for in the previous version of the Bill would be inappropriate for a commercially competitive body. (See Schedule 2).
- The requirement that the Board simply give notice to affected authorities when undertaking physical works or declaring taxi stands has been altered to require consultation with the relevant authorities before taking such action (clauses 22 and 24).
- The powers of authorised officers have been circumscribed to ensure they are exercised only on matters concerned with this legislation (clause 53).
- Under clause 54 matters of passenger comfort have been added to the list of matters about which vehicles can be inspected.
- The list of specific matters about which regulations can be made has been shifted to Schedule 1. Rates of fares and the means by which these are computed is now included as a specific matter about which regulations can be made.

I would like to thank everyone who has taken the time and effort to respond to the Government's call for comment on the Bill. I know we have a better piece of legislation as a result.

Regulations

Much of the consultation has been concerned with the regulations that will follow from this Bill. There is an understandable concern in this regard, for it is true that important details of policy only emerge in the process of establishing subordinate legislation. Work is proceeding on the subordinate legislation, though naturally we await Parliament's views on the legislation itself before venturing too far in this regard.

A formal consultation process has been established to aid us in developing the regulations. Four working parties have been established each representing important sectors. which will be subject to the regulations. These working parties cover taxis, tour and hire services, radio companies and regular passenger services. They are providing input at the ground level and have already helped us in clarifying our ideas and in challenging our assumptions. Needless to say, however, the output from these working parties will itself be made available to the other sectors and to consumer and other groups for comment.

Adequate consultation is inevitably at the cost of speed. Nevertheless, the Government will make its thinking on the direction the regulations will take during the course of the second reading debate.

Conclusion

Given the comprehensive nature of the reforms proposed for public transport the degree of community consensus has been remarkable.

It is widely recognised that the changes proposed are long overdue. In fact seminars conducted by the STA itself have reached the same conclusion. Reaction since the draft Bill was released has been positive, indeed, congratulatory, both in the media and in the consultations that have followed.

Obviously a number of hard decisions still have to be made and we will only turn around public transport with the hard work, wisdom and goodwill of all concerned. But with this Bill we have the legislative framework to enable us to get on with the job. I commend the Bill to the House.

Explanation of Clauses

Clause 1: Short title

This clause provides that the short title of the legislation will be the *Passenger Transport Act 1994*.

Clause 2: Commencement

The legislation will come into operation on a day to be fixed by proclamation.

Clause 3: Objects

This clause defines the principal objects of the legislation.

Clause 4: Interpretation

This clause sets out various definitions required for the purposes of the measure. The principal definition is that of "passenger transport service", which is a service consisting of the carriage of passengers for any form of consideration *(a)* by motor vehicle; *(b)* by train or tram; *(c)* by means of an automated, or semi-automated vehicular system; *(d)* by animal-drawn vehicle; or *(e)* by any other means prescribed by the regulations. A "public passenger vehicle" is any vehicle used to provide a passenger transport service.

Clause 5: Application of Act

The regulations will be able to prescribe that specified provisions of the Act do not apply to specified parts of the State, or to adjust the application of the Act as it applies to a particular part of the State. The Minister will also be able to confer certain exemptions from the Act, or specified provisions of the Act. These provisions will allow the degree of flexibility necessary to ensure the proper application of the wide-ranging reforms of the passenger transport industry proposed by this measure.

Clause 6: Establishment of the Board

This clause establishes the *Passenger Transport Board*. The Board will be an instrumentality of the Crown.

Clause 7: Ministerial control

The Board will be subject to the control and direction of the Minister, except in relation to granting service contracts (for regular passenger services), or in relation to the publication of information or recommendations.

Clause 8: Composition of the Board

The Board will consist of five members appointed by the Governor. A person appointed as a member must have, in the Minister's opinion, such managerial, commercial, transport or other qualifications, and such experience, as are necessary to enable the Board to carry out its functions effectively.

Clause 9: Conditions of membership

A term of office for a member of the Board will not exceed three years, although a member will, on the expiration of a term of office, be eligible for reappointment.

Clause 10: Remuneration

A member of the Board will be entitled to such remuneration, allowances and expenses as the Governor may determine.

Clause 11: Disclosure of interest

This clause will require a member of the Board to disclose any direct or indirect personal or pecuniary interest in a matter before the Board and then, in such a case, to withdraw from any relevant deliberation or decision of the Board. In addition, the Minister will be able to require that a member divest himself or herself of any interest that is not consistent with the duties of a member of the Board.

Clause 12: Members' duties of honesty, care and diligence

A member will be required to act honestly at all times, and to exercise a reasonable degree of care and diligence in the performance of official functions. It will also be an offence to make improper use of information acquired by a member of the Board through his or her official position.

Clause 13: Transactions with member or associates of member

This clause is based on a similar provision in the *Public Corporations Act*.

Clause 14: Validity of acts and immunity of members

A member of the Board will not be personally liable for an honest act or omission in the performance or purported performance of a function or duty under the Act. The immunity will not extend to culpable negligence.

Clause 15: Proceedings

This clause provides for the proceedings of the Board. Each member present at a meeting will have one vote on any question arising for decision.

Clause 16: Chief Executive Officer

The Act provides for the appointment of a Chief Executive officer of the Board. The CEO will be responsible for giving effect to the policies and decisions of the Board, and for managing the staff and resources of the Board. The CEO will be appointed by the Board with the approval of the Minister.

Clause 17: Other staff of the Board

The Board will have such other staff as the Board thinks necessary for the proper performance of its functions.

Clause 18: Accounts and audit

The Board will be required to keep proper accounting records and to prepare annual statements of accounts. The accounts will be audited by the Auditor-General on an annual basis.

Clause 19: Annual report

The Board will be required to prepare an annual report for the Minister. The report will be tabled in Parliament.

Clause 20: Functions

This clause sets out the functions of the Board. The Board will be the central regulatory and promotional body within the passenger transport industry. In particular, the Board will be responsible for the creation and maintenance of an integrated network of passenger transport services within the State. The Board will be empowered, to such extent as may be consistent with the Act, to determine, monitor and review services within that network, and to determine, monitor and review fares. At the same time, the Board will be required to foster and promote the interests of passenger transport services, and to encourage appropriate practices and standards. A prime responsibility of the Board will be to accredit operators of passenger transport services, drivers of vehicles, and persons who provide certain other services to the industry. The Board will have research capabilities and will be able to carry out inquiries and to provide reports to the Minister. The Board will also be in a position to provide advice to the Minister.

Clause 21: The Board's charter

The Board will be required to prepare a charter.

Clause 22: Powers of the Board

This clause sets out the powers of the Board, which will include the ability to provide facilities for the users of passenger transport services, and to establish or specify a ticketing system to be used on passenger transport services.

Clause 23: Acquisition of land

The Board will be able to acquire land in accordance with the *Land Acquisition Act 1969* for purposes of any facility reasonably required or warranted for the provision or operation of any passenger transport service, or for other appropriate purposes.

Clause 24: Power to carry out works

This clause provides specific power to the Board to carry out works in relation to the provision or operation of any passenger transport service.

Clause 25: Committees

Certain committees will be required by the legislation. The Minister will be able to require the Board to establish committees to provide advice or assistance to the Board in the performance of its functions. The Board will also be able to establish such committees as it thinks fit.

Clause 26: Delegations

The Board will be able to delegate any function or power under the Act. A delegation must be made in prescribed circumstances. Otherwise, a delegation will be revocable at will and will not derogate from the power of the Board to act in a matter.

Clause 27: Accreditation of operators

A person will be required to hold an accreditation under the Act to be able to operate a passenger transport service in the State. The purpose of this form of accreditation will be *(a)* to ensure that an operator is a fit and proper person to be responsible for the operation of a passenger transport service, and has the capacity to meet various industry standards; *(b)* to provide a scheme which is intended to ensure that an efficient and effective network of passenger transport services exists within the State, and that appropriate standards are maintained; and *(c)* to provide for other matters provided for by the regulations.

Clause 28: Accreditation of drivers

The second form of accreditation relates to drivers. Clause 26 will require a person who drives a public passenger vehicle within the State to hold an appropriate accreditation under the Act. The purpose

of this form of accreditation will be *(a)* to ensure that the person is a fit and proper person to be the driver of a public passenger vehicle to which the accreditation relates, and has an appropriate level of responsibility and aptitude to drive vehicles of the relevant kind; *(b)* to provide a scheme under which appropriate standards must be maintained; and *(c)* to provide for other matters provided for by the regulations.

Clause 29: Accreditation of centralised booking services

The third form of accreditation relates to centralised booking services. This clause will require a person who operates a service to hold an appropriate accreditation under the Act. The purpose of this form of accreditation will be *(a)* to ensure that the person is a fit and proper person to be responsible for the operation of a service, and that the service will comply with various standards; *(b)* to provide a scheme to ensure that operators of networks meet appropriate standards; and *(c)* to provide for other matters provided for by the regulations.

Clause 30: Procedure

This clause sets out various procedural matters relevant to an application for accreditation under the Act.

Clause 31: Conditions

It will be a condition of any accreditation that the accredited person will observe the relevant code of practice established under the Act. The Board, and the regulations, will be able to establish other conditions that apply in relation to an accreditation. For example, a condition of an accreditation to operate a passenger transport service may make provision as to such things as the fares to be charged, the area of operation, the periods during which vehicles may be operated under the accreditation, or the persons who may be carried on any vehicle. A condition will be able to be varied by the Board in an appropriate case.

Clause 32: Duration and categories of accreditation

An accreditation will remain in force for such period as may be prescribed by the regulations, or determined by the Board (unless sooner revoked or surrendered under the Act). The Board will be able to grant a temporary accreditation for a period of less than 12 months.

Clause 33: Periodical fees and returns

This clause will require the provision of returns, and the payment of a periodical fee, while an accreditation remains in force.

Clause 34: Renewals

An accreditation will be renewable from time to time.

Clause 35: Related matters

Accreditations are not transferable, but may be surrendered. The Board will be empowered to vary an accreditation in an appropriate case.

Clause 36: Disciplinary powers

This clause sets out the procedure to be followed if it appears that it may be necessary to take disciplinary action against a person who is, or has been, an accredited person under the Act. In particular, the Board will be able to exercise various powers if it is satisfied that proper cause exists for taking disciplinary action against the person. These powers will include the ability to issue reprimands, impose fines (subject to specified limitations), impose new conditions, shorten the period of accreditation or, in extreme circumstances, revoke the accreditation. A principal ground for disciplinary action will be that the accredited person has breached, or failed to comply with, a code of practice under the Act. The respondent will be entitled to reasonable notice of the subject matter of the inquiry.

Clause 37: Related matters

This clause provides for various matters related to the exercise of disciplinary powers.

Clause 38: Appeals from decisions of the Board

A right of appeal will lie to the Administrative Appeals Court against a decision of the Board not to grant an accreditation, or in respect of other classes of decision of the Board relating to accreditation under the Act.

Clause 39: Service contracts

A key feature of the new legislation is that a regular passenger service (defined to mean a passenger transport service conducted according to regular routes and timetables, or otherwise within a class prescribed by the regulations) must be conducted pursuant to a contract (to be known as a "service contract") between a person who holds an appropriate accreditation, and the Board. The Board will be able to invite contracts by tender, or in such other manner as the Board thinks fit.

Clause 40: Nature of contracts

A service contract will be required to make provision with respect to various matters, including the period for which it operates, the manner in which it may be terminated, the standards to be observed, service levels, fares, and other prescribed matters. A service contract may also address other matters.

Clause 41: Regions or routes of operation

A service contract will be required to specify a region or route of operation. A service contract will (if appropriate) be able to confer on the holder an exclusive right to operate a regular passenger service of the relevant kind within the region, or on or in proximity to, the route of operation. A contract will not be able to affect or limit any service of a kind specified by the regulations.

Clause 42: Assignment of rights under a contract

This clause provides that rights, powers or duties under a service contract will not be able to be dealt with without the consent of the Board.

Clause 43: Variation, suspension or cancellation of service contracts

The Board will be empowered to vary, suspend or cancel a service contract if there has been a serious or frequent failure to observe the terms and conditions of the contract, or if the holder of the contract is convicted of an offence against the Act or the regulations. A contract will be automatically cancelled if the holder ceases to hold the appropriate accreditation. The Board will be able to make arrangements for the provision of temporary services if a regular passenger service is affected by a variation, cancellation or suspended under this provision.

Clause 44: Fees

Lodgment and administration fees will be payable to the Board. The maximum amount of any such fee may be determined by the regulations.

Clause 45: Requirement for a licence

This clause has particular significance in relation to taxis. The clause will require a specific licence (granted by the Board) for each vehicle that satisfies four criteria that are seen as the distinguishing features of a taxi, namely (1) that the vehicle displays the word "taxi" (or other associated words); (2) that the vehicle is fitted with a taxi-mater (as defined); (3) that the vehicle plies or stands for hire at a designated taxi-stand (as defined); and (4) that the vehicle plies for hire in a public street or place. Where a licence is granted, the vehicle will be required to display the word "taxi", the fares or other remuneration charged to passengers will be required to comply with the regulations, and the vehicle will be required to be fitted with a taxi-meter that complies with the regulations. The licence scheme is primarily concerned with the Metropolitan area.

Clause 46: Applications for licences or renewals

An application for a licence will be made to the Board. The prescribed fee will be payable in respect of the application. An applicant will need to be the holder of appropriate accreditation under Part 4.

Clause 47: Issue and term of licences

The Board will issue the licences. The regulations will be able to prescribe kinds or grades of licence. In a manner similar to section 30(4) of the *Metropolitan Taxi-Cab Act 1956*, the Board will be able to determine the maximum number of licences (or licences of a particular kind or grade) to be issued, or in force, in a given period, determine not to issue licences for the time being, or issue licences according to an allocation procedure specified in the regulations. Furthermore, the Board will be able to allocate various licences on the basis that they cannot be transferred, leased or otherwise dealt with by the holder of the licence. The Board will specify the term of any licence.

Clause 48: Ability of Board to determine fees

The Board will be able to set various fees in respect of licences of a specified kind or grade. A fee may be payable on the issue of a licence, on a periodical basis during the term of a licence, or on any transfer or other dealing with a licence. The Board will be required to consult with the Minister before it makes a determination as to a fee under this provision.

Clause 49: Transfer of licences

The consent of the Board will be required in relation to any proposed transfer, lease or other dealing with a licence. (This provision is similar to section 33 of the current Act.)

Clause 50: Suspension or revocation of licences

The Board will be able to suspend or cancel a licence in certain cases, including on the basis that the holder's accreditation under the Act has been suspended or revoked. The Board will be required to observe procedures specified by the regulations before it takes action under this clause.

Clause 51: Appeals

Various appeal rights will be given in relation to decisions of the Board under Part 6. The right of appeal will be to the Administrative Appeals Court.

Clause 52: False advertising

It will be an offence for an unlicensed person to give the impression that he or she can provide a taxi service.

Clause 53: Authorised officers

This clause empowers the Minister to appoint authorised officers under the Act and sets out their powers, which are particularly concerned with the inspection of vehicles used for the purposes of passenger transport services.

Clause 54: Inspections

This clause will require each public passenger vehicle (other than a vehicle which falls within an exemption) to be inspected on a regular basis, or as required by the Board. The provision is based on Part IVA of the *Road Traffic Act 1961*. A vehicle which passes an inspection will be issued with a certificate. Conditions may apply. The Board will be able to cancel a certificate in specified circumstances including, for example, that the vehicle has become unsafe. Inspections will be carried out by authorised officers who hold a specific approval from the Board for the purposes of this clause, or by persons who hold accreditations to act as vehicle inspectors under the clause. A code of practice will apply to vehicle inspectors.

Clause 55: False information

This clause creates various offences in relation to false statements or misrepresentations, or fraud, connected with obtaining or using an accreditation, licence or service contract under the Act.

Clause 56: General offences

This clause creates various offences in relation to the obstruction of a service, interference with equipment, and so on.

Clause 57: Offenders to state name and address

This clause will empower a member of the police force, or an authorised officer who holds a specific authority issued by the Board for the purposes of the clause, to require a person suspected of having committed an offence against the Act to provide certain information.

Clause 58: Liability of operators for acts or omissions of employees or agents

This is a vicarious liability clause .

Clause 59: General provisions relating to offences

This clause contains various provision relating to proceedings for offences, and proceedings involving bodies corporate.

Clause 60: Application of fines

Fines imposed under the legislation will be payable to the Board.

Clause 61: Evidentiary provision

This clause sets out various aids to proof.

Clause 62: Fund

This clause continues the existence of the *Metropolitan Taxi-Cab Industry Research and Development Fund*. The Minister will be responsible for the administration of the Fund in consultation with the Board. The regulations will prescribe various amounts that will be payable into the Fund. The Fund will be used to carry out research into, and to promote, the taxi-cab industry, and for other purposes that are in the interests of the passenger transport industry.

Clause. 63: Registration of prescribed passenger vehicles

This clause extends the scheme that currently applies under the *Metropolitan Taxi-Cab Act 1956* relating to the issue of registration plates.

Clause 64: Regulations

The Governor will be able to make regulations for the purposes of the measure.

Clause 65: Review of Act

An independent review will be carried out after 1 January 1998.

Schedule 1

This schedule sets out various matters in relation to which regulations may be made.

Schedule 2

The State Transport Authority is to continue in existence under the name TransAdelaide. It will be constituted by one person appointed by the Governor.

Schedule 3

This relates to the sale of public transport infrastructure.

Schedule 4

The schedule provides for several things.

Clause 1 provides for the repeal of the *Metropolitan Taxi-Cab Act 1956* and the *State Transport Authority Act 1974*.

Clause 2 makes a number of amendments to several Acts.

Clause 3 will allow the Governor, by proclamation, to deal with various matters relevant to the State Transport Authority and its employees.

Clause 4 will transfer all property, and employees, of the Metropolitan Taxi-Cab Board to the new Board.

Clause 5 will allow existing licences to continue as accreditations under the new Act. This form of accreditation will continue until a day to be fixed by the Board, after the expiration of a transitional period to be fixed by the regulations.

Clause 6 will allow existing passenger services to continue without a service contract until a specified event occurs.

Clause 7 relates to drivers. A person who satisfies criteria to be prescribed by the regulations will, from the commencement of the new Act, be taken to hold an accreditation under the new scheme. This accreditation will continue until a day to be fixed by the Board, after the expiration of a transitional period to be fixed by the regulations.

Clause 8 relates to taxis. Existing licences will continue and the necessary accreditation taken to exist. As with the other transitional provisions, the Board will be able to fix a day on which accreditation under these arrangements will come to an end after the expiration of a transitional period fixed by the regulations.

Clause 9 is a special transitional provision.

Clause 10 includes various provisions of a general transitional nature.

Mr ATKINSON secured the adjournment of the debate.

JURIES (JURORS IN REMOTE AREAS) AMENDMENT BILL

Second Reading.

The Hon. S.J. BAKER (Deputy Premier): 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 1991 electoral redistribution has resulted in significant changes to those liable to jury duty and has the potential to cause hardship to persons living in remote areas as well as causing administrative difficulties in compiling jury lists.

To overcome these problems, while retaining the democratic right and duty to serve as a juror for people living in major population areas, it was proposed that the *Juries Act 1927* be amended to provide that the Sheriff be authorised to exclude persons from being summoned to serve as jurors if the Sheriff determines that such persons reside outside a radius of 150 kilometres from a circuit court in the Northern and South-Eastern Jury Districts.

Section 8 of the *Juries Act 1927* provides for jury districts to be constituted by the subdivisions of the House of Assembly electoral districts set out in the Second Schedule of the Act. Section 8(5) provides that the Governor may, by proclamation, vary the area of any jury district, provided that the area of the district as varied, consists of one or more complete subdivisions.

The Second Schedule, and the amendments made to it after electoral redistributions, have always provided for jury districts to be constituted of complete electoral subdivisions within a reasonable distance of circuit courts.

The 1991 electoral redistribution has created some new subdivisions which are geographically very large. For example, the subdivision of Eyre-Grey in the Northern Jury District extends to the State's borders with New South Wales, Queensland, the Northern Territory and Western Australia.

Prior to the 1991 electoral redistribution, the Northern Jury District consisted of the subdivisions of Custance North, Stuart and Whyalla in the House of Assembly Districts of Custance, Stuart and Whyalla respectively. Neither remote centres of population such as Ceduna, Coober Pedy and Roxby Downs nor the closer population centres on the eastern side of the Flinders Ranges such as for example, Hawker, Peterborough, Jamestown, Melrose and Laura were included in the District.

The electoral redistribution has resulted in a greater number of persons now liable to jury service but greatly extends the distance some persons may be required to travel to serve as a juror. It is necessary for a balance to be achieved between the right to serve as

a juror and undue hardship experienced by persons having to travel great distances to serve as a juror.

Jury service may involve four or more weeks service and the distances involved may not permit daily travel between the court and a person's residence. To expect people to be absent from their homes during their service may be considered unreasonable.

