HOUSE OF ASSEMBLY

Wednesday 2 November 1994

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

TRADING HOURS

A petition signed by 13 residents of South Australia requesting that the House urge the Government not to allow general Sunday trading where restrictions currently apply was presented by Mr Evans.

Petition received.

BLACKWOOD POLICE

A petition signed by 45 residents of South Australia, requesting that the House urge the Government to provide a shop front community police station within the Blackwood shopping centre and increase the number of police within the Blackwood area was presented by Mr Evans.

Petition received.

VIRGINIA PIPELINE

The SPEAKER: I direct that the following written answer to question No. 118 on the Notice Paper be distributed and printed in *Hansard*:

118. **The Hon. M.D. RANN:**

1. What is the predicted annual supply of water that will be provided by the pipeline from the Bolivar sewerage works to the 'Virginia Vegetable Triangle'?

2. What will be the unit price to growers of water supplied and how will that price compare with the unit price of mains water and the cost of bore water (where available)?

3. When will the pipeline be constructed, by what year will it reach optimum capacity, and at that point what percentage of the Bolivar treated waste water outflow will be diverted to growers via the pipeline?

The Hon. J.W. OLSEN:

1. Following investigations the MFP Development Corporation has estimated that total grower demand for Bolivar's recycled water will increase to 12 500 megalitres(ML) in the first year of pipeline operation, 18 000ML in the second year and 25 000ML per year thereafter. Industrial demand is estimated to be 2 000ML per year from the first year onwards. However, these forecasts are subject to review pending ongoing further investigations.

2. It is intended that the Virginia Pipeline Scheme will be financed, built and operated by a private sector company or consortium of companies. Therefore, the unit price to growers will be determined by that organisation, not the Government.

The price of mains water is 88¢/kL.

The growers are not charged a fee for the use of groundwater. However, growers need to have a licence under the Water Resources Act for the withdrawal of groundwater. There was a moratorium on trading of water licences over the last two years. When this moratorium was lifted in January 1994, I understand that only three licences were transferred with a total volume of 45ML transferred out of the total allocation of 26 000ML. Those licences traded at $1 200/ML which, when amortised is equivalent to 10¢/kL.

Growers also incur capital costs for the bore casing and bore pump plus maintenance and power costs for pumping. For example, these costs for the grower pumping 8ML per year, the median groundwater usage, are equivalent to about 44¢/kL over the long term. For the grower pumping double this amount, i.e., the 70 percentile usage, capital and operating costs decreases to about 25¢/kL.

When provision for the market value of water is added then these costs increase to 54¢/kL for the medium user and 35¢/kL for the grower using double that amount.

3. Studies by the MFP Development Corporation have assumed that the pipeline will be commissioned by June 1996 and that by 1999 the scheme will be operating at its capacity with the growers utilising 25 000ML per year. This is about 50 per cent of Bolivar's total annual volume recycled water discharged into the gulf.

TATIARA MEATWORKS

The Hon. D.S. BAKER (Minister for Primary Industries): I seek leave to make a ministerial statement.

Leave granted.

The Hon. D.S. BAKER: Two weeks ago I briefed the House on the Government's involvement in the decision by the Tatiara Meat Company's lending institutions to close its abattoir at Bordertown. At the time of the foreclosure, the Government engaged two independent consultants to advise on the future of the meatworks from both the financial and industrial perspectives. During the past two weeks, both consultants—Mr Ken Waldron of Australasian Agribusiness Services and Mr Paul Houlihan of First IR in Sydney—have been working closely with the company, its receivers and the Commonwealth Bank. I am delighted to be able to report to the House that agreement has been reached this morning between the Commonwealth Bank and the Tatiara Meat Company as a result of a decision by the German shareholders to increase their equity in the meatworks. It is expected that the company will be back in the hands of the shareholders tonight.

Planning has already begun to reopen the works for processing next Monday, with around 250 jobs under restructured workplace arrangements. While final details have yet to be resolved, it is expected that the company will retain the services of the two independent consultants during the start up phase. The decision by the German investors to increase their equity in the meatworks is a clear vote of confidence in South Australia. I have been reassured by the resolve of all parties involved, the employees who are totally committed to industrial harmony, the management, the investors and of course the lending institutions. The Government's role in this issue has been that of an active facilitator, bringing the parties together and assisting with independent advice.

The result today is a victory for the determination of the company's owners, its investors and the staff who have consistently sought to overcome any obstacles which stood in the pathway. South Australia is the winner. The families in Bordertown and the livestock producers in South Australia and Victoria who have supplied this abattoir can have confidence, and an important export industry worth $100 million per annum to this State can make a fresh start.

POLICE COMMISSIONER

The Hon. W.A. MATTHEW (Minister for Emergency Services): I seek leave to make a ministerial statement.

Leave granted.

The Hon. W.A. MATTHEW: Yesterday the Opposition Leader released a statement alleging a serious breakdown in communication between the Commissioner and me as Emergency Services Minister. In response, the Commissioner has sent me the following letter and requested that I read it to the House. The letter reads as follows:

The Hon. Minister for Emergency Services.

I refer to the attached copy of the OMEGA Plan media release dated 27 October 1994 and reiterate that this is simply an approach, as I stated in the media release. I also emphasised that this matter is to be more formally discussed with yourself, as I also stated at the

media conference. This approach was reiterated in a memo dated 28 October 1994. Whilst I did not have an opportunity to discuss this with you before the conference, it was an item of discussion later the same day. Whilst there is a suggestion of legislative change, the thrust of these statements essentially relate to operational policing issues.

I advise that I have also been contacted by the National Crime Authority today, seeking the support of the Commissioners of Police in dealing with the call for a national cooperation and to consider suggestions for legislative changes by the National Crime Authority. It is regrettable that media reporting is promoting a so-called rift between the Police Commissioner and the Minister. Nothing could be further from the truth. Your statement in the House that some of the suggestions are in need of closer scrutiny or are in need of further consideration is to be expected. This is precisely why I introduced them; for discussion, as well as serving the public interest in letting them know what is to be considered. From the foregoing, it will be seen that the approach is worthy of your support.

David Hunt, Commissioner of Police.

1 November 1994.

I have stated publicly that some of the issues the Police Commissioner has raised need closer scrutiny. Others are questionable and for that reason it is important that the Attorney-General have the appropriate opportunity to assess them. The Commissioner has also advised me that, from January 1990 to November 1993, 56 proposed amendments were placed before the previous Government and only 15 were acted upon. It is therefore little wonder that the police became despondent through the lack of reaction by the previous Labor Government.

On coming into Government I requested that the police reassess and prioritise their suggestions for legislative change in order that important areas of legislative change could be addressed. Many police have renewed enthusiasm through the opportunity to focus to an even greater extent on operational policing. This is evidenced through the creation of successful operational task forces, such as Task Force Pendulum and now Operation Titan. Officers are understandably eager to suggest associated areas of legislative reform and have been encouraged to do so. However, for legislative reform to occur, there is a process of which all honourable members are aware and which must be followed.

This includes the referral of requested legislative changes to me as Minister for Emergency Services, the assessment of the changes by the Attorney-General as the responsible Minister for such legislation and then the parliamentary process. Some changes may require a national approach and therefore need to go before the Australasian Police Ministers' Council. Unlike the previous Government, this Government will make sure that these processes are followed through and necessary changes implemented.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

Mrs KOTZ (Newland): I bring up the fourteenth report of the committee on the environmental resources, planning, land use, transportation and development aspects of the MFP Development Corporation for 1993-94 and move:

That the report be received.

Motion carried.

The Hon. S.J. BAKER (Deputy Premier): I move:

That the report be printed.

Motion carried.

QUESTION TIME

RACISM

The Hon. M.D. RANN (Leader of the Opposition): My question is directed to the Minister for Multicultural and Ethnic Affairs. Is the Government opposed to the principles set out in the Racial Hatred Bill, which is about to be presented by the Federal Government and about which the Federal Opposition is at odds, or will the South Australian Government introduce its own State legislation similar to that of its New South Wales Liberal counterpart to address the serious issues surrounding racial vilification?

The Hon. DEAN BROWN: As the Leader of the Opposition clearly indicated, not even the Federal Parliament has as yet, I understand, seen a copy of this legislation, so how can I possibly respond to the Federal legislation when I have not seen it? As I said, it is my understanding that even the Federal Parliament does not see it until today. In terms of similar legislation, I point out that the Liberal Government in New South Wales has introduced such legislation, and it is the first Government in Australia to do so.

The Hon. M.D. Rann: Do you intend to do the same?

The Hon. DEAN BROWN: It is my intention to look at the New South Wales and Federal legislation and to discuss the general principles to see whether or not there is any need to introduce such legislation in South Australia.

PUBLIC SECTOR MANAGEMENT LEGISLATION

Mr BRINDAL (Unley): Will the Premier reveal the outcome of the Government's four-week consultation program with public servants about the new public sector management legislation? Given a casual conversation with a number of senior public servants who are resident in Unley, the Premier will be pleased to learn that they have been delighted with the consultation process and heartened by the legislation. I want to know whether that is a general perception.

The Hon. DEAN BROWN: Mr Speaker, before I respond, I wonder whether you might get someone in the House to terminate the building work, at least during Question Time. I thought for a moment it was a cog at last moving in the brain of the member for Hart.

Members interjecting:

The SPEAKER: Order! I suggest the Premier should answer the question and not be distracted by interjections.

The Hon. DEAN BROWN: The reason why I thought it was probably that was that it occurs only periodically, and seldom at that.

The SPEAKER: Order! The Premier's response should be relevant to the question.

The Hon. DEAN BROWN: Certainly, Mr Speaker. Draft copies of the Public Sector Management Bill were sent right across the public sector in South Australia. I sent a letter to all Government employees outlining the nature of the legislation and the consultative process that would be gone through by the Government. I think it is fair to say that never in the history of Government in South Australia has there been such wide consultation with any legislation. Certainly there has never been such wide consultation with an Act or a Bill relating to Government employees. Each Government department was given a large number of copies of the draft legislation, and a formal process was set up within each

Government department or agency to brief all Government employees within those departments or agencies if they wished to be briefed on the legislation.

A hot line was then set up within the Commissioner's office to answer any questions over the four week period. A large number of letters were sent into the Premier's Department, to me and to the Commissioner, and we are in the process of sending an individual response to each of those letters. There is something like 1 400 letters involved which are all being addressed. But, in addition to that, today I have prepared and signed a letter which is going out to all Government public sector employees—something like 80 000 employees.

In terms of the main area of concern that came out of that very detailed consultative process, one major issue stood out above all others: that Government employees had some concern about maintaining the independence of the public sector whilst there was the opportunity for a Minister to direct a CEO in relation to employment of a particular individual. So, the Government has modified the legislation to take account of that, and the power for any Minister now to direct a CEO on a particular person's employment has been removed from the legislation. Another area of concern—

Mr Clarke interjecting:

The Hon. DEAN BROWN: Yes, this Government does listen to people when it is involved in a consultative process. Another area of concern was that they felt the legislation was being drafted to provide contract employment to virtually all Government employees. In fact, that is not the intention of the Government at all. We intend to have contract employment for only the executive officers of Government and for people who are employed to do a specific task within Government for a limited period. They are the only two areas where it is expected that contract employment will apply, otherwise the normal permanent tenure for public servants will apply as it does at present.

The other area where a lot of questions were raised was in respect of the appeal mechanism. Although the exact basis as to where the appeal takes place has been modified, the appeal opportunity is there in exactly the same way as it is in the present legislation. In fact, it was the then Liberal Opposition that managed to amend the former Government's legislation to include those appeal provisions. So, exactly the same rights of appeal will apply as is the case now, even though the formal procedure for the appeal has been changed.

I believe that Government employees will be very pleased with the outcome of the consultative process and the amendments to the legislation. In particular, under this new legislation we will have an opportunity to create modern management practices within the public sector. It will also give Government employees a chance to be highly motivated and to participate very significantly in the economic development and the provision of community services here in South Australia.

WATER RATES

The Hon. M.D. RANN (Leader of the Opposition): Did the Premier in any way mislead Parliament yesterday by deleting a crucial part of his statement on water and sewerage charges for industry; and why did he ridicule the media for inaccurately reporting him? Yesterday the Premier quoted himself—

Members interjecting:

The SPEAKER: Order!

The Hon. S.J. BAKER: I rise on a point of order, Mr Speaker. I believe the Leader said, 'Did the Premier mislead the Parliament?' If that suggestion is made, it must be by way of substantive motion. I believe that the Leader should reorganise his question.

Members interjecting:

The SPEAKER: Order! As I recall the question, the Leader of the Opposition asked, 'Did the Premier mislead' and not whether he had misled—

The Hon. M.D. Rann: Did he in any way—

The SPEAKER: Order! The Chair is giving a ruling, and does not need the assistance of the Leader of the Opposition. Therefore, I cannot uphold the point of order. I listened carefully, and I sought advice.

The Hon. M.D. RANN: Yesterday the Premier quoted himself selectively from a press conference when he claimed he said industry would pay heavily for sewerage effluent but the media had got it totally wrong by saying he was referring to water. The Premier's own staff yesterday distributed a full copy of the transcript of that same news conference which revealed the quote he used in Parliament was only half the sentence. The Premier actually said, 'Industry that uses water, industry that uses the sewerage effluent system, will pay for that system, will pay for that use and pay heavily for it'—that is, industry that uses water as well as effluent.

Members interjecting:

The SPEAKER: Order!

The Hon. DEAN BROWN: The answer is, 'No, I did not mislead the Parliament.' I quite clearly did not mislead the Parliament. If the honourable member wished to quote, why did he not go back and cite the earlier quotation as well to give a very detailed assessment of what I said? I had given that earlier. Everyone knows that people who are going to use a large quantity of water naturally will pay for using a large quantity of water. I do not withdraw for one moment from saying that. The payment is based on the quantity used. But if you look at specifically what I was referring to there—

Members interjecting:

The SPEAKER: Order!

The Hon. DEAN BROWN: I am aware of what I said. What I was specifically referring to was sewerage, and it is quite clear I was referring to sewerage. I read out both quotations yesterday and quite clearly what I was specifically referring to was sewerage.

Members interjecting:

The SPEAKER: When the House comes to order, I will call the honourable member for Chaffey.

COMPUTER SOFTWARE

Mr ANDREW (Chaffey): My question is directed to the Treasurer. Has the Government finalised its position on which computer software it will install across the public sector? I recall that in about June this year the Government announced that it was entering into negotiations with Microsoft to provide a standard suite of office software products through the public sector.

The Hon. S.J. BAKER: I am delighted to announce to the House today that at about 12.30 p.m. the Managing Director of Microsoft and I signed an agreement for the supply of software for PCs across the whole of the State Public Service. It is a breakthrough. We have for too long grappled with the inefficiencies of systems which are quite disparate, which do not communicate with each other and which do not meet the needs of the future. The contract is for $6.3 million over three

years. We have estimated that the contract, when implemented, will save us approximately $4 million on what we would have spent had the three existing systems been allowed to be pursued individually by departments according to their own needs.

So, we are pleased that we have now mandated a system which is very flexible and which can be imported or placed on any of the current PCs that are up to a reasonable standard—and I know that members in their offices have 286s and they are being phased out for 386 and 486 machines. We can translate this package onto those personal computers.

Mr Foley interjecting:

The Hon. S.J. BAKER: The member for Hart asks to be shown how to use it. I made the same comment. I have been trained on a different piece of software and I was going to have to go through some sort of remedial education. I know that I learn very quickly and I will not have a difficulty. The contract is for 18 000 PCs. It means the software we have bought can be placed on those machines and will be regularly updated. It has a number of very user friendly operations associated with it, and that makes it a very portable and useable device.

We now have e-mail available to Government departments and it will be on a consistent basis, so that documents can be sent back and forth rather than by the traditional method, which really is costly and subject to considerable delay. That is just one of the features; it also has a spread sheet and diary, as well as the word processing capacity, of which members of this House would be well aware. There are more than 18 000 PCs but we are organising the contract to allow some of the other agencies, which have invested in more recent times, a longer period over which to adjust. However, eventually we want every PC using the same software so that they can communicate and so that we will not need to have artificial devices to translate into the language of the system operating in individual departments.

It will be a great boon to us in terms of the conversion of dumb terminals into intelligent terminals and major processing of PCs straight into mainframes, so we are delighted with the contract that we have signed. There is a huge saving involved. Microsoft will place some economic development before us as a result of that contract. We have an excellent result from it, and I am sure that everyone in South Australia will applaud the Government for its initiative.

WATER RATES

Mr FOLEY (Hart): My question is directed to the Premier.

An honourable member interjecting:

The SPEAKER: The member for Hart.

Mr FOLEY: I think he was referring to you, Premier. Will the Government introduce trade waste charges for industry? Yesterday in Parliament the Premier said:

> Industry that uses the sewerage effluent system will pay for that system, will pay for that use, and pay heavily for it.

However, that contradicts a statement made by the Minister for Infrastructure on 21 September, in which he said:

> . . . we will avert the need for the draconian imposition of trade waste charges.

The Hon. DEAN BROWN: I highlight to the honourable member that the Minister for Industry and I were having a discussion just last Wednesday in which we spoke about the principles that should apply where you have exceptionally large industry putting huge quantities into the effluent system. We were discussing in general, philosophic terms what the long-term direction should be in relation to requiring those companies to pay for the additional infrastructure that is required as a result of that occurring.

It is an important issue that needs to be dealt with, and people need to understand the reasons why a Government would adopt a policy along a certain direction on this issue. Traditionally, some industries have been very high polluting in terms of putting effluent into the system. With some of those industries in the past, the soft option has been taken whereby, if it is based entirely on a property valuation, those industries will put as much waste as they possibly can into the effluent system. As a result, they cause enormous overload of the system and require the Government to put in significant infrastructure.

I do not wish to name individual companies, but I point out that, when I was Minister of Industrial Development in South Australia, I imposed an obligation on some of these companies—and one in particular—that they must start to reduce the total load that they put onto the sewerage system and that the Government would start to impose ever increasing fees upon them if they failed to do so. As a result of that action, that company, although it doubled its production—and traditionally production was completely related to the volume of effluent—put into the system the same volume of effluent because, under the threat of very high fees, the company then decided to invest money to re-treat the water and significantly reduce the effluent load. In fact, I understand that that company has again doubled its production since that time, so it has achieved somewhere between six and eight times original production, yet today it is still putting less effluent into the system than in about 1981-82.

The Minister and I were discussing whether we could allow companies that are, if you like, the heavy polluters—putting exceptional loads of effluent into a drainage system for treatment—to continue to do so without some penalty. In fact, we must create the incentive for those industries to invest money on site to treat their own effluent, which invariably can be much cheaper than the Government's having to provide its own infrastructure to cope with that load. As a general principle we came to the conclusion that we would do that, and that is how we would negotiate with these companies.

The honourable member needs to appreciate that negotiations with this type of industry occur on a company-by-company basis, because of the nature of the load. We have said that there will be a two year moratorium during which fees will not increase. As I outlined at the employer chamber dinner at which the honourable member was present—all 1 100 guests heard what I said and, in fact, applauded—

The Hon. J.W. Olsen: Not the member for Hart.

The Hon. DEAN BROWN: Not the member for Hart, I am sorry. I made two points: first, that no increase in environmental pollution fees would be imposed by the EPA for a two year period; and, secondly, I said, 'But those that are heavy polluters will pay, and will pay dearly.' There is nothing secret about that; I have already put that down as a principle. As I said, the Minister for Industry, Manufacturing, Small Business and Regional Development and I were discussing this matter only a week ago in relation to a particular company, and that is the Government's policy. We cannot stand by and allow companies that could take measures on site to significantly reduce their pollution to

continue dumping all of their pollution into a public effluent system, which then imposes a very high additional cost on the Government and significantly reduces—

Members interjecting:

The Hon. DEAN BROWN: That is the whole point: we have said that if companies get in there and fix their problems they will not pay heavily, but we are talking about heavy polluters. I stress again: when I said this at a dinner attended by 1 100 industry representatives—plus the member for Hart, because I do not put him in that category—they applauded both points: first, my statement that there would be no increase for two years; and, secondly, my statement that the heavy polluters would pay. As a Government, we have had considerable discussions with a whole range of heavy polluter industries.

The EPA has been talking to them. The important thing is that a comparison of EPA fees in South Australia with those in other States reveals that the South Australian fee on average would be less than $800 per company, whereas it is something like $4 000—a five-fold difference—in New South Wales, Victoria and Queensland. The exact figures are in my speech, which is a public document. That clearly confirms what the Minister for Industry was saying yesterday or the day before, that South Australia will hold down its costs for industry.

The whole objective of this Government is to have the most competitive environment in Australia for industry but, where an industry is a blatant polluter and refuses to take any action to overcome that pollution, it will pay, and pay dearly, which is what I said the other day but out of which the Opposition is now trying to create some sort of story.

PORT STANVAC REFINERY

Ms GREIG (Reynell): Can the Minister for Industrial Affairs advise the House of any steps taken by the South Australian Government to bring about a resolution of the strike action occurring at the Port Stanvac Mobil Oil Refinery? Media reports this week have indicated that a serious industrial dispute has arisen at the Port Stanvac Mobil Oil Refinery, which threatens South Australia's petrol supplies. Those reports also claim that the union strike action is protected by Federal industrial laws.

The Hon. G.A. INGERSON: I thank the member for Reynell for her question about this matter, involving an area close to her electorate. This situation, which the Government treats as a serious one, involves 45 maintenance employees who are holding 300 other employees and a company to ransom at a cost of $250 000 a day, and at a potential cost to the South Australian community which can hardly be measured. It is unbelievable that in a refinery that satisfies 90 per cent of the State's needs 45 maintenance employees can hold the whole State to ransom, and that is due to the fact that the Federal legislation allows this maintenance strike to be deemed as one occurring under Federal law.

This is the first example in South Australia indicating how stupid the Federal law is, allowing 45 employees to hold the whole State to ransom when the other 300 employees want to ensure that the system works. It is incredible that a dispute should involve a 10 per cent salary increase when wage increases throughout this State and most of the nation are below the CPI rate. One sees clearly how the union movement is abusing its privilege and how a few employees in this State can hide behind a Federal law and create this ridiculous situation.

Members interjecting:

The Hon. G.A. INGERSON: On Monday I sent a formal request to the Federal Minister for Industrial Relations, Laurie Brereton, and I expected that as a State Government we would get a reasonable response, but nothing has happened. Since the Federal Government is not prepared to act, the State Government today, at the request of the employer, has intervened in this action in the Federal Court. It is our intention to continue to support the company because it is our view that those employees, other than the 45 individuals concerned, are not interested in holding the State to ransom.

I note with interest the Deputy Leader's comment that, if he were given a chance, he would go and fix it. I offer him a challenge: how about doing just that! Let us see whether, for a change, the Opposition is prepared to do something about it in the State's interests. If that could be achieved in a bipartisan mode, it would be in the best interests of South Australia. Instead of blowing its bags about what can be done, let us see the Opposition come in behind the State Government and help us in this whole process whereby 45 employees are holding the State to ransom.

WATER RATES

Ms HURLEY (Napier): My question is addressed to the Minister for Housing, Urban Development and Local Government Relations. What are the implications for the Housing Trust of the review of water charges? Would a user-pays system mean increased rents to offset the annual allowance of 200 kilolitres now available to trust tenants?

The Hon. J.K.G. OSWALD: The whole question of the cost of water as it applies to the Housing Trust is part of a campaign being waged by one or two individuals, particularly as it applies to excess water. I take this opportunity to put on the public record the trust's and my concern about the way that this campaign is being waged. I refer to the misinformation that is being put around leading to many thousands of trust tenants incurring a debt which at some time has to be paid. The trust pays for water supplied to tenants but not for the excess water, and that should be clearly understood. Part of the campaign under way at present is to try to establish that the trust is responsible, through some agreement that Terry Hemmings entered into, for excess water. I am pleased that up until now the Opposition has not made a major issue of this matter in the House, but members opposite could make some public statements of support to try to neutralise this campaign, which is constantly being run, spreading misinformation contrary to the best interests of tenants.

Any future cost of water is subject to review, and I believe the present policy is very clear. At this stage there is no plan to change that policy, namely, that the trust will pay for water other than excess water, for which the tenant will pay.

BUSINESS INFORMATION

Mr EVANS (Davenport): Can the Minister for Industry, Manufacturing, Small Business and Regional Development inform the House of recent developments that should make it easier for business to obtain information about Government assistance available to it through a computer program now being trialled in South Australia and through a better coordinated approach between Federal and State Government agencies?

The Hon. J.W. OLSEN: An inability to access up-to-date information has been identified by business people as a

significant impediment to their expansion growth, and the Government's Focus Small Business strategies are now rectifying that in the marketplace. We have undertaken restructuring, and legislation is now before the Parliament to bring about some of those changes which will enable the information to flow through to small business operators throughout South Australia. Bizlink, which is the Federal initiative supported and coordinated through the Business Centre of South Australia, will be an important component of that. Last Friday, Industry Ministers signed the Ausindustry statement; the memorandum of understanding has now been signed—

The Hon. M.D. Rann interjecting:

The Hon. J.W. OLSEN: A national partnership will be put in place. Whereas South Australia was not represented on the advisory board, agreement has now been reached and changes were made on Friday so that South Australia will be taking a place on the advisory board forthwith.

Members interjecting:

The Hon. J.W. OLSEN: It was a win-win for South Australia. The Ausindustry board is now moving to put in place the bilateral agreement. I am glad the Opposition acknowledges we are getting for South Australia these wins out of the Federal Government. The bilateral agreements will now be put in place. Bizlink is a program which will deliver key information to business with an emphasis on client focus as a result of this consultative process between the Commonwealth, the State and business. Of course, this is responding to the McKinsey report.

The first Bizlink product to be marketed later this month, which will be of immense benefit to the South Australian community, is Bizhelp, to which I have referred. It is a computer program designed to provide improved client focused information for Australian business. That program is designed for business to access comprehensive, cost effective, up-to-date and useful information about assistance programs available to business, and that information will be updated every three months to ensure that the information is relevant to the interests of business. So, if the Parliaments—this Parliament or the Commonwealth Parliament—change a range of their business programs, shortly thereafter it is updated in the information flowing out.

The valuable business information provided includes advice about business assistance measures and programs, licensing requirements, management education and training, export services, tenders and other business opportunities, finance, technology, product information, taxation and industrial awards. For instance, if a tooling company wanted information on the Australian best practice program, all details, including a description of the program, eligibility requirements and local contacts, are readily displayed. If more advice is needed on, say, the Business Centre, the appropriate advice reflecting description, cost, eligibility and local content is displayed. If an interstate company wants to set up business in South Australia, which is happening with greater rapidity than it has ever been in the past, the right information will be readily available on the program.

Yesterday I had the opportunity to list just a handful of the many companies that are relocating out of Victoria and New South Wales to South Australia—a trend that was not evident through the 1980s. There is very significant benefit for these businesses to be able to access a range of information and contact points in South Australia. Let me give an example of one aspect of the benefits afforded as a spin-off to local South Australian companies from, for example, the ASLAV and Bushranger Phase 1 projects being undertaken at British Aerospace. I happened to mention that yesterday as one of the companies that is relocating out of New South Wales into South Australia.

What are the benefits of that for South Australian companies? As a result of the transfer of that function, that contract to South Australia, subcontracts have been let to Birrawa Engineering for actual assembly, Woodroffe for metal fabrications and Vipac for design. Suppliers include Hella for lights, Peter Berry for paint booths and equipment, Atlas Copco for air compressors and Sprott's for fasteners. In total, the value to subcontractors and suppliers at this stage is of the order of $7 million plus. That is why it is important for us to attract industry back here—to get subcontractors here and get that money circulating in the South Australian economy rather than the New South Wales or Victorian economy.

TRANSPORT FARES

Mr ATKINSON (Spence): Will the Premier rule out increases to public transport fares from next January and, if not, why has the Government taken so long to announce the details? In August this year the Government considered increases of up to 40 per cent in fares for long distance commuters, and the Premier confirmed that the Minister for Transport had been asked to come up with new fares. The Minister for Transport told the Estimates Committee six weeks ago:

> There will be an increase in public transport fares, probably some time in January.

The Hon. DEAN BROWN: I guess when one looks at the reason for this question today you only have to think of what is on next Saturday, which happens to be the Taylor by-election. A brochure happens to have been put out by members of the Public Transport Union—John Crossing, Rex Phillips and Frank Pearce. Quite clearly they are out there with the Labor Party at present running a campaign to try to imply huge increases in public transport fares and a range of other things. One has only to look at the sort of rubbish which they have put out, about which the Minister in another place has apparently already made a statement refuting the sort of rubbish that has been peddled. You then appreciate the reason for the question—

Members interjecting:

The SPEAKER: Order!

The Hon. DEAN BROWN: —coming from the Opposition today.

Mr Brindal interjecting:

The SPEAKER: Order! The member for Unley.

The Hon. DEAN BROWN: One could say it was very predictable. I anticipated a question like this. The Opposition will be out there trying to run every fear campaign it can between now and next Saturday, particularly in the seat of Taylor. I think it is most unfortunate that they have put a gun sight on a bus in this brochure, almost as they were trying to incite some people who we know have shot guns at buses.