The Sheriff's experience is that jurors generally have little difficulty in travelling up to 150 kilometres to attend for jury service. (300 kilometres a day return). Distances in excess of this often require jurors to be accommodated within the circuit town during a trial.

If only those people residing within a radius of 150 kilometres of a circuit court are required to serve as jurors, the population areas liable to jury service would be more equitably distributed when compared with the boundaries prior to the 1991 redistribution.

The 1993 jury lists were compiled using the 1991 redistribution boundaries. The Sheriff invited prospective jurors to apply to be excused from jury service on the ground of hardship where, in the opinion of the Sheriff, they resided more than 150 kilometres from the circuit court. Some applications to be excused were made in a timely manner and persons were excused prior to attending court. There were, however, two groups of people who cause significant problems in providing juries for circuit courts. For some 22% of summonses issued to remote areas there was neither a claim to be excused from jury service nor an attendance to serve as a juror.

In the Northern Jury District a statistical analysis of jurors summoned from remote areas from January to September 1993 shows that 149 persons were summoned from remote areas. Of these, 107 applied to be excused prior to attending for service, 7 attended and were excused and 33 did not respond in any way. Only 2 persons have actually served from "remote" areas for the duration of a circuit and both travelled slightly in excess of 150 kilometres to do so.

The number of jurors attending for jury service is critical for the conduct of criminal trials and the effective operation of circuit courts. The final number of jurors depends on many factors and is not known until the first day of the circuit. This is being exacerbated by the response of persons summoned from remote areas. Applications to be excused from jury service are being made too late to issue a replacement summons or no applications are being made.

The Bill before me does nothing to eliminate the administrative difficulties covered by the 1991 electoral re-distribution. It provides that if it appears from the electoral rolls that a person summoned to jury duty resides more than 150 kilometres from the place where the jury is empanelled then attendance is optional. The person is not required to let the sheriff know if he or she will be attending for jury service. The government will be moving an amendment to ensure that the original aim of the bill is effected.

The *Juries Act 1927* has not been amended since the *District Court Act 1991* was enacted, replacing the *Local and District Criminal Courts Act 1926*. The opportunity has been taken to remove obsolete references to the *Local and District Criminal Courts Act 1926*, to the Senior Judge of that court who is now the Chief Judge of the District Court and to court districts under that Act. The *District Court Act 1991* does not make any provision for court districts—the court sits where directed by the Chief Judge. The places the court is directed to sit correspond to the circuit districts established under the *Supreme Court Act* so there will be no practical effect in removing the references to District Court districts.

Explanation of Clauses

Clause 1: Short title

Clause 1 is formal.

Clause 2: Amendment of s. 3—Interpretation

Clause 2 amends section 3 of the principal Act by striking out obsolete definitions.

Clause 3: Amendment of s. 6—Criminal Inquests to be tried by jury

As a result of the *District Court Act 1991* the District Criminal Court has become the District Court. The amendment to section 6 inserts the correct name.

Clause 4: Amendment of s.7—Trial without a jury

Clause 4 inserts the correct name of the District Court—see clause 3.

Clause 5: Amendment of s. 8—Jury districts

Clause 5 amends section 8 to remove references to the District Criminal Courts and the *Local and District Criminal Courts Act 1926*.

Clause 6: Amendment of s. 14—Residence qualification

Section 14 of the principal Act provides that a person is not liable to serve as a juror unless residing within the jury district of the court. Clause 6 amends section 14 to provide that a person is not liable to serve as a juror unless residing within the jury district in which the court is to be empanelled. It also inserts two new subsections which provide that where it appears from an electoral roll that a person summoned to serve as a juror resides more than 150 kilometres from the place where the jury is to be empanelled, attendance in obedience to the summons is optional but, if the prospective juror does attend, further attendance is obligatory unless the juror is excused. If a person does not attend in obedience to the summons, and the person's place of residence is more than 150 kilometres from the place to which the person has been summoned, the sheriff must excuse the person from attendance.

Clause 7: Amendment of s. 30—Summons

Clause 7 inserts a new subsection in section 30 to provide that if a summons is issued to a person who resides at a place more than 150 kilometres from the place where the jury is to be empanelled, the summons should include an endorsement stating that the person's attendance is not compulsory and if the person elects not to attend the person will be automatically excused from attendance but if the person does attend the person will be required to render jury service as required under the summons unless later excused.

Clause 8: Amendment of s. 61—Challenge

Clause 8 is a consequential amendment.

Clause 9: Amendment of s. 78—Offence by jurors

Clause 9 inserts the correct name of the District Court—see clause 3.

Clause 10: Amendment of s. 89—Power to make rules

Clause 10 inserts the correct name of the District Court—see clause 3.

Mr ATKINSON secured the adjournment of the debate.

RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 560.)

Mr ATKINSON (Spence): This is another Bill drafted by the previous Government. The new Opposition has studied it carefully and with the suspicion due to Bills that are presented to us as being the product of agreement between pressure groups. When I read that one politician said of this Bill that she had rarely experienced such unanimity of purpose, I wondered just how heavy the cost to Consolidated Revenue would be. That the Bill was drafted by the previous Government does not exempt it from critical scrutiny by the new Labor Opposition.

A mischief that the Bill seeks to remedy is the trouble elderly residents have when selling their stake or premium in a retirement village in which they no longer live. For instance, they might be forced by ill-health to leave a village for a nursing home or hospital. Although an elderly person may no longer live in the village, he or she has a premium tied up in it and continues to pay the common charges for things such as gardening and maintenance. Persons who have a unit in the village but have left it allege that the authority administering the retirement village has little incentive to find new residents for the unit, especially if other units in the village have not yet been sold.

The new code of conduct to be promulgated under the Bill requires of administering authorities that, if a resident departs from a village in specified circumstances, a proportion of the resident's premium should be returned to him or her within 60 days. The administering authority can apply for an extension to 90 days. When a person buys into a village, the Bill requires a 90 day settling in period during which the resident can relinquish the unit and recover his or her premium less the costs of the administering authority. The Bill regulates meetings of village residents to be chaired by a representative of the administering authority. It requires

clear financial reporting to villagers by the administering authority and encourages villagers to put questions in writing to the administering authority.

The cost to the public of the Bill is in its casting upon the Residential Tenancies Tribunal the duty of adjudicating disputes in retirement villages. If the tribunal decides to proceed by way of arbitration, the Bill provides that the tribunal should resolve the matter by reference to considerations of general justice and fairness. Although these considerations are splendid, they hardly provide the certainty needed to guide the conduct of villagers and the administering authority. It is important in a society under the rule of law that like cases attract like decisions. With that reservation, the Opposition supports the Bill.

Mr MEIER (Goyder): I also wish to support the Bill and to acknowledge that it has been in the pipeline for sometime. One would hope that we will see a more efficient system applying to retirement villages, and that where there have been some veiled criticisms or real criticisms in the past this legislation will seek to ensure that they are no longer valid. The Bill, to some extent, seeks to ensure that persons who put money into a retirement village and who perhaps require that money to be refunded at the end are looked after appropriately, and that there is no loss on their part due to unfair dealings in one way or the other.

The role of retirement villages in our society today is so important. I want to applaud and compliment the many private and part-Government organisations for the magnificent role they play in our society, and the way those villages have developed over many years. I look at my own electorate and the example of the Maitland Retirement Village. It has developed from very humble beginnings to a situation today where retired people have the opportunity well in advance to sell their home and buy a unit in the retirement village.

A couple who are still together realise that age is catching up with them and that the time may soon arrive when one of the partners is no longer on this earth. They appreciate that by going into a retirement village they are able to have their own unit and, if one of them is taken, the remaining partner can go into another part of the village within weeks. Of course, from a physical, emotional or mental point of view, the wounds caused by the loss of a loved one may never be healed.

The Maitland village is a typical example. Once a person has gone into their own unit and age catches up with them further, they are next to the hospital facilities. If they are unwell they have a choice: first, they can be treated in their room; or, secondly, they can go into the hospital. I have seen quite a few elderly citizens in the Maitland area who have spent some time in the hospital and then returned to the village when they were better. The positive thing is that they receive tremendous support from the other residents in the retirement village. The hospital is within easy walking distance, so it is not difficult for their friends to come and see them.

One thing that is missing at Maitland but is not missing in many other areas is a nursing home. I realise that Federal Government money provides for nursing homes, yet it is almost essential as part of a retirement village and hospital complex to have a nursing home. Elderly people not only get sick but they may suffer an incapacity that should not be treated in the hospital on a day-to-day basis. They should not be there on a long-term basis, but it may be too much for the retirement village to handle, so that is where the nursing home comes into it.

We need to continue along the path of trying to make complete packages in many rural areas. I know it is difficult from a funding point of view to provide enough facilities in a sufficient number of towns, and I am not advocating that every town should have these facilities. There may be some argument for having some facilities in one town and others in another. However, it is great to see how well it works in Maitland in the one centre.

What interests me is that many of the residents are not originally from Maitland. They have chosen that retirement village particularly, usually from within the State but in some cases from outside the State. They recognise the great advantages of a country town to people as they get older. The principal disadvantage is if people are away from their families. Yet, if it is in reasonably close proximity to a metropolitan area such as Adelaide—Maitland is about two hours away—it is not so difficult. About 90 per cent of the people who are in retirement villages and who may have come from outside the area continue to stay in Maitland. In some instances, their families join them and live in the same area.

There is a fine line in deciding when a person should or should not go into a retirement village. I well remember one couple who decided to put their house up for sale. They felt that they had reached the age where they should be looking at retirement village facilities. The house did not sell, having been on the market for about nine months or even a year. They were very distressed because they had looked forward to moving into the retirement village as they felt it was the right place to go. Anyway, their house did not sell so they took it off the market. They decided that they would continue to live in their house in the hope that something may work out further down the track. That was about eight years ago. I visited those people recently and they are still in their house. I asked, 'Are you disappointed that you were not able to sell your house when you put it on the market so that you could move into the retirement village?' They said, 'In retrospect, we are delighted that it worked out the way it did. Our health has continued to be such that we can manage the yard and garden, we have our full freedom and, of course, extra privacy.'

Many couples have to make the decision sooner or later, but I would advise them not to jump in too early and to weigh up the factors carefully. If they can continue to remain in their own home, well and good, particularly now with the arrangements for nursing care in many instances. It also takes some pressure off the retirement villages, which are experiencing extreme pressure these days with people wanting to go into them. It is all very well to say that we need retirement villages, but equally important is where the money is to come from.

I suppose the answer is fairly easy in this instance: it is coming from the people who are going in and using the retirement facilities. That certainly pays for the infrastructure, and their retirement benefits will, by and large, pay for all the amenities to which they have access on a daily basis. However, we need to recognise that the funds from the Commonwealth and in many instances State contributions in one way or another are significant. Therefore, the more that persons can provide for themselves the less strain there is on Governments and on taxpayers.

I am pleased to support the Bill. I think it is another positive step in the right direction. I realise that some of the

towns in my electorate are increasingly becoming so-called retirement villages. In a real sense they are becoming retirement towns. Many rural areas can be thankful for the retirees who are moving in because they are not suffering the population loss facing many other communities. My concern is what will happen in 10 or perhaps 20 years. Will there be a significant drop in the number of retirees?

Mr Atkinson interjecting:

Mr MEIER: The member for Spence says that new ones will take their place. I guess that many of us will be in that situation at some time. South Australia is doing its best to look after its retirees by a combination of methods. I am pleased to support the legislation.

Mr LEWIS (Ridley): I support the Bill. I am interested in the general thrust of the legislation in the way it affects the smaller types of retirement villages which I have in my electorate, and that is the reason for my participation in the debate. I am disappointed that hostels are included in the legislation. That is a mess which was created by Brian Howe. Even though it has been pointed out that the Commonwealth controls their operation, for some funny reason they are still included in this Bill in an attempt to fix up Howe's mess. I point out that the Aged Persons Care Act is very specific on consumer rights and consumer protection. In the case of the Commonwealth funded hostels, there is another area of overlap between Commonwealth and State legislation which increases the operating costs for the people who have the responsibility of administering them. It would not be at all difficult to exempt from this Act those hostels which come under Commonwealth legislation.

Furthermore, I guess we will have to wait until we see the regulations, but in my judgment we need to fix some of the airy-fairy definitions to be found in the codes. For instance, the code requires villages to repay all or part of a premium to a resident moving to a higher level of care within eight weeks of their taking up occupation in the RV. That will be particularly hard on country villages, because it usually takes us between 12 and 26 weeks or longer to obtain a new premium to repay the old one to the person going to a higher standard of care. Secondly, we also need to remember that it allows any resident to depart because of 'extenuating circumstances' and to claim a refund of all or part of their premium, even though the premium had expired, that is, the arrangement that was entered into had they been in occupancy for the duration of the period specified in that arrangement. Nevertheless, through this proposition they are able to claim through extenuating circumstances a full or part refund of their premium.

Form 6 is very complex and verbose, and the associated documentation is equally so. In fact, in one village in my electorate form 6 contains 36 pages, and that is not the whole of it. I will go on with that in a minute. We need to recognise that the Australian Securities Commission advised that the Howe legislation was not strong enough and, as I said earlier, I think that is the reason why hostels are included in this provision. Aged persons care does not protect the premiums paid by hostel residents under that legislation, so we now have the crazy situation where a country hospital with a hostel accommodation wing is entirely included as a retirement village: the entire hospital is included as a retirement village, because it is one commercial venture with one ACN. All the other provisions of the legislation will apply to all the hospital facilities as well as the hostel facilities. That goes for their arrangements too: the title certificate of the hospital now has to be endorsed as a retirement village, even though it has one small hostel portion to it.

I believe that hostels can be removed from this Act and that Brian Howe ought to be told simply to get his act together and sort it out. It is not up to us to fix his problems, for goodness sake. If he and his advisers are incapable of doing that, he should resign and, if he does not do something about it in the near future, I believe he ought to resign.

Another aspect to which I wish to draw attention is the 90-day settling-in period. It is a good idea for new residents because, if it does not work out for them, they can leave and get all their money repaid to them (less any reasonable rent charges and charges for any repairs that might be necessary to the facilities they have occupied during that 90-day period). When we look at the legislation, we find it is vague as to when the period starts. One of the managers of an organisation providing homes for the aged in my electorate had tried to find out what the phrase 'the day the occupier first occupies a unit' really means. The legislation mentions the day of settlement, and the official day of occupation is meant to start from that time, but apparently neither of these is the day that the unit is first occupied.

Very often it takes several weeks after the settlement arrangement is made for the person who is moving in to get in there to sleep, and there are good reasons why that occurs. They may be physically incapable of doing all the moving themselves and may not be sufficiently financial to meet the cost of paying someone else to do it, or they might have chosen to have their family help them shift in. It might take three or four consecutive weekends to get their gear from where they were living, move it in and set it up so they can sleep there. So, the commencement point for this settling-in period is vague; it is unknown. Do we include those three or four weeks when they were not living there? In some instances it has been up to eight weeks—that is 56 days gone already—and in the remaining 30 days they do not know whether they will be suitable as occupants of such villages. That ought to be clarified.

The requirement that within eight weeks a village must refund all or part of the premium to a resident departing for a higher level of care will affect the smaller villages in my electorate. They will need a new premium to pay out the old, and in most cases they will be very lucky if they can do it. Some of the other things that cause me anxiety are the definitions under clause 3 (the retirement village scheme) by comparison with the 1987 legislation. Let us take a look at the situation. If there are 50 units and only one requires a deposit, that is, a premium to be paid, all the other 49 units in the development of the site are covered by the Act. That seems unreasonable and unfair—an unnecessary additional burden. If States wish to help Brian Howe overcome his weaknesses in the Aged Persons Care Act 1954, we ought to do so with a separate piece of legislation to protect the hostel premiums separately from this legislation; perhaps better still, as I have said, we should tell Brian Howe to fix his own mess.

An honourable member: The Hon. Brian Howe.

Mr LEWIS: Yes, I guess that is his title, but I don't know many people who think he is. With regard to form 6, I can give an instance where the package of required paperwork runs to 34 pages: there are 10 pages of form 6 that have to be photocopied to hand to the incoming resident; three pages of schedule 1 (form 1); three pages of the resident contract; and 15 pages of financial reports—and that is just the retirement village in my electorate, which is very well run. At Resthaven, for instance, every person has to receive a

complete copy of the 140 pages of its financial report. Under the provisions of this Act, they have to be given it, they have to have it explained to them and they have to sign a statement that it has been done. That includes the accounts and estimates as presented at the previous annual general meeting of residents.

Mr Brokenshire interjecting:

Mr LEWIS: It would not hurt for it to be *caveat emptor* a little more. I do not think someone at that age who is a bit past for it for some reason or another in comprehending what they are getting into will have their security enhanced by telling them all this stuff and giving them written information that they will not read and cannot understand anyway. In most cases they do not have the resources to go to a lawyer, a solicitor of some kind or another, to have it explained to them.

It might be more relevant for the State to provide for trained legal officers from the private sector to simply go and explain to such people what their position is and satisfy themselves in the role of mediator or ombudsman prior to the event that the person going into the retirement village understands what they are getting themselves into, instead of all this paper work. Further to the financial reports, accounts and estimates, there is a one page statement of any changes there may be to the affairs of the village and two pages of schedule 2 of the existing legislation.

All in all, that is 34 pages. How many people over the age of 70 do members know who will read 34 pages? Imagine what it would be like in the case of the Resthaven situation, where it will be about 160 pages that people have to read if they are to derive the benefit they are supposed to get from this kind of requirement. Sure, we need some sort of disclosure; that is not argued. It is necessary to protect prospective residents who may wish to invest in a unit.

I am worried that many smaller country RVs have financially disadvantaged residents who do not pay a premium and rent a unit just as they would from the Housing Trust or a private landlord, yet they still have to provide all this information because they are caught in the net with one or two rooms or units covered by this legislation, yet all the rest are rented. Another matter that needs to be dealt with to clarify the position for the kinds of RVs that I have in my electorate relates to a type of resident; the Act does not acknowledge the type of resident, yet the village has to provide all that paper work that I believe is superfluous to a rental situation. It does not and should not have to be provided to someone who wants to rent.

More than that, the Housing Trust has to provide only four pages of conditions of a lease and a private operator wanting to rent takes only about two pages to spell out what it is all about. With those few remarks, having repeated myself in different ways to emphasise my concern about aspects of the legislation, as more of these matters can be resolved in Committee than in the course of the second reading and given other constraints on my time, I will allow the Committee consideration to deal with those matters or perhaps see it properly addressed in the other place.

Mr BECKER (Peake): I have to congratulate the Government and all involved in bringing this legislation to fruition and for making it possible to now bring down major laws that will assist people who will take up retirement village accommodation. In introducing the Bill the Minister reminded us, as follows:

> Since 1990, the Retirement Villages Advisory Committee has considered a wide range of changes to this legislation in order to address certain contractual and financial matters. . .

I had the Fulham Retirement Village in my old electorate of Hanson as well as one of the largest villages, Southern Cross Homes, at Plympton. I was involved with the Fulham village almost from day one. That retirement village was built by a private developer. It reached a certain stage and was opened by the then Attorney-General (Hon. Chris Sumner). I often wonder why he allowed himself to be used to open that village. Perhaps it was to give some form of credibility to what was being established. However, I then saw the anguish, problems and difficulties experienced by people moving in and purchasing unit accommodation. That retirement village was then taken over by the Co-operative Building Society, as it was then known, but it encountered further difficulties in handling and managing that and other villages in its organisation. Sheer frustration and a tremendous number of problems were encountered by residents in that village in the early days.

Certainly, it is to the credit of those residents who stuck it out and who used every opportunity and means to resolve the situation. Those resources included everything and anything I could do to ensure that what was a private developed cum promoted project turned out to be something that is now operating for the benefit of residents. Initially, that was certainly not the case. I did not believe it was and I believe there were many other retirement villages built some years ago by promoters who wanted to make a quick quid. They saw the opportunity to cash in on the demand for this type of accommodation by the unsuspecting elderly.

Fortunately, as the local member of Parliament, with my banking experience and involvement with the local people, I was able to help. Widows in particular were able to come to me, because they were much in need of having someone they could trust and rely on to advise them about the difficulties they were experiencing in the various retirement villages. I refer not only to Fulham but to Edwardstown and further south of the city and in country areas where many of these developments ran into problems and where many people looked like losing all their savings. I well remember when the Fulham village started and the public meetings attended by 300 and 400 people who were urged in the initial stages to sell their homes and move into the village. It was to be the most luxurious and comfortable means of retirement. On paper it looked that way but there were countless problems.