Members interjecting:

The SPEAKER: Order!

The Hon. DEAN BROWN: I think it is most unfortunate that that sort of publicity should have been used by the transport union, obviously as part of the Labor Party strategy for next Saturday. The issue of public transport fares has been dealt with previously. Cabinet has made no decision on this whatsoever. I expect that public transport fares will be

adjusted some time next year, but no decision has been made. There is nothing unusual about that, because public transport fares are adjusted in most years, so I suggest that the honourable member just sit back and wait. When a Cabinet decision has been made we will announce it.

FORWOOD PRODUCTS

The Hon. H. ALLISON (Gordon): Will the Minister for Primary Industries advise the House what has been the result of offers made by Forwood Products in the South-East to provide permanent jobs to about 489 staff of the Department of Primary Industries who have hitherto been employed in the forestry industry in the South-East?

The Hon. D.S. BAKER: I thank the honourable member for his question and his caring for the people who reside in his electorate. What happened was untenable. In Forwood Products, which is the value adding arm of the Woods and Forests Department, some 480 employees were employed under the GME Act by Primary Industry South Australia, and some 200 were employed under the timber workers award. We had the untenable situation where people were employed under different terms and conditions.

Of course, as Forwood Products became ready to be world competitive and get its cost structure and employment conditions in order, something had to be done about that. The Government decided that quickly, efficiently and fairly an offer had to be made to those workers who were GME Act employees. That offer was made early in October: first, they could accept permanent employment with Forwood Products, including a tax free incentive of up to $10 000, depending on years of service; secondly, they could accept a targeted separation package and leave; or, thirdly, they could remain an employee of the Department of Primary Industries, knowing full well that under that employment they could be shifted anywhere in South Australia where gainful employment could be found.

I am pleased to report that, of the total of 478 employees, some 274 have accepted permanent positions with Forwood Products, 158 have indicated they wish to take a targeted separation package and three have opted to remain with the Department of Primary Industries. That leaves 43 people who were on sick leave, on holidays or doing other things. We are prepared to keep that offer open for a short period so those people can make up their mind when they return. I have to say that we believe that it is a very good result. I compliment the Minister for Industrial Affairs and his staff on the help they have given us to work through this, as I congratulate the board of management of Forwood Products and Mr Paul Houlihan from First IR who helped to steer this matter through.

TRANSPORT FARES

Mr ATKINSON (Spence): My question is directed to the Minister for Family and Community Services. Will the Government require a family impact statement to accompany the Cabinet submission for higher TransAdelaide fares, and will he guarantee that pensioners will not be disadvantaged? On 23 August the Minister told the House that family impact statements would not be required until after November. The Opposition has now received correspondence from a group of disabled trainees from the Balyana Centre expressing concern that the fare increases proposed by the Minister for Transport last August would seriously disadvantage their ability to train for work in the community and could cause them the loss of two one or two meals each week.

The Hon. D.C. WOTTON: The honourable member is correct in saying that family impact statements will be required after November; I think it is in the third week in November that they will begin to be used through the Cabinet process. As has been indicated by the Premier in response to an earlier question, no matter on this subject has been brought before Cabinet. When it is brought before Cabinet, I expect that a family impact statement would be required. That is up to the Minister who is preparing the Cabinet submission. It will be her consideration and that of the department that will be given, but I anticipate that a family impact statement would be required on this issue.

UNLEADED PETROL

Mr CAUDELL (Mitchell): Will the Minister for the Environment and Natural Resources advise the House what work is being done to investigate the level of dangerous pollutants produced from unleaded fuel in vehicles not fitted with catalytic converters and vehicles fitted with catalytic converters that no longer function, and the level of carcinogens in premium unleaded petrol? Recent reports by a select committee in the British Parliament raised concerns over the use of unleaded petrol and premium unleaded petrol in cars not fitted with a catalytic converter and the level of pollutants associated with those fuels.

The Hon. D.C. WOTTON: I thank the member for his question. He might be interested to know that ANZEC, the meeting of environment Ministers, will be taking place in Adelaide later this week, and one of the items on the agenda for that meeting is unleaded petrol. It is also a matter that I intend to raise with the Federal Minister, Senator Faulkner, because of the interest that has been shown in this matter.

The issue whether unleaded petrol is suitable for non-catalyst cars has been raised frequently in recent times, particularly by the suppliers of the lead additive used to increase the octane rating in petrol. Information gained from health and environmental protection authorities both interstate and overseas indicates that, although the emission of benzine and related substances warrants monitoring, it does not warrant the urgent over-reaction proposed in some quarters of the vehicle-related industry.

The control of exhaust emissions from motor vehicles, including nitrogen oxides and hydrocarbons which contribute to photochemical smog, carbon monoxide and lead, was the focus of a long-term study that was carried out nationally in the late 1970s and early 1980s. The strategy investigated a wide range of alternatives resulting in vehicles and fuels which would be affordable, reliable and acceptable in environmental and health terms. The decisions made under that strategy have allowed this country to change to unleaded petrol without substituting similar levels of aromatic hydrocarbons, as has been the case in Europe, particularly Britain.

It should be noted that aromatics are naturally found in crude oil in any case. These potentially carcinogenic aromatics result in traces of benzine in the exhausts of non-catalyst cars. According to the Australian Institute of Petroleum, typical petrol in Europe may contain about 55 per cent aromatics, whereas Australian blends contain only between 25 per cent and 28 per cent aromatics with a maximum limit of 5 per cent benzine. The potential for the generation of dangerous emissions is therefore much lower, and this point has been made by various authorities which have looked into

this matter over a period. Another factor in Australia's favour is the relatively higher number of catalyst-equipped vehicles, as these convert the aromatics almost completely to carbon dioxide and water.

A considerable amount of work is being done. At national level, the office of the EPA is participating in investigations to establish an environmental standard for vehicle fuel. The conflicting factors involved, including the use of substances which may also have deleterious effects, are an integral part of the investigations. I understand the matter that has been raised by the member and, as I said, I shall be taking it up with the Federal Minister and the Federal department because of the interest that has been shown in this issue.

FREEDOM OF INFORMATION

Mr FOLEY (Hart): Will the Premier take action to address the concerns of the State Ombudsman that freedom of information requests are being met by Government officials with paranoia and arrogance? The State Ombudsman is reported today as having problems with most of the departments with which he has dealings, and he has said:

> A number of the fundamental values of public law, including openness, fairness and rationality are set aside by this process.

Indeed, as recently as two weeks ago, the Opposition was refused access to documents which the Government holds in relation to its dealings with IBM on the ground that it would disclose trade secrets.

Members interjecting:

The SPEAKER: Order! The last part of the member's question was comment.

The Hon. DEAN BROWN: Through the appropriate Minister, I will certainly take up the comments of the Ombudsman. As he was reporting for 1993-94, he could have been referring to what happened under the previous Government, to which the member who asked the question was senior adviser. We know that during the lead-up to the last State election the former Government, in response to any request for freedom of information, simply sat on it, refused to answer it, blocked it and everything else. I will certainly have the matter followed up with the Ombudsman to ascertain to which Government departments he was referring and which particular incidents as well.

OPEN SPACE

Mrs ROSENBERG (Kaurna): Will the Minister for Housing, Urban Development and Local Government Relations advise the House what action is being taken for the provision and development of open space in urban areas and regional centres in South Australia to meet the growing demand for these facilities?

The Hon. J.K.G. OSWALD: I have a bit of good news for all, and for the Treasurer. I am pleased to be able to respond to this question. The Government has reviewed its open space programs and will now provide a balanced and responsible approach to open space management and enhancement through the provision of open space grants to local government. The money for the grants to councils is made available from a special trust fund called the Planning and Development Fund, which has been established specifically for open space programs. Money is paid into the fund by developers when no open space is provided in subdivisions of 20 allotments or less or when strata titles are created.

In view of the confidence in the new Brown Government and the resultant growth in development over the past 11 months, I am in a position to announce a substantial improvement in this year's open space program. An amount of $2.6 million will be made available for this year's grant program to local government. This is $1 million more than was provided for the whole of last year. In addition to the increase in funding for open space, the Government has taken on board a responsible debt management strategy to repay a $3.6 million debt still outstanding against the Planning and Development Fund. This debt is a legacy of the Dunstan Government and it has not been paid off since it accumulated in the 1970s. This Government will make a $1 million payment towards the debt this financial year with a view to retiring the total debt over the next three years. Hence, a balance between the debt repayment strategy and the provision of quality open space for the people of South Australia will be maintained.

There are three main components to the Government's open space program under which councils can apply for funding: first, the Metropolitan Open Space System (known as MOSS), which is designed to establish the second ring of parklands around the metropolitan area; secondly, the Open Space Facilities Scheme, where funding is made available for the enhancement of major open space reserves that provide passive, unstructured recreational benefits for a broad cross section of the community; and, thirdly, the Regional Open Space Purchase Program, where funding is provided for areas provided outside MOSS that are of regional significance.

My department has produced a booklet which sets out the details of the open space programs. The booklets will be sent to every council in the State with invitations inviting the councils, when they feel qualified, to apply under the guidelines. I am also circulating a copy of the booklet to every member of the House for their own information, and I am sure they will find it extremely valuable.

PARA DISTRICTS COUNSELLING SERVICE

Ms STEVENS (Elizabeth): Will the Minister for Family and Community Services fund the Para Districts Counselling Service or has the Government decided that this service is not important and no longer required? The Para Districts Counselling Service has been funded as a health service for several years. The Minister for Health has reduced funding for 1994-95 and then will discontinue it altogether because he claims it is not a health service. He has suggested that the service seek funding from FACS.

The Hon. D.C. WOTTON: Again, I would point out to the member for Elizabeth, as I have pointed out to other members, that it was the previous Minister in the previous Labor Government who determined that much of this funding should be reduced or, in certain cases, removed altogether. The honourable member should know that before she comes into the House, asks a question and blames this Government for any decisions being made. The previous Government sought advice from a committee made up of non-government sector representatives about which areas should receive priority funding. Advice was provided to the previous Government, and on coming to office I sought to have that advice reassessed by my own advisory committee. Again, the same information has been provided—that it falls outside the priorities of the Department for Family and Community Services.

Since that time, negotiations have been taking place with a number of organisations that have requested funding. Also, there have been negotiations between my own department and the Health Commission as to the possibility of funding being made available through either of the two agencies. That discussion is still continuing and no decision has been made in regard to that matter. Let the member for Elizabeth go back to the Para Districts people and indicate very clearly that this is a matter that is still under consideration. But let her also indicate that, along with the previous Government, it has been made very clear to me as Minister for Family and Community Services that it does fall outside the priorities that have been given to the Department for Family and Community Services.

POLLUTION CHARGES

Mr LEGGETT (Hanson): Will the Minister for the Environment and Natural Resources advise the House whether the Government's intention to absorb pollution fee increases to industry over the next two years will mean any reduction in environmental safeguards during that period?

The Hon. D.C. WOTTON: I thank the honourable member for the question, which is further to the question that was answered by the Premier earlier today. It is important, however, that we do not confuse the issue of licence fees with environmental protection. Some of the coverage that has been given to this matter by the media has tended to confuse the issue. The Premier has stated that the Government will absorb fee increases to industry over the next two years to provide industry with the opportunity to divert more resources into achieving environmental improvement over that time. I do not believe that there would be any member in this House who would be opposed to that direction being handed down.

As the Premier has made clear, industry will pay, in particular any industry that has not taken up the opportunity during the two years to improve its environmental performance over that time. We are all aware of the need for industry to achieve cleaner production. In that regard, the Premier recently launched the cleaner industry demonstration scheme, a scheme that has been very well received by industry and the community; a scheme designed to help industry to improve both its environmental and economic performance through cleaner production; and a scheme that is wholeheartedly supported by this Government through the EPA and the EDA and by the Commonwealth Government through the Commonwealth Environment Protection Authority.

This Government and the office of the EPA intend to continue to work closely with industry in order progressively to make environmental improvements, and the proclamation of the Environment Protection Act with its environmental improvement programs and voluntary audits will greatly assist in that process. Finally, I make clear that the requirements of the environment legislation in South Australia, including the Environment Protection Act once it is proclaimed, will not be affected by the Government's decision and will continue to apply with equal force. So, any suggestion that the Government's intention to absorb pollution fees will result in dirty industry in this State is quite incorrect and, in fact, the action that has been taken by the present Government in this area is to clean up industry throughout South Australia.

HOUSING TRUST TENANTS

Mr De LAINE (Price): Will the Minister for Housing, Urban Development and Local Government Relations give an undertaking that tenants of Housing Trust homes likely to be affected by plans for redeveloping The Parks area will be fully consulted during the investigation into this proposal? I have received calls from many residents following the announcement of a proposal to redevelop trust accommodation in The Parks area. While there is cautious support for upgrading trust homes in this area, there are many issues that directly concern tenants. These range from the possibility of higher rents to families having to relocate with implications in terms of access to employment and community services.

The Hon. J.K.G. OSWALD: The answer, of course, is, 'Yes, they will be consulted.' If the honourable member had read this morning's newspaper, he would have seen clearly spelt out that there will be a consultation process. There are other parts of that article in the paper that should be noted, that is, the response from the Opposition spokesperson on housing. If anyone ever took the opportunity to knock the potential to provide decent housing for people in this State and to knock the project, it was the honourable member in the paper this morning. We have an opportunity of turning the worst post-war trust housing into good, up-market housing for tenants, who should have and who do have every right to want to get involved and to have access to that housing. To knock the project, as the Opposition did today, does not augur well if the Government changed in this State and members opposite went back to providing housing of the post-war era to Housing Trust tenants.

GRAIN STRIPPER

Mr LEWIS (Ridley): Does the Premier share my view that the invention of the cereal grain stripper by a South Australian, Mr John Ridley, after whom my electorate is named, which was first used commercially 150 years ago here in South Australia is an event worth commemorating and celebrating and, if so, why and can he say what the Government and/or other people are doing to celebrate this momentous invention?

The Hon. DEAN BROWN: The answer is, 'Yes, it is a very significant occasion.' The first Ridley stripper was used 150 years ago to reap a crop at Mount Barker. It was the first mechanical grain harvesting machine in the world. It is very significant, because it was developed, designed and built here in South Australia. Of course, with something like 16 000 of these machines being built in this State, real industry was created. To commemorate this significant occasion, a program has been undertaken at Murray Bridge whereby young unemployed people through a Leap program, a State Government program, are constructing two of these machines. The project has been funded by Alan Hickinbotham of the Hickinbotham Group. One of those machines will eventually be stationed at Andrews Farm and the other will be on display through the Mount Barker council.

Very importantly, 16 unemployed people between the ages of 15 and 20 years have been taught skills. It is a 24 week program carried out at the Murray Bridge campus of the Onkaparinga Institute of TAFE. It provides training in a whole range of areas, but very significantly it has allowed these young people to get training. As a result, many of these young people now have jobs, and I understand that the Hickinbotham group alone will take on two of these young

people. It is a significant training program but it is also a significant event to commemorate the Ridley stripper in its 150th anniversary.

RURAL HEALTH

Mrs GERAGHTY (Torrens): Is the Premier aware of widespread concern in rural communities about the proposed changes to the health system, in particular the Minister's power to overrule hospital boards, and will he give an assurance that there will be full consultation with rural communities before the system is changed? The District Council of Crystal Brook-Red Hill has written to members expressing concerns about the Government's proposals. The letter states:

> To date a lack of information has been given to our local hospital and other parties in our district in relation to the make up of the proposed regional boards and how these boards will operate. Another concern is the powers the Minister will be given under this proposal. The Minister seems to have extreme powers under this proposal with the boards of the hospitals now playing insignificant roles.

The Opposition has received similar expressions of concern from many other rural communities.

The Hon. DEAN BROWN: I can assure the honourable member that the Minister for Health has gone through and is going through a period of consultation with the various country hospitals. I understand that a large number of submissions has been made to the Minister. As a result of that consultation, the Minister is now assessing the input and no doubt a suitable decision will be made based on the consultation that has occurred. I understand that there has been widespread interest in this and it is a matter I was discussing, when I had a full voice yesterday, with one of my own country colleagues who was talking about the consultative process. I know that the Minister for Health has also been talking to a number of the country members. The answer is, 'Yes, there is a period of consultation and, yes, those views will be taken into account.'

TRANSADELAIDE BUS SERVICES

The Hon. J.W. OLSEN (Minister for Industry, Manufacturing, Small Business and Regional Development): I table a ministerial statement made today by the Minister for Transport in another place about the Public Transport Union distribution of grossly misleading leaflets on the public transport system.

GRIEVANCE DEBATE

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

Mr ANDREW (Chaffey): I refer this afternoon to the Federal Government's superannuation guarantee charge. I do so because of the inequity and inadequate impact that this charge has on my electorate, particularly with respect to casual and part-time employment. I will elaborate on that shortly. I bring the issue forward today, because this coming Friday the Senate select committee on superannuation is holding a public hearing in my electorate in Berri. I take some minor credit for getting that committee to come to the Riverland this week, and I would particularly like to thank the committee for doing so. I particularly thank Senator Alan Ferguson, a member of that committee and a Liberal colleague in South Australia, for over many months listening to my complaints on this issue, which have been echoed and brought forward to me by many electors in Chaffey. I therefore deem it appropriate to convey this public concern and frustration today.

I have no intention of pre-empting any of the formal submissions that might or will be presented to the Senate select committee on Friday, but I want to place on record and echo some of the concerns that have already been placed before me. I believe they are fundamental, consistent and particularly valid. It could be argued that the Federal legislation which has operated since July 1992 can be supported in principle, because without doubt it represented a complete structural change to the manner in which retirement incomes will be provided in the future in this nation, being based on the principle that retirees will have to have an adequate retirement income instead of, as at present, being totally dependent on a Government subsidised pension system.

In the time available to me today, I will summarise the major concerns and issues with respect to the superannuation guarantee charge as it affects my electorate, particularly some of the industries, such as the horticultural industry, since its introduction in 1992. The majority of casual workers in the horticulture industry generally work for short periods of the year. Some may work only for brief periods over harvest or for other brief but intensive periods in the production of horticultural crops. Others, although they are much fewer today, are more of a transient nature, and travel the country. They may be involved in perhaps five or six industries and be covered by a number of different awards. Therefore, they require their contributions to go into a number of different funds.

The result is that small amounts of premiums are being paid into and held by a number of funds and, with the administration fees that may be charged, residual benefits are more often than not completely wiped out. In dollar terms—and we can blame the Democrats in the Senate when this legislation was introduced for this—the SGC exemption threshold was reduced to $450 a month, and this for casual employees in the horticulture industry is totally inappropriate. I submit that, if the Federal Government refuses to change the level, it should be sympathetic to the submission of some in the horticulture industry that this figure should at least be applied on a *pro rata* basis, whereby it can be taken over a three month period and therefore be more appropriate.

While I acknowledge that the Federal Government has made changes since July this year and that some of the amounts can be submitted through the Australian Taxation Office, the fact remains that the majority of the fees go into either Government taxes or to fund administration charges.

Added to that is the significant fact that the administrative costs of employers are increased in terms of the operation of the system, particularly, whether we like it or not, recognising that there is a significant abuse of the system by casual employees, where false tax file numbers are submitted. Employers have to do a tremendous amount of work to administer this scheme. Without doubt, there is no real benefit to the employees or the employers under this scheme, and I commend the committee for coming to the Riverland to take evidence.

The ACTING SPEAKER (Mr Bass): Order! The honourable member's time has expired.

Mr ATKINSON (Spence): I rise to protest the Adelaide City Council's continuing obstruction of Barton Road, North Adelaide. I do so, given the member for Colton's remarks yesterday about the Thebarton council's unlawful obstruction of Ashley Street, Torrensville. The cases are exactly the same. They purport to be closures under section 359 of the Local Government Act but, when this section of the Act was debated in this House in 1986, it was understood by all sides of the debate to be a provision about temporary closure of streets and roads. Yet the Thebarton council, which has now been exposed in the courts as a council that fines people not to uphold the law but to gather rate revenue, and the Adelaide City Council both persist with these unlawful closures. They do so with the support of the Liberal Government.

I am pleased to say that some Liberals are coming around to understanding the iniquity of these closures. The member for Colton is one such member, as can be seen by his remarks on the Ashley Street dispute. Another is the member for Hanson, who last week recovered a fine of $114 levied on one of his constituents for driving through Barton Road. He has now recovered that fine for his constituent, and he is on the side of the angels trying to reopen Barton Road, North Adelaide.

A constituent of the member for Peake went to the honourable member the other day to ask him whether he would help her recover her access to North Adelaide via Barton Road. This lady wanted access from her western suburbs home to property she owned in Finniss Street, North Adelaide, and she went to see her local member, the member for Peake, about what he would do to represent her on the question of the unlawful closure of Barton Road, North Adelaide. What did the member for Peake say? He said, 'I'm sorry, I can't help; you can never change a woman's mind,' referring to the Minister for Transport. How is that for representation of his constituents? You can tell that the member for Peake is about to retire, because he has given up on giving service to his constituents.

The Minister for Transport told the Estimates Committee when I questioned her about this matter that she had an open mind about Barton Road. The Minister for Transport lives in North Adelaide, and she has a financial interest in keeping that road closed. And it just so happens that her brother-in-law, who is also in the Cabinet, is one of the originators of the Barton Road closure: that is on the record. He has a financial interest in keeping that road closed—

An honourable member interjecting:

Mr ATKINSON: I say it out there all the time; I have said it in leaflet after leaflet, in press release after press release and in television interview after television interview. So, for the benefit of the member for Peake, let me tell him again: the Minister for Transport and the Minister for Health have a conflict of interest in the Liberal Government's policy of keeping Barton Road, North Adelaide, closed. I am pleased to say that at the moment the Police Commissioner has quite rightly issued an order to police that they not fine motorists and cyclists who use Barton Road, North Adelaide, and that position still obtains. If that position does not obtain, I will do everything possible to tell the public of South Australia that the Liberal Government, Diana Laidlaw, the Minister for Health and the Adelaide City Council are conspiring to fine them $114 every time they use their historically derived right to drive through Barton Road.

I am glad to say that the Public Transport Union supports me. It would be very easy for the bus drivers to turn around and support the Adelaide City Council's exclusion of private motor vehicles from Barton Road. Bus drivers have done the right thing; they want Barton Road restored to its previous width and alignment—that is the policy of the bus drivers; that is the policy of the union. I hope more Liberal members in this place get behind the people of the western suburbs and lobby their Government to have Barton Road and Ashley Street reopened to private motor vehicles and to cyclists.

Mr BRINDAL (Unley): Members of this Parliament, in our totality, are elected representatives of the people, and we collectively hold in trust all that is associated with this building. Ours is a custodial role, to pass on the customs, traditions and fabric. Our heritage must be passed on to future generations. Some of the artwork, furnishings, records and books that we have in this Parliament are very rare and highly prized, and it is in that context that I wish to address the Parliament today.

It came to my attention about a month ago that at an auction house in Unley, Small and Whitfield, a number of chairs, which are purported to have come from the parliamentary dining room, were offered for sale. I am not aware of how Small and Whitfield came to possess those chairs, nor am I suggesting that the acquisition was recent. Indeed, I am told by people who have been here for many years, such as the member for Peake, that the chairs in the dining room originally had rattan backs, and I am told that the chairs offered for sale contained those original rattan backs. So I can only surmise that, if they were at one stage the property of the Parliament and if they were removed from this building, it was done some time ago.

Nevertheless, it should be very easy to establish if and when the furnishings of this Parliament were auctioned, if and when furniture was disposed of, and if it was appropriately disposed of. I am told that when this Parliament was last refurbished, many rare furnishings—and I mean rare in terms of its being early Australian furniture—were placed in storage by SACON. I am also informed by way of anecdote that recently questions were asked about the whereabouts of these furnishings, and no answers could be given. I therefore think it is most appropriate that I, as the member for Unley, raise this matter with other members in this House, because it has been raised with the Economic and Finance Committee, and the committee believes that it is beyond the province of that committee to investigate this matter of its own volition, although, in fairness to this House, the Auditor-General has informed us today that he can and does have the right to investigate such matters.

This is a very serious matter. The member for Ridley is here and is an expert on these matters, but I believe that the library, for instance, holds a Gould. The Antiquarian Book Shop informs me that single pages of Gould are worth between $2 000 and $16 000 per page. So, we are not talking about little things: we are talking about valuable objects of art. One of the loveliest examples of a smoker's chair is in our library and would conservatively fetch $2 000 at the Snoop in Unley. I believe that, during various refurbishments and at various times, some furniture has gone missing from this Parliament.

I believe that this Parliament, on behalf of the people of South Australia, has a right to check that any furniture that was ever disposed of was not pilfered but was in fact legitimately disposed of in an acceptable way. If it was not,

I believe that in instances where we find that furniture has gone missing and where it turns up in an auction house, such as Small and Whitfield, it should be recovered, because it is clearly the result of a theft. The matter of the theft can or may be pursued by the State, but the recovery of valuable State items should be relentlessly pursued by this Parliament and the people of South Australia, because it is their heritage that has gone, and once it has gone it cannot be replaced.

If things were burnt, scrapped or disposed of in a manner that was thought responsible at the time, that is one thing; however, if people have used this place like a quarry to furnish their own homes and to enhance their own furnishings, that is another matter. It is a matter of which this Parliament should be made aware, and it should be investigated. I do not make accusations; I ask legitimate questions to which the people of South Australia deserve an answer. I, and I know most members here, such as the member for Murray Mallee, would like to see this Parliament restored to some of the glory that it must have enjoyed as a Victorian building, and anything we can do to recover such furnishings the better.

Mr BROKENSHIRE (Mawson): I rise this afternoon to express a concern which has been raised not only in my electorate but which clearly is evident everywhere, and that relates to what seems to be an increase in under-age drinking. In particular, I refer to an instance where one of my constituents contacted me recently and told me that her 14 year old son had been able quite easily to go down to the local liquor store and purchase a 750 millilitre bottle of Johnny Walker scotch whisky, when he should have been at school, and sit in a park with his mate and indulge in drinking that alcohol all day. Unfortunately for him, he was not experienced enough to realise that he was not going to be able to hide the evidence and that his mother would find out.

I particularly want to raise this matter today in light of an article in last weekend's *Sunday Mail*. I know that one of my colleagues is keen to speak further about that article tomorrow, so I will not touch specifically on it, except to say that, in my opinion, that article was another case of licensees of hotel and bottle outlets clearly not being responsible enough when selling products to minors. I know it is not always easy to determine whether or not somebody is under 18, but I do not think it is all that difficult to determine that someone is 14 years of age. In this instance the child purchased the alcohol with his school backpack on his back. It is clearly not good enough.

When I leave this House night after night, often at 11 or 12 p.m., or 1 o'clock in the morning, I drive down North Terrace and turn left onto West Terrace and I see some of the very young people, in my opinion, out late at night, waiting to enter certain discos, etc. Whilst I do not for one minute condemn the youth doing that—in fact, I did it a bit myself when I was younger—I condemn the people for selling potentially lethal amounts of alcohol—in many instances, pure spirit and liqueur. Although it has not been easy in the hotel industry of late to make profits, I understand that profits are now returning to the industry; but, even if profits have been hard to make in the past, I believe a licence to sell alcohol incorporates a responsibility to abide by the law and to ensure that under-age drinkers are not able to buy alcoholic products.

Profit at all costs is clearly short-sighted and the damage it does to youths in our society, and the cost to and the impact on family and community services, such as our health services, is very detrimental to our community as a whole. Only a small group of businesses are involved here: I am sure that the majority of hoteliers are very responsible people, but I want to record my concerns in *Hansard* today, and I will be circulating my remarks to the liquor outlets in my electorate. But I appeal to other members in this House to remind hoteliers in their electorates that they have a responsibility in this regard and that we cannot afford to let this problem continue.

I am not knocking the youth, who have problems at the moment. However, the Minister for Youth Affairs is coming up with initiatives and facilities for our youth, who will benefit as a result. Youth will be youth, just as many of us were a few years ago. We like to try these things and experiment, but unfortunately, when you are 14, 15 or 16, you do not understand the consequences and the damage these higher volume alcohols can do to a person's body and, in particular, the mind, and it is a matter of some concern. We all know that a bit of wine is good for you. In fact, I encourage people to indulge, and I do not mind doing so myself, particularly when it comes to drinking McLaren Vale wines, but it is all about moderation and about being careful in the way you indulge.

It is certainly not about letting hoteliers, desperate to make a profit, capitalising on the youth by selling them this expensive and dangerous alcohol for the short-term gain of those hoteliers.

Ms HURLEY (Napier): I want to comment on the Housing Trust Parks Redevelopment Project. In his answer to a question, the Minister claims I bucketed the proposal, but that is far from the case. I welcome refurbishment of Housing Trust accommodation which was built some time ago, and I am sure the residents welcome it. Indeed, the previous Labor Government commenced such projects in Rosewood, Mitchell Park, and Hillcrest. Those projects were undertaken very sensitively and was welcomed by the residents, it is needed in a number of other areas around the State.