The first problems encountered were structural. There were cases of poor workmanship; maintenance problems of settling in the first 12 months involved ill fitting doors, inadequate plumbing and tiling; and there were just so many construction problems that it was a constant battle and negotiation with the then promoter/managers to get these problems fixed. They were the types of problems that the people buying the units did not want to be bothered with or could not handle, certainly not at that stage in life. A couple might move in and unfortunately the husband would pass away and his widow was suddenly left with the financial responsibility of looking after the unit and trying to deal with ill fitting doors, poor plumbing and all the other little problems that can go wrong with a newly built residential unit.

So, it did make it tough. Life was almost hell for some of the residents in this village, but I give them credit: they stuck together, they helped one another and they were able to institute and establish committees. They met and discussed

the problems with people experiencing similar problems in other suburbs. They got together and formed associations, and we now know that that is the history of the retirement villages legislation.

There were many little problems that came up along the way that we as legislators did not anticipate; neither did the residents. It was not until they experienced these problems that we as members of Parliament were able to deal with them. One very simple issue which affected many of my residents was land tax. Because of the structure of the company and everything else, every resident in that retirement village was liable for land tax. We were fortunate to be able to mount a campaign, we got hundreds of signatures to petitions and we got the Government of the day to change the legislation so these people were exempted from land tax. However, not every village passed on the difference, so not every resident benefited by it. We then had to come back and insist that residents were given their rights.

That is why I say that anybody who could get this group together—management and the residents—and strike a settlement has done extremely well. They deserve the highest commendation. By golly, it was not easy. Those who were involved in this industry who were trying to provide a facility for the residents and at the same time having to maintain a profit and having to set aside sufficient funds out of the members' contributions to provide for future maintenance were experiencing many difficulties. The margins were just not there. The experience from interstate and overseas is that it takes a lot longer than the initial promoters thought to make a profit. The promoters came into the business because they had heard there was a quick dollar to be made within a short period of time. Because of the turnover of the units and the percentage of moneys that were being retained, they believed that substantial profits were being made. That was not to be so, and certainly it was not to be so in this State in terms of looking after the rights of the people.

I saw many people sell their houses, encouraged by their children, who said, 'She'll be right, mum and dad; sell your house and go into the retirement village. If there are any problems, we will look after you.' That was all right for six to 12 months. As soon as there were a few problems, poor old mum and dad were left on their own and they saw less and less of their grandchildren. It has happened on many occasions, because there was a lack of understanding and knowledge. Also, there was the temptation to solve an accommodation problem quickly, because many Australian families thought, 'Mum and dad can no longer look after their quarter acre block where they have the family home with gardens, flower beds, vegetable plot and trees. Mum and dad are too old. Let us get them out of there and put them into a retirement village.'

I always resist that type of advice. We as a Parliament have a responsibility to help people stay in their own home. I am against home unit accommodation. I would rather keep people in their own home. They are much happier and, in 99 times out of 100, it is theirs and it is freehold. They are accustomed to that local residential involvement. But there does come a time when the quarter acre block is just too big. We have not had the need in this country, this wonderful city and State of ours, to shrink the size of the blocks, although there is a growing market for courtyard type development. I call it the five metre fronted blocks with the narrow two or three bedroom cottage on it which is ideal retirement accommodation, but you are on your own. That type of living suits many people.

With most retirement villages today, through the Co-operative Building Society, the housing and accommodation that is provided is of a much better standard and many of the residents have the benefit of a type of hostel accommodation where assistance is on hand to those who are disabled or who have a disability so that they need a little bit of supervision. With the wonderful facilities that are provided in some of these retirement villages, somebody is there to supervise and take care in case something happens. Regrettably, as people age, their disabilities deteriorate and they may need to go into nursing accommodation.

We have some wonderful organisations in South Australia that look after the people whom I am talking about and provide this accommodation. I will not name them, because I am certain to leave one or two out and I will get into trouble. The vast majority of organisations in South Australia that are providing this accommodation are doing a wonderful job. I just hope that, given all the demands placed on them and the arrangements required under the legislation, with the assistance of the various facilities, the costs of managing these units of accommodation can be kept within a reasonable limit.

This legislation does many things. It ensures the provision of skilled management teams to look after the residents, their property and their investment. There is a settling in period: those who acquire their accommodation have at least 90 days. Clause 6 (e) provides:

(9) For the purposes of this section, a resident's settling-in period is—

(a) the period ending 90 days after the day on which the resident first occupies a unit in the retirement village, or 180 days after the day of settlement on the unit, whichever first occurs;

or

(b) such longer period as may be specified in an agreement between the administering authority and the resident.

So, there is that protection, and on occasion I have seen people acquire a unit, move in but suddenly realise that what they got was not what they had been promised and it was not suitable for their requirements. In addition, people can suffer debilitating disability in a short period, given the excitement and problems associated with moving in. Some people have suffered strokes in those circumstances. At least there is some form of protection in that respect. There is this settling in period, which will certainly be beneficial for many people.

Then, as the Minister advises, there is the greater role and the strengthening of the residents committees in the daily management of villages through regular consultation with the administering authority. On many occasions I was asked to go to meetings of the residents whilst they sought details of balance sheets, where their moneys were going in relation to maintenance, what was in the maintenance fund, how much was paid out for painting, and other maintenance problems. They questioned the tendering system and the arrangements for the calling of tenders to undertake the work.

Never let it be said that the people who move into retirement villages are fully retired, because my experience has shown that people who move into retirement villages, be they retired business persons, bankers, public servants or whatever, have a considerable amount of skills. You can imagine, Mr Acting Speaker, a retirement village of 50, 60, 70 couples or unit holders from a wide variety of occupations. They are people who are alert and astute enough to read contract agreements. They know how to operate and manage committee meetings, and they know the proper procedure for debate. They have maintenance skills, and they are able to

provide a wonderful source of assistance to the management of any of these villages through the residents committees.

The residents committee of the Fulham retirement village was a very active group. Everybody was involved and everybody wanted to be involved because the leadership of the people in that retirement village was outstanding. They had many social occasions and functions, and they certainly got out and about. There was no time for people to sit around and mope. You were taken out and made to be part of any activity that went on. I commend that committee because it undertook funding, had fetes and fairs and did a lot of things, and it was a happy place. It was like a little country town or village in its own right. The people who lived there wanted to be part of it. They certainly enjoyed their life in that village, and they should continue to do so for a long time. Of course, they had the backing and support of the Cooperative Building Society. When you have an organisation of that strength behind you, you have piece of mind and security.

One provision in the legislation deals with the disposal of a village and the communications that are required between the owners and the residents. I have already touched on that because the village I have mentioned went through such a period. It was quite a traumatic time for the residents when the original promoters and developers sold out and the village was taken over by the Cooperative Building Society. The problems to be sought out could not be resolved overnight. It took a long time to rectify some of the mistakes that had been made.

There is also to be a code of conduct in negotiating and dealing with the residents groups and/or the contractual arrangements—that is excellent. A provision of the Bill deals with people who have to move into hostel or care accommodation. We now have greater protection. One of the benefits is new section 9a(1), which provides:

> Where a resident is absent from a retirement village for a continuous period of at least 28 days, the resident is not liable to pay, in respect of a period of absence after those 28 days, any amount in respect of any personal service that the retirement village (or the administering authority) ceases to provide to the resident because of his or her absence from the retirement village.

That is a great benefit and a real plus, because a lot of people move into retirement villages having acquired the property or the unit and then, with their financial situation the way it is structured because they are on a pension, a large percentage of their pension goes into administrative costs and it leaves them very little chance to save any money or to have any money if they want to go away on a holiday or are forced to go into hospital. This new section helps them in that respect, and that is a great benefit. I congratulate all parties who got together to solve the problems that have been created in the past.

Mr WADE (Elder): As usual, the member for Peake has comprehensively examined the amendments and made quite detailed comments, to which I agree, on all the aspects regarding residents rights, residents committees, the role of tribunals and the disposal of villages. We congratulate everyone involved in the drafting of this amending legislation. I understand that the Retirement Villages Advisory Committee unanimously recommended the provisions which are now before Parliament. The majority of residents are very pleased with the provisions of the Bill.

There is one provision that is of concern to residents of villages in my electorate, and I bring it to the attention of the House. In September 1990 the Office of the Commissioner for the Ageing issued a report entitled 'Issues in the Financing and Administration of Retirement Villages'. Page 52 of that report, under principle 4, states:

> Any resident vacating a retirement village unit occupied on a loan/license basis:—
> - should either receive a refund (less deductions), based on the proceeds of the licence's resale at a price approved in advance by the resident, within fourteen days of the resale being concluded;
> - or, where a resale of the licence at a price approved by the departing resident does not occur within 90 days of vacant possession of the unit being given to the administering authority, should receive a refund (less deductions) which returns to the resident the same proportion of the licence's independently-assessed market value as the resident paid as a premium when he/she purchased the licence. . .

In short, the person gets paid 90 days one way or the other after leaving the unit.

In March 1991 the South Australian Retirement Villages Residents Association presented a submission in response to the Commissioner for the Ageing's discussion paper. Section 3(6) of the submission states:

> The 'Net Value of Refund'. . . should be paid to the original resident within 14 days of completion of the resale.
> Or payment within 90 days of the date of vacating possession if resale. . . does not occur. The 'Net Value of Refund' shall then be on a market value agreed between the parties.

You can see, Mr Acting Speaker, that the South Australian Retirement Villages Residents Association agreed with the Office of the Commissioner for the Ageing that a guaranteed refund should be included in any amendment to the Act. There is a guaranteed refund, but this refund is restricted to medical reasons or other extenuating circumstances. There is nothing in the Act, nor in the Bill, to ensure that residents leaving a village for reasons other than mental or physical illness will receive a repayment of their premiums within a specified time limit. The administering authority is not compelled to seek to re-licence a unit as soon as possible because the original licensee is liable for all costs until the unit is relet.

In this situation, one must admit that it could be virtually impossible for a person or couple to leave their retirement unit unless they re-licence the unit straight away or persuade a lending body to put up cash while the other unit is being re-licensed. This open ended situation caused a great deal of concern for some residents within my electorate who live in retirement villages. However, all is not lost, because I understand that regulations under the legislation will include the following:

> The administering authority must act promptly to remarket the unit as soon as the administering authority receives formal notice of the termination of occupancy of the unit.

Even though those words are not in the legislation, I am led to believe that they will be included in the regulations. The concerns of residents who wish to leave a retirement village and invest their money in another retirement village should be fairly well abated by the fact that the administering authority must act promptly to remarket the unit.

When this legislation is enacted and the regulations are brought in, I for one, along with a number of residents in the retirement units within my electorate, will be watching closely to ensure that the administering authority acts promptly to remarket the unit of any resident who wishes to leave a retirement village for any reason apart from mental or physical illness, not only for the benefit of the resident leaving but also for the benefit and feeling of security of the residents who remain. Apart from that major concern, the

Retirement Villages (Miscellaneous) Amendment Bill is a good one and takes into account a number of concerns residents have had for years. It has met those concerns as a result of consultation and consensus. That is to be applauded and all the persons, groups and committees that have made submissions and been involved in the discussions and decision-making are to be commended. On that basis, I commend the Bill to the House.

The Hon. S.J. BAKER (Deputy Premier): I thank all members for their contribution to the debate. Those who have been members of this Parliament for some time—at least for the past eight years—would recognise that the issue of retirement villages has occupied some considerable time of the Parliament, basically because some of the problems mentioned here today in this House by both new and older members of the Parliament have been the exact difficulties that have eventually needed to be addressed by legislation. We have here a further update of the legislation. It is important to understand that we have come out of a reasonably deregulated environment to a very regulated environment, but we should be very careful that the level of regulation does not prohibit the provision of accommodation for elderly people. We have managed to keep that balance, but it could change and prohibit or make more expensive the possibility of people obtaining their own level of independence within a retirement village. This important piece of the market could be put at risk if the Government goes too far down that track.

Protection should be afforded by the Bill to ensure that both the client and the financier of these villages are on equal footing in terms of negotiation, that the rules are clearly understood and a level of comfort is provided with the contractual arrangements. The Bill takes the issue of retirement villages, and the framework under which they operate, one step further and has the support of the industry, which means we have negotiated a very healthy position because it adds further safeguards to those that already exist.

A number of comments were made during the second reading debate, and I believe they are worthy of follow up and response. Commonwealth hostels, mentioned by my colleague the member for Ridley, remain subject to State legislation. Obviously we have some duplication. The Minister for Consumer Affairs has asked his officers to examine the question of duplication. The extent of it is unknown, but certainly the issue is important—we do not want Commonwealth officers doing the same job as State officers. Duplication has been a matter advanced at the Federal level by all the States. We are sick and tired of the Federal Government ripping off our taxes and filling up offices with personnel simply to duplicate the efforts of the State Government and its employees.

It is an important matter and one raised in a very combative situation with the Prime Minister. In COAG the Prime Minister said that he would address the issue. I do not have great hope that it will be addressed in a hurry because the same people who advise him would be those who want the situation to prevail, namely, the exercise of power. It is clearly on the State agenda to eliminate or at least reduce to a comfortable minimum the number of officers employed in any delivery of service where common provisions are involved. The issue of duplication was raised. It is an important issue, but it goes much further than the Commonwealth hostels.

The member for Ridley also said that hostels should never have been brought under legislation. It is a fine point that we take on this issue. Obviously the Minister does not want hostels to be placed in any more advantaged or worse situation than are retirement villages because, as we are all aware, the next step for many people in retirement villages is into hostel accommodation and, if they survive that, into nursing home or infirmary care. We are not talking of a separate part of the process. It is an integrated part of the process and should be treated as such.

The settling in period is 90 days, calculated from the first day of occupancy, or 180 days after settlement, whichever occurs first. That is set out in clause 6(9)(a) of the Bill. A finite period is given, whichever is the sooner. Obviously if a contract is signed and a person immediately enters the retirement village, at the end of the period the settling in period is complete and therefore all due consideration has been given. As a result, the resident does not have a right to walk out of the village and receive full compensation for the moneys invested.

However, if the contract is settled and there is some period before occupancy is taken up, the 180 days may be a more relevant measure of the settling in period. Situations vary, but both matters are covered in the Bill. One matter raised by members is the extent to which elderly people can understand contracts. As a person who does not regard himself as elderly, even my reading of some of the contracts leaves me with a lack of understanding as to their impact and, on occasions, I need interpretation. If people of our age have difficulty understanding contracts, the difficulty experienced by more elderly citizens is understandable.

Importantly, the regulations will stipulate that contracts are written in plain language to make them as understandable as possible, and that is certainly an advance from where we are today. In relation to the provision of information, which was a matter raised by the member for Ridley, we are talking about a very important investment. It is probably the last major investment that a person will make in his or her life. Irrespective of whether the person can understand all the detail, they can always obtain advice. That person can always go to a friend, a lawyer, the local preacher, or whoever he or she has confidence in and say, 'Look, given this information, do you think I should invest in this situation?'

So, by making more information available rather than less it will enable a person to make some decisions that will conceivably, at least on the financial side, provide them with a degree of comfort, because we are talking about a significant form of investment. The Commissioner for Consumer Affairs receives many complaints from people living in villages indicating that they do not receive enough financial information about the village and expressing concern about their investment. So, rather than the situation as outlined by the member for Ridley, which is a concern for country people in smaller establishments, there is a cost to providing information.

However, I would suggest that it is basic information that should be kept on the premises of any running establishment irrespective of whether it is a hostel, nursing home, retirement village, or whatever. Financial information should be available to any potential client. The level and extent of that information will vary according to the complexity of the arrangement, and some of these arrangements are very simple. The legislation should not impose too great a burden on the providers of these facilities. The member for Elder

raised the important issue of people receiving a refund when they leave a retirement village.

The contract specifies what refund will be available under particular conditions. Some of them have a number of years of occupancy, or they used to—that may have changed. I do not know that any of the current contracts for these villages provide for a 100 per cent refund. Normally the situation is that a person buys into a village, and they might pay $100 000 or $60 000, whatever the going price may be, and then there is a clear understanding at the end of their time at that village that there shall be a refund of, for example, 75 per cent of their original investment, either to them to provide for further accommodation, or to their relatives should the person not survive the experience.

The contracts are required to clearly indicate what arrangement is in place for refunds. The issue then is how long should a person wait before they receive the refund? That is a matter that is being addressed in the regulations, so I am pleased to give an assurance to the member for Elder on that subject. It should be understood that many of these retirement villages have not been exceptionally healthy in a financial sense, and therefore there has been reluctance to repay money, particularly if a unit is not relet. Under the financial arrangements that prevail in such places—because normally some deduction is made from the original capital input by the resident—it is in the administrators's best interests to relet that unit as quickly as possible so that the cycle continues.

Retirement villages depend very much on turnover, and they do not demand the full capital cost when people take up residence, otherwise the price would be much higher. So, there is a trade-off. The trade-off is that the person has residence of that village for a particular period, and some deduction is made at the end of that time for that residency. That deduction then forms part of the capitalisation process to meet the demands of financiers, or whatever. So, it is in the best interest of retirement villages to ensure that those units are relet or resold as soon as possible.

Situations do exist where that does not prevail. There are situations where there might have been a drop in capital value or some event which would suggest to the administrators that perhaps if they continue to receive the maintenance moneys, which are required in these villages, that would be better than receiving a diminished capital input. We can argue about the finances. We can say that some administrators will be slack, or they might be waiting on one of their friends to take over a unit, so they do not necessarily relet it as quickly as possible. There are a range of reasons why a unit is not relet, but the regulations will specify a test of reasonableness.

The regulations will provide that the administrators make prompt repayment of the original deposit or that portion remaining. So, that issue is covered. We cannot be prescriptive about this situation because it may well be that even under the best of intentions six months or nine months might elapse before that unit is sold or relet. That matter has been canvassed, and it will be the subject of continual scrutiny. We are pleased as a Government to introduce this measure; it takes us one further step along the road. I hope it is the final step in the retirement villages process.

There may well be other matters that need to be tidied up, but this is a significant piece of legislation in that it provides a cooling off period; it allows for more involvement of residents in the decisions of the village; it has a better defined role for the Residential Tenancies Tribunal; and it has the support of the industry. I thank all members for their constructive contributions during the debate.

Bill read a second time.

In Committee.

Clauses 1 to 14 passed.

Clause 15—'Insertion of schedule 3.'

The Hon. S.J. BAKER: I move:

To insert clause 15.

Clause 15 could not be dealt with by the Upper House; it is a money clause of the Bill and as such is the province of the Lower House, the House of Government.

Clause inserted.

Clause 16 and title passed.

Bill read a third time and passed.

LIMITATION OF ACTIONS (RECOVERY OF TAXES AND SUBSTANTIVE LAW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 April. Page 796.)

Mr QUIRKE (Playford): At the end of the day, the Opposition has no objection to this measure. Indeed, it was a consequence of Ministerial Council meetings during 1993 and was, I understand, a casualty of the election process. This measure would have gone through the House in the normal course of events during 1993.

The Bill, on the surface, smacks of the fact that when the Government has a certain number of arrangements, it can go ahead and change the rules. Indeed, a superficial look at this measure would reinforce that view. Unfortunately, Government is about setting rules, laws and regulations. This measure seeks to change some of the arrangements but, in essence, they are changes which are supported in every jurisdiction in Australia. I understand that this is complementary legislation. In other jurisdictions the limit of action has been changed to meet a set of national guidelines.

I understand that the Minister will be moving amendments in Committee. Those amendments will seek to alter the current limitations to two months for any actions. This measure is the product of much Government discussion that took place when we were in government until December last year. As the shadow Attorney-General has supported this legislation in the other place and made a number of remarks about it, I do not think there is much more that I can say at this stage. However, we may ask some questions on the clauses in Committee.

The Hon. S.J. BAKER (Deputy Premier): I thank the member for Playford for his support. However, this is not the Bill that he will finish up agreeing or disagreeing to, because in another place some important provisions were taken out. Basically, that emasculated the whole Act. We might as well almost not be debating this piece of legislation.

An honourable member interjecting:

The Hon. S.J. BAKER: Are you saying that it was not emasculated?

Mr Quirke: Neutered.

The Hon. S.J. BAKER: The Act has been neutered by the actions of Opposition members and the Australian Democrats in another place. We are facing a very difficult situation in relation to taxation measures. There have already been High Court challenges on the rights of States to collect particular forms of taxation which may be deemed to be akin to Federal

excise but which have been addressed in a different way by State legislatures in terms of taxation collection.

The items that have been at risk—although there is now a greater level of comfort—are tobacco, liquor and petrol. The last High Court decision gave us a great deal of comfort in relation to tobacco and liquor. The States collectively sighed with relief when the High Court ruled that those taxes were valid. However, the question of petroleum remains open. That is the interpretation with which we have been provided by the best legal brains at our disposal and it could be a matter of further challenge. Therefore, tomorrow or the next day or in a year's time, petrol tax collections could be placed at risk.

The State currently collects $144 million in petrol tax. The financial situation that I inherited does not allow for the loss of $1 million or even $1, let alone $144 million. The annual collection is $144 million. Therefore, if a decision repudiates our right to collect petrol tax, it will have a severe impact on our budgets.