I point out to the Minister that those areas are not necessarily ghettos, and I resent his description. I have a number of run-down Housing Trust areas in my electorate, and people living in those areas take great care of their houses and do not regard themselves as living in ghettos. What I am concerned about is the vagueness of the Minister's proposal. I am concerned that the residents of those five suburbs mentioned in the proposal will ultimately be disappointed by the reality—that they will find that this project might be reduced in size, and that the provisions promised for existing tenants may not be followed through.

Another reason I am very concerned is that, given previous pilots that have taken place which have been, as the Minister said, very successful, I cannot understand why the Minister and the residents have to wait until June next year and the end of any inquiry before any work is undertaken. Why has the Minister, after his 10 months in office and leading up to June, not engaged a private developer to get something going in this area? I understand the residents have been promised a refurbishment over a number of months. They believe that something will happen as regards empty houses; that maintenance work will be carried out on houses, but we will not see any action before at least June next year. Why present us with this vague proposal when the private sector apparently has not even seen the proposal? Where are the costings for this program? Where are the enthusiastic developers we know will do it properly?

Mr Caudell: Ian Wood Homes.

Ms HURLEY: If Ian Wood Homes is prepared to do it, why is it not in here? This is the problem with the proposal, and one wonders whether the Minister has consulted his own department. Has he consulted the South Australian Housing Trust, which has demonstrated its expertise on prior projects, or is the situation that Housing Trusts's planning expertise has been so stripped away by TSPs and the Minister's own restructuring that there is scarcely anything left of it? I believe that the Housing Trust has the expertise and ability to conduct this exercise sensitively, and I am very concerned that the Minister is not consulting the trust properly on this matter.

I believe that these are valid questions, given the proposed size of this project. The project covers five suburbs and involves 1 400 houses, with at least as many 1 400 families having to be moved out of the area they know and where their children attend schools; areas where they are perhaps employed. They have built up networks, but these families will be moved out of their area. I am particularly concerned about where the funding will come from. Will developers move in and put up cheap and nasty housing that will need to be refurbished long before the 30 or 40 years for which these houses are required?

For example, something of the order of $4 million or $5 million of Better Cities money was used for the Rosewood project, but I understand it will not be available for this project. Is the State Government prepared to commit those funds over the next few years in order to ensure that this refurbishment will provide a decent quality of living, not only to the people who have enough money to buy the houses but to those existing tenants who would like to stay where they are but do not have enough money to buy their own house?

The ACTING SPEAKER: Order! The honourable member's time has expired.

Mr CAUDELL (Mitchell): Earlier this afternoon I asked a question of the Minister for the Environment and Natural Resources about unleaded petrol, and I wish to discuss that subject now. Recent concerns over the use of aromatics, in particular benzine in unleaded petrol, have been expressed world wide. Critics of these recent reports, that is, the oil industry, blame companies wishing to sell lead additives. But can we trust the oil industry and the Australian Institute of Petroleum to tell us the truth and the whole truth on this issue? Unfortunately, when it comes to the environment—and overseas experience has shown this—the oil industry does not have a good record.

The British parliamentary select committee report and the air toxic conference recently held in Sydney raised the following issues for consideration: vehicles using unleaded petrol with no catalytic converters fitted; the effectiveness of catalytic converters in metropolitan areas, in particular the plains of Adelaide; cars fitted with catalytic converters no longer working; and the oil industry push to sell premium unleaded petrol and the level of carcinogens in that product.

Earlier today I raised these issues with the Minister for the Environment and Natural Resources, and I asked him to raise them either in the ANZEC forum which the Minister will chair this Friday in Adelaide, or in the Federal arena, requesting that these issues be addressed independently. Information supplied by the oil industry with regard to unleaded petrol must be noted. First, the oil industry is saying at present that unleaded petrol contains 28 per cent aromatics, of which 5 per cent is benzene. The lead content is further reduced, and the Mobil refinery has just done this, by increasing the level of aromatics in petrol, and it includes an increase in the percentage of benzene. To ascertain how dangerous benzene is, we need only refer to a report from the British Parliament. I also refer to a report in *The Times* newspaper of 26 October 1994, as follows:

> Benzene has been known to be a hazardous chemical for at least 20 years, but opinions differ sharply over whether the levels in the air from motor vehicles represent a serious health risk.

The report goes on:

> Most of the medical evidence against benzene comes from exposure in the workplace. A group of more than 1 100 workers exposed to high levels of benzene in a Goodyear plant for 25 years showed nine extra deaths from leukaemia.

In my life I have been subject to a health watch inquiry since 1982 by Monash University, and all people involved in the oil industry for a long period, as I have been, are now subject to that ongoing inquiry. As I said, there are vehicles not fitted with a catalytic converter using unleaded petrol, and members will be aware that the Federal Government has made a push through a 2¢ a litre price variance to encourage people to use unleaded petrol in cars not adapted for such petrol. Again, I refer to *The Times* of the same date, as follows:

> . . . scientific evidence showed that emissions from so called green petrol were more dangerous than those from standard leaded fuel in non-catalytic cars.

The catalytic converters fitted to vehicles which make short trips of about 15 minutes, which is the common journey time for people travelling into the city, do not heat up sufficiently to work properly. Therefore, we have the same result as with vehicles not fitted with catalytic converters, whereby these vehicles emit dangerous pollutants into the atmosphere. Also, some cars have catalytic converters fitted but they do not work. We are aware that three complete fills of leaded petrol will destroy a catalytic converter, and there are no checks on vehicles to date to ensure that catalytic converters are working. There is a need for an urgent inquiry into this matter.

The ACTING SPEAKER: Order! The honourable member's time has expired.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Received from the Legislative Council and read a first time.

PUBLIC SECTOR MANAGEMENT BILL

The Hon. DEAN BROWN (Premier) obtained leave and introduced a Bill for an Act to make provision for the Public Service of the State and its management and for certain general public sector management matters. Read a first time.

The Hon. DEAN BROWN: I move:

That this Bill be now read a second time.

It is a Bill to repeal the Government Management and Employment Act and to establish new management arrangements for the State Public Service. It is a Bill which will have a defining impact upon the future of South Australia. It is not simply a new way of managing the public sector in South Australia—it is the most significant and long overdue

recognition that the men and women of the public sector have a role far greater than just the provision of essential services—they are actually partners, with the Government of the day, in the future of this State.

And in giving that recognition, the Government maintains the employment safeguards necessary for an independent public sector and gives far greater responsibility for outcomes to chief executives and executives. This is a new era for an organisation whose traditions are proud and strong. It is the essential re-focussing towards the twenty-first century, for a State still trailing a heavy debt, as we line up in the race for new and expanded overseas markets against competing nations which have already enthusiastically embraced the challenge of change.

It will help us to ensure that South Australia will not be left behind, unable to compete with other States and other nations, in the global marketplace in which our future lies. This State is blessed with resourceful people, hard working people prepared to have a go, creative, inventive men and women and young people wanting a start. This Bill is about their future. As the provider of the essential services for the community and for industry, public sector performance must be the best because we are in competition with the best.

Positioning for the challenges of change means building on the great traditions of the public sector in South Australia. Building on the traditions, not discarding them. One of those great traditions of the public sector has been its willingness to move with the times and to implement the reforms necessary to meet present challenges. The Government now wishes to focus those strengths on the future by improving its performance orientation and giving the men and women of the public sector the opportunity to be a full and dynamic part of the South Australia of the future.

This Bill will ensure a strong public sector for today, and the future, playing a leading role in the rebuilding of South Australia. This Bill has not been imposed upon the public sector from above. There has been an extensive and extended consultation period. And it has not been consultation for consultation's sake. The Government values the wealth of experience and the potential of the ideas in the public sector, just waiting to be utilised for the benefit of South Australia.

One of the questions put during the consultation period was why new legislation was needed when the Government Management and Employment Act was so 'recent'. Frankly, the old Act was not on the pace for the twenty-first century. When we look at the Commission of Audit and then look at just how much had to be done to fix the problems and address the urgent needs identified by the commission, it is quite obvious that a new Act is required. Nor did the old Act capture the spirit of the reform and management accountability required to take our public sector into the next century.

Quite simply, since the Government Management and Employment Act was introduced in 1985, there has been a period of major development in general management practice. In 1985 we had yet to hear to any degree of total quality management, continuous improvement, customer service, benchmarking, quality circles, adding value and business re-engineering. In the public sector we had yet to hear to any degree of downsizing, customer service, 're-inventing Government', corporatisation, and performance culture. The number and extent of amendments required to reflect the needs of 1994 and beyond would have been so extensive that the Act would have become ridiculously cumbersome. It would also have lost the essential thrust of public sector reform. The Public Sector Management Bill focuses clearly on enabling public sector reform. It is shorter and more easily understood.

General aims of the Bill.

The Bill has two quite specific aims. The first is greater management flexibility while maintaining the traditional and necessary independence of the Public Service. The second is responsive and effective service to the South Australian community through greater performance orientation and emphasis on accountability and outcomes.

Major changes contained in the Bill.

The specific major changes contained in this Bill are as follows. The present principles have been rewritten as aims and standards. And they have been styled in plain English to be more accessible and relevant to a contemporary public sector. Responsibility for general employment determinations has been moved from the Commissioner for Public Employment to the Minister responsible for the Act. It is appropriate for the employing authority, the Government, to be responsible for setting the general personnel and industrial relations framework for the Public Service. This is consistent with other States. At present the Commissioner for Public Employment is involved in the day-to-day operational tasks of agencies in selection and appointment, classification, and executive officer employment. This will change with the Commissioner's primary functions being to develop guidelines on personnel management, provide advice, and monitor and review agency performance against the general public sector aims and standards contained in the Act.

The role of chief executives has been expanded to include increased responsibilities in personnel management, including for executive employment and for resolution of grievances. Chief executives will be employed on performance contracts, while contracts for executives will be phased in. Contracts will specify the terms of employment, grounds for termination and will allow for termination without cause subject to four weeks notice and a termination payment. Appointment arrangements for non-executive employees have been simplified and allow for appointment with tenure or under contract. It is intended that most Public Service employees will continue to be employed with tenure.

The Bill provides, as did the Government Management and Employment Act, for termination as a last resort in cases of excess, of misconduct, and of mental or physical incapacity. Where the Government Management and Employment Act allowed for termination under an unspecified general heading of 'incompetent employees', this Bill provides for a category of 'unsatisfactory performance'. It is intended that clear performance standards will be defined for each agency and work unit as part of performance management in agencies. This is an important element in the Government's priority for a greater performance orientation in the public sector. In any of the above cases of termination the processes of assessment will have protections for due process as under the Government Management and Employment Act. Employees will still have the right to appeal against administrative decisions directly affecting them but these appeals will be handled in a simpler, less legalistic manner.

Existing appeals tribunals will be replaced by a process where, in the first instance, the chief executive will try to resolve grievances. Depending upon the circumstances, appeals will then be handled by chief executives, the Commissioner for Public Employment, or independent persons nominated by the Commissioner. The employee can still be represented by a union, if he or she wishes. However, the legislative requirement for consultation will be removed.

I think the other matters in this explanation can be dealt with by simply inserting them. I seek leave to have the remainder of my explanation inserted in *Hansard* without my reading it.

Leave granted.

Consultation on the draft Bill.

Consultation on the draft Bill has been taken very seriously by the Government. In return, it has received substantial and thoughtful feedback from employees. The Government expresses its appreciation for those comments. As will be detailed later, they have helped considerably in the redrafting of this Bill.

Because consultation has been a very important part of the process of developing this Bill, and because of the enthusiastic participation by public sector employees, at all levels, the Government wishes to respond to a comment made by some unions that the consultation period was not long enough.

Knowledge of this Bill has been current for some months now, with newspaper articles and union comment first appearing back in August. The Government provided formally for a one month period of consultation on the draft Bill.

The key issue here is that those likely to be affected by the legislation have had the opportunity to reflect and comment. In the month of consultation on this Bill the Government has provided more assistance for employees to consider the draft Bill than has ever been provided before. It is a measure of the importance we place upon reform of the public sector that we have been determined to offer the widest possible opportunity for comment.

I wrote to all Public Service employees advising of consultation channels and welcoming comment, through a government hot line and through briefings provided in each agency. And, of course, the public sector unions played their part by providing information and a hot line of their own.

Proof for Government that the consultation has successfully identified the major issues lies in the fact that, for some time now, there has been a very clear focus on areas of potential concern, each of which has been considered at length. The Government would like to make clear its response to these major issues.

Major issues raised in consultation.

Independence of the Public Service was a major concern and arose from a provision in the draft Bill for Ministers to be able to direct their Chief Executives in relation to personnel matters affecting individual employees in their portfolio.

The intent of that provision had been to enable direct resolution of personnel matters at portfolio level. However, strong concern was expressed by employees about the possibility of Ministers responding personally and inappropriately to individual employees in their portfolios. As a result of the consultation process and the concerns expressed, this provision has been withdrawn.

The Government believes that it is appropriate for the employing authority, in this case Government, to be directly responsible for the establishment of the general personnel and industrial relations framework for its employees. This arrangement is consistent with those presently in place in other States.

In regard to contract employment, the concern was that it presents a degree of risk to Public Service independence in that those employed on contract might be reluctant to offer frank and fearless advice which may offend, and find themselves facing termination. The Government believes that, in line with general business practice in today's competitive environment, good managers or employers will not reject frank and fearless advice, even if uncomfortable, if it truly impacts on the effectiveness of their business.

In the view of the Government, the great problem, historically in the public sector has been with advice that is neither frank or fearless because with jobs for life at the senior levels, there have often been no real consequences for not getting it right. The Government believes that it is in keeping with employment practices elsewhere in both public and private sectors that Chief Executives and executives are not guaranteed jobs for life, but that they take responsibility for their performance in leading and managing their organisations.

Even so, the Bill has balanced this concern through monitoring, appeal and review functions of the Commissioner for Public Employment.

A second area of concern was over tenure for non-executive employees. It was suggested that the Bill will allow Government to introduce contract employment widely for non-executive employees. This will not be the case. There is no intent to vary current employment practices for non-executive employees. As I said earlier, it is intended that most employees will continue not to be employed under fixed term contracts.

A related concern was that the draft Bill's provision to appoint employees to a remuneration level rather than a position will in some way adversely affect the employment rights of employees.Employee rights to tenure and conditions of employment will remain unaltered under the Bill. The change will simply reduce considerably the administrative work associated with the appointment of employees.

A third area of concern was that the change from the Governor to the chief executive being responsible for termination of excess employees would somehow reduce employee protections. The protections are in fact essentially the same as at present for retirement of excess employees. They ensure that employees will only be terminated as a last resort and only after the agreement of the Commissioner for Public Employment. It has also to be stressed that the Government presently has a no retrenchment policy.

A fourth area of concern was about appeal rights. Employee rights of appeal are still maintained; the concern is really with the change in the avenues for appeal. There is concern that the new process of handling appeals against administrative decisions without an independent tribunal will not guarantee natural justice.

The appeal process has been changed so that Chief Executives must take prime responsibility for resolving grievances in the workplace, and through a process developed in collaboration with employees according to guidelines. And the Bill provides a further step. The Commissioner for Public Employment will hear appeals in more serious cases, or in cases where a Chief Executive has been personally involved. The Commissioner for Public Employment can also delegate this role to an independent body. The Government believes that natural justice has been protected, with less administrative cost.

Summary.

In summary, in moving to the clause by clause description, I reiterate the Government's strong desire to return our Public Service to the leadership position in Australia that it has occupied in the past. The many hard working and genuinely public spirited people that make up our public sector will welcome these moves to make the Service more vibrant and robust, and better placed to play its key role in a prosperous future for this State. I seek the full support of this House for the second reading of this Bill.

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Interpretation

This clause sets out the definitions required for the measure. The definitions correspond closely to definitions in the current Act.

PART 2

GENERAL PUBLIC SECTOR MANAGEMENT AIMS AND STANDARDS

Clause 4: General management aims

This clause contains the general management aims for public sector agencies. Agencies are to aim to—

(a) provide responsive, effective and competitive services to the community and the Government; and

(b) maintain structures, systems and processes that work without excessive formality and that can adapt quickly to changing demands; and

(c) recognise the importance of their people through training, ongoing development and appropriate remuneration; and

(d) manage all resources effectively, prudently and in a fully accountable manner; and

(e) continuously improve their performance in delivering services.

Clause 5: Personnel management standards

This clause contains personnel management standards for public sector agencies. Agencies are to—

(a) base all selection decisions on a proper assessment of merit; and

(b) treat employees fairly; and

(c) afford equal employment opportunities and use to advantage diversity in their work forces; and

(d) provide safe and healthy working conditions; and

(e) prevent nepotism, patronage and unlawful discrimination.

Clause 6: Employee conduct standards

This clause contains the standards of conduct expected of public sector employees. Public sector employees are expected to—

(a) treat the public and other employees with respect and courtesy; and
(b) utilise resources at their disposal in an efficient, responsible and accountable manner; and
(c) deal with information of which they have knowledge as a result of their work only in accordance with the requirements of the Government and their agencies; and
(d) endeavour to give their best to meet performance standards and other organisational requirements; and
(e) conduct themselves in public in a manner that will not reflect adversely on the public sector, their agencies and other employees.

PART 3
PUBLIC SERVICE STRUCTURE

Clause 7: Public Service structure

The Public Service is to consist of administrative units. The Governor may establish and abolish administrative units, transfer employees or a group of employees from one administrative unit to another, incorporate public sector employees (not forming part of the Public Service) into an administrative unit, exclude from the Public Service public sector employees previously incorporated into an administrative unit and make any appointment or transitional or ancillary provision that may be necessary or expedient in the circumstances.

Clause 8: Crown employees to be employed in Public Service

This clause provides that all persons employed by or on behalf of the Crown must be employed in the Public Service unless excluded from the Public Service under schedule 1.

PART 4
CHIEF EXECUTIVES

Clause 9: Administrative units to have Chief Executives

This clause provides for there to be a Chief Executive of each administrative unit, appointed by the Governor. When a temporary vacancy occurs the Minister may assign an employee to act in the position or the Minister responsible for the unit may assign an employee in the unit to act in the position.

Clause 10: Conditions of Chief Executive's appointment

The conditions of appointment to a position of Chief Executive are to be subject to a contract made between the Chief Executive and the Premier in consultation with the Minister responsible for the administrative unit.

The contract must specify—

- that the Chief Executive is appointed for a term not exceeding five years and is eligible for reappointment;
- that the Chief Executive is to meet performance standards as set from time to time by the Premier and the Minister responsible for the administrative unit;
- that the Chief Executive is entitled to remuneration and other benefits specified in the contract;
- the sums representing the values of the benefits (other than remuneration);
- the total remuneration package value of the position under the contract.

The decision whether to reappoint the Chief Executive to the position at the end of a term of appointment must be made and notified to the Chief Executive not less than three months before the end of the term. If the contract so provides, the Chief Executive will be entitled to some other specified appointment in the Public Service (without any requirement for selection processes to be conducted) if not reappointed or in other specified circumstances.

Clause 11: Contract overrides other provisions

The contract may make any other provision and will override other inconsistent provisions (but not provisions contained in this Part).

Clause 12: Termination of Chief Executive's appointment

A Chief Executive's appointment may be terminated by the Governor by not less than four weeks notice in writing to the Chief Executive or on the ground that the Chief Executive—

- has been guilty of misconduct; or
- has been convicted of an offence punishable by imprisonment; or
- has engaged in any remunerative employment, occupation or business outside the duties of the position without the consent of the Minister responsible for the administrative unit; or
- has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
- has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily or to the performance standards specified in his or her contract; or
- has, for any other reason, in the opinion of the Premier and the Minister responsible for the administrative unit, failed to carry out duties of the position satisfactorily or to the performance standards specified in his or her contract.

A Chief Executive's appointment is terminated if the Chief Executive becomes a member of, or a candidate for election to, the Parliament of the State or the Commonwealth or is sentenced to imprisonment for an offence.

A Chief Executive may resign from the position by not less than three months notice in writing to the Minister responsible for the administrative unit (unless notice of a shorter period is accepted by that Minister).

Subject to this clause and any provision in the contract relating to the Chief Executive's appointment, if a Chief Executive's appointment is terminated by the Governor by four weeks notice in writing, the Chief Executive is entitled to a termination payment of an amount equal to three months remuneration (as determined for the purpose under the contract) for each uncompleted year of the term of appointment (with a *pro rata* adjustment in relation to part of a year) up to a maximum of 12 months remuneration. This is not payable if the Chief Executive is appointed to some other position in the Public Service in accordance with his or her contract.

Clause 13: Provision for statutory office holder to have powers, etc., of Chief Executive

This clause provides that the Minister may declare that the person holding or acting in a specified statutory office established under an Act will have the powers and functions of Chief Executive in relation to an administrative unit.

Clause 14: Chief Executive's general responsibilities

This clause sets out the responsibilities of the Chief Executive of an administrative unit to the Minister responsible for the unit.

Clause 15: Extent to which Chief Executive is subject to Ministerial direction

This clause provides that, except in relation to appointment, assignment, transfer, remuneration, discipline or termination of a particular employee, the Chief Executive of an administrative unit is subject to direction by the Minister or by the Minister responsible for the unit.

Clause 16: Delegation

This clause allows the Chief Executive to delegate powers or functions.

Clause 17: Chief Executive to disclose pecuniary interests

The Chief Executive of an administrative unit must make a disclosure of pecuniary interests to the Minister responsible for the unit in accordance with the regulations on appointment and on acquiring further such interests. If a pecuniary or other personal interest of the Chief Executive conflicts or may conflict with his or her official duties, the Chief Executive must disclose the nature of the interest and the conflict or potential conflict to that Minister and not take action or further action in relation to the matter except as authorised by that Minister.

The Minister responsible for the unit may direct the Chief Executive to resolve a conflict between a pecuniary or other personal interest and an official duty. Failure to comply with this clause or a direction under this clause constitutes misconduct unless due to inadvertence only.

PART 5
COMMISSIONER FOR PUBLIC EMPLOYMENT

Clause 18: Commissioner for Public Employment

This clause provides that there is to be a *Commissioner for Public Employment* appointed by the Governor. The Minister may assign an employee to act as Commissioner during a vacancy in the position of Commissioner or when the Commissioner is absent from, or unable to discharge, official duties.

Clause 19: Conditions of Commissioner's appointment

The Commissioner is to be appointed for a maximum of five years on conditions determined by the Governor and is eligible for reappointment.

Clause 20: Termination of Commissioner's appointment

The Commissioner's appointment may be terminated by the Governor on the ground that the Commissioner—

- has been guilty of misconduct; or
- has been convicted of an offence punishable by imprisonment; or
- has engaged in any remunerative employment, occupation or business outside the duties of the position without the consent of the Minister; or

- has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
- has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
- is incompetent or has neglected the duties of the position.

The Commissioner's appointment is terminated if the Commissioner becomes a member of, or a candidate for election to, the Parliament of the State or the Commonwealth or is sentenced to imprisonment for an offence.

The Commissioner may resign from the position by not less than three months notice in writing to the Minister (unless notice of a shorter period is accepted by the Minister).

Clause 21: Functions of Commissioner

The functions of the Commissioner are—

- to develop and issue guidelines relating to personnel management matters in the Public Service;
- to provide advice on personnel management issues;
- to monitor and review personnel management practices;
- to make binding determinations as to the cases or classes of cases in which selection processes will not be required to be conducted for appointments to positions in the Public Service;
- to conduct reviews of personnel management practices as required by the Minister or on the Commissioner's own initiative;
- to investigate or assist in the investigation of matters in connection with the conduct or discipline of employees;
- to perform any other functions assigned to the Commissioner under the measure or by the Minister.

Clause 22: Extent to which Commissioner is subject to Ministerial direction

The Commissioner is not subject to Ministerial direction except in the exercise of delegated powers.

Clause 23: Investigative powers of Commissioner

This clause sets out the investigative powers of the Commissioner and when they may be exercised.

Clause 24: Delegation by Commissioner

This clause allows the Commissioner to delegate powers and functions.

Clause 25: Commissioner to disclose pecuniary interests

This clause provides that the Commissioner must disclose pecuniary interests in the same manner as Chief Executives must disclose their pecuniary interests under clause 17.

Clause 26: Annual report

The Commissioner must present an annual report to the Minister on personnel management in the Public Service and the Minister must lay copies before both Houses of Parliament.

PART 6

GENERAL EMPLOYMENT DETERMINATIONS AND POSITIONS

Clause 27: General employment determinations

This clause gives the Minister the responsibility of determining Public Service remuneration structures, employment conditions and other general employment matters.

Clause 28: Positions

This clause provides that the Chief Executive of an administrative unit may fix or vary the duties, titles and remuneration levels of all positions in the unit including executive positions.

PART 7

PUBLIC SERVICE APPOINTMENTS (APART FROM CHIEF EXECUTIVES)

DIVISION 1—EXECUTIVE POSITIONS

Clause 29: Appointment of executives

The Chief Executive of an administrative unit may appoint persons as executives of the unit.

Subject to a determination of the Commissioner under Part 5, an appointment may only be made as a result of selection processes conducted on the basis of merit.

Clause 30: Conditions of executive's employment

The conditions of employment in an executive position are to be subject to a contract made between the executive and the Chief Executive. The contract must specify—

- that the executive is employed for a term not exceeding five years and is eligible for reappointment to the position;
- that the executive is to meet performance standards as set from time to time by the Chief Executive;
- that the executive is entitled to remuneration and other benefits specified in the contract;
- the sums representing the values of the benefits (other than remuneration);
- the total remuneration package value of the position under the contract;
- that three months written notice is required for resignation (unless shorter notice is accepted).

The contract may provide that the executive will have a right of appeal under Division 9 of Part 8 against a decision under Division 4, 5, 6 or 8 of that Part to terminate the executive's employment (other than such a decision made because the executive has been convicted of an indictable offence).

The decision whether to reappoint the executive to the position at the end of a term of employment must be made and notified to the executive not less than three months before the end of the initial term. If the contract so provides, the executive will be entitled to some other specified appointment in the Public Service (without any requirement for selection processes to be conducted) if not reappointed or in other specified circumstances.

This clause is not to apply to an employee who is an executive only as a result of temporary promotional assignment.

Clause 31: Contract overrides other provisions

The contract may make any other provision that the Chief Executive considers appropriate and will override other provisions of this measure (other than this Division).

Clause 32: Termination of executive's employment by notice

The Chief Executive of the administrative unit in which an executive is employed may terminate the executive's employment by not less than four weeks notice in writing to the executive. Subject to this clause and any provision in the contract relating to the executive's employment, if an executive's employment is terminated by the Chief Executive by four weeks notice in writing, the executive is entitled to a termination payment of an amount equal to three months remuneration (as determined for the purpose under the contract) for each uncompleted year of the term of employment (with a *pro rata* adjustment in relation to part of a year) up to a maximum of 12 months remuneration. An executive is not entitled to a termination payment if the executive is appointed to some other position in the Public Service in accordance with his or her contract.

The power of termination conferred by this clause is in addition to the powers of termination conferred by Part 8.

This clause is not to apply to an employee who is an executive only as a result of temporary promotional assignment.

Clause 33: Executive's general responsibilities

This clause sets out the responsibilities of an executive to the Chief Executive of the administrative unit in which he or she is employed.

DIVISION 2—OTHER POSITIONS

Clause 34: Division applies to positions other than executive positions

This clause states that the Division applies to positions other than executive positions.

Clause 35: Appointment

The Chief Executive of an administrative unit may appoint a person to a position in the unit. Subject to a determination of the Commissioner under Part 5 and except in the case of appointment to a temporary or casual position, an appointment may only be made as a consequence of selection processes conducted on the basis of merit in accordance with the regulations.

Clause 36: Conditions of employment

The conditions of an employee's employment in a position in an administrative unit may be left to be governed by the provisions of the measure or, subject to the directions of the Minister, be made subject to a contract between the employee and the Chief Executive of the administrative unit.

The contract provision allows for the same forms of Public Service appointments as under the current Act, that is, temporary, casual, fixed term and negotiated conditions.

Accordingly, a contract may do one or more of the following:

- provide that the employee is employed for a term not less than 12 months (except in the case of a casual or temporary position) and not exceeding five years;
- provide that the employee is, at the end of a term of employment eligible for reappointment, or entitled to some other appointment in the Public Service, without any requirement for selection processes to be conducted;
- provide that the employee is entitled to remuneration and other benefits specified in the contract;
- provide for a right of appeal under Division 9 in respect of decisions to terminate the person's employment (other

than such a decision made because the person has been convicted of an indictable offence);

- in the case of a temporary or casual position, provide that the Chief Executive may terminate the employee's employment at any time;
- make any other provision that the Chief Executive considers appropriate, including provision excluding or modifying a provision of the measure.

A contract will prevail, to the extent of any inconsistency, over the provisions of the measure.

Temporary and casual positions are defined in the same terms as under the current Act except that a temporary appointment may not continue for more than 12 months rather than the current limit of two years.

Clause 37: Probation

This clause provides that a person who is not already employed in the Public Service is on probation when first appointed to a position in an administrative unit.

PART 8

GENERAL PUBLIC SERVICE EMPLOYMENT PROVISIONS

DIVISION 1—ASSIGNMENT BETWEEN POSITIONS

Clause 38: Assignment

Subject to this clause, the Chief Executive of an administrative unit may assign an employee from one position in the unit to another position in the unit or an employee may be assigned from a position in one administrative unit to a position in another administrative unit jointly by the Chief Executives of the units. The assignment power of Chief Executives applies to all positions including executive positions.

If the Chief Executives of two administrative units cannot reach agreement as to a proposed assignment between positions in the units, the Minister may determine the matter after consultation with the Commissioner.

If an employee is promoted through assignment, the promotion is temporary and may only continue for three years, or, in the case of promotion from a non-executive position to an executive position, for six months or such longer period as may be allowed by the Minister.

An employee may not be assigned from a position to another position with a lower remuneration level except with the employee's consent or in order to return an employee to his or her former remuneration level at the end of a temporary promotion.

If an employee whose employment is subject to a contract is assigned to another position, the provisions of the contract continue to apply in relation to the employee's employment in the new position subject to any necessary modifications or further agreement between the employee and the Chief Executive.

DIVISION 2—REMUNERATION

Clause 39: Remuneration

This clause provides that, subject to this measure, an employee is entitled to remuneration at the rate appropriate to the remuneration level of the position occupied by the employee.

Clause 40: Additional duties allowance

Where an employee performs duties in addition to those on which the remuneration level of the employee's position is based, the Chief Executive may authorise payment of an allowance.

Clause 41: Reduction in salary arising from refusal or failure to carry out duties

If, due to industrial action, an employee refuses or fails to carry out duties, the employee must not, if the Minister so directs, be paid for each day or part of a day on which duties are not undertaken.

Clause 42: Payment of remuneration on death

On the death of an employee, the Chief Executive of the administrative unit in which the employee was employed may, if of the opinion that it is appropriate to do so, direct that an amount payable in respect of the employee's remuneration be paid to dependants of the employee and not to the personal representative.

DIVISION 3—HOURS OF DUTY AND LEAVE

Clause 43: Hours of duty and leave

An employee's hours of duty and right to holidays and leave are governed by schedule 2.

DIVISION 4—EXCESS POSITIONS

Clause 44: Excess positions

If the Chief Executive of an administrative unit is satisfied that a position occupied by an employee is excess to the requirements of the unit and it is not practicable to assign the employee under Division 1 to another position, the Chief Executive must consult with the Commissioner about the matter.

If the Commissioner agrees that it is not practicable to assign the employee under Division 1 to another position, the following provisions apply:

- the Commissioner and the Chief Executive must examine whether it is practicable to transfer the employee to another position (whether in the same or another administrative unit);
- if it is practicable to do so, the employee may be transferred by the Chief Executive to another position in the same unit, or may be transferred to a position in another unit jointly by the Chief Executive and the Chief Executive of the other unit, or by the Minister;
- if the Commissioner and the Chief Executive are satisfied that it is not practicable to transfer the employee, the Chief Executive may terminate the employee's employment in the Public Service.

An employee who is transferred under this clause from a position to another position with a lower remuneration level is entitled to be maintained at the former remuneration level for a period and subject to conditions determined by the Minister.

An employee whose employment is terminated under this clause is entitled to a termination payment of an amount determined by the Minister.

DIVISION 5—MENTAL OR PHYSICAL INCAPACITY

Clause 45: Mental or physical incapacity

This clause provides for a similar process to be undertaken to establish a person's mental or physical incapacity as under section 60 of the current Act. If the Chief Executive of an administrative unit is satisfied that an employee is mentally or physically incapable of performing the duties of his or her position satisfactorily, and it is not practicable to assign the employee under Division 1 to another position with duties within the employee's capacity, the Chief Executive must consult with the Commissioner about the matter.

If the Commissioner agrees that it is not practicable to assign the employee under Division 1 to another position, the same provisions apply as apply in relation to excess positions under clause 44.

The termination of an employee's employment under this clause may, with the consent of the employee, have effect from a date earlier than the date of the decision to terminate the employee's employment.

DIVISION 6—UNSATISFACTORY PERFORMANCE

Clause 46: Unsatisfactory performance

If the Chief Executive of an administrative unit is satisfied that an employee in the unit is not performing duties of his or her position satisfactorily or to performance standards specified in a contract relating to his or her employment or has lost a qualification that is necessary for the proper performance of duties of his or her position and it is not practicable to assign the employee under Division 1 to another position with duties suited to the employee's capabilities or qualifications, the Chief Executive must consult with the Commissioner about the matter.

If the Commissioner agrees that it is not practicable to assign the employee under Division 1 to another position, the same provisions apply as apply in relation to excess positions under clause 44.

The Chief Executive may not take action under this clause on the ground that an employee is not performing duties satisfactorily or to applicable performance standards unless the employee has first been advised of his or her unsatisfactory performance and been allowed a reasonable opportunity to improve.

The Chief Executive must give an employee not less than 14 days written notice of a decision to transfer the employee or terminate the employee's employment under this clause.

This clause does not apply where an employee's unsatisfactory performance is due to mental or physical illness or disability.

DIVISION 7—RESIGNATION AND RETIREMENT

Clause 47: Resignation

An employee may resign from the Public Service by not less than 14 days notice in writing to the Chief Executive of the administrative unit in which the employee is employed (unless a shorter notice period is accepted). As under the current Act, if an employee is absent, without authority, from employment in the Public Service for a period of 10 working days and gives no proper written explanation or excuse for the absence to the Chief Executive before the end of that period, the employee will, if the Chief Executive so determines, be taken to have resigned from the Public Service.

Clause 48: Reappointment of employee who resigns to contest election

This clause provides for the reappointment of an employee who resigns to contest an election. It is similar to section 62 of the current Act.

Clause 49: Retirement

An employee who has attained the age of 55 years is entitled to retire from the Public Service.

DIVISION 8—CONDUCT AND DISCIPLINE

Clause 50: Conflict of interest

If an employee has a pecuniary or other personal interest in a matter and the interest conflicts or may conflict with the employee's official duties, the employee must disclose the nature of the interest to the Chief Executive of the administrative unit in which the employee is employed. The Chief Executive may direct the employee to resolve the conflict.

Clause 51: General rules of conduct

This clause provides that an employee is liable to disciplinary action on similar grounds to those in section 67 of the current Act.

Clause 52: Inquiries and disciplinary action

This clause provides that if the Chief Executive of an administrative unit suspects on reasonable grounds that an employee in the unit may be liable to disciplinary action, the Chief Executive may hold an inquiry to determine whether the employee is liable to disciplinary action. The process to be undertaken is similar to section 68 of the current Act.

Clause 53: Suspension or transfer where disciplinary inquiry or serious offence charged

This clause sets out the process to be undertaken when an employee is charged with an offence punishable by imprisonment or is given notice of a disciplinary inquiry under this Division. It is similar to section 69 of the current Act.

Clause 54: Disciplinary action on conviction of offence

If an employee is convicted of an offence punishable by imprisonment, the Chief Executive of the administrative unit in which the employee is employed may transfer the employee to some other position in the administrative unit or, jointly with the Chief Executive of another administrative unit transfer the employee to a position in that other unit or terminate the employee's employment in the Public Service.

Clause 55: Payments where employee has liability to Crown

This clause provides that if an employee or former employee is alleged to have misappropriated or damaged property of the Crown or to have incurred a liability to the Crown, a payment that would otherwise be required to be made to the person in respect of his or her employment in the Public Service may be withheld pending the determination of criminal or other proceedings in respect of the matter and may be applied in or towards satisfaction of any liability of the person to the Crown.

DIVISION 9—APPEAL AGAINST ADMINISTRATIVE DECISIONS

Clause 56: Chief Executive's responsibility to conciliate grievances

Despite the provisions of the Division, the Chief Executive of an administrative unit is required to endeavour to resolve by conciliation any grievance that an employee in the unit may have in respect of his or her employment.

Clause 57: Lodging of appeals

Subject to this clause, an employee in an administrative unit may appeal to the Chief Executive of the unit against an administrative decision directly affecting the employee in his or her employment.

The appeal processes encompass the separate reclassification, promotion, discipline and grievance appeals under the current Act.

An appeal may not be lodged against an executive appointment, a decision under Division 4, 5, 6 or 8 to terminate an employee's employment in the Public Service or a decision in relation to disciplinary action under Division 8 resulting from conviction of an employee of an indictable offence or by an executive or if the appeal is of a kind excluded by regulation.

Clause 58: Conciliation not prevented

A Chief Executive or the Commissioner may attempt to resolve by conciliation a matter the subject of an appeal prior to the commencement of proceedings.

Clause 59: Appellate authority

Clause 59 sets out the provisions that apply for the purpose of determining who is to hear an appeal (the "appellate authority").

Clause 60: Suspension of administrative decision subject to review

An appellate authority must, unless it is not possible to do so, suspend the operation of the administrative decision subject to appeal.

Clause 61: Conduct of proceedings

This clause provides that an appeal is to be heard with a minimum of formality and that rules of evidence and legal technicalities need not be observed. It also sets out the rights of a party to an appeal.

Clause 62: Appellate authority may decline to entertain certain appeals

An appellate authority may decline to hear an appeal if of the opinion that the application is frivolous or vexatious.

Clause 63: Orders of appellate authority

Clause 63 sets out the orders an appellate authority may make on determining an appeal.

Clause 64: Appeal in respect of process

Where an appeal is heard by a Chief Executive or a person or panel appointed by a Chief Executive the appellant may, if dissatisfied with the appeal process, appeal against the process. The appellate authority may remit the matter to the Chief Executive for reconsideration and/or make recommendations as to proper appeal processes.

Clause 65: Reasons for decision

If requested by a party to the proceedings, the appellate authority must provide that party with a statement of reasons for the decision.

Clause 66: Restriction on other appeals, etc.

This clause provides that the provisions of this Division operate in relation to an administrative decision affecting an employee in his or her employment to the exclusion of any other right of appeal or review or remedy under another Act or at law. The clause does not apply in relation to a decision under Division 4, 5, 6 or 8 to terminate a person's employment in the Public Service and does not, for example, prevent a person from making an application for relief under the *Industrial and Employee Relations Act 1994* in respect of a decision under Division 4, 5, 6 or 8 to terminate the person's employment.

PART 9

MISCELLANEOUS

Clause 67: Preservation of powers of Governor to appoint, transfer and dismiss

This clause preserves the power of the Governor to appoint a person to, or dismiss a person from, a position in the Public Service and to transfer a person to a Public Service position at the same or a higher remuneration level.

Clause 68: Annual reports by public sector agencies

Each public sector agency must present an annual report to the Minister responsible for the agency on the operations of the agency and the Minister must lay copies of the report before both Houses of Parliament.

Clause 69: Equal employment opportunity programs

The Minister may publish in the *Gazette* equal employment opportunity programs designed to ensure that persons of a defined class have equal opportunities in relation to employment in the public sector with persons not of that class.

Clause 70: Transfers of employees within public sector

This clause provides for employees to be transferred from the Public Service to a position in a public sector agency outside the Public Service and for an employee of a public sector agency to be transferred to a position in the Public Service or to a position in another public sector agency.

Clause 71: Appointment of Ministerial staff

The Premier may appoint a person as a member of a Minister's personal staff on conditions determined by the Premier. Such a person will not be an employee in the Public Service. This provision avoids the need for such an appointment to be made by the Governor as would otherwise be required under the *Constitution Act*.

Clause 72: Minister may approve arrangements for multiple appointments, etc.

The clause allows the Minister to approve arrangements under which a person is employed in the Public Service and continues to hold a position outside the Public Service or a person employed in the Public Service continues to remain in that employment whilst engaged in some employment outside the Public Service.

Clause 73: Extension of operation of certain provisions of Act

This clause provides for the Governor to extend the operation of any provisions of the measure to any specified class of public sector employees to whom those provisions do not apply.

Clause 74: Operation of Industrial and Employee Relations Act

A determination or decision under this measure affecting remuneration or conditions of employment is subject to an award, determination or enterprise or industrial agreement in force under the *Industrial and Employee Relations Act 1994*.

Clause 75: Freedom of association for employees

This clause provides that no employee may be compelled to become, or remain, a member of an industrial or professional association and no employee who is eligible for membership of an industrial or professional association may be prevented (except by the association itself acting in accordance with its rules) from becoming or remaining a member of the association.

Clause 76: Immunity from liability

No civil liability attaches to an employee or other person holding an office or position under the measure for an act or omission in the exercise or purported exercise of official powers or functions. Such an action will instead lie against the Crown.

Clause 77: Temporary exercise of statutory powers

If an employee is unable to exercise a statutory power or function it may be exercised by the Chief Executive of the administrative unit or some other employee nominated by the Chief Executive.

Clause 78: Obsolete references

If the title of an administrative unit or position in the Public Service is altered, a reference in an Act or statutory instrument to the administrative unit or position under an earlier title is to be read as a reference to the administrative unit or position under its new title.

Clause 79: Evidentiary provision

This clause provides that a certificate signed by the Minister certifying that an administrative unit referred to in the certificate existed as an administrative unit of the Public Service at a time or over a period referred to in the certificate, or that a person named in the certificate occupied a specified position in the Public Service at a time or over a period referred to in the certificate, will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.

Clause 80: War Service (Preference in Employment) Act

Nothing in this measure is to derogate from the *War Service (Preference in Employment) Act 1943*.

Clause 81: Service of notices

A notice or document required or authorised by the measure to be given to or served on an employee may be given to or served on the employee personally or by post addressed to the employee at the address last notified by the employee in accordance with the regulations.

Clause 82: Delegation by Minister

This clause provides that the Minister may delegate powers or functions under the measure.

Clause 83: Regulations

This clause empowers the Governor to make regulations for the purposes of the measure.

SCHEDULE 1

Persons Excluded from Public Service

This schedule lists the persons who are excluded from the Public Service. It is consistent with the corresponding schedule under the current Act.

SCHEDULE 2

Hours of Attendance, Holidays and Leave of Absence

The clauses of this schedule confer the same leave rights as under the current Act with the exception that, under clause 11, a Chief Executive or an executive has a new right to be paid the monetary value of an accrued long service leave entitlement instead of taking the leave.

SCHEDULE 3

Repeal and Transitional Provisions

Clause 1: Repeal

The current Act is repealed.

Clause 2: Commissioner

The current Commissioner is continued in office.

Clause 3: Administrative units continued

All current administrative units are continued in existence.

Clause 4: Positions continued

All current positions are continued in existence in the same administrative units. Positions classified as senior positions continue as executive positions subject to the measure.

Clause 5: Employees continued in positions

All current employees are continued in the same positions.

Clause 6: Basis of employment

Current probationary employees are continued on probation. Current temporary, casual, fixed term and negotiated conditions appointments are continued as contract appointments under the corresponding provisions of the measure.

Clause 7: Executives

Employees occupying senior positions may come under the new contract provisions by agreement only. Remuneration may vary for executives at the same level according to whether or not their appointments are subject to a contract.

Clause 8: Chief Executives

Existing Chief Executives are brought under the new contract provisions.

Clause 9: Temporary promotional reassignments

Provision is made for an employee subject to a temporary promotional assignment to be assigned back to his or her former position or an equivalent position within three years.

Clause 10: Classification and remuneration levels of positions

Existing classification levels are converted to remuneration levels.

Clause 11: Classification reviews, promotion appeals and grievance appeals

Appeals lodged but not commenced may be proceeded with under the new provisions.

Clause 12: Leave rights

Leave rights are preserved.

Clause 13: Directions, etc., continued

Existing administrative directions, instructions, determinations and decisions are continued.

Clause 14: Acts Interpretation Act applies

The *Acts Interpretation Act* is to apply except to the extent of any inconsistency with this schedule.

Mr CLARKE secured the adjournment of the debate.

CONSUMER CREDIT (CREDIT PROVIDERS) AMENDMENT BILL

Second reading.

The Hon. S.J. BAKER (Treasurer): 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.

In September 1994 the *Consumer Credit Code* was passed by the Queensland Parliament and it will come into operation in September 1995. Some of you will be aware that the passage of that legislation is the first step in the fulfilment of a uniformity agreement between all the States and the Territories to implement consistent and comprehensive regulation of the provision of credit to consumers.

Pursuant to the agreement between the States and the Territories, the Government will be introducing a Bill for the purpose of applying the Queensland Code as a law of the State of South Australia with the expected date of application of that 'template' legislation being 1 September 1995.

While the Code will provide comprehensive protection to consumers, one of the areas not subject to the Ministerial agreement is the issue of the regulation of credit providers.

From the commencement of the *Consumer Credit Act* in 1973, the majority of credit providers were, and are to this day, exempt from the requirement to be licensed under the Act as credit providers. Those credit providers, and others, have also been exempted from the requirement to comply with the substantive consumer protection measures set out in the Act, with the exception of Parts V and VI which deal with harsh and unconscionable terms and the procurement of credit. Section 6 of the current Act, sets out the credit providers who are exempt from the provisions of the Act and includes a power of exemption by proclamation made by the Governor.

For many years it was accepted that the licensing of certain occupations or undertakings would weed out those persons with a propensity or predisposition to break the law. While that may still be relevant in a small number of areas, history has clearly shown that consumer credit is not one of them. The level of consumer complaint about the activities of credit providers in this State is extremely low and the complaints processed by the relevant authorities in the other States are principally centred on failure to comply with the extremely technical requirements of the present uniform *Credit Act*. In short, the licensing of credit providers does not seem to enhance the protection of consumer interests and it merely imposes an unnecessary administrative burden on governments and the finance sector.

In the case of some credit providers operating in this State, other State and Commonwealth legislation regulate their activities. I refer to the *Banking Act 1959* and the *Financial Institutions Scheme Legislation*.

It is clear to the Government that the absence of licensing of the majority of credit providers has not prejudiced the interests of consumers and to extend the present licensing regime to those credit providers presently exempt would result in the duplication of regulation for no benefit. In fact there are Constitutional reasons why the licensing of banks as credit providers under the State legislation may create difficulties.

For these principal reasons the Government has decided that the licensing of credit providers is no longer relevant or necessary for the protection of the interests of the consumers. Instead a 'negative licensing' regime, along similar lines to the present provisions of the *Credit Act (Queensland) 1987*, has been adopted and is reflected in this Bill.

Having made the decision to completely alter the method of regulating credit providers, the main issue for the Government was the question of the timing of the introduction of these changes. Although it may have been simpler to include this measure in the package of legislation which the Government will introduce to implement the adoption of the uniform *Consumer Credit Code*, we have decided to proceed with the introduction of this change as a separate measure with the earliest possible commencement date. Our primary reason is to remove the administrative burden which falls to a small number of credit providers.

In effect, the burden of licensing is now borne by the finance companies which have diminished in their historic role of providing the majority of loans to consumers. It is a fact that the vast majority of consumer credit, both in terms of volume and value, is provided to consumers in this State by unlicensed credit providers such as banks, credit unions, building societies and insurance companies. If there is no justification in continuing the present licensing regime then there is no justification in continuing to require one sector of the finance industry to bear a discriminatory burden. For these reasons the Government has decided to proceed with this deregulatory measure now rather than wait for the commencement of uniform *Consumer Credit Code* in September 1995.

For those credit providers which are presently exempt from the requirement to comply with the contractual and similar provisions of the *Consumer Credit Act*, those exemptions will have to continue until all credit providers become subject to the uniform Code. To require those credit providers to comply with the substantive provisions of the Act would impose excessive and unnecessary costs on those parties to comply with an Act which has less than 12 months of life left.

Applications with respect to revolving charge accounts will be dealt with by the Commissioner for Consumer Affairs.

Under the new negative licensing regime, all matters with respect to discipline will be dealt with by the Commercial Tribunal. The Tribunal will have the power to fine, suspend or disqualify a credit provider from trading. The Tribunal will have to take into account the prudential consequences which a penalty may have on a particular financial institution.

The Commissioner of Consumer Affairs will have the power to require a credit provider to enter into a Deed of Assurance with respect to a particular conduct. A breach of an Assurance is grounds for disciplinary action being taken against a credit provider.

The measures which this Bill seeks to implement will form the basis of a *Credit Administration Act* which will compliment the *Consumer Credit Code* when it commences next year. The passage of this Bill will therefore send a clear signal to all credit providers about what they can expect to face in South Australia under the new credit legislation.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 4—Repeal and saving provision

Section 4 of the principal Act is consequentially amended by removing those subsections which contained references to licensing under the Act. The repealed subsections dealt with transitional matters and are no longer necessary.

Clause 4: Amendment of s. 5—Interpretation

This clause removes definitions which are no longer necessary, due to the substitution of a new Part III in the principal Act, and inserts a definition of 'director'.

Director of a body corporate is given a wide meaning to encompass persons who control the body corporate. Under new Part III directors of a body corporate may be disciplined, or prosecuted for an offence, alongside the body corporate.

Clause 5: Amendment of s. 6—Application of this Act

This clause amends section 6 of the principal Act by removing the references to licensing and by substituting the references to the Tribunal, in the context of applications for providing credit by revolving charge account, with references to the Commissioner.

Clause 6: Substitution of Part

This clause substitutes new Part III in the principal Act. This Part of the Act currently deals with the licensing of credit providers. Under new Part III there is no licensing scheme but the activities of credit providers are controlled through the ability to institute disciplinary proceedings in the Tribunal. New Part III contains the following sections:

28. Cause for disciplinary action

Disciplinary action may be taken against a credit provider if—

- the credit provider has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*;
- the credit provider or any other person has acted unlawfully, improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the credit provider.

Disciplinary action may be taken against a director of a body corporate that is a credit provider if disciplinary action could be taken against the body corporate.

Disciplinary action may not be taken if it is not reasonable to expect the person to have been able to prevent the act or default.

29. Complaints

A complaint alleging grounds for disciplinary action against a credit provider may be lodged with the Tribunal by the Commissioner or any other person.

30. Hearing by Tribunal

The Tribunal is empowered to adjourn proceedings to allow the Commissioner to undertake further investigations and to allow modification of a complaint.

31. Disciplinary action

Disciplinary action may comprise any one or more of the following:

- a reprimand;
- a fine up to $8 000;
- a ban on carrying on the business of a credit provider;
- a ban on being employed or engaged in the industry;
- a ban on being a director of a body corporate credit provider.

A ban may be permanent, for a specified period or until the fulfilment of specified conditions.

Before making an order under this section the Tribunal is required to consider the effect of the order upon the prudential standing of the credit provider.

32. Contravention of prohibition order

It is an offence to breach the terms of an order banning a person from carrying on the business of a credit provider or being employed or engaged in the industry or from being a director of a body corporate in the industry.

33. Register of disciplinary action

The Commissioner must keep a register of disciplinary action taken against credit providers available for public inspection.

34. Commissioner and proceedings before Tribunal

The Commissioner may be joined as a party to proceedings.

35. Investigations

The Commissioner may ask the Commissioner of Police to conduct relevant investigations.

Clause 7: Amendment of s. 45—Prohibition on procurement charges, etc.

This clause amends section 45 of the principal Act by striking out subsection (1). This subsection is no longer necessary as it deals with licensed credit providers.

Clause 8: Substitution of s. 59

This clause substitutes a new section 59 in the principal Act which imposes a time limit of two years, or five years with the consent of the Minister, on the commencement of prosecutions under the Act.

Clause 9: Amendment of s. 61—Regulations

This clause makes a consequential amendment to section 61 of the principal Act, removing any reference to licensing under the Act.

Schedule: Transitional provisions

An order of the Tribunal suspending a credit provider's licence or disqualifying a person from holding a credit provider's licence is converted into an order of the Tribunal prohibiting the person from carrying on, or from becoming a director of a body corporate carrying on, the business of a credit provider.

Mr CLARKE secured the adjournment of the debate.

MOTOR VEHICLES (CONDITIONAL REGISTRATION) AMENDMENT BILL

Second reading.

The Hon. J.W. OLSEN (Minister for Industry, Manufacturing, Small Business and Regional Development): 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 amends the *Motor Vehicles Act 1959* to allow for the conditional registration of left hand drive vehicles that were manufactured before 1 January 1974 and are owned by financial members of recognised classic car clubs.

Left hand drive vehicles manufactured on or after 1 January 1966 do not comply with Australian Design Rules and, under existing legislation, are not eligible for registration unless converted to right hand drive.

In view of the classic nature of these vehicles, conversion to right hand drive is not an option for members of classic car clubs.

As only limited access to the road network is required by these club members, they must obtain a short term unregistered vehicle permit for each club event. The issue of these permits is time consuming for both the applicant and the Department of Transport.

This Bill will enable owners of such vehicles to be granted registration which will be subject to a condition that the owner must be a financial member of a recognised left hand drive car club, and the use of the vehicle restricted to events organised by the car club. The Registrar of Motor Vehicles will also be able to impose additional conditions if necessary.

Vehicles registered under the conditional registration provisions will be issued with a standard number plate and registration label. The registration label will indicate that conditions apply to the use of the vehicle. This will assist the police in the enforcement of road laws.

The Bill also provides for an administration fee for the issue of conditional registration to be prescribed by regulation.

A consequential amendment to the *Stamp Duties Act 1923* will provide for vehicles registered conditionally to be exempt from the payment of stamp duty on the value of the vehicle and the policy of insurance.

This approach is in line with the National Road Transport Commission's recommendations on the registration of vehicles that require limited access to the road network.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement of the measure on a day fixed by proclamation.

Clause 3: Amendment of s. 20—Application for registration

Clause 4: Amendment of s. 21—Power of Registrar to return application

These clauses amend sections 20 and 21 of the principal Act to include reference to administration fees. The amendments are consequential on the insertion of section 25 by clause 5 of the measure.

Clause 5: Insertion of s. 25

This clause inserts new section 25 into the principal Act.

S. 25—Conditional registration of certain classes of vehicles

Proposed subsection (1) empowers the Registrar to register a motor vehicle of a prescribed class on payment of an administration fee if the owner of the vehicle satisfies the Registrar that the vehicle is to be driven on roads in circumstances in which, in the opinion of the Registrar, it is unreasonable or inexpedient to require the vehicle to be registered at the prescribed registration fee.

Proposed subsection (2) provides that where a motor vehicle is registered under section 25—

- the period of registration will be the period specified in the regulations;
- the registration is subject to the conditions imposed by the regulations and any conditions that the Registrar may think fit to impose;
- there is no refund of the administration fee on cancellation of the registration;
- the registration is not transferable.

Proposed subsection (3) provides that a person must not contravene or fail to comply with a condition of a registration under section 25. The maximum penalty is a division 9 fine ($500).

Clause 6: Amendment of s. 32—Vehicles owned by the Crown

This clause amends section 32 of the principal Act to include reference to administration fees. The amendment is consequential on the insertion of section 25 by clause 5 of the measure.

Clause 7: Amendment of Stamp Duties Act 1923

This clause amends the second schedule of the *Stamp Duties Act 1923* to exempt from stamp duty—

- applications for registration of motor vehicles under the proposed section 25 of the Motor Vehicles Act;
- premiums on insurance under Part 4 of that Act (compulsory third party insurance) payable on registrations under that proposed section.

Mr CLARKE secured the adjournment of the debate.

SECOND-HAND VEHICLE DEALERS 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 *Second-hand Motor Vehicles Act 1983* has been in operation for almost a decade without being fully reviewed.

In January 1994, the Government appointed a Legislative Review Team to review the provisions of each of the Acts which fall under the Consumer Affairs portfolio. Given the high level of complaints about second-hand motor vehicle purchases made each year to the Commissioner for Consumer Affairs and the willingness of industry to contribute constructively to the search for better means of dealing with them, the review team gave priority to its examination of the *Second-hand Motor Vehicles Act 1983*.

The Review Team examined the basic need for legislative intervention and considered various modes of regulation. A variety of improvements to the Act have been recommended, although its basic structure will remain.

A new streamlined licensing system is proposed under the Bill. Criteria for the licensing of natural persons will reflect the main reasons for vetting applicants and preventing the entry of undesirable and impecunious persons into the industry namely: consumer protection. Thus, as well as being over 18 years of age, applicants must be fit and proper persons to hold a licence, must not have been previously disqualified from being a dealer and must be financially solvent (that is, applicants will not be granted a licence if they are or have been insolvent, or are or have been the director of an insolvent body corporate in the preceding five years).

A new requirement to be eligible for warranty indemnity insurance, will also be introduced. This major new initiative is discussed in detail later.

Similar criteria will apply to companies which apply for a licence. The Bill is also designed to prevent disqualified people with an interest (or a prescribed interest) in a body corporate from hiding behind the corporate veil and having an involvement in the business of the corporate licensee.

The duration of licences will remain the same but several amendments consequent on the transfer of power to refuse licences to the Commissioner (including removal of the requirements to advertise and serve applications on the Commissioner of Police and removal of the objection procedures) will be necessary.

It is proposed to remove the task of licensing second-hand motor vehicle dealers from the Commercial Tribunal and to reallocate this task to the Commissioner for Consumer Affairs. Appeals from a failure by the Commissioner to grant a licence will go to the Commercial Tribunal.

It is also proposed to amend the deeming provision in Section 35 of the Act, which supports the licensing regime, by shifting the onus to people who sell over four cars a year (instead of the present six) to prove that they are not dealers.