What we attempted to do, and what we are now going to reattempt to do, is to insert a six-month limitation of action clause in the Bill to ensure that if those taxes are collected we do not have to repay them. There is a good reason for that. Once we have collected those taxes and put them in the budget, hospitals, education, transport and so on will be affected, or our State debt will be affected, and I do not need to tell the House about that.

We undertook to respond to a matter which was raised in another place and which was also raised by the Law Society about the validity of the amendments to the Act. We undertook to provide an answer in this place and we are now so doing. The issue that was raised was in relation to certain clauses. I have received a response on that matter, which states:

> On examination, the issues did not turn out to be matters of substance, but I wish to place the following response on record. First, the Law Society notes the effect of s.48 of the Act, 'General power to extend periods of limitation' and rule 53.03 of the Supreme Court rules, 'Power to allow amendment when the limitation period has expired' may modify the impact of the amendments. However, the Law Society appears to have overlooked s.38(3), which provides that the limitation period prescribed by subsection (2) cannot be extended.
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> Secondly, the Law Society comments that the new section 38 does not deal with any mark-up on purported taxes, and this seems only to deal partially with the concept of windfall profit. It is true, but it must be considered in the context that the limitation can sensibly apply to the invalid tax. The provision is not directed towards windfall profits but merely against the repayment of invalid taxes where such repayments result in windfall profits. In any event, as the amendment refers to passing on the burden and, as the extent of such passing on is unlikely to be exact or detailed, I would expect that some mark-up will be included, unless such a mark-up was very clearly distinguished from the tax at the time it was paid. I am satisfied the Bill should not be amended to include mark-ups.

If I can draw a parallel, we had a similar situation with the way the licence fees, which have been a matter of some scrutiny by the High Court, were demanded prior to the measures being introduced into the budget. The former Treasurer can well remember the circumstances where the tobacco tax had to take effect from 1 July, yet the provisions that would make that tax possible were not to be introduced until somewhat later when Parliament resumed. In fact, we found that those were budget measures which did not pass until October. Nobody in the industry knew what was going on at the time, and no tax was collected from 1 July until an instruction was issued by the Commissioner of Taxation. In that period there was at least a fortnight when no increased taxes were collected as a result of an increase in the rate of taxation, yet the industry was expected to pay the impost through its licence fees.

The former Treasurer acted promptly and constructively on that issue, and we determined to ask the members of the industry to provide an estimate of the taxation that they were unable to collect because of the lack of notice, and therefore there was a trade-off or an offset against their tax liability to that effect. We should remember that when we are talking about this introduction. I am not saying it is a direct parallel: I am saying that in this area some issues have been addressed simply by agreement. In the matter that we are talking about, however, the main issue is not the windfall profit that may be made (it may be the one month or the six week collection by the company, and that is why I think a mistake has been made): the issue happens to be the extent to which taxes that have been collected should be passed back. That is the issue.

I am mindful that the Opposition may not be in full knowledge of the facts. I would understand that, when we address this matter in Committee, the Opposition may not feel comfortable with the amendment which substitutes the 12 months with six months, which was the original intention of the Bill, but I am assured that the matter can be re-examined in light of my answer and the impact on the budget in another place without our getting into a heated argument about whether the time limit should be 12 months or six months. I thank the members of the Opposition for their support in this matter.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Limitation on actions for recovery of money.'

The Hon. S.J. BAKER: I move:

Page 2, line 8—Leave out '12' and insert 'six'.

This brings back the limitation period from 12 months to six months.

Mr ATKINSON: The Opposition opposes this amendment, the reason being connected with the history of this matter. When the Labor Party was in government, we proposed to impose a limit on actions for recovery of taxes that might have been rendered invalid by the High Court's ruling on section 90 of the Constitution. When we sought to impose those limits, the then Opposition, now the Government, said that our changes were terrible, that they ought to be opposed, that they were a violation of the rule of law and that it was a case of a Government behaving in a tyrannical and oppressive manner. Now that the Liberal Party is in government and we are in opposition, we find that by its own lights it will be more oppressive and tyrannical by shortening that limitation period which I thought would aggravate the mischief which it identified when it was in Opposition. Accordingly, the Opposition will be entirely consistent and support the original provisions and not the amendment.

The Hon. S.J. BAKER: I thank the member for Spence for his well reasoned argument. Having read the debates on this issue, I was interested in the way we have come back and how, after being in opposition, Governments change their mind on issues. It is an important issue.

Mr Atkinson: And Oppositions change their mind.

The Hon. S.J. BAKER: And Oppositions change their mind, of course. I am sure that wisdom will prevail in this matter. If the honourable member had read my contribution in this place, he would understand that I fully appreciated

every effort being made by the then Treasurer to secure our future finances.

The Hon. Frank Blevins interjecting:

The Hon. S.J. BAKER: Not this one, I didn't. Members should look back at the debate on this issue and, despite particular issues being raised in another place, they will find that the Opposition was constructive. Wisdom does prevail in much stronger doses in this House. I appreciate the Opposition's argument. I do not believe it is a matter on which we need to call for a division, but I have been provided with an explanation.

Amendment carried.

The Hon. S.J. BAKER: I move:

Page 2, line 12—Leave out 'eight' and insert 'two'.

The same reasons apply here as were previously addressed. One reason involved the period during which tax can be claimed, another involving the period of the taxation. We believed it was important to satisfy those matters. Members in another place were dissatisfied, and we are now satisfying them here. We intend to proceed and I hope that logic will prevail in another place.

Mr ATKINSON: We oppose this amendment also. In the four years that I have been in Parliament the Attorney-General when in Opposition was a great defender of the rule of law, yet in the few months that he has occupied ministerial office he has introduced a series of retrospective Bills. He has undermined the independence of the judiciary and now he seeks tyrannically to deprive private citizens of their legal rights. The Opposition opposes the amendment.

The Hon. S.J. BAKER: I am not sure that private citizens are being affected in any way by this measure.

Mr Atkinson interjecting:

The Hon. S.J. BAKER: One actually hands it back to the collecting agency, which happens to be the cigarette company, the oil company or the liquor retailers. It all goes back there. One has to trust them to pass the money back to the people who bought the original product. It is farcical in the extreme. The honourable member does not have a great argument in this situation.

Amendment carried; clause as amended passed.

Remaining clauses (5 and 6) and title passed.

Bill read a third time and passed.

INDUSTRIAL AND EMPLOYEE RELATIONS BILL

In Committee.

(Continued from 19 April. Page 817.)

Clause 97—'Employer to provide copy of award or enterprise agreement.'

Mr CLARKE: I move:

Page 39—

Line 3—Leave out 'within 28 days after the date of the request' and insert 'within 24 hours after the time of the request'.

Lines 6 to 10—Leave out subclause (3) and substitute:

(3) An employer must keep a copy of an award or enterprise agreement that is binding on an employee exhibited in a prominent position at the employee's workplace.

Penalty: Division 9 fine.

Expiation fee: Division 10 fee.

My amendments are fairly simple. There are a couple of extraordinary aspects to the Government's clause. Subclause (2) says that, if an employee wants a copy of an award or enterprise agreement from their employer, they can get it but the obligation on the employer to provide it is within 28 days of the date of the request. With today's technology and photocopiers, whether they be on site or around the corner at a delicatessen, an employee should be entitled and should be able to receive a copy of that enterprise agreement, at the latest, within 24 hours of the request, which is what the Opposition seeks in its amendment. We believe the agreement should be provided within 24 hours of the date of request.

That is not an unreasonable request, particularly if an employee wishes to make an appointment with an employee ombudsman, union, lawyer or some other representative concerning that matter. Clearly, 28 days is grossly far too long. We believe the provisions in the current Act should also be in this legislation, so that the employer is obligated to display a copy of the award or enterprise agreement in a prominent position in the workplace, thus allowing the employee going about his or her normal duties at any time to inspect that award or enterprise agreement on site without having to go to an employer and request a copy of it.

Sometimes it is not unusual for employees to lose papers and the like, particularly enterprise agreements that are not read every night before going to bed. They may wish to ascertain their rights at a particular time. I do not see any onerous obligation on an employer displaying a copy of the award or enterprise agreement at the workplace. That provision has been part of the Act for many years and I have never heard any employer complaining about it to date. My other amendment relates to subclause (3), which provides:

an employer is not obliged to give an employee a copy of an award or enterprise agreement if—

. . . the employer has, within the preceding 12 months, given the employee a copy of the award or enterprise agreement; or

. . . the award or enterprise agreement is exhibited at the employee's workplace.

We believe the subclause should simply provide that it has to be at the employee's workplace in a common position, as my amendment provides. Subclause (3)(a) is somewhat on the draconian side. On 1 January an employee is given a copy of the enterprise agreement for information. If they mislay it over the next 12 months, is the Government seriously suggesting that employees should not be able to check their legal rights and entitlements by asking the employer to provide a copy of the agreement? Again, I have not heard of any employers seriously disadvantaged or incurring massive costs or dislocation through an employee being able to access a copy of the award or enterprise agreement readily at a prominent spot in the workplace. Further, I draw the Committee's attention to subclause (2). For an employee to make a request and then have to wait 28 days for a copy of the enterprise agreement is too stupid for words, particularly in view of today's technology. Many enterprise agreements involve a handful of employees. As it is a stupid provision, I urge the Committee to support my amendments.

The Hon. G.A. INGERSON: As I said yesterday, I have a lot of difficulty with the honourable member opposite, but I would have thought that, if it had to be supplied within 28 days, it meant it could be supplied just as easily within one day. I think his amendment on the other side of the coin is more irrational in stipulating a period within 24 hours. That gives no scope at all, whether it involve unavoidable delay or any other reason—legitimate or otherwise—for the employer to provide a copy of the award or agreement. I ask the honourable member to be practical about this. I do not know of an employer who would deliberately extend the period unless there were extenuating circumstances, as there might

well be. I know from experience in the department for which I am now responsible that it is not always easy to get copies of the award within a reasonable period.

I understand that every business is supposed to have a copy of the award on the premises, but there are times when they do not. To say that it has to be provided within 24 hours is absurd. We say it should be done within 28 days and we stand by that. As I have already indicated, it may or may not be the decision of the two parties to make the agreement public. Our clause covers all instances, whether or not confidentiality is involved. We just do not accept the argument of members opposite.

Mr BRINDAL: The devastating logic of the member for Ross Smith is again getting to me. I heard him say that enterprise agreements can be negotiated by a handful of people. I believe that the Minister has told this House that the current Government's concept is that an enterprise agreement can include one person or whole work forces. In the light of the proposed amendment, I therefore ask whether the Minister thinks it would be practicable to display every enterprise agreement for a workplace publicly. I think the Minister has considered the fact that, if you are an outworker or working on a remote location, you probably could not get a copy of your agreement within 24 hours.

The Hon. G.A. INGERSON: I thank the member for Unley for his learned question. He has a point, and it is a point that I had not considered. In the case of the outworkers, there is a perfect example. If they are involved in an enterprise agreement, it may be difficult to get a copy to them within 24 hours, so the leniency of a provision stipulating that it should be provided within 28 days makes a lot more sense. The member for Unley highlights the inadequacies of the member opposite, and I thank him for giving me the opportunity to again bring that to the Committee's attention.

Amendments negatived; clause passed.

Clause 98 passed.

Clause 99—'Unfair dismissal.'

The CHAIRMAN: I believe the member for Ross Smith has an amendment to speak to, but I propose to follow the practice adopted in respect of previous clauses, where the honourable member has indicated his intention to oppose the clause and insert a new clause which, in effect, negates the Minister's intention. The honourable member may speak to his new clause but I will put the question 'That the clause stand as printed'.

Mr CLARKE: I keep saying it, but there are many important parts of this Bill, and this is a very significant and important part of the measure dealing with the rights of workers with respect to unfair dismissal. Members may note that the Opposition's suggested clause 99 seeks to replace the whole of clauses 99 to 105 of the Bill. I seek your guidance, Mr Chairman. If my amendment fails, that basically disposes of the argument right through to clause 105, because I seek to delete clauses 99 to 105 and substitute in lieu my amendment, which is put forward as clause 99. It would seem absurd, if I were to lose on clause 99, that we re-argued the remaining clauses.

The CHAIRMAN: The honourable member has created his own dilemma by moving one clause to substitute several clauses. The Chair will exercise some discretion. I am not certain what the honourable member's intention is, but under normal circumstances I had indicated on my copy that I would put clauses 99 to 105 separately, since he has already indicated his intention to oppose them. If the clauses are put separately, he will get the opportunity to speak to them on each occasion that they are put.

Mr CLARKE: For the information of the Committee and yourself, Mr Chairman, and in the interests of time, my amendment goes over the whole gamut of clauses 99 to 105. I will not repeat my arguments through each of those clauses subsequently. Of course, I might win the amendment, in which case that disposes of the problem straight away. This is a very important amendment that has been moved by the Opposition because we seek to re-insert into the Bill the provisions of the existing Industrial Relations Act dealing with unfair dismissals, namely, section 31. At the same time, we have moderated it slightly in the sense that the existing Act does have a cutoff point with respect to employees who earn over a certain amount not being able to pursue an unfair dismissal claim before the Industrial Commission. That is the only difference between my amendment and the existing Act. The Government's proposal involves a number of problems. Clause 99 (1) provides:

> (b) the dismissed employee is an employee of a class excluded by regulation from the ambit of this Part.

That is grossly unfair because an employee who is dismissed ought to be able to ask, 'Do I have a right to seek reinstatement? Do I have a right to pursue my claims?' By referring to the Act, employees would realise that they had to ascertain whether they had been excluded by regulation.

An employee could find that he is in one employment class today and is perfectly content that he is covered by the legislation, because no regulation excludes him from pursuing a claim for unfair dismissal. The next day, by regulation, he finds that, even though he has not changed his occupation, by Government edict he no longer has the right to pursue an unfair dismissal claim. If it is aimed primarily at management persons or senior executives to make them pursue cases in the Supreme Court rather than the Industrial Commission, this does not achieve that. It means that employees performing even the lowest level of work in a workplace could, by regulation, find themselves cast out of the safety net of being able to pursue an unfair dismissal claim.

Subclause (3) is particularly vicious because it takes away rights that employees have enjoyed. To illustrate that, I refer to a comment already forwarded to the Minister by Andrew Stewart, an Associate Professor in law from the Flinders University of South Australia.

The Hon. G.A. Ingerson interjecting:

Mr CLARKE: I appreciate that the Minister does not want to hear this and would not want it on the record because of his embarrassment. In relation to clause 99(3), Mr Stewart says:

> This deals in a very heavy-handed way with the situation where an employee is able to complain about their dismissal either to the commission or to some other body under some other provision. In effect, once a complaint is filed under s99. . . the choice is irrevocably made: the employee can no longer pursue their other remedy which might for example be at common law for breach of contract, or under another statute, such as the Equal Opportunities Act. This seems far too draconian.
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> It makes no allowance for the situation where the employee, at the time of filing a s99 application, is unaware that they have another remedy which might indeed prove more favourable to them. It is not simply a question of people being ignorant as to their rights. For example, an employee might discover only after lodging a complaint of unfair dismissal that their dismissal was in fact motivated by discriminatory reasons which would justify proceedings under the Equal Opportunity Act.

The existing provisions with respect to section 31 dismissals are quite clear. You cannot ride two horses at the time you

come up for a section 31 unfair dismissal hearing. If you file a claim with the Equal Opportunities Commission and your section 31 matter comes on first, before that case is heard you have to make a determination: will you pursue the equal opportunity complaint or section 31? You cannot prosecute an employer for the same offence under two different parts of the legislation. Nobody is complaining about that. That is fair and reasonable and the employer is not placed in double jeopardy. However, this provision severely curtails an employee's rights. They may not know, for instance, that they have rights under the equal opportunity legislation to pursue a particular form of compensation or redress in the form of reinstatement.

The Hon. G.A. Ingerson interjecting:

Mr CLARKE: No, it's not.

The Hon. G.A. Ingerson interjecting:

Mr CLARKE: Unlike the Minister, I am interested in justice. The unfair dismissal legislation is overwhelmingly used by non-unionists. I am sticking up for the rights of the ordinary citizen to make an informed choice as to which tribunal best suits their circumstances and is best able to give them a fair go. There is no double dipping and, as the Minister should know, there is no double dipping under the existing legislation. An employee must make a choice prior to pursuing a claim. That is a simple fact—it is in the legislation, and that is all there is to it. The Minister can protest all he likes but, effectively, he is saying to somebody who wants to make an unfair dismissal claim, 'You must make your decision immediately'.

Members should also remember that the Minister proposes to reduce the time span to lodge a claim from 21 days to 14 days. Many of these people, particularly the non unionists, are not aware that they do have rights with respect to challenging a dismissal. They are not aware of their rights under equal opportunity legislation, and it may be several days or a fortnight before they get to see a lawyer, their union or some other body, such as the Working Women's Centre, which can advise them as to their legal rights. The Minister is narrowing their rights in this respect and is clearly acting at the behest of employers in this area.

The Hon. G.A. Ingerson: What's wrong with that?

Mr CLARKE: There's nothing wrong with that, as long as you are open about it. I am glad the Minister has said that he is acting on behalf of the employers. I am glad he has said that, and that it is in *Hansard*. That is a very truthful answer from the Minister, and I thank him for it. Clause 100 again shows the Minister's ignorance of industrial matters, particularly with respect to section 31 as it is currently constituted. Clause 100(3) provides that the commissioner or whoever is presiding at the pre-trial conference under this provision:

> . . . may dismiss the application if—
> (a) the applicant or a representative of the applicant fails, without reasonable excuse, to appear at the conference; or
> (b) the application is frivolous or vexatious; or
> (c) the person presiding at the conference decides, after hearing submissions from the parties appearing at the conference, that the application has no reasonable prospect of success.

Again, that is a nonsense for a number of reasons. As the Minister ought to be aware, the way section 31 proceedings go ahead—and I am sure the member for Florey and the member for Elder would have some knowledge of this—is that you go before a commissioner or a judge of the commission at a pre-trial conference to see whether the matter can be settled. It is done on a 'without prejudice' basis with respect to final arbitration and the parties appear.

At best the parties will get 45 minutes to initially sketch out their positions as to what caused the incident and the reasons why the employee was dismissed. Witnesses are not called. The employer and the employee are not sworn under oath, they are not subject to cross-examination and evidence is not tendered. It is all done in a very informal atmosphere. The commissioner, or whoever the presiding officer is, seeks to conciliate the matter on the very basic sketch presented by both parties. If there is no prospect of success, the matter is then referred for full trial where witnesses, including the applicant, are called, sworn and subject to cross-examination.

When the applicant and the employer have each stated their full case, called all their witnesses, tendered all their exhibits and had all their respective witnesses subjected to cross-examination, the commissioner is in a position to decide whether the application is frivolous or vexatious, or whether on the merits that have been put forward by the respective sides the application has a reasonable prospect of success.

It is an absolute outrage for employees—and, indeed, for employers, who are also caught by this—that a commissioner or presiding officer, probably in less than 45 minutes, with each side being lucky to have 10 minutes to state their case, can decide whether or not you have a reasonable chance of success, without witnesses being produced and cross-examined. As the Minister would be aware, the real test for both the applicant and the employer is when both are subject to cross-examination at the bar table to elicit the truth of the case. The Minister is trying to fast track unfair dismissal matters—he is trying to get rid of them as quickly as possible, which must, in all circumstances, favour the employer over a dismissed employee.

You would not be permitted to get away with this type of rubbish in the Supreme Court or the District Court. There is no way that the legal fraternity, the Attorney-General or the Supreme Court justices would tolerate the suggestion that a quick 45 minute get together of the parties could, somehow or other, without calling evidence or calling the parties and without cross-examination, put one in a position to determine whether an applicant has a reasonable prospect of success.

We are dealing with an employee's livelihood, yet clause 100(3) treats it in a frivolous sausage machine manner. Clause 100(4) provides:

> If the application is not dismissed or discontinued, the person presiding at the conference must, at the conclusion of the conference, make a recommendation to the parties on how the questions at issue between them might be resolved.

It already happens to some degree where the commissioners and judges who hear these matters in a private conference make suggestions to the parties about whether they think there is a possibility of reconciling different views to ameliorate the need for having to go to full trial, but again it is an injustice to the party against whom the commissioner makes the recommendation, because it is without the full case being heard and all witnesses being called and cross-examined.

It is just ridiculous, particularly as there is no provision in this legislation, as I read it, for the recommendation of the commissioner who first heard the matter at conference to be held on a without prejudice basis, and therefore it cannot be used in section 31 disputes as they are currently. They start afresh before a new member of the commission if it goes to trial, so no party is prejudiced. Parties will be prejudiced by

recommendations made by the commissioner in the first instance at the pre-trial conference, because that information will be available to whoever hears the case if it goes to full trial. Whoever the initial recommendation is against—the employer or the employee—they are substantially disadvantaged when they present themselves for trial. It is just ridiculous.