For some time following the collapse of a major dealer, Medindie Car Sales, the Second-hand Motor Vehicles Compensation Fund was in a precarious position. It required a major injection of funds by way

of a special levy to remain viable. Dealers have also long argued that it is unjust for the honest, solvent well-functioning members of the industry to subsidise the dishonest or insolvent who can simply refer consumers to the Fund when they default on their obligations.

The Review Team therefore recommended that a warranty insurance scheme replace the Fund to encourage individual responsibility and accountability among dealers while, at the same time, maintaining consumer protection. This Bill gives effect to that recommendation by requiring dealers to hold ongoing warranty insurance.

Related to this new provision is removal of the requirement for dealers to have registered repair premises. Market forces, in the shape of contractually enforceable precautions to prevent a call on warranty insurance, should lead to a more rapid rise in standards in this area than government imposed regulations.

The Government has decided that dealers under the *Second-hand Vehicle Dealers Bill 1994* should be subject to the same sort of disciplinary proceedings as those proposed for land agents in the recently introduced *Land Agents Bill 1994*. The existing provision which makes it a cause for disciplinary action if a person is "guilty of an offence" will also be extended to include a situation where a dealer has acted contrary to the Act and the new disciplinary proceedings will reflect the proposed new licence entry criteria.

While major changes have been proposed in the manner in which compensation may be obtained for breaches of the Act's warranty provisions (and its source), major changes to the warranty provisions themselves are not proposed. They have been updated by Parliament in comparatively recent times.

In a major advance designed to protect consumers, motorcycles will now come within the scope of the Act.

In response to requests from industry, the proposed amendments will also simplify the exclusion of obviously defective cars (in relation to which consumers cannot have high expectations) by excluding from the warranty provisions cars that are either over 15 years old or have travelled over 200 000 kilometres.

Under the current Act, provision exists for a person to waive rights such as the statutory duty to repair defects in a vehicle purchased by a second-hand vehicle dealer, on obtaining a certificate in a prescribed form from the Commissioner. This provision was intended to be used only in exceptional circumstances where persons could demonstrate that, as a consequence of their special skills or training (for example, as a motor mechanic), that they could assess the risk associated with the waiver of rights. In practice, however, the Office of Consumer and Business Affairs has been inundated with thousands of applications for certificates from the Commissioner. It has been the experience of this Office that the right of waiver has been used as a perceived bargaining tool to negotiate the sale and purchase of a car. It is not therefore being used for the purpose for which it was intended to be used. Under the provisions of the proposed Bill, a person will no longer be able to waive the rights conferred on him or her by the Act. This will ensure the maintenance of the consumer protection offered to purchasers of second-hand vehicles under the Act.

It is intended that greater reliance be placed on conciliation in the area of used car disputes. Compulsory conciliation conferences—along the lines of those contained in the 1971 *Second-hand Motor Vehicles Act*—will therefore be reinstituted.

If the parties cannot reach agreement at the conclusion of a compulsory conference, the purchaser can apply to the Commercial Tribunal for orders to be made.

The Legislative Review Team recommended that a delegation power similar to that contained in the *Land Agents Bill 1994* be incorporated into the new *Second-hand Vehicle Dealers Bill*. The Commissioner will then have the power to delegate specific matters under the Act to industry organisations by means of a written agreement.

In conducting its comprehensive review of the Act, the Review Team uncovered several minor miscellaneous amendments which are required to bring the Act up to date including updating penalties (strongly recommended by the Motor Trade Association), extending the time limit for prosecutions, moving exemptions from the Regulations into the body of the Act and harmonising the vicarious liability provisions with those proposed in the *Land Agents Bill*.

Finally, it should be noted that the Bill as received from the other place now contains provisions that are not acceptable to the Government and amendments will be moved in the Committee stage to restore the Bill to the form preferred by the Government.

I commend the Bill to Honourable Members.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These are formal.

Clause 3: Interpretation

This provides for definitions of words and phrases used in the proposed Act.

Clause 4: Application of Act

If a dealer sells a second-hand vehicle to a credit provider on the understanding that the vehicle will be sold or let on hire to a third person and it is sold or let on hire to the third person, the proposed Act applies (except for clause 17) as if the dealer had sold the vehicle to the third person.

Clause 5: Non-derogation

The provisions of the proposed Act are in addition to and do not derogate from the provisions of any other Act and do not limit or derogate from any civil remedy at law or in equity.

Clause 6: Commissioner to be responsible for administration of Act

The Commissioner is responsible (subject to the control and directions of the Minister) for the administration of the proposed Act.

Proposed Part 1 is substantially the same as Part 1 of the *Second-hand Motor Vehicles Act 1983* ('the repealed Act').

PART 2
LICENSING OF DEALERS
DIVISION 1—GRANT OF LICENCES

Clause 7: Dealers to be licensed

A person who carries on business or holds himself or herself out as a second-hand vehicle dealer who is not licensed under the proposed Act is guilty of an offence and liable to a division 5 fine ($8 000). Exceptions to this are—

- persons who are lawfully carrying on business as a credit provider within the meaning of the *Consumer Credit Act 1972* whose business as a dealer is incidental to the credit business;
- auctioneers who sell second-hand vehicles on behalf of other persons by auction or by sales negotiated immediately after conducting auctions for the sale of the vehicles, and who do not otherwise carry on the business of selling second-hand vehicles;
- the Crown.

(*Cf:* Section 9 of the repealed Act.

Clause 8: Application for licence

Applications for licences must be made to the Commissioner in the manner and form approved by the Commissioner and be accompanied by the fee fixed by regulation.

Clause 9: Entitlement to be licensed

A natural person is entitled to be licensed as a dealer if the person—

- is of or above the age of 18 years; and
- has not been convicted of an offence of dishonesty; and
- is not suspended or disqualified from practising or carrying on an occupation, trade or business; and
- is not an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and
- has not, during the period of five years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors when the body was being so wound up or within the period of six months preceding the commencement of the winding up; and
- is a fit and proper person to be the holder of a licence.

A body corporate is entitled to be licensed as a dealer if—

(a) the body corporate—

- is not suspended or disqualified from practising or carrying on an occupation, trade or business; and
- is not being wound up and is not under official management or in receivership; and

(b) no director of the body corporate—

- has been convicted of an offence of dishonesty; and
- is suspended or disqualified from practising or carrying on an occupation, trade or business; and
- has, during the period of five years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors when the body was being so wound up or within the period of six months preceding the commencement of the winding up; and

· each director of the body is a fit and proper person to be the director of a body that is the holder of a licence.

Clause 10: Appeals

An applicant for a licence may appeal to the Commercial Tribunal against a decision of the Commissioner refusing the application. An appeal is to be conducted by way of a fresh hearing. The Tribunal may, on the hearing of an appeal—

· affirm the decision appealed against or rescind the decision and substitute a decision that the Tribunal thinks appropriate;

· make any other order that the case requires (including an order for costs).

Clause 11: Duration of licence and annual fee and return

A licence remains in force (except for any period for which it is suspended) until the licence is surrendered or cancelled or the licensed dealer dies (or, in the case of a licensed body corporate, is dissolved). A licensed dealer must pay an annual fee and lodge an annual return with the Commissioner. If a licensed dealer fails to pay the annual fee or lodge the annual return, the Commissioner may require the dealer to make good the default and pay the amount fixed as a penalty for default. If the dealer fails to comply with the notice within 28 days after service, the dealer's licence is cancelled. A licensed dealer may surrender the licence.

Clause 12: Requirements for insurance

A person must, at all times when carrying on business as a dealer, be insured in accordance with the regulations. A dealer's licence is suspended for any period for which the dealer is not insured. A licensed dealer must lodge with the Commissioner evidence of the dealer's insurance coverage.

Clause 13: Incorporated dealer's business to be properly managed and supervised

A licensed dealer that is a body corporate that does not ensure that the dealer's business is properly managed and supervised by a licensed dealer who is a natural person is guilty of an offence and liable to a division 4 fine ($15 000).

DIVISION 2—REGISTRATION OF PREMISES

Clause 14: Registration of dealer's business premises

A licensed dealer must not carry on business as a dealer except at premises registered in the licensee's name. The penalty for contravening this is a division 7 fine ($2 000). The Commissioner may register premises in the name of an applicant if satisfied that the premises are suitable for the purpose of carrying on business as a dealer. A licensee who does not, within 14 days after ceasing to carry on business at registered premises, notify the Commissioner in writing of that fact is guilty of an offence and liable to a division 7 fine ($2 000). If the Commissioner is notified of the cessation of business at registered premises or is otherwise satisfied that a licensee has ceased to carry on business at registered premises, the Commissioner may cancel the registration of the premises. (*Cf:* Section 12 of the repealed Act.)

PART 3

DEALING IN SECOND-HAND VEHICLES

DIVISION 1—SALES OTHER THAN BY AUCTION

The clauses in this Division are similar to the sections in Division 1 of Part 3 of the repealed Act. The penalties for contravention of these provisions of the proposed Act are greater than those set out in the repealed Act but are consistent with comparable measures.

Clause 15: Application of Division

The proposed Division does not apply to the sale of a second-hand vehicle by auction or the sale (or offering for sale) of a second-hand vehicle to a dealer. Except as provided in clause 17, the proposed Division does not apply to the sale of a second-hand vehicle negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle. (*Cf:* Section 17 of the repealed Act.)

Clause 16: Notices to be displayed

A dealer who offers or exposes a second-hand vehicle for sale without attaching to the vehicle a notice in the prescribed form containing the required particulars and statements relating to the vehicle is guilty of an offence and liable to a division 7 fine ($2 000). The clause sets out in detail the information required to be given when offering or exposing for sale a second-hand vehicle. (*Cf:* Section 18 of the repealed Act.)

Clause 17: Form of contract

This clause sets out in detail the form of a contract for the sale of a second-hand vehicle by a dealer *eg:* these details include the fact that the contract must be in writing, be comprised in one document, be signed by the parties to the sale and must contain certain particulars set out in a particular manner. The penalty for failure to comply with this clause is a division 7 fine ($2 000). (*Cf:* Section 19 of the repealed Act.)

Clause 18: Notices to be provided to purchasers of second-hand vehicles

On the sale of a second-hand vehicle by a dealer, the dealer must ensure that a copy of the notice that was required to be attached to the vehicle under clause 16 and a notice in the prescribed form are given to the purchaser for retention before the purchaser takes possession of the vehicle. Failure to comply with this provision causes a dealer to be liable to a division 7 fine ($2 000). (*Cf:* Section 20 of the repealed Act.)

Clause 19: Cooling-off

A purchaser under contract for the sale of a second-hand vehicle may, by giving the dealer written notice of the purchaser's intention not to be bound by the contract before the expiry of the cooling-off period (*ie:* 3 clear business days commencing on and including the day on which the contract is made), rescind the contract. This does not apply if the purchaser immediately before accepting delivery of the vehicle signs the prescribed form waiving the right to rescind the contract. The provision sets out other matters relating to what can occur during the cooling-off period.

DIVISION 2—SALES BY AUCTION

The proposed clauses in this Division are similar to the sections in Division 2 of Part 3 of the repealed Act. The penalties for contravention of the provisions of the proposed Act are greater than those set out in the repealed Act but are consistent with comparable measures.

Clause 20: Interpretation

This clause contains a definition of 'trade auction' for the purposes of the proposed Division. (*Cf:* Section 21 of the repealed Act.)

Clause 21: Notices to be displayed in case of auction

An auctioneer who conducts an auction for the sale of a second-hand vehicle (other than a trade auction) without attaching to the vehicle a notice in the prescribed form containing the required particulars and statements relating to the vehicle and ensuring that the notice has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders is guilty of an offence and liable to a division 7 fine ($2 000).

The clause sets out in detail the information required to be given when offering or exposing a second-hand vehicle for sale by auction. (*Cf:* Section 22 of the repealed Act.)

Clause 22: Notices to be provided to purchasers of second-hand vehicles

On the sale of a second-hand vehicle to a person other than a dealer by auction, or by a sale negotiated by an auctioneer immediately after the conduct of an auction for the sale of the vehicle, the auctioneer must ensure that a copy of the notice that was required to be attached to the vehicle under clause 21 and a notice in the prescribed form are given to the purchaser for retention before the purchaser takes possession of the vehicle. Failure to comply with this provision causes a dealer to be liable to a division 7 fine ($2 000). (*Cf:* Section 23 of the repealed Act.)

Clause 23: Trade auctions

An auctioneer must not conduct a trade auction unless a notice in the prescribed form is attached to the vehicle and has been attached to the vehicle at all times when the vehicle has been available for inspection by prospective bidders. A person who advertises a trade auction must include in the advertisement a statement in the prescribed form. Contravention of this clause attracts a division 7 fine ($2 000). (*Cf:* Section 24 of the repealed Act.)

PART 4

DEALER'S DUTY TO REPAIR SECOND-HAND VEHICLES

Clause 24: Duty to repair

A dealer is under a duty to repair any defect that is present in a second-hand vehicle that the dealer sells or that appears in the vehicle after the sale. To discharge the duty imposed, the dealer must carry out the repairs in a manner that conforms to accepted trade standards. This clause does not apply—

· to certain sales of second-hand vehicles; or

· to the sale of certain second-hand vehicles; or

· to certain defects; or

· to defects appearing in a vehicle sold at a price below the prescribed amount.

These are set out in detail in the clause. If a second-hand vehicle is sold by a dealer on behalf of another dealer, the duty imposed by this clause must be discharged by that other dealer.

Clause 25: Enforcement of duty to repair

If a dealer is under a duty to repair a defect in a second-hand vehicle, the purchaser must, if requiring the dealer to discharge the duty,

deliver the vehicle to the dealer for that purpose during ordinary business hours at a place agreed on by the dealer and the purchaser or (if no place has been so agreed on) any registered premises of the dealer, and afford the dealer a reasonable opportunity to repair the defect.

The purchaser may apply to the Commissioner for a conference to be convened for the purpose of attempting to resolve the matter by conciliation if the purchaser delivers the vehicle to the dealer as required but the dealer refuses to discharge the duty to repair, or fails to discharge the duty to repair the defect expeditiously, or the purchaser makes reasonable efforts to deliver the vehicle but is unable to do so. On an application, the Commissioner must, unless satisfied that in the circumstances of the case it is not appropriate to convene a conference, require the purchaser and the dealer to attend a conference. If agreement is reached at such a conference, the agreement must be recorded in a written instrument signed by the parties to the agreement and the Commissioner and a copy of the instrument given to each of the parties.

If, on application by the purchaser—

· the Commissioner determines that it is not appropriate to convene a conference; or

· a conference is convened but the dealer fails to attend the conference, the matter in issue is not resolved by agreement or the dealer fails to carry out the dealer's obligations under an agreement reached at the conference,

the purchaser may apply to the Tribunal for one or more of the following orders:

· an order that the dealer (or another person at the expense of the dealer) repair the defect;

· an order that the dealer pay to the purchaser the reasonable costs of repairing or completing the repairs of the defect;

· an order that the dealer compensate the purchaser for any loss or damage suffered by the purchaser as a result of the dealer's conduct;

· an order enforcing the terms of an agreement reached at the conference.

If the Tribunal makes an order for the repair of the defect and the dealer fails to comply with the terms of the order, the Tribunal may, on the further application of the purchaser, make an order that the dealer pay to the purchaser the reasonable costs of repairing or completing the repairs of the defect or an order for compensation or both.

If repairs that a dealer is under a duty to carry out are carried out by another person on behalf of the dealer and the purchaser of the vehicle pays the costs of the repair, the Tribunal may, on the application of the purchaser, order the dealer to reimburse the purchaser in respect of the amount paid by the purchaser.

If a dealer who is under a duty to repair a defect in a vehicle is not licensed, the purchaser may cause the vehicle to be repaired by a person other than the dealer and the Tribunal may, on the application of the purchaser, order the dealer to pay to the purchaser the reasonable costs of repairing the defect.

The Tribunal may, on an application under this clause, make an order under this clause on any terms and conditions it considers just.

PART 5

DISCIPLINE

Clause 26: Interpretation of this Part

Contains definitions of 'dealer' and 'director' for use in this proposed Part.

Clause 27: Cause for disciplinary action

This clause lists the causes for disciplinary action against a dealer, including (among other causes) where licensing was improperly obtained or where the dealer or another person has acted contrary to this proposed Act or otherwise unlawfully, or improperly, negligently or unfairly, as a dealer.

Clause 28: Complaints

The Commissioner or any other person may lodge with the Tribunal a complaint setting out matters that are alleged to constitute grounds for disciplinary action.

Clause 29: Hearing by Tribunal

On the lodging of a complaint, the Tribunal must conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action.

Clause 30: Disciplinary action

On the hearing of a complaint, the Tribunal may do one or more of the following:

· reprimand the person;

· impose a fine not exceeding $8 000 on the person;

· in the case of a person who is licensed as a dealer—

(a) suspend or cancel the licence; or

(b) suspend or cancel the registration of the dealer's premises;

· impose conditions as to the conduct of the person or the person's business as a dealer;

· disqualify the person from being licensed;

· prohibit the person from being employed or otherwise engaged in the business of a dealer;

· prohibit the person from being a director or having an interest in a body corporate that is a dealer.

Clause 31: Contravention of orders

If a person contravenes or fails to comply with a condition imposed by the Tribunal as to the conduct of the person or the person's business, the person is guilty of an offence and liable to a division 3 fine ($30 000) or division 7 imprisonment (6 months). If a person is employed or otherwise engages in the business of a dealer or becomes a director of a body corporate that is a dealer in contravention of an order of the Tribunal, that person and the dealer are each guilty of an offence and liable to a division 3 fine ($30 000) or division 7 imprisonment (6 months).

PART 6

MISCELLANEOUS

Clause 32: No waiver of rights

Except as expressly provided by this proposed Act, a purported exclusion, limitation, modification or waiver of the rights conferred by the proposed Act is void.

Clause 33: Interference with odometers prohibited

A person who interferes with the odometer on a second-hand vehicle is guilty of an offence and liable to a division 6 fine ($4 000). If a dealer is convicted of an offence of interfering with an odometer on a second-hand vehicle that the dealer has sold to a purchaser, the court may (in addition to imposing a penalty), on the application of the purchaser, make one or more of the following orders:

· an order that the contract for sale of the vehicle is void;

· an order that the dealer compensate the purchaser for any disadvantage suffered by the purchaser as a result of the purchase of the vehicle;

· any other order that the court thinks just in the circumstances.

Clause 34: Certain agreements to indemnify dealer void

An agreement between a dealer and a person (other than a dealer) from whom the dealer purchases a second-hand vehicle that indemnifies the dealer in respect of any costs arising under this Act in relation to that vehicle is void. (*Cf.* Section 37 of the repealed Act.)

Clause 35: Delegations

The Commissioner may delegate any of the Commissioner's functions or powers under this Act to particular persons. The Minister may delegate any of the Minister's functions or powers under this Act (except the power to direct the Commissioner).

Clause 36: Agreement with professional organisation

The Commissioner may (with the approval of the Minister) make an agreement with an organisation representing the interests of persons affected by this proposed Act under which the organisation undertakes a specified role in the administration or enforcement of the proposed Act. Such an agreement must be laid before Parliament.

Clause 37: Exemptions

The Minister may exempt a person from compliance with a specified provision of the proposed Act. An exemption is subject to the conditions (if any) imposed by the Minister and the Minister may vary or revoke an exemption.

Clause 38: Register of dealers and premises

The Commissioner must keep a register of licensed dealers and of premises registered in the name of a licensed dealer in which the Commissioner must record certain matters. A person may inspect the register on payment of the fee fixed by regulation.

Clause 39: Commissioner and proceedings before Tribunal

The Commissioner is entitled to be joined as a party to any proceedings of the Tribunal under this proposed Act and may appear personally or be represented at the proceedings by counsel or a public servant.

Clause 40: False or misleading information

It is an offence for a person to make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this proposed Act. The penalty if the person made the statement knowing that it was false or misleading is a division 5 fine ($8 000) and, in any other case, a division 7 fine ($2 000).

Clause 41: Name in which dealer may carry on business
A licensed dealer must not carry on business as a dealer except in the name in which the dealer is licensed. The penalty for breach of this clause is a division 7 fine (($2 000). (*Cf:* Section 42 of the repealed Act.)

Clause 42: Statutory declaration
If a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been so verified.

Clause 43: Investigations
The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to the determination of an application under this proposed Act or a matter that might constitute proper cause for disciplinary action.

Clause 44: General defence
It is a defence to a charge of an offence against this proposed Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

Clause 45: Liability for act or default of officer, employee or agent
An act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

Clause 46: Offences by bodies corporate
If a body corporate is guilty of an offence against this proposed Act, each director of the body corporate is, subject to the general defence under clause 44, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

Clause 47: Continuing offence
A person convicted of an offence against this proposed Act in respect of a continuing act or omission is liable, in addition to the penalty otherwise applicable, to a penalty for each day during which the act or omission continued, of not more than one-tenth of the maximum penalty prescribed for that offence. If the act or omission continues after the conviction, the person is guilty of a further offence against the provision and liable, in addition, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

Clause 48: Prosecutions
Proceedings for an offence against this proposed Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date. A prosecution for an offence against this Act cannot be commenced except by the Commissioner, an authorised officer or a person who has the consent of the Minister to commence the prosecution.

Clause 49: Evidence
For the purposes of this proposed Act, a person who has sold, or offered or exposed for sale, four or more second-hand vehicles during a period of 12 months, will, in the absence of proof to the contrary, be presumed to have been a dealer during that period.

Clause 50\: Service of documents
A notice or document required or authorised to be given to or served on a person may—

- be served on the person personally;
- be posted in an envelope addressed to the person at the person's last known address or, if the person is a licensed dealer, at the dealer's address for service;
- if the person is a licensed dealer, be left for the person at the dealer's address for service with someone apparently over the age of 16 years;
- be transmitted by facsimile transmission to a facsimile number provided by the person.

Clause 51: Annual report
The Commissioner must, on or before the 31 October in each year, submit to the Minister a report on the administration of this proposed Act during the period of 12 months ending on the preceding 30 June. The Minister must, within 6 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Clause 52: Regulations
The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this proposed Act. The regulations may impose a penalty (not exceeding a division 7 fine *ie:* $2 000) for contravention of, or non-compliance with, a regulation.

SCHEDULE—*Repeal and Transitional Provisions*
The proposed schedule repeals the *Second-hand Motor Vehicles Act 1983* and contains other provisions of a transitional nature.

Mr CLARKE secured the adjournment of the debate.

MINING (NATIVE TITLE) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 19 October. Page 697.)

Mr CLARKE (Deputy Leader of the Opposition): As I outlined in my second reading speech on the Native Title (South Australia) Bill yesterday, all the comments I made with respect to that Bill encapsulated my comments in respect of the Mining (Native Title) Amendment Bill, the Environment, Resources and Development Court (Native Title) Amendment Bill and the Land Acquisition (Native Title) Amendment Bill. I do not wish to proceed any further and am more than happy to support the second reading to enable the Bill to be considered in Committee.

The Hon. S.J. BAKER (Deputy Premier): In keeping with the spirit in which the debate was entered into in the first place and agreed previously, namely, that it would be a cognate debate but not involve the suspension of Standing Orders, I accept the cooperation of the Opposition and am more than happy to move straight into the Committee stage.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

Mr CLARKE: Mr Chairman, I seek your guidance on a point I have mentioned to the Deputy Premier. The amendments currently in my name relate to the definition of 'Aboriginal owner'. I also draw the Committee's attention to subsequent definitions of 'native title agreement', 'native title determination' and 'ordinary tenure'. They mean something only if my amendment with respect to clause 25 (section 58) gets up.

The CHAIRMAN: The Chair will test the feeling of the Committee. I propose that the amendment to be moved by the member for Ross Smith to clause 3, page 1, after line 17, to insert 'Aboriginal owner' be canvassed along with the subsequent amendments relating to 'native title agreement', 'native title determination' and 'ordinary tenure' and that he also canvass the substantial amendment to clause 25, which is really the more important amendment. The amendments to clause 3 are consequential on the amendment to clause 25 being carried. If the honourable member is allowed to canvass the amendments to clauses 3 and 25 as a test case, the Chair can then put the 'Aboriginal owner' definition to the Committee for determination. If the Committee is happy with that arrangement, it will mean that the Deputy Leader can range over a slightly wider area.

The Hon. S.J. BAKER: The Government is more than happy to accommodate this arrangement, because the debate about this definition does not make much sense unless we go further.

Mr CLARKE: I move:

Page 1, after line 17—Insert—
'Aboriginal owner' of land means—
(a) a person who holds native title in land; or
(b) a trustee for the holders of native title in the land; or

(c) a company of which the only shareholders are persons who hold native title in the land;.

I appreciate the comments made by the Deputy Premier and trust that he will be as accommodating during the rest of the debate with respect to these amendments, although I will not hold my breath. The Opposition has put forward this amendment for a number of reasons with which I will deal specifically later. I draw the Committee's attention to the way that my amendment to clause 25, which deals with section 58 of the Mining Act, is worded. It would provide:

(1) A mining operator may enter land and carry out mining operations on the land . . .
(c) after giving notice of the proposed entry describing the nature of the proposed operations.

We contend that, as the amendment is drafted, paragraphs (a) and (b) do not have to be considered at all. Mining operators, for the purposes of gaining entry to carry out mining operations, can automatically go to paragraph (c), because the words in paragraphs (a) and (b) roll on. The amendment can be dealt with in three parts. Our amendment contemplates three possible situations. The first is where land is native title land and no-one other than a native title holder has an interest in that land entitling him or her to possession of it—for example, under a lease. In those circumstances, the mining operator may not enter the land to carry out mining operations until authorised to do so by a native title agreement—an agreement between the registered native title holders or claimants and the mining operator—or by a native title determination—a determination by the ERD Court or a determination in substitution by the Minister in accordance with section 63R.

Secondly, where land is not native title land, the mining operator may not enter the land to carry out mining operations unless the mining operator is authorised to do so by an agreement with the owner of the land or a determination of the appropriate court—for example, the Warden's Court—following an objection from the owner in accordance with the Government's proposed new section 58A(3), or at least 21 days have passed after service by the mining operator on the owner of a notice of intention to enter the land describing the nature of the operations to be carried out on the land where, for example, there is no objection from the owner to that entry.

The third situation is where the land is native title land and someone other than an Aboriginal owner—that is, the holders of native title or a trustee or company holding title on their behalf—has ordinary tenure in the land, for example, an entitlement to possession under a lease. In those circumstances the mining operator would be obliged to satisfy the requirements of points 1 and 2 of the argument that I have just put forward. The third point relates to the proposed amendment to section 58 which effectively reflects the possibility that native title might not have been wholly extinguished by the grant of a pastoral lease.

The Hon. S.J. BAKER: I want to disabuse the honourable member of his interpretation of the Act. My advice suggests that native title is covered by part 9B of the Act. Section 58 provides a hierarchy. If it involves native title, we then go to part 9B and the rules that prevail there have to be adhered to in relation to any intrusion for mining purposes. The Opposition has raised a point which will be examined further, but we believe that the Act does not do what the Deputy Leader suggests. Section 58 is worded as it is because of the balance of the approach taken in new section 63F in part 9B. The Government's approach, in keeping with the Commonwealth Native Title Act, allows operations to go ahead if native title is not—I emphasise not—affected. An agreement or determination must be entered into by the parties if native title is affected. Section 58, as it stands, fits in with the requirements under new section 63F. There is an arrangement which takes a separate stance in relation to native title consistent with the provisions in the Bill.

Amendment negatived; clause passed.

Clauses 4 to 26 passed.

New clause 26A—'Compensation.'

Mr CLARKE: I move:

Page 11, after line 8—Insert—

Amendment of s. 61—Compensation.

26A. Section 61 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The owner of land on which mining operations are carried out under this Act is entitled to compensation from the mining operator for economic loss, disturbance, hardship and inconvenience resulting from the operations.;

(b) by striking out subsection (3) and substituting the following subsection:

(3) The amount of the compensation is to be decided by agreement between the owner and the mining operator or, in default of agreement, to be determined (on application by an interested party) by the appropriate court.[1]

[1.] The compensation to which an Aboriginal owner is entitled is to be determined by the ERD Court. (See section 5 of the Native Title (South Australia) Act 1994.)

Section 61(1) of the Mining Act provides:

The owner of any land upon which mining operations are carried out in pursuance of this Act shall be entitled to receive compensation for any financial loss—

and I emphasise the words 'financial loss'—

hardship and inconvenience suffered by him in consequence of mining operations.

The words 'financial loss' are limited to monetary loss. The words we seek to insert are 'economic loss'. We believe that economic loss extends to a loss of subsistence rights, for example, hunting rights. The loss of hunting grounds to mining would not ordinarily give rise to any monetary loss. The ERD Court should be the appropriate court for dealing with compensation for mining operations on native title land.

Our proposed amendment to clause 3 of the Native Title (South Australia) Amendment Bill would clarify this point—and I cannot remember whether that was one of the amendments that the Deputy Premier in a moment of generosity agreed to accept last night. Nonetheless, the important point of this new clause, particularly in relation to mining on Aboriginal lands, is that compensation for only financial loss does not recognise other losses that can be incurred by Aboriginal people. I gave what I thought was quite a good example in citing hunting: there might not be financial loss, but it would affect their way of subsistence and it would be an economic loss, as we would term it, and should, therefore, be compensable.