I cannot conceive who brought this idea forward, other than the Employers Chamber and other employer groups, because it is absolutely outrageous. There is not even a scintilla of evidence of natural justice being accorded. It will simply mean that the parties going before the conference and the commissioners will not open up and use the allocated 45 minutes. If I were an advocate for a union on this matter I would say, 'Look, what's there to discuss—let's go straight to trial. I will not say anything here, because I cannot cross-examine the employer. I can't call the witnesses I want because you have not allocated enough time for us to do it. It is not in a formal court room where, if people lie, they are under oath and are subject to a penalty for perjury. I will simply not proceed with the conference—you can call the conference, I will turn up, but that is it, because I will not say a word. We will go to full trial, and we will run our case there.' So, it is a stupid, nonsensical and unjust bit of legislation.

Clause 101 of the Bill is another doozey. It talks about the balance of probabilities, and the commission must determine whether the applicant has established that the dismissal was harsh, unjust or unreasonable. That is not the onus in terms of the current legislation, although it would be true to say that, with the way the State commission has operated in this jurisdiction, unlike the Federal legislation—

The Hon. G.A. Ingerson interjecting:

Mr CLARKE: That's true. I accept what the Minister says. The way the commission has ruled in these matters—and this is not in the legislation—the onus has been on the applicant to establish their case. However, clause 101(2) is the real doozey in that the Minister is saying that, if an employee is made redundant, no matter how unfair or unjust their selection may have been as far as the dismissal is concerned, provided it is a redundancy or retrenchment and that that person has been paid out the minimum severance entitlements under their award or enterprise agreement, you do not have a claim for an unfair dismissal. That is absolutely scandalous. We could have a plant of 20 employees. The company may want to get rid of one employee due to a downturn in business or some other perfectly legitimate reason—a drop in orders, new technology or whatever.

[Sitting suspended from 6 to 7.30 p.m.]

The CHAIRMAN: The member for Ross Smith had been speaking for some 20 minutes, a few minutes over the customary 15 minutes. I did say that I would allow some licence in view of the fact that he is speaking to the clause which he proposes to insert should clause 99 fail. I remind him that he will have at least a couple more chances to speak on clause 99 and also the opportunity to speak on clauses 102 to 105. I ask the honourable member to conclude either his remarks or part of his debate so that the Minister can be given the opportunity to partly respond; the honourable member will have another opportunity to continue his comments.

Mr CLARKE: I trust I will be able to conclude in the next few minutes, particularly given the Minister's attention span. I do not want to tax him unduly. I have already partly dealt with clause 101. I simply want to point out that you can have an absurd situation with respect to that clause, and I gave the example prior to the dinner adjournment of an employer who might legitimately need to reduce his work force from 20 to 19 for a variety of reasons—loss of business, and so on. However, if the employer, in the selection process of retrenching that person or persons, simply pays the 13 weeks maximum severance pay under the award or enterprise agreement—the standard TCR provisions—the employer is exempt from any section 31 applications. That is not good enough. I have recently been involved with respect to Pasminco BHAS: I represented the members of my own union concerned in that company—

The Hon. G.A. Ingerson interjecting:

Mr CLARKE: The Australian Services Union, correct; it is the largest white collar union in Australia. In that instance the commission upheld, particularly in the case of one of our members, that the retrenchment was callous and unfair: whilst the company itself may have been facing economic stringency, the method by which it selected persons for retrenchment was manifestly unfair, unreasonable and harsh on the individuals concerned. Three out of those four persons were awarded additional compensation over and above that which the company provided on a voluntary basis.

That would not have been applicable under the Government's Bill, because it is not provided for. There was no procedural fairness in the method of selection of a person in terms of retrenchment: it was simply that the employer could substantiate that there was a *bona fide* retrenchment, and in terms of retrenchment pay the minimum payments were made. That person has no come back and no rights with respect to saying, 'Hang on a moment; your selection processes were totally iniquitous, totally unfair, and totally contrary to natural justice.' That worker would have no come back with respect to unfair dismissal. I want to deal with all these clauses in one go, and I will not be labouring these points when the matters are dealt with—

The CHAIRMAN: It is in breach of Standing Orders for the honourable member to continue to go right through the clauses. I suggest that the honourable member resume his seat and I will call upon the Minister, if the Minister cares to respond to any or all of the points raised.

The Hon. G.A. INGERSON: You can easily understand why no employer wants to employ anybody when you have union diehards like the member opposite. In the past 25 minutes we have heard absolutely staggering nonsense. Let us look—

Mr Clarke interjecting:

The CHAIRMAN: The Minister will resume his seat. The member for Ross Smith has had a great deal of tolerance and assistance from the Chair. I remind the honourable member that yesterday he spoke at some length and then by way of interjection extended his debate considerably. I do not propose to allow that this evening, and I caution the honourable member that interjections will have to be dealt with, otherwise the debate will be prolonged interminably.

The Hon. G.A. INGERSON: Thank you, Mr Chairman, for your protection. My first point relates to the regulation exclusion that the member opposite became so uptight about. In the last day and a half the honourable member opposite has been reminding us how good his Federal colleagues are. If he looks at the Federal Act, he will see that this clause is a straight take from it. I find it quite amazing that the honourable member opposite should become so uptight, because all this clause allows, by regulation, is the exclusion of particular

classes. If his Federal mates think it is a good idea, why is it no good for the State body? That is quite amazing.

The second point he made was about a professor from down south—another one of these lefties. He talked at length about the comments that Andrew Stewart made in relation to double dipping. But he forgot to quote the following comment by Andrew Stewart:

> There is certainly a point in reducing the element of double jeopardy for employers and in requiring complainants at some point to elect between overlapping remedies.

It is interesting. It is convenient for the honourable member to quote the top half of the professor's report but not the bottom half. Surely the honourable member opposite does not believe that, if you go into the Industrial Commission, argue your case and lose, you should be able to run across to the Equal Opportunity Tribunal and have another go. Or does he believe that, if you win in the Equal Opportunity Tribunal, you can say, 'I would like to have another go across the road at the Industrial Commission.' That is absolute arrant nonsense. The sooner we prevent that from happening, the better.

In other words, the individual has to make up his or her mind. They can go to the Equal Opportunity Tribunal, have their go and get their dues, or they can stay with the Industrial Commission and argue their position. They win one way or the other. That is the reason why that clause has been inserted. The honourable member opposite had a few things to say about clause 100, which refers to the rights of the presiding officer at the conference to decide whether the application is frivolous or vexatious. I remember yesterday the honourable member opposite saying that the commissioners in the State Industrial Commission were people whom we ought to uphold and whose views we should accept.

When we provided a draft of this Bill to the Industrial Commission, as we normally do, the commissioners recommended that we include this provision. They recommended that there ought to be a provision whereby they could decide whether or not the case was frivolous and whether it could be thrown out of the commission when there was no opportunity for the employee to win the case. It was their view. I remind the member for Ross Smith that they wanted this provision included.

Those heralded gentlemen about whom the honourable member has been talking and praising in recent days suggested that this clause should be put in. There is no point in saying that we are wrong, because we are the only ones who know that is the case. It has been put in because a couple of the commissioners said, 'We could clear up a lot of these unfair dismissal claims if we were given the right to say to the employee that he has no chance of winning and not to bother continuing with the case.'

I find it amazing that the member for Ross Smith believes that the commissioners ought not to be able to make a recommendation to individuals before them in an unfair dismissal case. After all, they make recommendations on a daily basis in the award area and they make them currently in what is euphemistically called enterprise agreements. Why should they not make a recommendation to the two parties in an unfair dismissal claim as to whether they believe they have a chance of succeeding one way or the other? I would have thought that was a sensible situation.

One of several points that the member for Ross Smith forgot to mention relates to the 21 days back to 14 days for claims. That is also in the Federal legislation. His Federal colleagues believe that it should be 14 days, not 21 days. It is the much heralded Brereton Act that we are copying because we thought it was a good idea. We felt that on a couple of occasions Minister Brereton got it right, and this is one area where we believe he did get it right. I should have thought that the honourable member would have looked at the Federal Act and compared a few things with his Federal mates, because this is one area where the Federal Government has got it right.

Let us look at some additional rights for employees. These are the things that the member for Ross Smith does not like to talk about, because the Liberal Party is starting to get some of the ground that the Opposition is giving up at a rapid rate. We are starting to put into our industrial relations legislation some rights for employees. The ILO termination convention, for the first time in Australian history, has been put in full into an Act. We believe that there ought to be reasonable conditions for employees to be able to terminate their job and for the employer to follow certain rules. We have put that in an Act for the first time, but we have not heard any comments about that from the honourable member.

We have increased the minimum notice to a maximum of five weeks. That is a new right for employees. If the Bill goes through, we shall legislate for the right to respond to any allegation as it relates to the employee. Those matters were not mentioned by the honourable member. We have also said that decisions must be in within three months. The honourable member, who has been involved in the commission, knows that some of these cases have been taking up to 12 months. In order to give some protection to the employer and the employee, we have put into legislation the right to have these decisions made within three months. I would have thought that was fair and reasonable, but there has been no comment by the honourable member. It is a right, it is a positive, and obviously it does not need to be commented upon by the member for Ross Smith.

Fundamentally, the whole area of unfair dismissal is about giving both sides a fair go. There are many examples of employers who break the rules of reasonableness. That is why this area is in the Bill. But there are many occasions when the union movement and some of its left wing Labor lawyers abuse this process. If there is a genuine redundancy, why should someone be allowed to get extra deals by way of unfair dismissal? There is a straightforward legal situation in regard to redundancy terms. If the employer has done the wrong thing and there is a genuine case, we believe that the maximum claim should be 26 weeks. There seems to be a lot of concern on the part of Opposition members because it is 26 weeks. We find on average that the maximum pay out is about 12 weeks, yet we have all this hoo-ha about a maximum of 26 weeks.

We believe that in regard to unfair dismissal we have put the balance back a little more in favour of the employer, but we have also put in some very significant changes which give rights to the employee. The Government opposes the changes put forward by the Opposition because it is the same old union-based bash the employer nonsense that we have had to put up with for the past eight hours in this debate.

Mr CLARKE: The Minister has made a number of wrong assertions in response to my points today. In particular, I note that, with respect to clause 99, when he quoted from Mr Andrew Stewart, the Associate Professor of Law who wrote to him on 15 March 1994, he left out the sentence immediately following the passage that he quoted, which reads:

> But the provision chosen here is far too blunt an instrument.

I have already stated my views with respect to clause 99 and I will not go over them again.

Clause 102, 'Remedies for unfair dismissal', provides for a maximum of 26 weeks pay at average earnings in the three months immediately prior to dismissal. As I said in my second reading speech, that is totally unjust. As the Minister has suggested in various speeches, it is true that the commission, particularly with respect to award covered employees, is not a generous body or tribunal when it comes to awarding compensation. That highlights its conservatism. Whilst I might have some disagreement with the rulings of the commission in that area, nonetheless I accept them, but I do not accept that we, as a legislature, should say to a commissioner, deputy president or judge of the commission that they cannot award more than 26 weeks. If they find on the evidence before them that an employer has behaved in such a reprehensible manner as to warrant a sum in excess of 26 weeks, they should have the freedom to exercise that right and not be legislatively curtailed.

Members interjecting:

Mr CLARKE: I note that the Minister said 'Bad luck.' That highlights the whole point behind this legislation. It is an enormous shift from a balance between employer and employee towards the employer because the employee is the one who gets the sack, is without the income and has the least resources to be able to contest such a claim.

I know how the retail trade will use the average over the last three months. Employees who are selected for the sack will have their hours reduced, particularly if they are casual employees, to a very low level. For example, if someone is on 20 hours a week, they will bring that figure down to 10 hours a week in the three months prior to dismissal. Therefore, no matter how unfair or reprehensible the dismissal may be, the employer will be faced with a maximum cost in compensation of 26 weeks at 10 hours per week. Also, reinstatement, if they are able to achieve it, will be at the 10 hours a week to which they were entitled. It is an open invitation to an employer to dismiss people on the cheap without having any regard to the rights of employees before an independent tribunal such as the Industrial Relations Commission.

An honourable member: You're still back in the 70s.

Mr CLARKE: If seeking truth and justice for those least powerful in our society is harking back to the 1970s or the 1960s or the past century, then I am proud to do so. The Minister has made some play of clause 104, which provides that decisions are to be given expeditiously. That is a very hollow boast, because clause 104 does not provide a penalty against the commissioner if he or she does not hand down a decision within three months; it is an exhortation that the commissioner will hand down a decision in relation to an unfair dismissal within that period, and it allows the President to extend the time for handing down a determination. As the Minister has said, I have been involved in this jurisdiction for some years and, like the Minister, as a practitioner I have been very frustrated at the delay in decisions being handed down. Some delays are inordinately long. However, simply legislating to say, 'Mr Commissioner, you are to hand down your decision in three months' is outrageous because, unfortunately, despite all the exhortations, we cannot force people.

I have raised the point earlier with respect to the independence of the commission that, when commissioners are acting under section 31 in unfair dismissal jurisdictions, they are acting in a judicial capacity, not as lay persons. The Minister does not have the guts to introduce legislation, or to ask his Cabinet colleagues to do so, requiring justices of the Supreme Court or district court judges to hand down their decisions within two or three months of the conclusion of the case. Commissioners and Industrial Court judges similarly exercise a judicial power when ordering a reinstatement or awarding compensation to employees. The Minister is seeking to impose an unwise provision in trying to expedite matters. I agree with the exhortation of trying to get commissioners to give out decisions more quickly, but that depends very much upon the resources that are made available to the Industrial Commission to enable it to hand down those decisions as expeditiously as possible.

In the area of costs provided under clause 103, the Government is again acting unreasonably, given that the Act already provides that an employer, employee or any party to an unfair dismissal case can have costs awarded against them if the commission believes they have acted unreasonably; the Act allows that discretion. Indeed, at the end of last year we were awarded costs in three out of four applications against Pasminco BHAS with respect to four dismissal cases that my former employer, the Australian Services Union, took to the Industrial Commission at that time. The Minister's legislation would remove the discretion from the commissioner to make findings on all the facts that are presented before the commission.

One of the great advantages of our unfair dismissal legislation in South Australia (and we basically pioneered it in this State some 22 years ago, against great opposition by the Minister's forebears in the Liberal Party) was that this was to be as costless a jurisdiction as possible, unless you were acting in a vexatious or frivolous manner. So, employees who were dismissed would not fear having costs awarded against them and they would have their day in court to determine whether or not their dismissal was harsh, unjust or unreasonable. Through this legislation, the Minister is trying to penalise people for exercising their rights in the industrial jurisdiction, particularly when we are dealing with a person's livelihood.

The Minister might like to believe his own rhetoric in this matter, but he has had absolutely no dealings with it in the real world, and neither have his advisers, with due respect. They have not been involved with individuals and seen the impact on them of an employer taking away their livelihood and how devastating that is, not only for that employee but also for their family. Unless it can be clearly demonstrated that either party has acted unreasonably in pursuing this case through to finality and to arbitration, there should be no suggestion that costs be awarded. That discretion should be left in the hands of the commission so that it can judge each case as it comes before it and make a decision on its merits. It has been doing that and making costs orders against both employers and employees.

This legislation is supposedly craftily drafted by the Minister and his advisers to try to circumvent the legislation introduced by the Federal Labor Government and enforced since 30 March. Clearly, this legislation is not an adequate remedy within the terms of the Federal legislation. I have no doubt it will be tested out in higher authorities than this Parliament and that the Minister will be found wanting once again in this area. In my view, if necessary, the High Court will make a clear determination which will show that the South Australian legislation is not an adequate remedy under the Federal legislation, and employees will have the right to pursue an adequate remedy through that legislation. I much

prefer our South Australian system. It is far quicker and less legalistic. In light of 22 years of history in South Australia, I believe the judiciary here and the members of the commission have developed a fair body of law and precedents which give a reasonable degree of certainty to all the major players within this field.

I am a strong supporter of the State system, but what the Minister is doing through this legislation is driving people into the Federal system, and they will succeed, notwithstanding the threats the Minister has made on other occasions that the Government will intervene in every matter, to the High Court if necessary, to stop people going to a Federal award jurisdiction. His counterpart in Victoria, Mr Gude, said exactly the same thing. He is now effectively the Minister for nothing in that State, because most of his own employees in the State Public Service are now respondents to Federal awards, and more and more employees under the former State system are now covered by Federal awards. The Minister may well be successful in delaying it by a year, maybe two, but the inevitable result is that he will be the architect of the downfall of the State industrial relations system. I am very attached to the State system; I am a great supporter of the State system, but only as long as it remains a fair and level balancing influence between employer and employee. For all those reasons I strongly urge the Committee to support the Opposition's amendment.

The Hon. G.A. INGERSON: The Government is of the view that 26 weeks is adequate. As I said earlier, I have been advised that about 12 weeks is the average currently being paid, and we are suggesting at least double that average as the maximum. In relation to the costs provisions, it is our view that the commission may order costs if it is satisfied that either the employer or the employee (and the member opposite keeps ignoring the fact that this legislation has two parties) has clearly acted unreasonably in failing to discontinue or settle the matter before the hearing is concluded.

I would have thought that that was fair. All it is saying is that, if the procedures of the commission work well and both parties have acted in a reasonable way, there will be no costs. I suspect that in about 90 per cent of instances there will be no costs. It is our view that, if either party—employer or employee—acts unlawfully, whether by delay or whatever, the commission ought to be given the right to order costs. We believe that is fair and we are not moving, as the honourable member suggested, away from a no cost system. All we are saying is that, if parties do not act reasonably in their presentation before the commission, the commission has the right to order costs.

The Committee divided on the clause:

AYES (28)

Andrew, K. A.	Armitage, M. H.
Ashenden, E. S.	Baker, D. S.
Baker, S. J. t.)	Bass, R. P.
Becker, H.	Brindal, M. K.
Brokenshire, R. L.	Buckby, M. R.
Caudell, C. J.	Evans, I. F.
Greig, J. M.	Gunn, G. M.
Hall, J. L.	Ingerson, G. A. (teller)
Kerin, R. G.	Kotz, D. C.
Leggett, S. R.	Lewis, I. P.
Matthew, W. A.	Meier, E. J.
Oswald, J. K. G.	Penfold, E. M.
Rossi, J. P.	Scalzi, G.
Such, R. B.	Wotton, D. C.

NOES (9)

Arnold, L. M. F.	Atkinson, M. J.
Blevins, F. T.	Clarke, R. D. (teller)
De Laine, M. R.	Foley, K. O.
Quirke, J. A.	Rann, M. D.
Stevens, L.	

Majority of 19 for the Ayes.

Clause thus passed.

The CHAIRMAN: I advise the member for Custance that his presence was not recorded in the division as his arrival was well after the cessation of the ringing of the bells.

Clauses 100 to 108 passed.

New clause 108A—'Object of Part.'

Mr CLARKE: I move:

Page 45, after line 14—Insert new clauses as follows:

PART 8

IMMUNITY FROM CIVIL LIABILITY

Object of Part

108A. (1) The object of this Division is to give effect, in particular situations, to Australia's international obligation to provide for a right to strike.

(2) The Parliament considers that it is necessary to provide specific legislative protection for the right to strike, subject to limitations compatible with the existence of the right, in situations where—

(a) there exists an industrial dispute involving an employer and one or more associations members of which—
  (i) are employed by the employer to perform work in a single business, part of a single business or a single place of work; and
  (ii) are covered by an award; and
(b) the employer and the association are negotiating an enterprise agreement.

Joint employers

108B. A reference in this Part to an employer includes a reference to two or more employers carrying on a business as a joint venture or common enterprise.

Application of this Part

108C. This Part applies if—

(a) the Commission has found that an industrial dispute exists; and
(b) the dispute involves a particular employer and a particular association or associations of employees; and
(c) remuneration and conditions of employment of employees who—
  (i) are employed by the employer; and
  (ii) are members of the association or one of the associations,

are regulated by one or more awards; and

(d) all or some of those employees are employed by the employer in a single business or a part of a single business or at a single place of work

Initiation of bargaining period

108D. (1) If the employer, or the association or one of the associations of employees, wants to negotiate an enterprise agreement in relation to employees (the 'relevant employees') that are employed in the single business or the part of the single business, or at the single place of work, as the case may be, the employer or association (the 'initiating party') may initiate a period (the 'bargaining period') for negotiating the proposed agreement.

(2) The bargaining period is initiated by the initiating party giving written notice to the other proposed party or the other proposed parties to the agreement, and to the Commission, stating that the initiating party intends to try, or to continue to try—

(a) to reach agreement with that party or those parties in settlement of the industrial dispute in so far as it involves the relevant employees; and
(b) to have the agreement approved as an enterprise agreement.

(3) In this Part, the initiating party and the other proposed party or parties are called 'negotiating parties'.