The Hon. S.J. BAKER: I note what the Deputy Leader has said. The Government is not in a position to accept this new clause. It understands the reasons why it is being put forward. The problem is that we opened up the whole Act to this interpretation, which has not been tested. That raises a number of possible difficulties, given the change to a definition that has had long standing within the mining industry, amongst those who would benefit from or be compensated for intrusion onto land. So, it is not as simple as changing a word: it could lead to a whole range of other

issues which could be to the detriment of the industry and the people concerned.

I would suggest that the definition of 'economic' becomes very broad, and I can think of a number of examples where financial considerations may apply. Economic considerations may have a far wider breadth and depth than perhaps even the honourable member contemplates. It may well be that the issue of financial hardship is addressed by the existing terminology, for the example provided by the honourable member. One would suggest, without getting into a legal argument about this, that, if a person was deprived because of an inability to obtain animals that they have obtained in the past, this would lead to further costs or hardship associated with that deprivation. Perhaps the current definition, which is clearly understood by one and all and which has stood the test of time, serves better under those circumstances. It may well be that in that situation the court would hear that particular point of view put forward, because it does translate somewhere to a financial cost to the person concerned, or to the tribe concerned, or whatever.

So the issue is exceedingly complex, and changing definitions to recognise what the honourable member is putting forward may be fraught with a great deal more danger than any of us here perceive. I give the honourable member an undertaking that the matter will be looked at before the Bill is debated in the other place to see whether there is a way of satisfying the argument put forward by the honourable member without causing grave difficulties, which we would not wish to impart on anybody in the process.

Mr CLARKE: I am partially encouraged by the Deputy Premier's words. I appreciate that he understands the issues behind my moving the new clause. The Opposition is not seeking to, if you like, upset a regime that has been established over the years with respect to the Mining Act and financial compensation. I understand the consequences that the Deputy Premier is talking about but, at the same time, given that we are dealing with native title issues, we must also be innovative and, if the words 'economic loss' are potentially too damaging or too broad, we have to find words that do take into account the legitimate concerns of the Aboriginal people in this exercise, because they will suffer a loss.

What does concern me in terms of the Mining Act as it is currently constituted—and, as the Deputy Premier has pointed out—as has been subject to litigation and case law over time—is that in the example I have just described the Supreme Court, or whichever court hears the case, may feel compelled to follow past precedents which have more narrowly kept very much to the point of financial loss. The legitimate rights of the Aboriginal people in this area could be tossed away simply because it is narrowed down as a result of our westernised European version whereby the only real loss to us is in the old hip pocket nerve approach. That is not necessarily appropriate in Aboriginal communities, particularly in remote locations where people live a traditional lifestyle.

I thank the Deputy Premier for his words of encouragement in so far as the Government will look at it. It is an issue that we are very serious about, and we would seek to ensure that that is taken on board in the passage of the Bill through the Upper House. We should use our time to find those innovative words which can do justice to both.

The Hon. S.J. BAKER: The legislation refers to financial loss, disturbance, hardship and inconvenience. The issue to which the honourable member is referring certainly involves hardship if people are deprived of food, and it may involve inconvenience if it is a tribal custom from which they are being deprived. We will examine this matter but it may well be better served by a footnote if there is any difficulty rather than changing what has withstood the test of time.

New clause negatived.

Clauses 27 and 28 passed.

Clause 29—'Insertion of part 9B.'

Mr CLARKE: I move:

Page 11, lines 21 to 34, page 12, lines 1 to 8—Leave out section 63F and insert—

Mining operations on native title land

63F. A prospecting authority confers no right to carry out mining operations on native title land and a mining tenement over native title land may not be granted or registered unless—

(a) the mining operator is authorised by a native title agreement or determination registered under division 3 to carry out mining operations on the land; or

(b) a declaration is made under the law of the State or the Commonwealth to the effect that the land is not subject to native title.

A declaration to this effect may be made under part 4 of the Native Title (South Australia) Act 1994 or the Native Title Act 1993 (Cwth). The effect of the declaration is that the land ceases to be native title land.

Section 63F(1)(a) in our view gives a misleading impression that certain mining operations as defined in the Mining Act may not affect native title, as that expression is explained in section 227 of the Commonwealth Native Title Act, not section 226 as the Bill suggests. The proposed substitution is in line with the corresponding provision, new section 63F(2)(b), in the Government's draft Bill of 16 August 1994.

The objection to section 63F subsections (2), (3) and (4) is on the following bases: first, the right to negotiate procedure should operate prior to the granting of a mining tenement and not after; and, secondly, subsection (3) is contemplating conjunctive agreements in conjunctive determinations. It is also contemplating that an agreement or determination may extend the prospecting authorities and mining tenements not yet applied for. When I use the term 'conjunctive agreement' to refer to an agreement between native title parties and a mining operator which covers not merely prospecting or exploratory operations but also mineral or petroleum production, the former may be authorised by prospecting authorities, mineral claims and exploration licences, the latter by mining leases, precious stone claims and petroleum production licences.

A 'conjunctive determination' means a determination by the Environment, Resources and Development (ERD) Court which allows for mineral or petroleum production in addition to prospecting or exploratory operations at a time when the tenement applied for relates to prospecting or exploration only. We have no objection to freely negotiated conjunctive agreements between registered native title holders and mining companies. We strongly object, however, to the provision for conjunctive agreements between native title claimants and mining companies. We further strongly object to provision for conjunctive determinations in any circumstances and not just, although this is of major significance, because proposed section 63R would give the Minister power to impose a conjunctive determination by way of a substitution for the determination of the Environment, Resources and Development Court. As indicated, we are opposed to the granting of mining tenements over native title land prior to the completion of the right to negotiate procedure (and I alluded to that in my second reading speech).

In brief, my reasons are as follows: first, their effect in many instances will be to render native title rights nugatory. Many small mining operators will simply ignore the statutory requirements to give notice and negotiate, etc., having had their claims registered. They will proceed to carry out mining operations, running the risk, whether knowingly or unknowingly, of the existence of native title over the relevant land. Secondly, it is what we believe is inconsistency with section 43 of the Native Title Act. The Government is seeking to minimise the potential for conflict between small mining operators and Government, but at the expense of maximising the potential for conflict between small mining operators and native title holders. With respect to the argument on the conjunctive agreements that can be made, I will not use such an extreme example as I used yesterday in my second reading speech, but quite legitimately, under the State legislation, you could have an example where the mining company has been granted its tenement, it goes out and gives notice as it is required to do, and 24 hands go up in that period as being native title claimants. An agreement could be struck between that mining company and half of those claimants, 12 of them, from go to whoa, from exploration through to mining operations.

The other 12 are still in the courts trying to establish whether or not they are entitled to be native title holders. A determination is made that they are in fact native title holders, but after the agreement has been struck. That agreement is still binding, even though those remaining 12 have had no input necessarily into the making of that agreement and they and their descendants, for so long as that agreement runs (it could be an agreement for 25 years for a mining operation), are stuck with an agreement that they had no input in, even though, by a process of determination by the appropriate courts, they were found that they are native title holders. That deals with the conjunctive issues.

The other one, to which I have already referred in my contributions so far today, also very much relates to whether you place the cart before the horse. I am sure that an argument will be advanced with respect to the interpretation of sections 28 and 43 of the Native Title Act, and I will deal with it then. However, it is our view that the Commonwealth Act clearly states that, before being allowed to obtain a tenement, a miner must negotiate with native title holders prior to getting agreement or having it determined before commencing the work involved.

As I said yesterday, the Opposition is not concerned with companies the size of Western Mining Corporation or other significantly large mining companies, because they are in this business for the long haul and therefore will no doubt have the infrastructure and the will to go through the necessary legal processes to ensure that their mining tenement is valid at the end of the day. But the small mining operators will nonetheless, I believe, chance their arm and whip in and find, say, a bit of opal somewhere—South Australia is a very big State, particularly in the outback—and run the risk of being caught and fined for a breach of the Act but, nonetheless, go ahead and do their 12 or 18 months mining, with no consultation and without seeking agreements with native title holders in the area or seeking to find out whether there are any native title claimants in that area.

So, I do not think there is any real saving in time for large mining companies. Under State Government legislation, the mining companies cannot commence their mining operations until they have given notice. After they get their mining tenement, they have to give notice and ascertain whether there are any native title claimants or holders in a particular area, and go about the business of negotiations. As we see it under the Commonwealth system, they have to do that prior to getting their mining tenement. I do not think that the State Government scheme will save those who do their job seriously and those with a long-term future in the mining industry so much as a day, because they will have to go about the process of negotiations and establishing native title holders or claimants in any event.

What it does is open the door very significantly to those small operators to basically rort and abuse the system, and set up potential areas of conflict between small mining operators and Aboriginal communities, with the Government being able to say to mining companies, 'That's your worry; we have passed the law; you have the responsibility of those negotiations; you go and do it.' We just think that is the wrong approach with respect to this matter. It is a fundamental difference.

The Hon. S.J. BAKER: The honourable member has raised a number of issues that run into one another in terms of the principles developed under his own amendments. There seems to be some confusion about this issue but, if an agreement is reached at that stage, a very debateable point does arise as to the extent to which that agreement reached for exploration should proceed to the mining tenement stage. We are quite actively looking at that matter at the moment, so the honourable member's point of view is not in any way discounted. However, in normal negotiations we would expect that this provision could prevail for owners of land. We are sensitive to the issue that he has raised, but it is our view that we have included certain things in this legislation which require almost full disclosure of those with interest in the land.

We have introduced such extensive conditions under the legislation during the notification stage as to invoke or galvanise, if not the people themselves—who may not be naturally aware of these matters—the representative groups of Aboriginal communities to certainly test their own communities to see whether there is interest in a particular piece of land. One of the issues that keep dogging us is the extent to which we can ascertain whether a right attaches to that land relating to a particular person or Aboriginal group.

The Hindmarsh Island bridge is a very interesting example, because the group was made aware of the circumstances by notification and consultation, but at the last minute a subset of that group determined that its rights were not being looked after, and I cite the case of the Aboriginal women. I cannot judge the merits of that case, except to say that a somewhat curious situation developed, and I do not think that the ultimate outcome did credit to anyone involved. However, we have to live with that outcome.

Whatever we feel about the Hindmarsh Island situation, it should be used as a lesson to us all. Therefore, by notifying all the people required to be notified under this legislation, one would assume that we will get a fairly extensive coverage of groups—and we have talked about the role of the ALRM and any other group that has standing among the Aboriginal communities, including their own councils—which will be able to bring forward evidence as issues arise. I do not know that we can go on forever, but I do not think that we can ever discount the possibility of another claim being made at some stage during the process.

We make a super human effort at the outset to satisfy ourselves that we are dealing with the group of people who have—or believe they have—some rightful claim over the

area in question. Having done that—and presumably galvanised the various groups into thinking about their history and researching the museum records—we believe that we are actually going to canvass a large number of people so as to either include or exclude them in the process.

During that process, it is still likely that someone may come along at a later date, and the process cannot be never-ending. So, we are saying that, under our provisions, extraordinary effort has been made at the outset, and therefore we are trying to get the 100 per cent record that we would like. In some cases we will not achieve that, and we may not achieve it until some 10 years down the track, as the honourable member would be aware. I do not think we would want to wait another 10 years to ensure that everyone is included in the process. Problems might occur because of people living over the border, and those sorts issues may provoke some interest in the claim before the court.

So, we are making every effort to bring interested parties together. Therefore, at the outset, when the court settles the issue of native title, my belief is that we are doing as much as is humanly possible in the circumstances. To extend the process beyond that point raises a number of issues, and I think it is inappropriate for them to keep coming back to the courts. I would like the honourable member to take this as a constructive comment, but it may well lead to a deferral of interest at a particular point, and then the matter may come in for consideration later if there is some mineral discovery of some economic benefit.

That would not be seen to be in the interests of any particular person. I am suggesting that the process of identification of the groups and individuals involved should be as exhaustive as possible in the first instance, and then we avoid a number of the pitfalls the honourable member has outlined; otherwise, the consequences could be considerable and, again, could lead to points of aggravation that we do not need.

The Native Title Act does not state that the mining operator must negotiate before the person or mining company concerned is given tenement: it says that the Government Party must negotiate under its own scheme. It does not impose this on all States but allows for alternative regimes, so I think there is a misinterpretation of what the Commonwealth Act does actually say. However, I appreciate the honourable member's point, which is under active discussion.

We will make special effort to seek clarification from the Commonwealth on its stance as to whether agreements reached in the initial exploration stage should translate into the granting of mining tenements as a natural flow on, or whether it should be part of a separate exercise. Again, we cannot accept the honourable member's amendments. We recognise the spirit under which they are put forward, and the honourable member has made some valid observations about concerns within various communities. However, I would like to think that we are getting it right at the start and that, when claims are made later, the court can act should a person not be part of the agreement.

Even though we may do the job properly in the first place, it is possible that a person could come forward as a result of the provision of information that could not conceivably be known at the time—and I make the point 'not conceivably known at the time'. Opportunity exists for that person to go to court for some determination of their rights. I believe the legislation is very responsible. There is a typographical error in the footnote to clause 63(f). It says 'section 226', but it should be 'section 227'. As a footnote, it does not require amendment, but it will be adjusted before it goes to another place.

Mr CLARKE: The Opposition wants it right the first time, too, with respect to native titleholders or claimants, so that the miners know what they are getting themselves into. I will not go through the example I gave of the 24 claimants who put up their hands. We are not talking about people who, after the expiry of the notice period, or six years after commencement of the mine, suddenly put up their hands and say, 'Hang on, we were not consulted; we have a claim.' We are only talking about people who put up their hands within that time frame and who are subsequently found to be legitimate native titleholders to that area. An agreement might have been reached with the mining company at the very beginning, and that agreement still sticks.

Those claimants who are subsequently held by the court to be native titleholders, and who, in a sense, should have been at the bargaining table from day one in terms of getting their point of view across and what they want are denied that right. As I understand it, they cannot go back retrospectively with respect to the agreement. That is very important. We are not opposing disjunctive agreements in the exploratory stage. It would be a 1 in 1 000 shot if a mining company knew, before it went onto a block of land, that there were, say, 15 kilograms of gold to every 20 kilograms of dirt. They might think, 'You beauty, I do not have to do too much about this. Let's get a deal done quickly before anyone finds out about it.'

The Hon. S.J. Baker interjecting:

Mr CLARKE: That is right. In the main miners want access to the land to check the extent of any minerals, the composition and the richness of the lode before they start thinking about royalties, employment opportunities, and the whole mining operation. We are not delaying that process. We are trying to protect the interests of those people who have an agreement, from go to whoa.

The Deputy Premier referred to the Commonwealth Act, and I spent the past five minutes reading it. Section 43(2) of the Native Title Act sets out the regimes that States must follow if they are to get the big tick from the Commonwealth Government that their legislation is up to scratch. Section 43(2) provides:

> The alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they:
>
> (a) contain appropriate procedures for notifying registered native title bodies corporate, registered native title claimants and potential native title claimants of the proposed act;

I stress the words 'of the proposed act'. It clearly contemplates, in my view, that the act is handing out the mining tenement to the miner. I do not quite see how the Deputy Premier can say it conforms with section 43 of the Commonwealth Act because that provision seems to suggest that the words, 'of the proposed act' mean that you must do these things first before you come along and get your mining tenement, whereas the Deputy Premier's legislation contemplates doing the act first, that is, handing out the mining tenement, before any consultation. Section 28 of the Act is headed 'Act invalid if done before negotiation or objection/appeal etc.' Section 28(1) provides:

> The Act is only valid if:
>
> (a) by the end of the period of two months starting when notice is given under section 29, there is no native title party in relation to any of the land or waters that will be affected by the Act;

As I read the Commonwealth Act, it clearly contemplates that the process of negotiation and the like in determining who are the claimants or the native titleholders of the land has to be done first before you get your mining tenement. I do not want to belabour the point because obviously the Deputy Premier has a different view on the legal interpretation, but we may find that, rather than having this certainty applying, the mining industry itself will know about these provisions and the legal points of view, which would suggest that what I am saying is correct and that the honourable member's view is wrong. Of course, we will have to wait for the High Court to work that one out as well. Where is the certainty for the miners in this exercise?

If they approach the exercise in the way that the State Government has suggested, the miners could well find subsequently that they have carried out an invalid act. We are all about certainty, and we think that our amendment achieves that to a far greater degree than the Government's proposal. The Deputy Premier wants to see that the business is expedited. For a miner, who is genuinely in the business of negotiating with native titleholders, or native title claimants, and whether the cart goes before or after the horse, the difference in time is probably inconsequential because they must go through that process anyway.

The State Government's legislation opens the way for small mining operators who are not in it for the long haul, who will take the risk of contravening the Mining Act and who run the risk of being caught, who do not worry about giving notice or about negotiating with people, and simply mine an area for all its worth and then steal away into the night with their rewards. We believe the process that we are suggesting will overcome that and rightly put the Government in the position where, before any miner kicks off, they have to go through certain processes to obtain a licence. That is our fundamental concern—small mining operators, not the large ones.

The Hon. S.J. BAKER: I will take up three of the points made. Our interpretation of section 43(2)(a) is that the Commonwealth put it in with a degree of conservatism. It is technical rather than apparent. That is the information that has been fed back to us. It leaves that element in there, which suggests that, if the State is not making enough effort to make sure that everyone is aware of what is going on, that could be the perceived interpretation. We believe the strength of our other provisions obviates the need for this issue to be canvassed in the way the honourable member has interpreted it. They did not want to exclude potentiality, for the very reasons that I have already expressed.

As to when native title is affected, it comes into being only when the mining tenement is granted and not the exploration, because that is consistent with its freehold/leasehold status. Under our system the proposed act is the act that affects native title, that is, the mining operations. If the little miner sneaks away in the night, we miss out on royalties. If everyone misses out because someone has dug a hole without anyone knowing, obviously they are in breach of the Act. As soon as they are into the system, all the provisions apply. That invokes the various safeguards laid down. I am not sure that the Deputy Leader has understood. If one is granted a mining tenement, they have to go through the procedures.

Mr Clarke interjecting:

The Hon. S.J. BAKER: We do all right out of Coober Pedy.

Mr Clarke: Do you get your full share?

The Hon. S.J. BAKER: No, we do not get our full share, as the Deputy Leader is well aware.

Mr Clarke interjecting:

The Hon. S.J. BAKER: There have been suggestions that 20 per cent or 30 per cent of what is taken out of the ground is revealed. That begs another question. It is not the issue of whether there is an appropriate agreement in place; it is a question of whether the rewards are as specified in the returns provided. It is the granting of the tenement which affects native title. The Commonwealth agrees with that interpretation. The Deputy Leader has made an issue of one aspect which I said we are willing to look at concerning the extent to which we negotiate up front for the full range of exploration plus the mining tenement. We will be discussing that issue further with our Commonwealth counterparts, and there may be some change or adherence to what we have here. As I said, if we get it right, we do not leave the door open and we do not create laziness in the system or lack of adherence, because people can come along later and have a grab at the system, for whatever reason. We are trying to make sure that it is up front, that it happens at the beginning and therefore the claims are as legitimate as possible. They get to the point of being satisfied as far as is possible, so it is all on the table.

If we do as the Deputy Leader suggests, we could have a rolling situation of people saying, 'We'll put in a claim now.' Further down the track someone else will put in a claim and so on. That has inherent dangers, as the Deputy Leader would appreciate. We will be looking again at the natural flow on from exploration to tenement. We believe it provides all the safeguards and is appropriate. If there is dissatisfaction in that stance, we will obviously have to modify the stance. However, we believe we are doing as much as possible to get it right up front and at the beginning, and that that approach will satisfy people. We cannot necessarily satisfy all the people because, when one gets into a determination, not everyone is satisfied with it. That is achieved through the independence of the court and with the assistance of the Commissioners. I am sorry that we cannot accept the amendment, but we appreciate the views put forward by the Deputy Leader. It is a matter that we will discuss further prior to the passage of the legislation.

The Committee divided on the amendment:

AYES (9)

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

NOES (33)

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

NOES (cont.)

Wotton, D. C.

PAIRS

Rann, M. D. Armitage, M. H.

Majority of 24 for the Noes.

Amendment thus negatived.

Mr CLARKE: I move:

Page 12, lines 9 to 20—Leave out section 63G and insert—

Protection for applicants for mining tenements over native land.

63G. (1) If a person makes a genuine application for the grant or registration of a mining tenement over native title land, no other mining tenement may be granted over the same land for minerals of the same kind.

(2) However, the Minister may dismiss an application to which subsection (1) applies if it appears that the mining operator is not proceeding with proper diligence to obtain the necessary native title agreement or determination to authorise mining operations on the land.

This amendment is designed to secure the priority of the first applicant for a mining tenement over particular land pending the conclusion of the negotiating procedure and the ultimate grant of the mining tenement. As with subclause (1), this proposed amendment contemplates the adoption of the amendments to ensure that the right to negotiate a procedure operates prior to the granting of a mining tenement. Accordingly, rather than the Minister revoking the mining tenement that has been granted over native title land because of the mining company's tardiness, our amendment allows for the Minister to cancel the application in similar circumstances.

I accept that, having lost the previous amendment by the slenderest of margins, a number of these amendments are somewhat sequential. Nonetheless, for the education of the Deputy Premier and the Government during the passage of this Bill from this House to the Upper House, I think it is worth my while canvassing these points. I will not call for a division, because we have already voted and divided on the key item, but it is useful for the Government fully to appreciate our reasons and likewise for us to hear the Government's response to the points that we put up with respect to these amendments so that we can work constructively together between now and when the matter is debated in another place.

The Hon. S.J. BAKER: These amendments are part and parcel of a package which is really the rewrite of part 9B. We have canvassed the issues previously. There are slight changes. The amendment does not refer to prior rights but adds to what is already in the Mining Act, which recognises the stance the Opposition is taking on the issue of native title. For the reasons already expressed, we understand the constancy of the honourable member, but from our point of view in the interests of consistency we reject the amendment.

Amendment negatived.

Mr CLARKE: I move:

Page 12, after line 24—Insert—

(2) However, an application cannot be made if—

(a) the land is subject to a declaration under the law of the State or the Commonwealth to the effect t hat the land is subject to native title; or

(b) an application for a native title declaration has already been made under the law of the State or the Commonwealth, and the application has not yet been determined.

Amendment negatived.

Mr CLARKE: I move:

Page 12, lines 27 to 37—Leave out section 63I and insert—

Negotiation of native title agreement.

63I. (1) A person (the 'proponent') who—

(a) is an applicant for the grant or registration of a mining tenement over native title land; or

(b) holds a prospecting authority and wants to explore for minerals on native title land;

may negotiate an agreement with the relevant native title parties authorising the proponent to enter the land and carry out mining operations on the land.

(2) The native title parties with whom the proponent is required to negotiate are those who are registered under the law of the Commonwealth or the State as holders of, or claimants to, native title in the land or any part of the land two months after notice is given under this Division to all who hold or may hold native title in the land[1].

(3) If the proponent is an applicant for a mining tenement (rather than a person who merely holds a prospecting authority) and the agreement is negotiated with persons who are registered under the law of the State or the Commonwealth as the holders of native title in the land, the agreement is not necessarily limited to mining operations of the kind contemplated by the mining tenement for which the proponent has applied, but may extend also to future mining tenements.

[1] For method of service see part 5 Native Title (South Australia) Act 1994.

Mr CLARKE: I refer the Deputy Premier to our concerns with section 63H, to which I proposed an amendment, and I take his word that he understands what we are saying. Section 63H is unnecessary and our preference would be to delete it. Clause 20 of the Native Title (South Australia) Bill allows for a mining operator to make an application if native title does not exist. However, if section 63H is to stand, an appropriate limitation should be made to the right to apply for such a declaration. Those limitations are set out in paragraphs (a) and (b) of our proposed amendment. I do not think they are particularly controversial amendments, and the Minister said he will reflect on them.

The amendment to section 63I is consistent with the requirement that the mining operator implement negotiating procedures prior to the granting of the mining tenement. It is consequential on the earlier debate but, for the information of the Government, I will state our reasons in full with respect to the flow-on. The agreement should not constitute an agreement for the purposes of part 9B unless it is entered into after a mining tenement has been applied for. This provision is not intended to discourage mining companies from commencing negotiations prior to an application for a mining tenement. Paragraph (a) deals with mining tenements whereas paragraph (b) deals with prospecting authorities. Prospecting authorities are afforded a general right to prospect, that is, to carry out exploratory operations which do not involve the disturbance of land or water by machinery or explosives.

In not continuing to press for a miner to apply for the registration of a claim before carrying out any prospecting on native title land, as may be the effect of section 43 of the Native Title Act, we are being realistic in terms of what is achievable by way of amendment to the Bill. It is not conceded that a prospector has the right, under the Native Title Act, to enter native title land without first applying for a mining tenement.

As indicated earlier in relation to section 63F, conjunctive agreements should be allowed only in specific circumstances. They are inappropriate where there has been no determination, whether under the Native Title Act or the Native Title (South Australia) Bill, as to the identity of the native title holders. Section 63(3) also appears to contemplate an

agreement being entered into in relation to possible future prospecting authorities and mining tenements, presumably all being within the geographical area over which the native title parties are registered native title holders or claimants. If an agreement is to extend to undefined areas, it should only be in circumstances in which those areas lie within the geographical area over which those entering into the agreement as the native title parties or on whose behalf it is being entered into by their registered representative comprise all the registered native title holders.

The Hon. S.J. BAKER: Regarding the proposed amendment, I undertake to look at the provision. Paragraph (a) is unnecessary, but there may be some sense in paragraph (b). We would not have been able to accept it as it was written, but we will look at that matter on the way through. At first sight, it looks reasonably acceptable, so we will have it tested.

We are talking about a fundamental issue. Either there is a declaration that there is no native title or there is a requirement to enter into negotiations. We have talked about the issue of agreements as being a fundamental problem. In the absence of a use-by date, a process can extend for many years, which would be to the detriment of all parties concerned. I make the point that the courts are there to make determinations.

We believe that there are safeguards in the legislation which protect the rights of the various parties. We have a different way of approaching the matter, so that it is determined sooner rather than later. We believe that the process that we are following is basically consistent with what happens in other areas affected by exploration and mining and it carries further safeguards for those who have a native title interest.

The issue is quite fundamental, so we cannot accept the amendment. We have canvassed this issue on the way through on other clauses. I think that the debate has sometimes spread into other areas of the Bill on the way through and we are now getting down to some of those areas. In my second reading response I expressed my reservations, plus consideration of other issues relating to the Bills, and that confirms our desire to advance this measure in a workable way so that there will be a coming together of the parties concerned sooner rather than later, which I believe will be in the best interests of everybody concerned.

I make the point again that the worst thing we can do is to have a situation where interests can be expressed at different times during the proceedings. That may lead to people waiting until that time has elapsed or until there is a mineral claim which is worth something before putting their hand up. That gives rise to an untenable situation, as the honourable member will understand. Yet, if a genuine claim is available, there are ways in which that person's claim can be heard. We have made the point strongly previously about the intent of the Act. It is not to the honourable member's liking and it may not be to the liking of a number of interested parties, but we intend to pursue this mechanism.

Amendment negatived.

Mr CLARKE: I move:

Page 13, lines 22 to 24—Leave out subsection (4) and insert—

(4) A determination under this section—

(a) may only authorise the proponent to carry out mining operations under a prospecting authority that the proponent currently holds or under a mining tenement for which the proponent has applied; and

(b) if the proponent is an applicant for the grant or registration of a mining tenement in respect of the land—has no effect until the tenement is granted or registered.

I do not think I should have accepted the Deputy Premier's kind offer last night to knock off at 10 o'clock, but he was in a generous mood last night in accepting so many amendments. Unfortunately, he has had some rest and has decided to put steel back into the process. Section 63K indicates that the ERD Court may make a conjunctive determination where there is no native title party as defined under section 63I(2) within two months after notice is given. It should not be open to the ERD Court to make a conjunctive determination unless there has been a conclusive determination that native title does not exist. This stems back to what we have had debates about during the past three-quarters of an hour.

Such a conclusive determination may arise only following an application for a native title declaration (for example, pursuant to section 63H), from which time the right to negotiate procedure would not apply to the land in question. In our view, such a position is also outside the parameters set out under section 43 of the Native Title Act. The ERD Court should be empowered to make determinations only in relation to mining operations authorised by a current prospecting authority or an applied-for mining tenement.

The Hon. S.J. BAKER: This is a matter on which we said we were going to reflect further. I am not sure that the member has got the whole argument correct in the process. However, clause 29 inserts new section 63K(4), which provides:

A determination under this section authorises the mining operator to carry out mining operations under both current and future prospecting authorities and mining tenements.