Particulars to accompany notice

108E. The notice is to be accompanied by particulars of—

(a) the single business or part of the single business, or the single place of work, to be covered by the proposed agreement; and
(b) the proposed party, or proposed parties, to the agreement; and
(c) the matters that the initiating party proposes should be dealt with by the agreement; and
(d) the industrial dispute to which the proposed agreement relates; and
(e) the proposed period of the agreement; and
(f) any other matters prescribed by the regulations.

When bargaining period begins

108F. The bargaining period begins at the end of seven days after—

(a) the day on which the notice was given; or
(b) if the notice was given to different persons on different days—the later or latest of those days.

Protected action

108G. (1) This section identifies certain action ('protected action') to which the immunity provided by this Part is to apply.

(2) During the bargaining period, an association of employees that is a negotiating party, a member of such an association who is employed by the employer, or an officer or employee of such an association acting in that capacity, is entitled, for the purpose of supporting or advancing claims made by the association that are the subject of the industrial dispute, to organise or engage in industrial action directly against that employer and, if the association, member, officer or employee does so, the organising of, or engaging in, that industrial action is protected action.

(3) Subject to subsection (6), during the bargaining period, the employer is entitled, for the purpose of—

(a) supporting or advancing claims made by the employer that are the subject of the industrial dispute; or
(b) responding to industrial action by any of the relevant employees;

or for both those purposes, to lock out all or any of the relevant employees from their employment and, if the employer does so, the lockout is protected action.

(4) The reference in subsection (3) to the employer locking out employees from their employment is a reference to the employer preventing employees from performing work under their contracts of employment without terminating those contracts.

(5) If the employer locks out employees from their employment in accordance with subsection (3), the employer is entitled to refuse to pay any remuneration to the employees in respect of the period of the lockout.

(6) This section has effect subject to the following provision of this Part.

I thank the member for Custance for being a closet supporter of the Opposition by ensuring that he was absent when the previous vote was taken. The Opposition's amendment is bound to send the Minister into apoplexy. The new clauses are designed to provide the right for workers to go on strike. What a ludicrous idea, the Government will claim, what a monstrous point of view that we should try to enshrine in this legislation the difference between a serf or slave and a free working man or woman having the right to withdraw their labour in trying to bargain with their employer in terms of their employment conditions. What a hideous concept that is to the Government! This is so revolutionary to the Liberal Government that it just cannot countenance the idea that workers should have the right in the bargaining process over their wages and working conditions to be able to say,'As part of my right to enhance my bargaining position with my employer, I am able to withdraw my labour to extract the best possible return from my employer.'

The Liberal Party is a free enterprise Party committed to the rights of the individual and the right of persons to be able to corner the market and get the best return for their labour, goods or services that the market will bear. From the public utterances and the press release of the Minister, that principle seems confined only to employers or persons who run businesses against one another and compete against one another and who seek new markets and the like. It is all very fair and well for employers to have the right to hire and fire—that is the ultimate sanction in any employment relationship. An employer's ultimate sanction is the ability to decide whether they will invest or disinvest in a particular industry, State or region. The Government says it must have the unfettered right to transfer its capital out of a State, region or city, and move it overseas or outside of this universe, if that is possible. That cannot be trampled or touched. That is the unalienable right of an employer.

However, when it comes to a worker, be they a labourer, a clothing trades worker, an attendant, waiter or waitress at Parliament House, they do not enjoy the same right because, as is too often not recognised in Australian society, until the Federal legislation was passed by the Federal Labor Government last month, there was no legal right to strike in Australia. Through a series of common laws and other statutes with respect to both State and Federal legislation, workers did not have the right to strike. It was often assumed that, because people did go out on strike, that legal right existed, but it did not. For the past century, except for the past 10 or 15 years, by and large Australian society accepted the right of workers to go out on strike.

They might not have agreed with the issues that those workers were striking for—whether it be more money or an improvement in conditions or something of that nature—because they were inconvenienced if the trains or buses stopped running or the mail was not delivered. They might have been very upset because people went out on strike, but the average Australian citizen really believed, notwithstanding their inconvenience, that the average Australian worker should have the right to strike. It is only fair in this capitalist society that, if capitalists have the right to hire and fire labour or to move capital in or out of a State or region, a worker should have the right to withdraw their labour to improve their bargaining power.

Of course, the Minister might say, 'Hang on a moment, unlike most Western developed countries, we have an arbitration system where you can settle disputes over wages and working conditions through the Industrial Commission.' We have enacted in Federal legislation and, whether it be under our amendments or the Government's Bill, in this legislation provision for enterprise agreements under State statute. The Minister has regaled this House with the view that workers should be free, either without union interference or with union assistance, to negotiate directly with their employer as to their wages and working conditions at a particular enterprise.

The Minister and his Government support that in theory. The Minister says, 'Workers can have all these rights, but they cannot have the right to strike. An employer has the right to sack an employee or relocate the work site away from where he or she is employed, but the employee does not have the right to go out on strike.' That is unfair, even in an enterprise agreement area where the Arbitration Commission does not have the power to arbitrate on the conditions of employment of those workers.

In his public utterances, the Minister says, 'We want you to have the absolute unfettered right as an employee to bargain with your employer for the best possible conditions, but we will provide you with a circumstance in which both hands are tied behind your back. You have no legal capacity to negotiate with your employer by withholding your labour because of common law and other statute law which prevents workers from having the right to go out on strike.'

The Opposition's amendment puts into legislation the same which applies federally with respect to the right of workers to withdraw their labour. There are a number of conditions which members opposite should read with respect to the Opposition's amendment. It refers to the bargaining period between employer and employee. It refers to particulars of a notice that workers would have to give in the event of their going out on strike. It refers to when the bargaining period commences and when notice can be given. It refers to what is protected action under the legislation and what is not protected action. It refers to physical injury or damage occurring arising out of a strike. It refers to damage to the property of an employer or a person, and it provides that they are not exempt from the law.

Very simply, we are entering an area of enterprise bargaining where there is no Arbitration Commission, no umpire to sort out the combatants in industrial relations, and where the workers are on a level playing field with their employer in the sense that they have the right to say, 'Your offer is not good enough. It is not high enough. It is deficient for a whole range of reasons.' Similarly, an employer has the right to say to the purchaser of his or her goods, 'I do not think the price you are offering me is good enough. I will not sell you the goods for that price.' Since we are in the area of enterprise bargaining where the commission has no power to arbitrate and compel parties to accept a settlement, the worker has the same right to say, 'Your offer is not good enough and I am upping the ante. Therefore, I am out on strike or will impose some form of industrial action to try to make you see reason.' The employer then has the right—and it is provided in my amendments—to effect lawful lock outs in those situations, so it is not all employee driven. It does provide for lock outs. It is a very well crafted piece of legislation.

The Hon. Frank Blevins: I don't know that I can support you in that.

Mr CLARKE: I appreciate that I will have difficulty with the member for Giles. It does legitimise lock outs, and the Federal legislation does the same. It is not a provision that I particularly favour but, nevertheless, for consistency sake, I believe it is appropriate as a first step—and this has applied ever since South Australia was settled in 1836—in recognising the rights of workers to go out on strike, even if it is circumscribed considerably by the amendments I am putting forward.

It is a first step in recognising the rights of workers to withdraw their labour. I know that members opposite will be in a state of absolute frenzy over this legislation. As the Minister has indicated through his interjections and contributions in the debate, this Bill is designed for and by employers in this State. The Minister does not want enterprise bargaining. He does not want employees to have the right to withdraw their labour. The Minister and the Government want to maintain a situation where employees, at law, are effectively no better than serfs or slaves. The Opposition is seeking to incorporate into State legislation that which was recently enacted at Federal level.

I know the Minister will ignore this, but the International Labour Organisation, a tripartite body with representation from employers, Governments and trade unionists throughout the world, found in 1992 that Australian laws contravene ILO conventions. It found that the right of workers to form unions and bargain freely with their labour for wages or improved conditions was forbidden under the laws of this State and this nation. In other words, it found that our laws forbid strikes carried out in a peaceful manner. Our laws contravene ILO conventions, and the Minister would do well to remember that. He may want to poke fun at the ILO, but he is but a blip on the landscape as far as the ILO is concerned. The Minister and this Government is of no consequence to the ILO because, at the end of the day, such legislation will ultimately be passed in the State Legislature with or without the Minister's concurrence. The laws of the land will start to recognise the legal right of workers to bargain freely and on an equal playing field with their employers by legally withdrawing their labour. I commend the amendment to the Committee.

The Hon. G.A. INGERSON: Here we go again. I am always amused when members of the Labor Party quote the ILO as the basis for their argument. I wonder why they do not quote the ILO convention about freedom of association. I wonder why they do not quote the fact that the ILO argues that every individual should have the right to join or not join a union. I wonder why they do not quote that convention. They deliberately run away from that. What does the ILO say about freedom of association? It believes it should be incorporated into every Australian State and Federal law. We are doing just that because we believe that in some instances the ILO happens to be right. In the area of freedom of association, it is definitely right.

On occasions in this place I have been a little sympathetic with the right to strike and the right for individuals to withdraw their labour, but I believe that that ought to be available to everybody. I do not believe it ought to be kept purely and simply for the union. If you are going to have this provision in any Bill, why would you leave out, say, emergency services? There is no exception for emergency services. What if hospitals, schools, ambulance officers, police officers, rubbish collectors etc. went on strike? Is that okay? Is that an acceptable principal?

It is the Government's view that there would be no limit to the area of disruption. Why should the union movement be placed above civil liberty law? Why should the right to strike not be available to every worker? Why is it that only the union movement and union members should have this right? What is so special in our community about the union movement in terms of the right to strike? Is the honourable member saying that, in a non-unionist shop with a mix of 50 per cent unionists and 50 per cent non-unionists, the unionists have the right to strike and the others have not? I thought the Opposition was talking about the rights of workers.

This is nothing more than a union sham. That is what it is all about. It is about giving the union movement more power. Members opposite should just step up and say that. This Parliament would at least accept that argument, even though many of us believe it is nonsense. Why hide behind the right to strike in this granting of an extra privilege to the union movement? Why not come straight out and say, 'We, the unions, want a special position in front of the law and we want to make sure that there is no civil liability irrespective of what we do in the workplace'? At least you would get some publicity in the local media for being honest. You may not get any support, but at least you would be perceived as honest and you would get support in that sense.

I have stood in this place for nearly 10 hours and argued with the Opposition about the rights of workers, and here is a perfect example of how the Labor Party deserts the workers and gets into bed with its union mates. As I said initially, sometimes I have felt that there ought to be the right to strike, and I have said that before in this place. I will never accept that a privileged few—and I note that the statistics indicate

that their number is diminishing each day—who belong to a union should be given special rights. The Government will not, under any circumstances, accept that the union movement be given rights over all other workers, and I believe non union workers now comprise 70 per cent of the work force in this State.

Mr CLARKE: If the Minister is sincere in what he says, I am perfectly content to amend my amendment so that it gives all workers—union members and non unionists—the right to strike. I will do it now if the Minister is prepared to say he will support the amendment. For consistency, my amendment is based on the Federal legislation.

The Hon. G.A. Ingerson: There's no legislation like that anywhere in Australia.

The CHAIRMAN: Order! Members will address their remarks through the Chair.

Mr CLARKE: The Federal legislation says that. In 1993, the ILO made a finding about civil liability with respect to industrial action, as follows:

> Regarding the lack of protection of trade unions and their members against common law liability for industrial action and that tripartite consultation is under way in an attempt to secure agreement to the adoption of a revised set of compliance mechanisms within the Federal Act itself, the committee notes the Government's statement that so far no agreement has been reached. The committee asks it to continue supplying information in future reports as to progress in protecting unions and their members from common law actions based on their exercise of the right to strike, particularly in view of the ACTU's statement that employee use of such actions has increased markedly in recent such years.

The Minister would be well aware that some of the more recent celebrated cases involving civil action against employees who have been out on strike have been against union members and their unions—with very heavy penalties.

The Meatworkers Union is but one that has suffered losses of millions of dollars under the Trade Practices Act for carrying out its right to conduct a peaceful picket and go on strike. However, if the Minister is sincere (and I ask him this quite deliberately now) and if his only objection to my amendment is that it does not apply to non-unionists, I will amend my amendment forthwith and make it apply to all workers, irrespective of their union membership. In that situation I ask the Minister whether he will support this legislation if it is on the basis of all workers, irrespective of union membership. If he answers 'Yes', we can do it straight away and fix up the problem immediately. I ask the Minister to give a response.

The CHAIRMAN: The honourable member should be aware that there is no obligation on the Minister to respond to any question.

Mr CLARKE: Then I ask—

The CHAIRMAN: The Chair has not called the member for Ross Smith: the honourable member will resume his seat. The Chair is advising the member for Ross Smith on the Minister's rights and responsibilities. If the honourable member wishes to make further comment, it will be his third contribution on this clause and I therefore invite him to speak.

Mr CLARKE: I ask *Hansard* to note that the Minister is gutless.

Members interjecting:

The CHAIRMAN: Order! The Chair needs no assistance: the Chair is deliberating. The member for Ross Smith is very near the contemptuous stage. He has had several warnings. This evening the Chair cautioned him. As he will be ready to admit, the Chair has assisted and been tolerant and he has been heard in relative silence compared with the vast number of interjections he has made in the debate over the past 10 or so hours. I ask the honourable member to withdraw the remark, which is offensive both to the Chair and to members of Parliament. I ask him to withdraw the remark, otherwise the Chair will take steps.

Mr CLARKE: I withdraw the remark, but I ask the Committee to note and the public record to show that, when the Minister was asked a direct question about an open invitation by the Opposition to allow for the right to strike for all workers irrespective of union membership, the Minister refused to answer. He has no credit on this issue: no credit whatsoever. He has shown himself to be a boss's lackey.

The Hon. G.A. INGERSON: Perhaps I ought to start by serving up a few truths to members opposite.

Members interjecting:

The CHAIRMAN: Order! The Minister has the floor.

The Hon. G.A. INGERSON: The honourable member opposite spent some time saying that the right to strike was contained in Federal legislation, but he is often careless with facts. The only instance in which opportunity exists for the right to strike under Federal legislation is in the bargaining period leading up to enterprise agreements. I am glad that the member opposite shakes his head and notes that I am correct. He ought to read in *Hansard* what he said: he said that the right to strike is covered right across the Federal Act. That is not right. It is provided only in one area under the Federal legislation.

The reason the Government is opposed to this clause is that it is all about the union movement, through the union heavies in this place. I should not use the words 'union heavies' because, as I said last night, the member opposite was involved in the amalgamation of a union because he could not keep up the numbers in his own union. He talked about retail trade. One of the reasons he lost members in the retail trade union was that the Shop Distributive and Allied Employees Association ran over the top of him. Why? Because it gave service to its members.

The member opposite was part of the demise of his union. Yet, he stands in this place and tries to lecture us about the rights of workers. The member for Ross Smith would not know what it was to represent the rights of workers. It was his right to represent a few of the workers. He did not have the opportunity to represent all the workers, because he could not keep his own union figures up: they all fell over. They could not bear staying with him any longer, but amalgamated with a union which had more power and more flexibility and which could do more for them.

Members interjecting:

The Hon. G.A. INGERSON: They did not continue to re-elect you, because they let you stand for a seat, which you nearly lost. Not too many people would go into the seat of Ross Smith and nearly lose the seat. I do not know any member opposite who could take a safe Labor seat to a marginal Labor seat. Not too many could do that. It is like the old story, if you put a member in a safe seat, it will only take a couple of elections to make it marginal. This member took one election. There is an outside chance that he may not even be here next time.

The Hon. M.D. Rann interjecting:

The Hon. G.A. INGERSON: The Deputy Leader has come in to protect his mate. The Deputy Leader only comes in when he likes to stir up the place. He then runs out to the media to get his little stories in. We are opposed to this clause, because members opposite are only putting forward a farce. It is perfect example of the union mates wanting to

put a clause into the Bill just to suit themselves. The Government opposes any amendment put forward by the Opposition.

The CHAIRMAN: The amendments comprise a main new clause 108A and new clauses 108B to 108G, which are consequential. I put the question that new clause 108A be inserted.

The Committee divided on the new clause:

AYES (9)

Arnold, L. M. F.	Atkinson, M. J.
Blevins, F. T.	Clarke, R. D.(teller)
De Laine, M. R.	Foley, K. O.
Quirke, J. A.	Rann, M. D.
Stevens, L.	

NOES (31)

Andrew, K. A.	Armitage, M. H.
Ashenden, E. S.	Baker, D. S.
Baker, S. J.	Bass, R. P.
Becker, H.	Brindal, M. K.
Brokenshire, R. L.	Brown, D. C.
Buckby, M. R.	Caudell, C. J.
Evans, I. F.	Greig, J. M.
Gunn, G. M.	Hall, J. L.
Ingerson, G. A.(teller)	Kerin, R. G.
Kotz, D. C.	Leggett, S. R.
Lewis, I. P.	Matthew, W. A.
Meier, E. J.	Oswald, J. K. G.
Penfold, E. M.	Rossi, J. P.
Scalzi, G.	Such, R. B.
Venning, I. H.	Wade, D. E.
Wotton, D. C.	

Majority of 22 for the Noes.

New clause thus negatived.

The CHAIRMAN: The member for Ross Smith, I assume, is in agreement that new clauses 108B to 108G are consequential and therefore lapse?

Mr CLARKE: Yes.

Clause 109—'Freedom of association.'

Mr CLARKE: The Opposition's proposed amendment will send the Government into apoplexy. The Opposition is opposed to the provisions under clauses 109 to 111 and instead seeks to insert into the Bill provisions affecting the rights of employees and employers regarding injury to their employment that might result because they are or are not a member of an association, whether that association be an employee or an employer association. Sections 156 and 157 of the Act prohibit discrimination towards employees who are members or non-members of an association, likewise an employer association.

The Opposition does not believe that the legislation needs to be taken any further. Of course, the Government will say that clause 109 deals with freedom of association and therefore is in accordance with the ILO convention—which it very conveniently ignores with respect to the limited right to strike that I moved under a previous set of amendments—and that we should embrace the ILO convention with respect to freedom of association. However, what the Minister totally forgets, and what is forgotten by every conservative politician and employer when dealing with the ILO convention on freedom of association, is that when that convention was carried in 1948, Eleanor Roosevelt, the wife of a former President of the United States (Franklin Roosevelt), who was a great champion of workers' rights and who was the Chairperson of that ILO session which made that convention ruled without dissent from the Chair that that did not include the right of workers to organise themselves into unions and to seek a 100 per cent union shop.

That is ignored constantly when referred to by conservative politicians in Australia. That is the meaning of the ILO convention of the freedom of association, as ruled by the Chairperson of the working group without dissent from any member within that group. What the Minister fails to appreciate is that it is his intention, through this legislation, somehow to break down the number of unionists who work on the wharfs, in metal companies, in storepersons positions in a variety of industries, in the motor vehicle industry, in the manufacturing industry and in a whole range of other industries.

Of course, he is patently wrong. In all States where provisions such as this have been carried, as advocated by the Minister in his Bill, they have proved to be abject failures with respect to those workers who want to become members of unions and who want to ensure that their work place is 100 per cent unionised. The passage of such a law makes no difference to the Waterside Workers Federation, now the Maritime Union of Australia. That union has enjoyed 100 per cent membership for the past 50 to 80 years and it will have 100 per cent membership when the Minister is but dust in a grave, because workers in that industry will insist on new employees becoming members of their union, as they want to maintain their wages and working conditions and they realise that the best way of achieving that is through unity, which is their strength. It will make no difference, for example, that the Federation of Air Pilots—up until that disastrous strike of 1989—had never had a closed shop agreement with their employer, but they had 100 per cent membership.

The Hon. G.A. Ingerson: What has happened now?

Mr CLARKE: In the airline industry generally, both domestic and international, in the clerical areas, in administration, in the ramp areas and in the baggage control areas, there is no closed shop within Ansett Airlines or within Qantas, but the employees are all members of their respective unions. When all new employees join, they are told by the rest of the employees, 'Look, mate'—or Mrs, Ms or Miss, whatever their title might be—'this a union shop. You enjoy the best wages and conditions. If you do not like those good wages and conditions, you do not have to work here', and that will continue.

What the Minister and the members opposite do not appreciate is that ABS statistics clearly show that the wages and working conditions of union members are far in excess of those of non-union members. Those traditional areas will remain unionised whether or not this law is carried. Despite the Tarzans of the industrial relations world, Jeff Kennett and Phil Gude in Victoria, the vehicle industry is still 100 per cent unionised.

That is because the workers say that they do not intend to be exploited like they were under Henry Ford and others in the United States. They want to maintain their position in terms of wages and working conditions, and as a collective group they say to new employees, 'We are all members. What about joining as well?'—and they join.

Members interjecting:

The CHAIRMAN: Order!