There is a suggestion about the break between the exploration and the mining, and then the mining and the further mining. So, those matters will be looked at and tested with the Commonwealth Act to ensure that they have a reasonable level of comfort. As I indicated to the member previously, we are more than happy to review that situation. We believe that it is a very workable solution. However, as I pointed out, if the Commonwealth expresses displeasure to the point where it says that it will impose its will upon us, we will have to look at this one further. As I have said, we believe that we have a very workable solution here. The points that have been made are recognised and we will be looking at this provision on the passage between the Houses.

Amendment negatived.

Mr CLARKE: I move:

Page 14, after line 13—Insert new subclause 63L(4)—

(4) A determination under this section—

(a) may only authorise the proponent to carry out mining operations under a prospecting authority that the proponent currently holds or under a mining tenement for which the proponent has applied; and

(b) if the proponent is an applicant for the grant or registration of a mining tenement in respect of the land—has no effect until the tenement is granted or registered.

The basis of this amendment is to ensure that where the proponent is intending to carry out the proposed mining operations pursuant to a mining tenement the authority of the summary determination operates from the date of the grant or registration of that tenement.

The Hon. S.J. BAKER: The amendment is consistent with the arguments that have previously been canvassed. It is a consequential change that has been made, so we cannot accept it.

Amendment negatived.

Mr CLARKE: I move:

Page 14, lines 15 to 17—Leave out subsection (1) and insert—

(1) The proponent must negotiate in good faith with native title parties with a view to obtaining their agreement to the conduct of the mining operations on the native title land.

This deals with negotiating in good faith. This was a point that I made in my second reading speech on the Native Title Bill. In our view, we have to be careful with respect to the obligation that the current Bill places on native title parties to negotiate in good faith with a view to reaching an agreement. The native title parties must retain the right to oppose any mining operations on their land and maintain that position before the ERD Court, as contemplated in section 63O(2)(a).

If the Deputy Premier is not content with our wording as per our amendments, the Opposition would be prepared to accept perhaps a different form of wording in relation to good faith maintaining with respect to both sides, provided that it did not compel one side or the other to shift their initial point of view. I tried to explain that yesterday by saying that it is my understanding that the meaning of 'bargaining in good faith' is that there is an obligation on both parties to reach agreement and to shift from their initial position. Circumstances could arise where Aboriginal native title holders might say their first position is, 'We do not want your mining operations under any circumstances.' If that is the case, then the miners have the opportunity to seek a determination from the ERD Court and the like.

So, they are ultimately not precluded from starting their operations up, but the native title holders should not have their positions compromised in the courts by accusations that they had not bargained in good faith; that is, by seeking some agreement they had not shifted at all from their base position. One can understand that, particularly in areas such as sacred sites, or positions such as that, where they can genuinely hold firm views that they do not want a mining operation whatever the price, and they are not bargaining in good faith: they have sincerely told the mining operators their view exactly and they should not have it held against them at a subsequent date with accusations that they had not bargained in good faith.

I will be interested to hear the Deputy Premier's response with respect to what he perceives is the legal position as to bargaining in good faith. But, they are genuine fears that the meaning of those words is that there is an expectation that one must work towards an agreement, and hence that means the shifting of one's initial position, although I have not noticed too much of that from time to time in the amendments I have moved in the Industrial Relations Bill or anything else. You have certainly not shifted your position one iota on many occasions.

The Hon. S.J. BAKER: The member sells himself short. We are inevitably compelled by the argument if it is good enough. I would be more comfortable if the issue of good faith comprised both parties. However, it could be argued that here, because they are the natural owners of the land, they have rights and therefore do not have to bargain in good faith. I remind the member that people can take a position for profit over and above what would be regarded as reasonable because they hold a significant interest and would wish to play that position off.

I am not saying that will occur, but I just do not like the idea of good faith relating to one party and not the other party because those circumstances can—and will—prevail, particularly where you have more than one group that has an interest in the proceedings. I can imagine, because there are some differences between tribal communities for a whole range of reasons, that in disputes such as this, when you bring them around the table, there may well be occasions where stances are taken which would not naturally occur if you were dealing on a one to one basis.

We are prepared to have a look at the amendment. We understand what the member is putting forward. My personal preference would be for both sets of parties to be bound by the same outcome; that is, that everybody is going to the negotiating table in good faith. We have looked at it; it does have one or two redeeming features; it is probably not complete enough for what we want to achieve; but we will certainly look at it on the way through.

Amendment negatived.

Mr CLARKE: As the Deputy Premier points out, the next amendment on file is consequential on the debate we have just had. The Deputy Premier has assured me he will look at it and I accept that assurance. Therefore, I will not pursue it but proceed to the next one. I move:

Page 15, lines 2 to 4—Leave out paragraph (b) and insert—

(b) if the Court considers it appropriate, order the registration of the agreement as originally negotiated or with amendments agreed by the parties.

This is almost another consequential amendment. The Environment, Resources and Development Court should not be in a position to impose its own solution without the consent of the parties except pursuant to procedures set out in new sections 63O and 63P.

The Hon. S.J. BAKER: It is a consequential amendment.

Amendment negatived.

Mr CLARKE: I move:

Page 15, after line 10—Insert—

(7) If native title parties were not represented in negotiations by the relevant representative Aboriginal body, the Court may, on application by that body, made within three months after the date of a native title declaration to the effect that land is subject to native title, exempt (wholly or partially) from the application of subsection (6)(a) any person or group of persons who—

(a) are recognised at common law as holders of native title in the land; but

(b) were not among the original parties to the agreement.

This is again a consequential amendment, but if I keep repeating myself I might get the Deputy Premier to agree. We believe the danger inherent in paragraph (a) of new section 63N(6) principally arises where native title claimants and a mining company have entered into a conjunctive agreement. However, an agreement between such parties which falls short of being a conjunctive agreement may nonetheless include terms and conditions which are intended to define and limit the negotiating parameters for a possible mining agreement to be entered into in the event of a successful exploration. Representative Aboriginal bodies have a responsibility to protect those future native title holders who are not included among the parties to the agreement, including children and other descendants of the native title claimants. A relevant representative Aboriginal body should be entitled to intervene to protect the interests of such people where those claimants were not legally represented in the negotiations or were represented by lawyers who were not from that body or briefed by it.

The Hon. S.J. BAKER: I think this is a double 'No'. This is not only consequential but it takes it one step further. It keeps opening the door to a point where a little further down the track someone may say they want another bite of the cherry. What we are trying to do is get some determinations. I remind the honourable member that we are actually canvassing everybody who has a conceivable interest in the

process so that we get it right at the beginning. By this amendment, the honourable member is saying, 'If I don't think I've been represented particularly well, I can have another go.' If you talk about finality, about getting to a point of agreement that is actually binding, this erodes it completely. The answer on this one is, therefore, 'No, no'.

Mr CLARKE: The Deputy Premier has gone further back. He was starting to edge his way towards a common viewpoint with me, but he became worried by it and has jumped back considerably. I think we also need to take into account the following facts when we are dealing with people who may not have been adequately represented. There are cases in our own jurisdiction outside native title and so forth where, if there has been a perceived miscarriage of justice—and up until the Government's amendments to the Industrial Relations Act—the Industrial Relations Commission was able to intervene in an agreement struck between independent contractors and the principal, if they thought the agreement needed to be reviewed because of duress or because it was inherently harsh or unfair, and that is not unknown in a whole range of legal proceedings.

We are dealing with native title and, whilst a number of people assume that automatically Aboriginal people in these circumstances may have access to the Aboriginal Legal Rights Movement or some other lawyer, it is quite possible that in some remote areas of the State traditional tribal people enter into an agreement that is manifestly unfair, because of inadequate representation or advice they have been able to secure for themselves. Rather than looking at this as a double negative, if the Deputy Premier is serious about that contention, then what happens regarding all those other provisions in our laws which allow people to argue a case before the courts and say, 'I was unfairly tricked or misled into some agreement or contract that was entered into, and I want the court to review that agreement'? What is good for the goose is good for the gander.

I do not see anything particularly radical about this position put forward by the Opposition. In fact, it is rather consistent with the way we have dealt with things. I gave the simple example of the Industrial Relations Commission, up until the Government's draconian amendments came into effect on 8 August.

Amendment negatived.

Mr CLARKE: I move:

Page 15, lines 16 to 18—Leave out paragraph (a) and insert—

(a) if the proponent merely seeks authority to carry out exploratory operations under a prospecting authority currently held by the proponent, or if the proponent is an applicant for an exploration licence and seeks authority to carry out exploratory operations under the licence—four months from when the negotiations were initiated; or

The purpose of this amendment is similar to that in the last amendment which we again lost by a narrow vote, except that new section 63O deals with determinations by the ERD Court, whereas the last amendment was dealing with the registration of agreements under new section 63N. New section 63O refers to mining operations and proposed mining operations. It seems that the mining operations in question are those referred to in paragraph (a) in the definition of 'relevant period' in new section 63O(1). This refers to mining operations to which the negotiations relate. It may well be that one or other party, or perhaps both parties, to the negotiations may raise the possibility of an agreement being entered into which covers mineral production and not merely operations of an exploratory nature. The mere fact that negotiations have addressed that possibility would on the face of it be enough to allow the ERD Court to make a conjunctive determination.

We say that the ERD Court should not be entitled to make a conjunctive determination in any circumstance. The determination should be limited to the operations which may be carried out pursuant to the prospecting authority obtained or the mining tenements applied for. It is quite inappropriate for the ERD Court to be imposing conditions relevant to the construction and operation of a mine within a comparatively small geographical area at a time when the mining operations primarily under consideration are those of an exploratory nature over a very much larger area.

There are far too many unknown factors, including the mineral to be extracted; the size of the resource; whether there are Aboriginal sites or communities in the immediate vicinity; whether a fly-in/fly-out operation is practical; what Aboriginal employment opportunities exist; and so on. Furthermore, if new section 63O allows for a conjunctive determination, then so too does new section 63R—a highly dangerous scenario, where the Minister can intervene. It does not require much imagination to contemplate a mining company pressuring the Minister—and, depending on the Minister, it may not require much pressure at all—to overrule the ERD Court's determination and impose a conjunctive determination in substitution.

Allowing the ERD Court to make a conjunctive determination is, in our view, clearly inconsistent with section 43 of the Native Title Act. These points again have been canvassed but nonetheless have been spelled out in full by me in the hope that the Attorney-General, in particular, will take these matters on board when the Legislative Council deals with the Bill.

The Hon. S.J. BAKER: I thought that the honourable member was doing particularly well in consistency of argument until he mentioned sacred sites; we have a process for dealing with sacred sites, as the honourable member is well and truly aware. We are talking about consequential amendments to the argument that has already been put, and I have already indicated that we are attempting to get a tick from the Commonwealth on this issue, as we believe it is the appropriate way to proceed. We will be looking at the honourable member's very thoughtful contribution; we will be looking at the way in which the Commonwealth believes it should be addressed; and that may well lead to some of the amendments that have been put forward being accepted in this form or some other form on the issue of the relationship between exploration and mining tenements. However, we believe that we have a particularly good solution. The matter will be further canvassed, and the honourable member may well see changes more in keeping with the thoughts he has expressed. Certainly at this stage I cannot accept the amendment.

Amendment negatived.

Mr CLARKE: I move:

Page 15, after line 19—Insert—

(1a) The relevant representative Aboriginal body is entitled to be heard on an application under this section.

As I read it, this is consequential on the last amendment.

The Hon. S.J. BAKER: I think that the honourable member has done himself a disservice. We will look at this amendment. It makes some sense; we will not accept it in this Chamber, but in principle we do not disagree with the proposal. It will be subject to further scrutiny. I will not accept the amendment at present, but it is almost likely to succeed in another place.

Amendment negatived.

Mr CLARKE: I move:

Page 15—Lines 24 to 30—Leave out subsection (3) and insert—

(3) If the ERD Court determines that mining operations may be conducted on native title land, the determination must deal with the notices to be given or other conditions to be met before the land is entered for the purposes of mining operations.

I probably ought to quit while I am ahead with the Deputy Premier, because I almost gave it away. He accepted the last amendment, so perhaps I should try the same tactic with this one.

The Hon. S.J. Baker interjecting:

Mr CLARKE: Into the breach one more time. The ERD Court should not be limited in our view in the conditions which it may impose. If a mining operator is dissatisfied with royalty and profit sharing arrangements imposed by the ERD Court, he or she can take up the matter with the Minister and seek an overruling in accordance with new section 63R. Paragraph (b) requires the ERD Court to limit its determination as to the mining operations which may be conducted on native title land to those which may be carried out pursuant to the mining tenement applied for or the prospecting authority already obtained by the proponent.

The principle point is, in so far as limiting the conditions of what the ERD Court can do, the Committee must remember—and certainly the Minister is well aware—that under new section 63R the Minister can overturn a determination by the ERD Court. If the ERD Court determines royalties and profit sharing arrangements that are entered into—that is, agreements between mining companies and native title holders—and the Government of the day believes that the profit sharing or royalty payment is either too generous or too little to the native title holders, the Minister can exercise his or her rights under new section 63R in any event.

However, it should be see seen in the full light of day. If, after it has heard all the facts, the ERD Court believes a certain profit sharing arrangement is fair and reasonable and makes such a determination, then *prima facie* in my view it should not be overturned by the Minister. However, if the Minister believes that it is in the public interest to do so, the public, the Parliament, and so on can say, 'The Minister overruled this arrangement; why? The ERD Court had taken into account all these various factors in coming to its conclusion and, notwithstanding that, the Minister has overruled it.'

I accept that it allows for greater public scrutiny of a Minister's action to override a determination by the ERD Court. That is the purpose of the amendment, and I do not think anyone need fear that because, if any Minister is acting in what they believe are the interests of the State, the particular native title holders or the particular mining companies, that is fine. However, they should be prepared to stand up and say it proudly and give all their reasons for it, and then accept the political costs or accolades or whatever that may flow from taking that decision.

I cannot understand the practical reasons, given that the Minister still retains that unfettered right to intervene. I cannot understand an objection to the ERD Court going ahead in its determination of royalty or profit-sharing benefits. It may choose not to do so, but I do not see why the court should be fettered in that way, and the Minister, in the public interest, if you like, is still protected because new section 63R allows him or her to swoop down and exercise his or her powers pursuant to that section.

The Hon. S.J. BAKER: I guess the amendment changes the way in which we wish these matters to be agreed. Section 38(2) of the Native Title Act provides some level of protection for the miner under the circumstances the honourable member outlines.

Mr CLARKE: I note the comments of the Deputy Premier and his point that profit-sharing conditions are not to be determined under the Commonwealth Act. However, one can pick out the eyes of an Act to suit oneself.

The Hon. S.J. Baker: We have consistency between the two pieces of legislation.

Mr CLARKE: That is a matter of dispute, as I have already outlined. I would be quite happy if the Government had done the same as New South Wales and Queensland and brought in basically identical complementary legislation to the Federal legislation and set up State arbiter bodies, as has been done in those two States. The State Government has made great play of the fact that it wanted to retain all these sorts of powers for States' rights reasons, and various other reasons, which I do not think are necessarily as wholesome as they would seem, in terms of the presentation of those points of view to the Opposition.

The Deputy Premier cites the Commonwealth Native Title Act with approval—and he is dead right, in so far as section 38 is concerned—but he then says that in other areas of the State's legislation there is the right to negotiate. I know we have debated other aspects of commonality between the Federal legislation and the complementary State legislation, but I still say that, if we are to have separate State legislation and we can make it better so far as our own State is concerned, that is fine; so be it. I would be very interested to hear what the Minister has to say. For reasons of consistency, the Minister says that our ERD Court should not have the right to make determinations on profit-sharing arrangements, and the like, because of Commonwealth legislation in that area, but what about the general principle?

The State Minister will still have the power to supplant any ERD Court determination in that area, but it is being seen in the full light of day. What fundamental difficulties does the Deputy Premier have—given that the State Minister still retains that power—in allowing the ERD Court to go about its business of making determinations in this area? The Government still retains its reserve powers. What is wrong with the full light of day being displayed on these matters? If the Minister intervenes, the general public has the right to say, 'Well, the ERD Court thought it was a fair thing'. If the Minister of the day does not agree, let him or her stand up and say why.

The Hon. S.J. BAKER: The honourable member is quite right: Queensland and New South Wales were compelled by the rhetoric of the Commonwealth and believed that it had the system sorted out and that they should adopt the legislation. I am not critical of that. I can inform the honourable member that the Queensland Government is in a state of despair, to the extent that an enormous amount of effort is currently being exerted to make the Act work in Queensland. They are probably now in the process of doing what we are doing. If the honourable member wants further information, I suggest he contact Queensland.

At a recent meeting, a New South Wales Minister said, 'We did not think we had a problem because we do not have a lot of land that we believe could be subject to native title, and we were not going to get involved in the particularity when it was not a big issue.' I am informed that some problems are arising and that they will have to look at their

legislation again. Sometimes we have a great deal of goodwill but, in practical circumstances, it does not necessarily work. What everybody is seeking to achieve can be defeated simply because good intention does not make good law. I believe there has to be certain improvements to the legislation to provide those lanterns or guiding lights to make sure that it does work, and that is what we are doing with our own legislation.

As to the extent to which the court should be the determiner, I would say to the honourable member that we do have an arbitral body in the industrial arena. I am not saying that the parties will be dealt with in the same way as the unions and the employers in their jurisdiction. However, the honourable member would be well aware that when normal people meet and reach agreement then the strength of that agreement is so much greater, and that is why we believe in enterprise bargaining. The adversarial system in our courts and in our Industrial Commission has to be arbitrated. The process of negotiation between some parties starts from a great distance and they get to the point where they say, 'The court shall determine this matter.' In those circumstances they are poles apart.

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

The Hon. S.J. BAKER: As to the difference between facilitating an agreement and causing difficulty by having an adversarial system, as the Deputy Leader has been involved in the adversarial system, he would know that outcomes were sometimes to his liking but that, if anyone was an observer of the prevailing system, some would say that there is an element of madness about it all. On a number of occasions I have quoted to the Parliament the sorts of claims that have been put before the court in order to create a dispute. From building unions there have been extraordinary claims for six months annual—

Members interjecting:

The Hon. S.J. BAKER: I will not go through all the claims because the Deputy Leader is familiar with that time honoured system. A dispute was created by putting in a claim that was totally outrageous and saying that the employer had rejected it so that, therefore, it had to be conciliated. We do not want the system to work like that, we do not think it should work like that and we do not think it will work like that, because we are not creating an adversarial climate in the negotiations.

In structuring the court, we say that the rules that normally apply in the conduct of a court will not apply in these circumstances in order that each party can produce their best or provide as much information as is necessary without duress so that people can be heard fairly. The conditions that the Deputy Leader wishes to impose on the proceedings are totally wrong. That is why we have not said that the court shall be the determinant. We believe there is a way through the system that will prove more than successful, and I suggest that the honourable member rethink his amendment.

Mr CLARKE: The Deputy Premier's analogy is totally wrong. If he uses the industrial context about the ERD Court and the determination of profit shares and the like, he must recognise that one of the greatest motivators during my 20 years in the industrial game was that, in coming to a settlement with employers between points A and Z, the one point constantly on our minds—whether it be the employer or the employee—was that, if we did not settle somewhere in between, there was an arbitral body that would make a decision that I might not like. The employers might offer a quid and we might say, 'That is not bad, but I wonder whether we can just screw them for a little bit extra?' Then we might say, 'If we go to the Arbitration Commission, if the employer withdraws the offer totally and says, "Cop this or nothing", we have to be certain we can do better before the commission in an arbitrated case taking into account the time delays, elements of retrospectivity and so on.' We would have to take a conscious decision: there would have to be an overwhelming weight in our mind that we could do better at arbitration than accepting an agreement.

The Deputy Premier inadvertently put forward a good argument for the Opposition's amendment. I thought about it over the dinner adjournment and saw his wisdom. The Deputy Premier would have been a good advocate for the employing classes and that is the whole essence of an arbitral tribunal. In the case of a mining company and Aboriginal title holders, each has their respective position. If they go to the ERD Court, what is there for them to lose? If they are negotiating over royalties or profit sharing programs and a number of sticking points arise, there is no incentive between the parties to say, 'If we do not reach an acceptable compromise, an arbitrator can impose an agreement on top of us, and the only way we can be saved is if the Minister exercises his power under section 63R and comes in right over the top again.' That power would not be used by any Minister regularly, otherwise the whole concept would fall apart. If it was used with such monotonous regularity, why have an ERD Court at all; why not give every decision to the Minister?

You could not rely on the Minister to save your bacon on every occasion if you made a poor decision. Contrary to what the Deputy Premier says and contrary to what the Commonwealth legislation states, our amendment provides a real incentive to negotiating parties to come to an agreement because they know there is an impartial umpire who can say, 'If you cannot reach agreement, we will determine the profit sharing or royalty arrangements.' They are compelling arguments.

I have seen that in the Industrial Relations Commission for 20 years under State and Federal systems, and always in my negotiations with employers I had to weigh up whether, if I did not accept the settlement, what would be the best I would get out of them at the time and whether I could do better at arbitration. In many of the industrial disputes in which I have been involved, that sort of pressure on both employer and employee has caused us to come to an agreement without having to go to the arbitrator, because there was the threat of the sword of Damocles hanging over our head—if we went to arbitration, we could lose the lot or do worse than the offer on the table.

As to the adversarial system to which the Deputy Premier has referred, today in Question Time there were comments about the oil industry and the enterprise bargaining position in that industry where such an arbitration system is not involved. It is enterprise bargaining. The Minister for Industrial Affairs complained loudly about enterprise bargaining and 45 maintenance workers creating problems with regard to petrol and the like in South Australia.

That is enterprise bargaining, to which this Government is wedded, as the Deputy Premier said; each side is free to negotiate and fight with one another to try to get the best deal for their respective sides, virtually without regard to the wider community. They can do that, because they do not have to fear arbitration in enterprise bargaining; they do not have to worry that in their adversarial contests an outside arbitration

body can come in, superimpose itself over the enterprise bargaining negotiations and say, 'Enough is enough; this is what we determine is a fair and just arrangement.'

I will try to assist the Government to get itself out of the problem with respect to the oil industry and ensure that the Federal Minister for Industrial Relations gets to know the name of the State Minister for Industrial Affairs so that he will take a phone call from him and things can be sorted out. I will use whatever influence I have to assist in the resolution of this dispute because, having practised in the industrial relations sphere, unlike the Minister for Industrial Affairs, I may be able to give some practical advice and assistance in that area. I do not seek any kudos from that or even public acknowledgment from the Minister or the Government if I am successful, but I will accept a beer or cup of coffee from the Minister for Industrial Affairs.

If the Minister actually looks at what I say, an arbitration body which can deal with the lot, including profit sharing and royalty arrangements, can force competing parties to come to an agreement, because they know that if they do not come to an agreement the arbitration body can come between them and impose on both parties a settlement which neither might like. That has a compelling force in industrial relations and private arbitration proceedings that occur between people under private contracts who agree to go to private arbitrators to sort out disputes as to meanings of contracts. When people decide to go to court to contest certain features of an agreement or contract they have entered into, both sides try to work out a solution before they go to court, which can arbitrate and impose a solution on them. They think to themselves, 'Can I win? Can I do better than the offer? Is it worth the risk?' So, far from what the Deputy Premier fears, which is that this would only exacerbate the problems, I believe it would help considerably.

The Hon. S.J. BAKER: I am obviously not getting through to the honourable member. We do not believe it is appropriate for a decision on sharing profits to be handed down by a court—for two reasons. The court can arbitrate on what damage has been done. It can say, 'We believe there is a quantum for damage that has been caused.' It can reach agreement, because people bring forward records regarding the loss of income but who, may I ask, determines that somebody is worthy of a share of the profits? How many other people will be dragged into the system to agree or disagree? As the honourable member would well recognise, I am not sure that the sort of thing that the honourable member is talking about can actually be found anywhere in Australian law. I may be wrong, but I am not sure that there exists a precedent in the law for what the honourable member wants.

Mr Clarke interjecting:

The Hon. S.J. BAKER: Currently, the Wardens Court deals with the simple matters of what damage has been done and what income has been lost. Even if there is hardship in relation to hunting or whatever, that matter would be reasonably determinable, because there would be a body of evidence on a number of those issues, so they can come up with a quantum. It is a bizarre concept to say, 'We want to change the whole system now and we want the court to determine that a company's or a miner's profits shall be distributed in this fashion', because that brings up a lot of other considerations, including the right of the shareholders to participate and receive some level of comfort as to the proceedings.

Mr Clarke interjecting:

The Hon. S.J. BAKER: That is not the situation at all. When commercial agreements are made and you say, 'If you give me a licence for your product, you will get a share of the profits', that is an agreement. We are talking about an arbitrated situation; we are talking about a decision which may have no relevance whatsoever to the justice of the situation, or indeed which may be made without any recognition of other parties that have—

Mr Clarke interjecting:

The Hon. S.J. BAKER: The honourable member is now saying that the Minister has reserve power. We are saying that we will create conflict and a difference between the two parties, as we talked about earlier but, when the court is forced to make a decision on profit sharing, the Minister will stand on the sidelines saying—

Mr Clarke: Every national wage case uses that argument.

The Hon. S.J. BAKER: What we are saying is that profit sharing is outside the boundary lines which are currently considered appropriate compensation, and it is not the situation. I can only ask the honourable member to look at what he is trying to create. All he will create is a lot of damage and dissent. It is not appropriate for a court to determine the share of profits that should prevail, for whatever reason. It may well be that a mining company says (and there is one example in Australia at the moment where this does occur), 'We believe that you have certain rights. We will not pay a certain amount of money up front; or we will have a combination of offers on a profit front and on a compensation front for a particular amount to satisfy each of our requirements.' That is on the basis of offer and acceptance, not on the basis of a decision handed down by a court.

We believe that this provision is inappropriate for the reasons I have outlined. We think the court is quite competent to sort out the issue where there is a factual basis for compensation for damages, but when we get into this area we get into the unknown, and that will create its own levels of conflicts. I have heard what the honourable member has said. We do not accept the proposition.

Amendment negatived.

Mr CLARKE: I move:

Page 15, after line 30—Insert—

(3a) A determination under this section—

(a) may only authorise the proponent to carry out mining operations under a prospecting authority that the proponent currently holds or under a mining tenement for which the proponent has applied; and

(b) if the proponent is an applicant for the grant or registration of a mining tenement in respect of the land—has no effect until the tenement is granted or registered.

I have covered the arguments with respect to this amendment in my earlier address on this matter.

Amendment negatived; clause passed.

Remaining clauses (30 to 36) and title passed.

Bill read a third time and passed.

PAY-ROLL TAX (SUPERANNUATION BENEFITS AND RATES) AMENDMENT BILL

Returned from the Legislative Council without amendment.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT (NATIVE TITLE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 October. Page 701.)

Mr CLARKE (Ross Smith): Mr Deputy Speaker, again I indicate that I am happy for this Bill to proceed to the Committee stage.

Bill read a second time.

In Committee.

Clauses 1 to 7 passed.

Clause 8—'Insertion of section 20A.'

Mr CLARKE: I move:

Page 3, line 15—Leave out paragraph (a).

This amendment is fairly straightforward.

The Hon. S.J. Baker: I'm still trying to work it out. I read it twice and put 'Strange' against it.

Mr CLARKE: The issue of the transfer of proceedings involving a native title question from the ERD Court to the Supreme Court is dealt with in clause 6 of the Native Title (South Australia) Bill. The reference in new section 20A is therefore superfluous. The reason why it should be removed is that the Native Title (South Australia) Bill should make it clear that the Supreme Court in proceedings involving a native title question is to have the same powers as the ERD Court and must comply with the same procedural and other rules.

This is to make absolutely clear that when a case is transferred from the ERD Court to the Supreme Court the same procedural rules as would apply to the matter occurring in the ERD Court will carry over into the Supreme Court. It is not clear in the legislation as it is. I think I know what the Government was intending to do, that is to say, not just in this Bill but in other Bills, 'We are taking out of the ERD Court X number or 75 per cent of the rules that apply to the ERD Court. We have to keep referring to the rules of the Supreme Court Act to see what governs the Supreme Court's procedures. Therefore, we must make it absolutely clear in the legislation specifically dealing with native title that the Supreme Court, in dealing with matters that would be dealt with in the ERD Court relating to native title, must follow the same procedures as the ERD Court.'

The Hon. S.J. Baker interjecting:

Mr CLARKE: Yes, I do. That is a gross distortion of the truth. There should not be any fuss. There is nothing of major substance. It will not cost the Government a brass razoo more or attack your philosophical base. It is to ensure that if it goes to the Supreme Court that court will follow the same procedure as the ERD Court relating to native title questions. The Deputy Premier should be able to sleep easier at night by accepting this amendment.

The Hon. S.J. BAKER: Normally when I have Bills to handle I read them and compare the amendments and put a tick, a cross or a query against them, and then I seek greater legal advice than I have available to me. On this amendment I wrote 'Strange'. Then I read it again and underlined 'Strange'. After listening to the Deputy Leader, I think that I should underline 'Strange' again.

I am not sure whether the Deputy Leader is unduly complicating his argument. This is a very simple proposition. It says that these cases can be transferred between the ERD Court and the Supreme Court. What can be transferred between the ERD Court and the Supreme Court is important as a statement within the legislation. Therefore, we should list the items that can be transferred. It does not talk about the procedures that will be followed. Therefore, for completeness, we are saying that these are the particular matters or anything else that is prescribed by regulation. That is within the province of the ERDC with a transfer provision to the Supreme Court. In that way we have completeness.