Mr CLARKE: That is a fact of life, and the employers in those industries understand it only too well. If the Minister wants to interfere with that right of workers' collective strength and their saying they intend to retain membership in that area, he will ruin a significant part of industry in this

State because the work force will not put up with it. The work force at Mitsubishi, of which we are all so proud, will not tolerate people coming onto that site and undermining their wages and working conditions.

Let us be quite blunt about it. In the private sector 70 per cent of workers in South Australia are not members of any union. It is a falsehood that has been peddled by the Minister and his mates in the employers' chamber that there is compulsory unionism in South Australia.

This legislation on compulsory unionism which has been peddled by the Minister is interesting. He will claim a mandate from heaven with respect to this legislation and say that it formed an integral part of the Government's promise to the electorate at the election. I was a candidate in 1977 for the then seat of Torrens when I was running against Mr Michael Wilson. I well recall, in the last week leading up to that election, David Tonkin, sensing imminent defeat, putting full page advertisements in the *Advertiser*, authorised by the Liberal Party and backed by editorials in that newspaper, saying, 'A vote for Labor is a vote for compulsory unionism.' That was repeated throughout that election campaign.

After the election, when the Dunstan Government was re-elected with a significantly increased majority, legislation was brought into this Parliament to provide not for compulsory unionism but for the commission to have the same powers as it had had in the Federal jurisdiction for the last 50 years, on the merits of the case, to award preference to unionists. That was not a God-given right; you had to establish a right in the commission giving the commission the power to do that.

Mr Rossi interjecting:

The CHAIRMAN: Order! The member for Lee is out of order.

Mr CLARKE: The Liberal Party in the Upper House rejected it, notwithstanding the full page advertisements leading up to the 1977 State election saying, 'A vote for Labor is a vote for compulsory unionism.' Acting on the Minister's words with respect to the so-called mandate from heaven in the election of December last year, the Liberal Party in the Legislative Council should have supported the legislation by the then Labor Government to provide for the commission to have the power to award preference to unionists. They did not. Big surprise! The permanent will of the people came out in the argument by the Liberal Party in the Legislative Council and they rejected that legislation. Therefore, they can hardly be surprised when we oppose this type of legislation in this place and in another place. The Government should not be at all surprised if, as we hope it will be, this legislation is tossed out on its ear, which it thoroughly deserves.

The amendment that I am putting forward, which the Minister and members opposite should read if they can read more than a couple of lines consecutively, is to insert in this Bill the same provision as is contained in the existing legislation: that employees cannot be injured or discriminated against in the workplace because they are or are not members of a registered association, whether that association be an association of employers or employees.

I think that succinctly puts our position with respect to all of those clauses. I can well anticipate the type of breast beating that will go on by the Minister, but it does not take away the fact of life that in the key parts of industry in all of those conservative States, where the employers would dearly like to break down union strength, the unions are holding strong and increasing their membership. Notwithstanding the best wishes of the Liberal Party in Victoria to try to destroy my union in that State, they have not succeeded in doing so. Indeed, whilst there was an initial decline in membership, we are now on the upward path, because workers, whether in Victoria, South Australia or anywhere else in Australia, understand perfectly well that their conditions of employment—

Mr Rossi interjecting:

The CHAIRMAN: Order! The member for Lee is out of order for the second time.

Mr CLARKE: —are largely determined by the activity or inactivity of the union. Thank you, Mr Chairman, and in particular I thank you for your protection from the yahoos and yobbos to my left.

The CHAIRMAN: I can see that the honourable member is a student of the late Dean Jonathan Swift, who referred specifically to those two categories of beings in *Gulliver's Travels*.

An honourable member interjecting:

The CHAIRMAN: Yahoos, yes. I believe that yobbos are typically Australian. The honourable member is a literary student. Before calling the Minister, I should like to ascertain whether the member for Ross Smith was speaking to his three substitute clauses 109 to 111.

Mr CLARKE: Yes, I was.

The CHAIRMAN: I will invite the Minister to respond to those three clauses, and I will then put them *en bloc*. I am happy to put them separately if the honourable member wishes.

Mr CLARKE: No, I suggest that you put them *en bloc*, Sir. I am content with that.

The Hon. G.A. INGERSON: Freedom of association is the most important principle that we have placed in this Bill. It is the right of individuals to choose whether or not to join a union or an employer association. It is fundamentally the most important part of this Bill. As I said yesterday, if there is one particular survey on which one can be absolutely certain of winning an election, it is whether or not there should be compulsory unionism. On that one issue, over the past 15 years of polling, between 80 and 85 per cent of the community have indicated their opposition to compulsory unionism.

I was fascinated to hear the member for Ross Smith talk about individuals choosing to join a union, but then colourfully saying, 'We have a good system in the motor industry, where if you want a job you either join or it will be fixed so that you do not get a job.' That was what the honourable member was implying. We do not accept that. We have no problems with 100 per cent of employees choosing to be in a union, provided it is of their own free will. If a number of them get together and do that, all well and good. There must be some reason for their wanting to do that. We do not discourage that and we never will. However, we will not accept that a person must join a union to get a job. That is abhorrent to the Liberal Party. In my view, there is a significant difference between a closed shop and 100 per cent union membership.

A closed shop is where you are required to be a member of an association before you are employed, but 100 per cent membership is where employees choose to be members, and I do not have any problems with that. All the amendment does is reinstate union mates again and reinstate compulsory unionism as a fundamental right. The Government does not and will never accept that. We went to the election on this issue; it was a very important part of our industrial relations

platform before the people of South Australia. It is our intention to work very hard in this Parliament to make sure that this part of the legislation gets through. In the six weeks since this Bill has been formally out in the community I have been fascinated by the number of union members who have come to me to say, 'At last: I can now freely come to work and know that whether or not I am in this union will not affect my job.'

The number of people who have asked the Government to continue to collect their union dues and the number of people who have chosen not to renew their dues as at 1 April have also been fascinating. I think the last set of figures was averaging about 17.5 to 18 per cent across the board. Whilst I understand that other methods are being used to get people to pay through other corporations, if the 18 per cent is doubled it still represents a significant reduction in the number of people who have chosen not to rejoin the union. All we are saying is that if we give people the choice we will have better unions, because the right people will be joining the unions for the right reasons, and I believe that applies to employer organisations as well. I oppose the amendment.

Progress reported; Committee to sit again.

RACISM

The Legislative Council transmitted the following resolution in which it requested the concurrence of the House of Assembly:

That this Council condemns the racist activities of certain elements of our community and calls on all South Australians to join in this condemnation of racism in our society.

PASSENGER TRANSPORT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 853.)

Mr ATKINSON (Spence): South Australians' attitude to the State Transport Authority is rather like their attitude to the church. On the whole, South Australians will use public transport only during emergencies or breakdowns, just as they are seen in church only for funerals and weddings. On the rare occasion they use the State Transport Authority on the church, they want them to be there in all their glory, despite the long intervals between their attendance. Demand for public transport in South Australia is low and falling. The Liberal Government is quite right to cite statistics which show a considerable drop in patronage from that of the previous generation. It is true that, although our population has increased over the past generation, our use of public transport has declined. The reasons are not hard to find. Australians are keen on their homes on quarter-acre blocks, and our suburbia therefore extends for miles and miles. Australians are also strongly attached to private motor vehicles; they want not merely one car per family but two or three. In our kind of society, public transport will always run at a loss; there is no other way.

I have taken only one overseas trip in my life, and two of the places I visited on that trip were Prague in the Czech lands and Budapest in Hungary. In those cities the trams rolled by every two or four minutes and even on Sundays were full of people. The reason for that is that Czechs and Hungarians are relatively poor alongside Australians and cannot afford private motor vehicles, and they are happy to live in four-storey tenements. Because of that greater density of population in the city they can be more efficiently served by public transport.

The Australian Democrats and small public transport consumer organisations are always telling us that if only the State Transport Authority would increase the frequency of its services more people would travel on them. I disagree with that, as the only member of Parliament who does not drive and who uses public transport every working day. From my experience I would predict that, if State Transport Authority services were increased, the number of people using them would increase only a little, if at all, and therefore the average number of people travelling on the services would fall, and the State Transport Authority deficit would continue to grow.

Having claimed for myself the title as the only MP who uses public transport every working day, I should give an honourable mention to the Deputy Premier and the Hon. Mike Elliott in another place whom I have seen on the train from time to time.

Mr Lewis: And me.

Mr ATKINSON: And, when he is in town for Parliament, I have seen the member for Ridley travelling in on the Grange line, which serves my home station of Croydon: thank you for that correction. The Bill before us is, of course, an exercise in cost cutting. The Liberal Government will not give as high a budgetary priority to public transport as did the previous Labor Government. This Bill is not a bold experimental bid to provide better services, as the Minister claims. Indeed, I think the Minister (the Hon. Diana Laidlaw) will be a political victim of the Bill and the portfolio she holds. It seems to me that when new Governments are elected one can tell who the winners and losers will be in the ministry just by looking at the portfolios they are allocated. It seems to me that the Hon. Diana Laidlaw has been dealt a losing hand.

The Hon. S.J. Baker: What about the Treasurer?

Mr ATKINSON: There may be something in that. I am certain that the Hon. Diana Laidlaw has been dealt a losing hand, because transport will have a much lower priority under the new Government than it did under the previous Government. The Liberals are not as interested in public transport as Labor was, and there are good reasons for that. The traditional Liberal constituency is divided between the country—

Mr Lewis: Where we don't have any.

Mr ATKINSON: Where there is no public transport—and the eastern suburbs. Although the eastern suburbs are generously served by public transport, people in that area do not use public transport at the same rate as those in suburbs that until recently were Labor territory. To give an example of that, on a week day the buses that travel along Port Road from LeFevre Peninsula, through the centre of Port Adelaide and down the Port Road through Woodville and Hindmarsh, are nearly always full when they travel to the city and, when they leave the city and go out towards the eastern suburbs and return to the city, they are nowhere near as heavily laden as they are on the Port Road.

It is natural that the Liberal Party would give public transport a lower profile. It is natural that the Liberal Party would seek to make the necessary savings in Government expenditure through public transport, and this Bill is the instrument of that cost cutting. I note with some amusement that among the objectives of the Bill is 'social justice'. I cannot imagine how this Bill will promote social justice, because it will take away from the working class and poor

people of Adelaide the services that they use more often than their better off counterparts. Furthermore, I objected to the use of the term 'social justice' by the former Labor Government, just as I object to its use by this Liberal Government. I regard the adjective 'social' as a weasel word. Put 'social' in front of any noun and the adjective 'social' empties the noun of any meaning. I would rather talk about justice than social justice.

I refer to the losses that the State Transport Authority has been making of late, and in particular the cost and revenue figures that were applicable in 1990-91. Between 9 a.m. and 3 p.m. the loss incurred by the STA per boarding passenger was 82¢. That is an 82¢ subsidy from the taxpayer to each boarding passenger between 9 a.m. and 3 p.m. That grows to $1.51 during peak hour, $2.38 on weekends, and a big $3.73 per passenger in the evening. Even on the current fare structure, which some of my constituents claim is too expensive, the taxpayer subsidy for each STA journey in the evening is $3.73.

Additionally, the subsidy to trains is much greater than the subsidy to buses. If we broke the figures down into buses and trains, there would be a sharp contrast. To illustrate the same point a little differently, the cost recovery from the fare box is 31 per cent between 9 a.m. and 3 p.m.; 29 per cent in the rush hours; only 16 per cent on weekends; and only 13 per cent in the evening. The Government will have to subsidise the provision of buses and trains for the foreseeable future, and it will have to subsidise them heavily. The Labor Party was willing to provide that subsidy, but I do not believe that the new Government is prepared to do that, hence this Bill.

Under Labor, STA fares were kept dirt cheap. Adelaide public transport users benefit from an average fare that is 25 per cent cheaper than other Australian cities. In comparison with other cities, Adelaide is on average 33 per cent cheaper than Melbourne, 29 per cent cheaper than Brisbane, 20 per cent cheaper than Sydney and 2 per cent cheaper than Perth, where the Liberal Government recently raised fares by 20 per cent. Therefore, arising out of the economic statement, we can soon expect a sharp increase in public transport fares.

In my opinion, the Adelaide people who will be most affected by this will be those over 55 years of age. When I travel on the buses and trains the people I mostly see are the elderly and those who have retired. An interesting paradox here is that it is just those people who voted overwhelmingly for the new Liberal Government. If we are to believe the opinion polls—and I think the polls were pretty accurate as to the election result—we can assume that 75 per cent of people over 55 supported the Liberal Party at the last election. However, it is these people who will be most affected by the changes that the Government proposes. They will be most disadvantaged both in the reduction of services and the increased cost of fares.

It is those people over 55 who for much of their working life used public transport. They used public transport before the motor vehicle became a 'necessity' in Australia. It will be these people over 55 who will be most resistant to change so that, when the Liberal Government introduces these radical privatisation measures in public transport, it is the over 55s who will complain most often and most loudly. That is a pleasure that Government backbenchers have to look forward to.

In my opinion this Bill will lead to lower wages and inferior conditions for bus, tram and train drivers as well as guards and ticket conductors. Doubtless that is the Liberal Government's intention in the Bill. I concede the Government's mandate to do that but I must say, as a Labor member of Parliament whose preselection and support at the ballot box relied on members of the Public Transport Union, it is something I cannot support. I freely concede that under the most recent Labor Government we saw a casualisation of the labour force in the STA. The blame for that does not rest solely on cost cutting by the previous Labor Government: it also rests on an extraordinary capitulation by the then Secretary of the Tramways Union, Mr Tom Morgan, a capitulation that his members rewarded him for with dismissal from office.

I am worried about what will happen to the bus drivers who are made surplus in the State Transport Authority by the operation of this Bill. The Minister for Transport says there will be no forced retrenchments. I find that hard to believe. Will these bus drivers be redeployed elsewhere in the Public Service? I cannot see any future for them in a bus service which has been contracted out.

Another criticism I have of the Bill is that, in making contracts with private transport providers, there is little control over them by the Passenger Transport Authority, should the contractors provide a bad service. The Minister for Transport concedes that in effect the taxpayer subsidy will continue to be paid to these private contractors, but we will not have the control over them that we have now over the State Transport Authority. So, when there is some fault in the service or when there are persistent breakdowns and passengers are left at the side of the road, there will not be the opportunity that there is now for the State Transport Authority to put in reserve buses or fix the problem quickly. The only control over the contractors will be to threaten them with not having their contract renewed, which is hardly the most subtle and flexible sanction.

Under this Bill, public transport services will no longer be comprehensive or integrated. Indeed, there may not even be an integrated ticketing system. So, those travelling on public transport may buy a Crouzet ticket for the Adelaide section of the trip but, when they have to change to another bus service run by another company, they will have to buy a new and different ticket. My mail is that, far from there being competition in this tendering process for State Transport Authority bus routes, there will be only one tenderer. The Liberal Party, I think, is already aware of the identity of that company. It provides services in New South Wales and Victoria, so there will not be the competition that the Minister holds out to the public.

Finally, one of the better aspects of the Bill is that it continues the former Labor Government's idea of approaching local councils to ask them whether they would like to run feeder services through their municipality to mass transit public transport services. This seems to me to be a return to the original concept of the Municipal Tramways Trust, which preceded the STA and which was a federation of local government for the purposes of providing public transport. On the whole, I believe that the Bill is a regressive step. I think it will lead to inferior public transport services for people in metropolitan Adelaide. However, I must concede that the Government has a mandate for much of this. It accords with Liberal Party doctrine and, accordingly, the Opposition will have to acquiesce reluctantly in the passage of this Bill. However, we will make some trenchant comments during the Committee stage.

Mr CAUDELL (Mitchell): I listened with interest to the member for Spence. When he started his speech, I thought at last we have acknowledgment of a very good document put together by the Minister for Transport. Unfortunately, he quickly slipped into his normal rhetoric and once again he supplied us with the same amount of misinformation and what could only be described as the twaddle we have heard previously. The introduction of this Passenger Transport Bill in the first session of the new Parliament confirms the priority that this Government places on the need to revitalise passenger transport services in South Australia. The Bill honours undertakings made over the past 18 months that a Liberal Government would regard the delivery of passenger transport services as one of the four basic areas for service delivery, together with education, health and personal and public safety. The Bill provides the framework for implementing the detailed innovative passenger transport strategy released by the Liberal Party in January 1993, a strategy designed to provide more South Australians with more access to more passenger transport services for every dollar spent by the customers and taxpayers.

The Government, together with the industry at large, is determined to reverse the perception that buses, trains and trams, also taxis and vehicles for hire, are a transport option of the last resort. We are determined to reverse the drift to even higher costs and even less relevance that has characterised our public transport system for too many years. In essence, the Bill heralds the start of a long haul to win back public confidence in public transport by providing a comprehensive customer friendly service that is safe, reliable, relevant, affordable, clean and cost effective.

When considering the initiatives in the Bill, I ask members to consider the following facts. Over the past 11 years, the State Transport Authority has lost 30.3 million passenger journeys. Over the same period, the Government has poured nearly $1.3 billion of taxpayers funds into subsidising the operations of the STA, with increasing subsidies from $55 million in 1981-82 to about $140 million this financial year. A further $250 million of taxpayer funds have been spent since 1981-82 for fare concessions, reimbursements on top of full fares, which are already heavily subsidised. This financial year, the STA estimates it will lose a further 800 000 passenger journeys on top of the 30.3 million passenger journeys already lost. Today, the STA caters for only 6 per cent of daily passenger journeys in the Adelaide area, while taxi journeys comprise only 0.4 per cent of all trips in the Adelaide area. Today, patronage on STA services is lower than it was in 1970, 24 years ago, despite a 30 per cent increase in population over the same period.

The background to the legislation that is before the House is that in 1974 the Government of the day thought the answer to public transport was to buy out the private operators and place their operations under a single heavily subsidised body, the State Transport Authority. The level of subsidy skyrocketed from practically no subsidy in 1974 to $144 million last year. Why has all this money been spent with so little apparent effect? One answer lies in the inefficiency of a Government monopoly. A second answer lies in the way our public transport system has failed to adapt to the changing travel patterns of Adelaide's population. The radial network caters for the dwindling proportion of people who work and shop in the Central Business District. The increasingly localised and cross suburban nature of our travel has not been catered for, and that is even more so in the electorate of Mitchell.

With respect to the Government strategy to reform public transport, the Government has adopted the Fielding and Radbone reports as the basis for the proposed reforms to the State's public transport system. The evidence from the United States, Scandinavia and London has bolstered our belief that the reintroduction of private bus companies through competitively tendered contracts is the most effective way to arrest both the decline in patronage and the steady increase in taxpayer commitments.

Private bus companies will once again play a significant part in the provision of public transport in Adelaide, but there will be three important features. First, companies will have to compete for contracts to provide services. This Government recognises that public transport in Adelaide can no longer be regarded simply as a commercial operation. It is an important social service essential to the quality of our lifestyle. For the first time we will have a body, the Passenger Transport Board, devoted to passenger transport services, whether publicly or privately owned, metropolitan or rural. The Passenger Transport Board will coordinate, regulate and promote public transport. Relieved of the operating responsibilities, the Passenger Transport Board will have a clear mandate, as has the Government. These have been expressed as objectives in the legislation. Clause 3 provides:

> The objects of this Act are—
> (a) to benefit the public of South Australia through the creation of a passenger transport network that—

and I hope the member for Spence is listening—

> (i) is focused on serving the customer; and—

I am glad I have his attention—

> (ii) provides accessibility to needed services, especially for the transport of disadvantaged; and
> (iii) is safe; and
> (iv) encourages transport choices that minimise harm to the environment; and
> (v) is efficient in its use of physical and financial resources; and—

if the member for Spence is listening—

> (vi) promotes social justice . . .

By that, I mean it is accessible to all people in South Australia, not just the people who live in Croydon Park. The State Transport Authority will continue in existence as TransAdelaide. Relieved of its policy responsibility, TransAdelaide can be expected to become far more efficient and responsive to customer needs in order to meet the competition posed in the new era.

I now refer to the regulation of passenger transport. This legislation is not simply about conventional public transport. Like the Fielding and Radbone reports, our passenger transport strategy document highlighted the unsatisfactory, messy arrangements under which small vehicle demand responsive services are regulated. This legislation will cut through this mess putting all such services under one authority and one Act. When combined with the competitive tendering practices of the Passenger Transport Board, the taxi and hire vehicle sectors will be presented with a wonderful opportunity to broaden their roles and provide a real alternative to the private car. The intention—

Mr Atkinson interjecting:

Mr CAUDELL: The member for Spence uses a bike: I use public transport. The intention under the legislation is to repeal the Metropolitan Taxicab Act, part IVB of the Road Traffic Act and the State Transport Authority Act. Those local councils outside the metropolitan area which regulate taxis will continue to do so if they wish. All passenger

operators, including the former STA, will be required to be accredited. (Exemption provisions exist for activities such as car pooling and community transport).

Accreditation will be designed to ensure that everyone providing passenger transport services to the public is fit and proper to do so. Accreditees will be required to abide by a relevant code of practice covering matters such as their attitude to the customer and their ability to provide a safe and appropriate service. Both operators and drivers will require accreditation. The Government does not propose the deregulation of the taxi industry. Codes of practice developed in association with the industry group and embedded in regulation will be developed. The other important strategy is to require industry itself to take an active role in policing the regulations.

A vexed issue to be addressed under the new regime is the respective roles of taxis, hire cars and mini-buses. Under the Passenger Transport Bill, taxis are defined not by the size of the vehicle but by the rights their licence gives them. These rights are to ply for hire in the streets or public places, to have a taxi meter, to occupy taxi stands and to promote the service as a taxi service. Mini-bus operators will have these rights if they buy a taxi licence and accept the conditions of accreditation.

Given the comprehensive nature of the reforms proposed for public transport, the degree of community consensus has been remarkable. It is widely recognised that the changes proposed are long overdue. The reaction since the draft Bill was released has been positive indeed, congratulatory both in the media and the consultation process that has followed. Obviously, a number of hard decisions still have to be made and we will turn around public transport only with the hard work, wisdom and goodwill of all concerned. With this Bill we have the legislative framework to enable to us to get on with the job. It is obvious from the work done so far that the Minister for Transport has done an excellent job in formulating this Bill. She has done an extremely good job in relation to the consultative process that has been undertaken over the past few months. I commend the Bill to the House.

Mr BROKENSHIRE (Mawson): Prior to the election I surveyed my electorate and, of the six main issues that were raised, transport ranked number four. In other words, there are enormous transport concerns in the public arena. Clearly, the history of public transport was not working. It was not working for the user of public transport, the staff, the drivers, the maintenance staff and those within the STA. It was not working for the public coffers of South Australia.

Over the past two, three or four years we have seen enormous cutbacks, particularly in the southern areas. Election time was the only time we saw an increase in services to the south, where the previous Government introduced the transit link. I support the previous Government for its initiative. It was a sad day that it introduced that service only at the eleventh hour when it realised how important transport was to the people of South Australia, and particularly those in the south who had, at the best, a fairly poor transport system and, at the worst, no transport whatsoever. In fact, there was little to none in the way of cross-over transport in any part of the southern area.

If a constituent lived at Woodcroft, Hackham East or Onkaparinga Hills, they had no way of accessing transport on the weekend or after 6 o'clock at night. They had no chance of getting to Noarlunga to go to the theatre, to TAFE or to the interchange to come to Adelaide for part-time or shift work, to visit the theatre and so on. That severely jeopardised people in my area. That applied not just to that area but to most of the outlying areas in the metropolitan area. Regarding the country areas such as McLaren Vale, Willunga, McLaren Flat, Blewett Springs and Mount Compass, there was nothing at all. The only way that you could get to Adelaide from McLaren Vale on Sundays was to catch a bus that left McLaren Vale for Adelaide at 5.45 p.m. How you ever got back was beyond me. Clearly, the message was that something had to be done to amend the deterioration of the public transport sector.

I will not go into the intricate detail tonight, because it will be discussed more in Committee. However, I owe it to my electorate, given that I lobbied hard with the Minister for Transport (then shadow Minister), to congratulate her on the excellent effort put into this Bill. She got out there and listened to the people of South Australia, and it would have been good if the previous Government had done that. She went around the electorate with me and other candidates and spoke to groups. Working parties were established. The Bill was formulated after full consultation with the community at large.

I have many bus drivers in my electorate and I can tell you that their morale has been low for quite some time. When I hear from members opposite that there will be fewer bus drivers, it is an absolute furphy. It is a negative. They can say that only because they have been reducing the number of bus drivers in South Australia for so long through the run down of services that they think the only way the transport system can go is further down the gurgler. It is not about losing jobs, as they keep saying: far from it, as are many other issues in this State. We are now in a growth phase. We hear about Motorola, Mitsubishi and ACI. They are growth phases. This Bill will allow another growth phase in South Australia when it comes to transport. I wish that members opposite would start to think positively instead of negatively and see that there can be a lot of expansion.

When I was a student travelling to Urrbrae Agricultural High School, I caught two buses: one was a Thomas Tours bus and another service was run by Campbells. If I had to come into Adelaide to do research of an evening, I would get onto an MTT bus and it would bring me into Victoria Square. There was no difference whatsoever between the cost of my fare from Plympton Park to Urrbrae on the Thomas Tours or Campbells bus services and the cost on the MTT bus from Urrbrae to Adelaide. Fare differentials is a furphy, not a valid argument, to try to arouse and scare people who want to support us in the enhancement of this transport direction.

As a Government we realise that a lot of subsidy is needed with transport. We have never denied that fact. In fact, we are strong supporters of what the Government is there for, namely, to make laws that protect and enhance this State and to provide services, infrastructure and facilities that the private sector either cannot afford or will not provide. If we stick to that commitment as a Government, this State will go a long way, as will transport services for the people of South Australia. In other words, by getting out of the areas in which we do not have to be involved and still providing an STA type service under the new form proposed in the Bill, we will have the best of both worlds. No-one will be jeopardised, but we will be supporting a transport service for South Australia, taking off the handcuffs on the private sector and saying, 'If you can do it better, if you can help our country mates and increase your cross-over, after hours and weekend services

and become more flexible without costing the Government, then go for it.' Surely that is what the Government is here for.

I understand that South Australia has probably the lowest level of passenger transport usage in the western world. That is clearly not a good record and one of which I am not proud. When I drive to Adelaide to come to Parliament and get jammed on South Road, I note the number of people travelling in one car: it is clear that we have to do something about the transport problem and encourage people to use public transport again.

In my electorate we had a working party to look at the Bill over about four months. Bus drivers from the STA, who are an important part of helping to draft these Bills, were involved, as were passengers. We had representation from groups and private coach operators. When they saw provisions in the draft Bill with which they were not happy, they told me. It was documented and went to the Minister. Where appropriate, after discussion and proper consultation, the draft was amended. We have come up with the best possible Bill to put before the people of South Australia to give them a good transport service. It gives us the opportunity to service the outlying areas and to feed the main transport facilities such as the transit links and the rail interchange.

What is the point of having a rail interchange or a transit link if 50 to 60 per cent of people cannot access it? That is why we have a bottleneck coming into Darlington with people travelling one per car: they have to drive in cars, because they cannot access the transit links. They do not want to pay expensive parking fees in Adelaide or to wear out the cars that they use for family enjoyment on weekends, but they do not have a choice. We are about giving them a choice, and that is what we are doing with this Bill.

There is another opportunity in McLaren Vale and Willunga: the Willunga High School has an enormous number of school buses feeding the high school and those school buses are now mainly privately owned but they sit around all day doing nothing because operators are not allowed to have a licence or competitively tender to get out and pick up the passengers who badly want to access the Colonnades, the interchange and Adelaide. It is jeopardising the elderly and keeping them at home. They are not allowed to go out and outreach the services that we are providing. It is stopping them from catching up with their family and friends and, in some instances, on the edges of the metropolitan and near country areas encompassing my electorate, people are prisoners at home because they have no way of getting out.

Why cannot we allow private buses that sit around all day to have a part of this new direction and offer a service that will help everybody whilst at the same time creating some real jobs? That is why I talk about the increase in the number of jobs because, clearly, if there are more services out there on the road through transport, there will be more jobs because buses cannot drive themselves, as we all know. So privatisation will offer incentives to people to get out there and provide a real service. After all, when you have your own interests or money in a product or service, you will damn well make sure that it is a good, clean, efficient, safe and reliable service that people want to patronise.

The board will be designed to understand the transport needs. It will be responsible to the consumer, the operator and the employees. The board will also be responsive and flexible to customer requirements. It is about time we had a board and a transport service that was responsible to the customer, just as Government must be responsible to the customer—the constituent and taxpayer. We are here to serve them, and the board proposed in this Bill will be there to make sure that this happens.

It is an excellent opportunity for the taxi industry to improve. We all know how much taxi operators have been struggling. If one catches a taxi late at night from this place and talks to the driver, one finds that they are sitting around for eight to 10 hours at a time to make $20 or $50. The infrastructure and service is there but they have not been able to free it up. We are now allowing an efficient, integrated system between the buses, the trains and the taxi industry. I commend the previous Government for the work it did on the pilot project at Hallett Cove. It saw how well that worked. Women were able to get home from work late at night, access a taxi from Hallett Cove and arrive home safely without the trauma of wondering whether someone was stalking them or all the other things that have happened in the past. The same applied to students, the elderly and others. They were able to get out of the train, get into a taxi and get home safely. That is what it is all about. Therefore, we need to support this Bill.

The previous Government's record in relation to transport was abysmal. Year after year we saw an increased blow-out in its budget to the tune of millions and millions of dollars that could have been spent on health, education, law and order and maybe even repairing and constructing a few new roads. We have seen those services run down over the past 10 years. Here is an opportunity to ensure that money is redirected to the appropriate avenues. The transport policy proposed by the Government in this Bill has been strongly supported by the public, and it is important that we do not have amendments that will destroy the main thrust of the Bill.

This Bill will work, I am convinced of that. We have to bite the bullet and introduce policies and legislation that will help people and get the State going without throwing money in year after year, because we all know that the State does not have the money. In conclusion, I would like to comment on the excellent job that has been done by the Minister and the working parties in putting this Bill together. It is an exciting opportunity for South Australia. I, and other members in this House, can now go to our electorates and say, 'At last you have someone doing something about a better transport system for you.'

I know that my constituents by and large are delighted that we have got on with the job and are putting this Bill through quickly. It is a pity it has not been quicker, and I cannot understand why it was held up for so long in the Upper House. However, it is here and my constituents are delighted to say, 'Here is the Government trying a new initiative, giving people an opportunity to have a better transport system.' Not only will it be a new initiative but it will be one that works because it is thought out—not like the tripe that has been put up in the past. It has been planned and it has been through consultation with the people concerned.

If members opposite are prepared to get behind us—as I heard you say that you were, and I was delighted to hear that—I am sure that you and I will be much happier because we will not have the telephone calls and stress in our offices with people saying, 'I cannot get to the hospital because I have no bus service', or 'I cannot access the train to visit my grandmother who is in a nursing home.' That is what it is all about. It is about giving us a service, and I therefore support this Bill.

Mr Atkinson: When was the Minister last on a bus?

The Hon. G.A. INGERSON (Minister for Tourism): As the former shadow Minister of Transport I was probably on a bus a lot more than the honourable member has ever been on one. I thank the members for Spence, Mitchell and Mawson for their contributions to this very important debate. I remember in 1989, when we first signalled the change in transport, that this important concept of the private sector handling part of the delivery of services and the STA operating in areas it believed it could perform in practically was a fundamental part of our policy. Peter Fielding was a very interesting man, who spent a large part of his life organising transport systems in cities such as Adelaide.

I suppose the most important thing he said when he was here was that what we were doing was wrong—that a monopoly of any kind (it does not matter whether it is public or private) cannot deliver the services efficiently, effectively and in the best interests of the community. Since all previous speakers, including the member for Spence, have supported the principle of the Bill, I conclude my remarks and have pleasure in commending the measure to the House.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

ADJOURNMENT DEBATE

The Hon. G.A. INGERSON (Minister for Tourism): I move:

That the House do now adjourn.

The Hon. LYNN ARNOLD (Leader of the Opposition): I rise tonight on behalf of a group in South Australia that is relatively small and perhaps unknown to many. It is the group known as the Church of the True Christian Spiritual Molokans, a small group located mainly in the northern suburbs of Adelaide. There is also a community in Western Australia, particularly centred around Bunbury. They can be regarded as the theological cousins of the Amish, the River Brethren, the Mennonites, the Dukhobours and the Quakers. At the moment large numbers of them live in California, Arizona and Nevada. Even larger numbers live in the States formerly known as the USSR, particularly in what is now again Russia, but there is also a large community in Armenia.

It is on behalf of those Molokans living in South Australia and their concerns for Molokans living in Armenia that I speak tonight. I spoke about this group some years ago and indeed interceded on their behalf with the Federal Government with a view to having a special arrangement included in the refugee program to enable some of this group to settle in Australia. I am pleased to say that on that occasion my representation, supported by the representations of a number of other people, was successful. The Hon. Gerry Hand, who was then the Minister for Immigration, Local Government and Ethnic Affairs, was pleased to provide a special assistance category scheme in 1991-92 that permitted the immigration to Australia of some 50 Molokans from Armenia.

I understand that some 49 of those 50 places were in fact taken up. The concern I have now, however, is that that program has not continued into subsequent years, and the Molokan community of South Australia has approached me to seek my support in having the Federal Government reinstate this special assistance category scheme. They have already written to the Federal Minister, the Hon. Nick Bolkus, and on 9 December last year received a reply, which *inter alia* states:

> Within this framework the Government allocates places to particular components of the humanitarian program. In 1993-94 there has not been an allocation of places for the Molokan community made available under the SAC for citizens of the former USSR. It is not possible to state whether such program places might be available in future years, as this is a matter for consideration by the Government as part of the overall annual planning for the migration and humanitarian intakes.

I am sorry to read that response from the Federal Minister because I believe that there is real repression taking place within Armenia against the Molokan community. I will, in a few moments, read extracts from the letter that was written by two South Australian members of the Church of True Christian Spiritual Molokans, but before doing so I want to detail the particular problem that they are having in Armenia.

I mentioned the churches to which they may be considered theological cousins. Those churches are also known as the Historic Peace Churches. In other words, they have a higher incidence of pacifists among their members than is common in other religious groupings. For that reason, they have earned the enmity of both groups that are presently warring in the Armenian Azerbaijan region of the former USSR. Being Christians, they are not liked. In fact, they are being attacked by the Azeris, who are Muslim. Because they are pacifists, neither are they liked by the Armenian Christians and they are being attacked by many of that group as well. In consequence, they are being attacked from both sides. Their pacifist response means that they are being subjected to severe repression and there is real suffering.

Some years ago I raised this matter not only with the Federal Government but with Amnesty International through its London office, with the Australian Embassy in Moscow and with the Friends Service Council based in London, seeking their support. In each instance inquiries were made, and I appreciate the inquiries that were made. However, it needs to be noted that the inquiries that were made were inevitably made through Moscow, so officers from Moscow would either travel to Armenia or seek reports from others. However, because of the real fear of persecution that exists among the Molokans in Armenia, it was very difficult to obtain information from that community as they were fearful that, by speaking openly about their position, they would only worsen the persecution that they were suffering from both sides.

As I said, the Hon. Gerry Hand acknowledged that the information that had come through to Moscow was not reflecting the real situation in Armenia and created this special category. I want to quote some of the points made in the letter that Nick Bolkus received in September last year from this community, as follows:

> The special assistance category scheme for migration is very important to our community. The non-inclusion of the Molokan people in the scheme would have a devastating effect on our community. We are a small community who marry within our own faith and our reliance on growth and mateship is dependent on migration of our people from the former USSR.
>
> The Molokan people in the former USSR have been persecuted for over 200 years for their religious beliefs and for being different culturally and ethnically. Even today, for many this has not changed.
>
> Our people are from common peasant stock and were denied access to higher educational facilities because of their religious beliefs. The present 'points system' for migration from the former USSR is very discriminatory. It favours the 'cream of the crop' and disregards the vast majority of people, most of whom were disadvantaged in one way or another. This is another reason why the Molokan community consider the special assistance scheme very important.

We are sure that you are aware that the situation in Armenia (part of the former USSR) where many Molokan people live is rapidly deteriorating. Food, essentials and utilities have drastically been reduced or cut off because of various blockades around Armenia. Whether in the city or country, this has taken its toll on the Molokan people. Many have become refugees within their country of birth.

The Federal Government had allocated 50 places to the Molokan people in the 1991-92 quota, of which 49 places have been filled. For this the Molokan community thanks you and the Federal Government. These 49 people represent eight families which our community welcomed. Two of these eight families have left behind young married children who were living with them. In original discussions with DILGEA, it was said that families would not be split, but it happened. This must be corrected.

We therefore strongly request that another 50 or more places be allocated to the Molokan people with emphasis on uniting families. It is further requested that the strong community ties and close links with Australia in the form of community groups aspects be reconsidered as grounds to be eligible for migration to Australia as originally indicated to us. This will allow many young people who would be assets to Australia to migrate here.

Picking up that last point about being assets to the community, it has been my pleasure to know a number of Molokans in South Australia and to be received in the home of one family who on that occasion brought many other families together for a delightful social-cum-religious occasion, and I found them to be very positive members of the Australian community. They have established themselves in various business and work activities. They are hard working people and those who are already here are positive assets to Australia. It is certain that those who would come under this special assistance category would undoubtedly continue the practice of those who have come before them.

Once again, I raise this matter. Previously I raised it and a successful outcome was achieved. I hope that on this occasion Senator Nick Bolkus will check through the files and appreciate the previous investigations of the Hon. Gerry Hand and support his decision and, in consequence, reinstate the special assistance program for the Molokan community in South Australia.

Mr CAUDELL (Mitchell): My contribution to this grievance debate relates to an inquiry from a constituent who spoke to me on behalf of his father, who is a retired Army officer, and to the lack of satisfaction he has been receiving from the Department of Defence in Canberra for an ongoing claim for Commonwealth compensation over a period of nearly 20 years. Before I go into that situation, I should like to read out details of the Army service of this constituent. In 1952 he enlisted in the Australian Army whilst in the United Kingdom. He disembarked in Adelaide from the United Kingdom in 1953. He was involved with the 23 Construction Squadron at Woodside Army Camp. Later in 1953 he qualified as an engine hand, class III. In 1954 he qualified in a parachute training course, transferred to the Airborne Platoon at Williamstown and then qualified in an air dispatch course. He transferred to headquarters 14 Infantry Brigade and then transferred to 1SAS assault pioneer group in 1957 until his discharge from that service in 1958. In 1966 he enlisted and served with the Citizens Municipal Forces. During his period in the Australian Army he did 73 parachute descents.

My constituent and his father have given me a number of documents, including a letter, from which they said I could quote, which was sent to the Department of Defence. My constituent's father joined the British Army in 1934 at the age of 15. Having served a total of 18 years in the British Army, he served a further eight years with the Australian Army. By 1968, therefore, he had spent 26 years of his working life of 34 years as a professional soldier in either the British or Australian Army. At the relatively early age of 50 he suffered a severe heart attack just a short while after completing an authorised CMF regimental band engagement during service with the CMF. He continued to soldier on in the CMF until being discharged at his own request in 1968.

He was granted an invalid pension in 1969, but he was not granted his invalid pension via the Veterans Affairs service pension until 28 November 1984. In 1993 he telephoned the Department of Defence and explained the difficulties he was having and discussed the unclear and confused messages he had been receiving. Part of the problem was that he was now 75 years of age and was finding it hard to explain his point clearly. He also explained that he found it difficult to contain his anger and frustration over issues related to the long delays in his compensation claims.

During his service with the Australian Army he was exposed to a number of incidents which would have been undoubtedly and markedly distressing to anyone. These incidents were psychologically traumatic events that were 'outside the range of normal human experience'. Collectively, these incidents would have caused stress so severe as to effect some psychosomatic reaction. The frequency and intensity of exposure to physical injury, the reports of mental trauma and the emotional distress which occurred during his Australian Army service, and which still exists today, is directly attributable to his ARA service relating to this trauma. This should be held causally responsible for his coronary artery disease.

Many of his claims have been of long standing—since 1961—and have been won by him only after a legal appeal against the delegate of the CEC. For a long time he has been misguided into believing that his claims would receive a favourable response from Veterans Affairs.

The constituent's legal advisers were also misled by incorrect facts given to the constituent by serving ARA officers, who denied the existence of medical evidence necessary to support his claims. This calumny is aggravated by the fact that the constituent has not received clear direction from the CEC or the Department of Veterans Affairs as to which way to proceed with his claims. He has felt alone and alienated by the very system to which he gave almost all his working life, namely, the Army. The constituent's successful prosecution of early claims has been hampered by this misunderstanding. The matter is most complex, partly due to the lapse of time, the constituent's advancing age and difficulties experienced by him in the pursuit of his claims for injuries sustained as a result of his Army service.

The constituent and his son approached me for help in the promotion of his claims. From reading his voluminous files, I would have to agree that his frustration and anger are warranted. Due care and appropriate attention to his claims should have seen this matter finalised in his favour some considerable time ago. Unfortunately, for some unknown reason the Department of Defence has continued to procrastinate over this issue of compensation. The constituent no longer has the indulgence of time. Lack of time should mitigate urgency. The constituent is entitled to a Class 1 compensation pension or its equivalent, and I call on the Minister for Defence in the Federal Parliament to review the file of the constituent and make a decision immediately.

Motion carried.

CRIMINAL LAW CONSOLIDATION (SEXUAL INTERCOURSE) AMENDMENT BILL

Received from the Legislative Council and read a first time.

At 10.13 p.m. the House adjourned until Thursday 21 April at 10.30 a.m.