I still cannot come to grips with the Deputy Leader's opinion on this matter. There is obviously something profound about the whole thing that I have missed and that has been missed by counsel. The best I can suggest is to have a translator who can explain it better or provide some background notes during the Bill's passage between the two Houses and we will be willing to look at them in depth. The reasons escape me, and I do not know that we can improve upon the argument in this forum.

Mr CLARKE: Quite the contrary. All that the Deputy Premier has to do is to accept my word. For the sake of clarity, the reason for its removal is that the Native Title (South Australia) Bill should make clear that the Supreme Court, in proceedings involving a native title question, is to have the same powers as the ERD Court and must comply with the same procedural and other rules. I am obviously not getting through to the Deputy Premier.

The Hon. S.J. BAKER: You have already amended the other Bill to make it quite clear. All I am saying is that for completeness we are listing the items that can be transferred between the two courts.

Mr CLARKE: We will deal with that matter in the time between now and when the Bill goes to the other place.

Amendment negatived; clause passed.

Title passed.

Bill read a third time and passed.

LAND ACQUISITION (NATIVE TITLE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 October. Page 697.)

Mr CLARKE: I do not wish to add anything further to the second reading debate, and the Opposition is quite happy for the matter to proceed straight into Committee.

Bill read a second time.

In Committee.

Clauses 1 to 6 passed.

Clause 7—'Notice of intention to acquire land.'

Mr CLARKE: I move:

Page 3, lines 8 to 13—Leave out subsection (2) and insert—

(2) If the Authority proposes to acquire native title in land, the Authority must—

(a) if there is a registered representative of the native title holders—give notice of intention to acquire the land to the registered representative and the relevant representative Aboriginal body; or

(b) if there is no registered representative of the native title holders—give notice of intention to acquire the land to all persons who hold, or may hold, native title in the land[1.] and give a copy of the notice to the Registrar of the ERD Court.

[1.] For method of service see Native Title (South Australia) Act 1994.

This amendment is similar to that which we sought to clause 8(2) of the Native Title (South Australia) Amendment Bill, and it is moved for the same reasons as those applying to clauses 26 and 27 of the Native Title Bill, that is, to reasonably safeguard against the possibility of the registered representative misplacing the notice or failing to recognise

or appreciate its significance and the effective time limitations it imposes. The amendment would seek to overcome that. If my memory serves me correctly, the Deputy Premier accepted those amendments with respect to the Native Title Bill last evening.

The Hon. S.J. BAKER: I recall saying that we would look at this, and I will give the honourable member the same assurance here, as we believe there is some sense in what he proposes. I am not sure how it will come out in the wash in terms of whether there is an umbrella representative body like the ALRM or a similar organisation plus constituent bodies that will have some recognition before the court. We accept in principle what the honourable member is trying to achieve; and, if he will leave it with us, we will examine the wording.

Amendment negatived; clause passed.

Clause 8—'Substitution of s.11.'

Mr CLARKE: I move:

Page 3, lines 24 to 28—Leave out subsection (1) and insert—

(1) A person who has an interest in the subject land[1], or the relevant representative Aboriginal body for the land, may, within 30 days after notice of intention to acquire the land is given, require the Authority, by written notice—

(a) to give an explanation of the reasons for acquisition of the land; and

(b) to provide reasonable details of any statutory scheme in accordance with which the land is to be acquired.

The time limitation in new section 11(1) is 30 days. The representative Aboriginal body may not have established within that period whether there are native title claimants; its inquiries might quite reasonably be continuing. In such circumstances, it should be in a position to seek an explanation of the acquisition scheme.

The Hon. S.J. BAKER: For the same reasons as those I mentioned earlier, we will certainly look at the amendment during the passage of the legislation between the two Houses. The principle involved here is similar to that involving the amendment with which we have just dealt.

Amendment negatived; clause passed.

Clause 9—'Substitution of s.12.'

Mr CLARKE: I move:

Page 4, lines 13 to 21—Leave out subsection (2) and insert—

(2) A request may be made under subsection (1)—

(a) on the ground that acquisition of the land or carrying out the purposes for which the acquisition is proposed would—

(i) seriously impair an area of scenic beauty; or

(ii) destroy, damage or interfere with an Aboriginal site within the meaning of the Aboriginal Heritage Act 1988; or

(iii) destroy or impair a site of architectural, historic or scientific interest; or

(iv) prejudice the conservation of flora or fauna that should be conserved in the public interest; or

(v) prejudice some other public interest; or

(b) on some other ground stated in the request.

It is about time for a change in my run of luck in getting the Deputy Premier's agreement on these matters. The basis behind my amendment is simply this: it appears that the authority is obliged to consider a request and respond to it only if that request is made on one of the grounds set out in new section 12(2). A request may legitimately be made on some other ground that the authority not proceed with the acquisition, or that the boundaries of the land to be acquired be changed. This is recognised in new section 12(2) of the existing Act by the inclusion of the words 'without limiting the effect of subsection (1) of this section'.

The effect of those words is that the grounds set out in new subsection (2) are not exclusive. Those grounds are merely illustrative of grounds upon which a request might be made. The authority should respond in accordance with new section 12(3) to any request which satisfies the requirements of paragraphs (a), (b) or (c) of new section 12(1).

The Hon. S.J. BAKER: The Government certainly is not fussed about this amendment. As the Deputy Leader has quite rightly pointed out, at the beginning there was, without limiting this section. It says there that there are a number of criteria, but the consideration shall not be limited to those matters. The honourable member is making it more explicit, and we accept the amendment.

Amendment carried; clause as amended passed.

Clause 10 passed.

Clause 11—'Notice of acquisition.'

Mr CLARKE: I move:

Page 6, lines 2 to 9—Leave out subsection (3a) and insert—

(3a) However, the acquisition of land under this section is subject to the non-extinguishment principle so that the acquisition does not, in itself, extinguish native title in the land but native title is extinguished when the Authority, in giving effect to the purpose of the acquisition of the land, exercises rights obtained by the acquisition in a way that is wholly inconsistent with the continued existence, enjoyment or exercise of rights deriving from the native title.

As the Deputy Premier has said, we are into an issue now which is more of a philosophical difference between the two sides. The basis behind the Opposition's amendment is that it is apparent that the Government is trying to make a nonsense of the application of the non-extinguishment principle as it is required to apply by section 23(3) of the Native Title Act in the case of compulsory acquisitions. For example, with respect to the note on page 6 of the earlier version of this Bill dated 16 August 1994, it is possible that the Government may wish to acquire native title land for any of the following purposes: first, for a purpose which is inconsistent with the continuation of native title, for example, housing development; secondly, for a consistent purpose, for example, a national park; or, thirdly, for the purpose of depriving native title holders of their rights and interests over the land.

The effect of paragraphs (a) and (b) of section 23(3) is to ensure that the land can be used for the consistent purpose as I stated in my second point, but the native title rights and interests, to the extent that they are not inconsistent with the proposed use of the land, continue to be excisable. If the land were to be used for a national park, any native title right to exclusive possession being inconsistent with that use would be suspended during the period of the land being used as a national park. Section 23(3) does not preclude compulsory acquisition for the purposes set out in my earlier points one and three. The effect is that the native title rights and interests are not extinguished until, in the case of point one, the inconsistent use commences, e.g., a housing development works; and, in the case of point three, an act is done which prevents the continuing enjoyment or exercise of native title rights. I do not wish to speculate as to what kind of act would be effective to achieve this.

In referring to my earlier point three, we are not suggesting that the purpose of depriving native title holders of their native title is a lawful purpose under South Australian legislation. We also do not accept that South Australian legislation authorises the Crown to compulsorily acquire land for the purposes of obtaining a 'right to exclusive possession', as suggested in new section 16(3a) of the Bill. I imagine that those freeholders and leaseholders would also strongly object to the Government's acquiring the land solely for the purpose of obtaining a right to exclusive possession

rather than for a legitimate public purpose. That is the nub of our concern: that the Government, in acquiring the land compulsorily, must have a legitimate public purpose behind it, not simply obtaining it for a right of exclusive possession.

The Hon. S.J. Baker: You've got to be joking!

Mr CLARKE: Well, the public purpose may be to build housing or a road.

The Hon. S.J. Baker interjecting:

Mr CLARKE: I accept the Deputy Premier's word that he would not want to waste that money. Nonetheless, with legislation in this area, we do not just want to take the Deputy Premier's word for it. He might be hit by a truck tonight, God forbid! Rather it be one of his colleagues in a marginal seat to give us some assistance and hopefully get a lawyer on our side of the Chamber. I am tired of being the QC!

Mr Cummins interjecting:

Mr CLARKE: And if the member for Norwood would walk in front of a bus, we would be quite happy to accommodate him to create that vacancy. All jokes aside, I understand what the Deputy Premier is saying. If you are going to acquire it for the legitimate purposes of a housing development, the legislation provides, 'when the housing development takes place'. You could have a situation where a Minister less reputable than the Deputy Premier, for instance, would say, 'Yes, we want to acquire this land for the purposes of building houses on it'. However, that might not take place for the next 30 years, which would subvert the purpose behind the legislation.

If you are going to compulsorily acquire native title land for a public purpose, fine, do it, and let it be seen to be done, but not in the broad-brushed approach adopted by the Government's Bill in this area. Once you start building houses, roads or public works or whatever in that area, that is when it comes into force. We are just trying to be ultra protective because there are other Government Ministers who are not necessarily as benign as the Deputy Premier.

The Hon. S.J. BAKER: I will make two points. First, I refer to the issue of whether the Crown requires exclusive possession for some reason or just wants to do it for the hell of it. The honourable member suggested that as Treasurer I would want to buy a piece of dirt, whether it be freehold or under native title, for the hell of doing it. I point out to the honourable member that any Treasurer who does that should be kicked out of the State.

The way it is expressed in the legislation is 'exclusive possession'. The member is taking exception to the issue of exclusive possession. Exclusive possession exists when there is compulsory acquisition of freehold land, as the honourable member would clearly understand. If I said I needed a piece of land for a school or housing estate, a sewerage works, a bypass or whatever—

Mr Foley interjecting:

The Hon. S.J. BAKER: The member for Hart is interjecting out of his seat. He has trouble distinguishing between water and sewage, Mr Chairman, but we will let him off the hook this time. The issue then is: does the honourable member take exception to the term 'exclusive possession'? In a sense, the Crown obtains exclusive possession when it buys the land, even though it may be a freehold piece of land that it wants to use for a particular purpose. Therefore, that wording seems to be consistent with the powers that are exercised by the Crown and is the outcome achieved by the Crown. So, I cannot necessarily relate to the argument that has been put, because that is the outcome which is achieved whenever the Crown compulsorily acquires a piece of land.

The second issue is whether, if the Crown buys that land and then should no longer have need of it, there should be some residual native title associated with that land. That seems to be the argument being put forward by the honourable member. Again, I would say that the use of the land perceived by the Crown motivates the land acquisition—and land acquisition matters can be contested in the Land Valuation Court—and, when these matters have been settled, exclusive possession is provided to the Crown. The honourable member referred to the example of the use of a park which may be resumed at some time in the future. I do not know that we can leave the legislation open, to the extent that I am not sure whether, in normal ownership situations, we do leave the future right to land open for any other person who has owned it or who has title to it. We can certainly have a look at the argument of the honourable member, but it creates a number of other anomalies—at least on my first reading—and, as I said, I was confused by the wording. If we put this up in bold type in the *Advertiser* and asked for an interpretation—

An honourable member interjecting:

The Hon. S.J. BAKER: No; from any reader who would like to offer an interpretation. We would probably receive 1 000 different interpretations, even from the legal profession. So, it is a problem with the wording; we talk about precise English and English that can be understood, and this is very difficult for most people to understand. We will look at the honourable member's proposal but, on first sight, it does not seem to have the merit that the honourable member would suggest.

Mr CLARKE: There is an explanatory note in so far as the amendment is concerned, which is to try to give some consistency. In discussions on the mining industry legislation the Deputy Premier referred me to section 38 of the Commonwealth Native Title Act and pointed out that the State legislation was consistent with the Commonwealth legislation, so we should follow that. The explanatory note in my amendment states:

> The non-extinguishment principle is the principle set out in section 238 of the Native Title Act 1993 (Cwth).

So, we are trying to give consistency between the State and the Federal arena in that area. Our case is quite simple: the native title rights are not extinguished until inconsistent use commences, for example, if you compulsorily acquire 'X' number of broad acres for housing development, sewerage works and so on or there is some other act that prevents the continuing enjoyment or exercise of native title rights. I do not see that as being all that difficult to accommodate, particularly as our amendment ties us to the non-extinguishment principle of the Commonwealth Native Title Act.

The Hon. S.J. BAKER: I have good advice that the Commonwealth is very confused about its own provision and that it likes the clarity of our legislation. I understand that this is one of the areas it wishes to sort out because it is a great problem to the Commonwealth. This Bill sorts out the problem, and we would hold to our current position. However, if the reflections of the Commonwealth on this matter—and it says that it is not happy with section 238 of its Act—result in it coming up with something workable which reflects some of the flavour of the honourable member's suggestion, we will certainly have a look at it. We could argue all day about extinguishment, but a principle has been placed in the previous Act that provides that prior to 1975 the Crown had a right to do certain things; beyond 1975 it could not take

away title without some level of compensation. We can debate that point, and it has been already debated in this place. However, the purchase of that land under the common law and the legislative provisions within our South Australian statutes would automatically involve extinguishment under the rules within which we operate.

That situation should prevail in this position, as it does for other owners or other people who have title to land. If something other than that needs to be looked at, we will certainly take further advice, but we think that the honourable member is adding to the confusion the Commonwealth has at the moment, whereas we have a very clear position.

Amendment negatived; clause passed.

Clauses 12 and 13 passed.

Clause 14—'Substitution of ss.18 to 23.'

Mr CLARKE: I move:

Page 7, lines 6 to 9—Leave out section 18 and insert—

Application of Division.

18. This Division applies if an authority proposes to acquire land for the purpose of conferring rights or interests on a person other than the Crown.

I have only two amendments, including this one, for the balance of this Bill, and the Deputy Premier could help make my night by accommodating these amendments. Section 26(2) of the Native Title Act provides for the rights to negotiate procedure to operate in relation to the following:

> The compulsory acquisition of native title rights and interests... where the purpose of the acquisition is to confer rights or interests in relation to the land or waters concerned on persons other than the Government party [that is, the Crown].

Proposed new section 18 is more restricted in its apparently intended scope. First, it applies only to land which is to be transferred by the acquiring authority. Section 26(2) of the Native Title Act says nothing about 'transferring'. The authority—and I refer to the definition in the Bill—may be a person other than the Government party. In that case, the effect of the acquisition would be to confer rights or interests in relation to the lands or waters concerned on persons other than the Government party. An obvious example is provided by the Petroleum Act, which gives an oil company the right to compulsorily acquire land in certain circumstances for the purposes of a pipeline.

In addition, not all persons other than the Government party are private persons. It is clear that the right to negotiate procedure under the Commonwealth legislation is intended to apply in relation to compulsory acquisitions where the beneficiary of the acquisition scheme is not the Crown. This may include certain statutory authorities.

The Hon. S.J. BAKER: My advice is that our provision is more in keeping with what the honourable member would want than his own amendment. My advice is that our provision assists in the interpretations along the lines the honourable member has suggested but, again, we will look at the record and review the situation. My advice is that our provision includes better wording than the honourable member's amendment and does not, in any way, negate any of the issues that are raised.

Mr CLARKE: My eminent legal advice is that my amendment makes it a lot clearer than does the Government's. Perhaps it is just as well that this House is not full of lawyers, because we could have 47 different versions. Perhaps the member for Norwood, who is the only legally-trained person sitting in this Chamber, could assist us. Whilst I appreciate the comments made by the Deputy Premier and certainly the advice that has been given to him, I guess his legal advice is as good as mine with respect to this matter. I am afraid it is a matter about which I will not convince the Deputy Premier tonight. This and other matters of major dispute have question marks hanging over them, and both the Government and the Opposition will have to give a lot of thought to them before this Bill is finally negotiated through the Upper House.

Amendment negatived; clause passed.

Clause 15—'Principles of compensation.'

Mr CLARKE: I move:

Page 10, after line 34—Insert paragraph as follows—

(aa) by striking out paragraphs (a) and (b) and substituting the following paragraphs:

(a) the compensation must adequately compensate the claimant for loss (including future loss) resulting from the acquisition of the land;

(b) in assessing the loss under paragraph (a), consideration must be given to—

(i) the actual value of the subject land; and

(ii) loss attributable to severance, disturbance or injurious affection;

This is my last amendment in a long list, and the Deputy Premier could make my entire evening. Last night he was absolutely *par excellence*. I expected to get nothing out of him—not a brass razoo—but, as the night wore on, he became more generous. Then, he reverted to being tight this afternoon when we debated this issue and he has become progressively worse. He has obviously been spoken to. They obviously regard him as too conciliatory—a soft touch. He is not as tough as the member for Bragg, the Minister for Industrial Affairs, because I could never get him to agree to an amendment.

The Hon. G.M. Gunn: He got around the Democrats.

Mr CLARKE: He could beat the Democrats up. He should be Minister for that portfolio—in charge of beating up the Democrats. He did very well indeed. This is my last chance to have a reasonable evening. The amendment is quite simple. As is apparent from the amendments I moved with respect to clause 11, in light of the non-extinguishment principle, native title rights may continue to be exercised after acquisition of land has been made. Section 25 of the Act needs to be amended so that compensation is limited not to the loss suffered or occasioned upon the acquisition but also upon the subsequent extinguishment.

The Hon. S.J. BAKER: I am not going to make the honourable member's night. The honourable member succeeded with one amendment, and for that he can be pleased. I am an infinitely reasonable person, but I would point out to the honourable member that, whilst a number of his amendments were adjudicated as being suitable, we did, on a number of occasions, say that we need to look at them in terms of their ramifications. Others were agreed to and they were quite clearly competent and appropriate. The honourable member should not feel disappointed that he has not done as well today as he did yesterday. In some cases, the complexity of the matter and the degree of concern about outcomes would mean that we have to look at those matters again.

In this case, I can imagine the mining community throwing up its arms and saying, 'We do not want to be involved in South Australia ever again.' I do not think the Aboriginal community would wish to impose this position on those people with whom they would negotiate in relation to mining, for example, or in relation to the purchase of land. We should look at the purpose for which the land is bought,

and the honourable member wishes to insert a provision that it should compensate against future loss.

That has not been tested. There is no concept before the court as to what that actually means. When a court reviews the merits of particular provisions, it takes account of the value of the asset. That may well involve a concept of income return from the land, as the honourable member can appreciate. You cannot translate compulsory land acquisitions into future use of land. The honourable member is overturning the whole rule of the land acquisition provisions with this proposal, and they affect not only native title but also all compulsory acquisitions. The matter has never been tested. Attempts have been made by people who have had their farm land acquired for urban purposes. The farmer has said, 'If I sold this land myself I could get $10 000 a block and not incur any development, because I could get a developer in to do it.' He might well be right, but that has not been recognised in determinations of the courts.

In those circumstances, I do not know that we should translate a provision regarding future loss into the Act which affects everybody when that has never been tested before the courts: to do so would be absolutely dangerous. The honourable member can understand that the recognition of future loss can be assessed only in the future, so we either suspend all payments until that future has been realised, whether it be five or 10 years down the track, or we pay an interim payment and, 10 years down the track, we work out how much would have accrued to that property and increased the value of that property as a result.

The problem is that that has never been tested before the courts and we do not want to start messing around with the concept at this stage. It would set new precedents and set lawyers on a whole new area of endeavour in pursuit of future loss. It is indeterminate until the future is met and I cannot agree with the proposition.

Mr CLARKE: I appreciate what the Deputy Premier has said, but this is the first time in State law that we have sought to reconcile compulsory acquisition of land that has native title. Until 30 June 1992 the concept of native title outside areas specifically provided by the State Government to the Pitjantjatjara and the Maralinga Tjarutja people has not had to be dealt with in our history. As to compulsory acquisition of such land by the State, native title was not recognised as a lawful right for Aboriginal people. It is the first time that we as a State—post Mabo—have had to take into account with the compulsory acquisition of native title land—it is not land in dispute but land held by native title holders lawfully—the fact that it is compulsory acquisition for public purposes which would extinguish native title and all that that means to Aboriginal people. The Deputy Premier may be right in what he says about looking back over our history—that this has not been tested or looked at or whatever until Mabo—

The Hon. S.J. Baker: It's dangerous!

Mr CLARKE: The Deputy Premier—

The Hon. S.J. Baker interjecting:

Mr CLARKE: It was considered dangerous by our forebears 100 years ago to give women the right to vote or stand for this Parliament. The fact is that we have to live with evolving circumstances, and the law with respect to native title changed on 3 June 1992 with the High Court Mabo decision. The State has to take that into account. It is no use saying, 'We have never had to worry about it in years gone by', because legitimate Aboriginal land rights were not an issue, except where the State decreed by statute in particular areas. We now have the High Court's common law decision and the Commonwealth legislation of December 1993. We have to grapple with these issues now. We have to be a bit pioneering in our legislation, similar to our forebears 100 years ago, the majority of them deciding that the sky was not going to fall in simply because they gave women the vote and the right to stand for Parliament.

If the member for Eyre were here 100 years ago, he would have supported that right for women to vote and stand for public office. In those circumstances, he would support an evolving and dynamic situation such as we have experienced with the Mabo decision of the High Court in June 1992, and the concept that the Opposition has floated in its amendment has to be entertained. It has never had to be entertained before because it was not an issue, but now it is an issue.

The State cannot wash its hands of it and say that it is too dangerous. It has to deal with the changing circumstances and times, and it has to deal with the fact that we are saying that, when the State compulsorily acquires land validly held by native title holders—we are not acquiring land *per se* in the European sense as we understand it—we are extinguishing native title forever, with all that that means for Aboriginal people. That has to be factored in. It cannot be ignored. The Deputy Premier can say, 'Let's look back at what has happened over the past 200 years. It has never happened before.' That finished on 3 June 1992 and we are in a new era.

The Hon. S.J. BAKER: The Deputy Leader should look at the law that prevails in every State and in the national jurisdiction.

Mr Clarke interjecting:

The Hon. S.J. BAKER: The Deputy Leader can talk about his expertise in industrial relations but not about the concept of future loss. Certainly, I do not have a great deal of knowledge of the law, as I have frequently told the Parliament. I battle under great ignorance in such matters, but there is nowhere in Australia where we have duplication or reference to future loss, because it is too hard to deal with. There is recognition in workers' compensation of future loss of earnings, so there is some element of what the honourable member suggests. In terms of compulsory acquisition, I am not aware of anyone attempting to embrace the proposition because of the difficulty and the legal mine field created. There is the capacity for the legal fraternity to benefit from the system.

Mr Clarke interjecting:

The Hon. S.J. BAKER: I am simply saying that it is an unnecessary diversion from what the legislation attempts to achieve. The Deputy Leader claims that extinguishing the title on the land has special reference that should be recognised in a damages claim. How does one recognise a spiritual affiliation with the land? How does it have greater weight than someone else owning the land and how would it be represented in money terms? The Deputy Leader has not given a conclusive argument about how we translate the spiritual value into a monetary value. The propositions do not fit. My dilemma with the amendment is twofold.

First, there is precedent and how do we value and, secondly, do we put a monetary value on spiritual attachment? In terms of the court's determining whether a mining tenement is placed on land, we have set down a procedure. It is simple and straightforward for the miners and holders of native title to follow up. The Deputy Leader thought that was reasonable. We are also being reasonable here. We are not stretching the boundary lines to the point where no-one can understand them and we are not creating more difficulties

than the honourable member would repair in the process. I have not heard a compelling argument how, if there is a loss of spiritual value as a result of land being acquired—we are talking only of extraordinary circumstances, because most of the land is in a difficult use situation as it is not prime land for a whole range of reasons and the Government is not likely to acquire large tracts of it—the Deputy Leader believes we can translate the spiritual value of land into monetary value. The Aboriginal communities would not be pleased with that concept, either.

Mr CLARKE: The Government has made its intentions quite clear. The fact of the matter is that in our own society we put monetary values on things which are not necessarily tangible, such as workers compensation claims, loss of amenities and loss of sexual drive or sexual ability. There is a whole range of things; how do we value them? We do that now, for example, in connection with criminal injuries compensation. I know that a stricter formula is used, but somehow or other we make a determination in those areas. The victims of crime compensation fund provides for the payment of X number of dollars to the victim, and there is a scale. I am not saying that the scale that is finally adopted is necessarily right or wrong, but our society does put a monetary value on these things.

Even though it may not involve a concept of injury such as a broken arm, broken leg, permanent disability or even death, these other injuries have nonetheless occurred. We in society have put a monetary value on the a loss of a child or a spouse: we do that under the workers' compensation legislation. How do you put a value on the life of a human being? But we do it. We put a figure on that and say it is worth X thousands of dollars. Nobody can put a price on a human life, but we do it, because money is the only mechanism by which, in our European society, we can value certain things. We do not have any other yardsticks, so legislatures must and do put monetary values on certain things. People can argue that they are too high or low, but that is done. I do not think the Opposition's amendment in this area is so out of order that we cannot appreciate the fact that we are extinguishing native title in these areas, and therefore we must factor in a means of arriving at a sum for compensation.

The Hon. S.J. BAKER: I will take the argument very slowly and discuss the layperson's appreciation of what the honourable member has just said. Loss of life, loss of sex or loss of income are matters that have a reasonably concrete base in terms of a person's drive and loss of amenity at home. People can draw conclusions on a whole range of issues, including the loss of life. Victims of crime hardly get compensated in terms of what may be their real injury. They get some token for being victims of crime. We do not necessarily value their injury to the extent that we would if it happened under different circumstances, as the honourable member would recognise.

Mr Clarke: Where's the difference?

The Hon. S.J. BAKER: There is a big difference. In this case, where the honourable member is suggesting that all these measurable deficits are the result of an act—

Mr Clarke: How do you measure a death?

The Hon. S.J. BAKER: I said 'measurable deficits'. In the case of CTP (compulsory third party), a price is put on death and a whole range of injuries which have been commonly referred to in the courts under agreement; there is a point at which you reach a determination. The honourable member is suggesting that we put a price on spiritual attachment to a piece of land. I do not and cannot believe that the Aboriginal community would support that proposition.

Mr Clarke interjecting:

The Hon. S.J. BAKER: I am not sure that they do. I think it sounded like a good idea, but the implication is quite in contrast to what I believe would be the Aboriginal culture. So, I am sorry; I cannot accept the honourable member's amendment.

Amendment negatived; clause passed.

Clauses 16 to 25 passed.

Title.

The Hon. G.M. GUNN: A number of provisions in this Bill go a great deal further than the Land Acquisition Act. The Attorney-General is aware of my concerns and gave a number of commitments that some other protections will be brought into force for people who have been aggrieved by acquisition orders. Will the Deputy Premier comment on those undertakings?

The Hon. S.J. BAKER: I understand that the honourable member has a concern, which we all share, that when the Government decides to do something it may not be deemed to be in the best interests of the person involved, and that is quite often the case. The honourable member has an abiding concern about Governments riding roughshod over people's rights and the purchase of properties in the process. We have seen circumstances in which people's lives have been badly affected by compulsory acquisition, for which further down the track it has been proved there was no good reason.

The member for Eyre, on behalf of his constituents, has rightly raised the issue whether the Crown should have that ultimate right or whether there should be some modification to that right. I understand that he has already taken that up with the Attorney-General, who is in the process of referring the matter to the Crown Solicitor to consider whether there should be some modification to the right of the Crown, for whatever reason it perceives appropriate, to acquire a person's property, which is not only their title and holding but for many people their life. The Deputy Leader said that when buying land one is not simply buying a piece of dirt. I am sure that the member for Eyre was making the same point.

I believe that this matter is worthy of further consideration. The Crown should have to defend its right to walk in and acquire a piece of someone's life, and I think that it should have to justify the public benefit that will flow from the result of such an acquisition. I have a great deal of sympathy for what the member for Eyre is pursuing, and I hope that—

Mr Clarke interjecting:

The Hon. S.J. BAKER: If the member for Eyre's wish is granted and there is modification of the rules, whoever holds title, whether it be freehold, leasehold or native, everyone gets a better deal out of the process. I should have thought that everyone would benefit.

Mr Clarke: A win-win!

The Hon. S.J. BAKER: A win-win.

Title passed.

The Hon. S.J. BAKER (Deputy Premier): I move:

That this Bill be now read a third time.

Mr CLARKE (Deputy Leader of the Opposition): I do not want to take up too much of the time of the House as we have had a considerable debate on native title legislation both yesterday and today. It is important legislation for the reasons that I set out yesterday in my second reading speech on the

Native Title (South Australia) Bill, and I will not repeat them now. I simply want to restate for the Government's information that there are a number of amendments that the Government, which I thank for its consideration, has indicated it is prepared to examine. It did not agree with them in this House, but it is prepared to consider them again before the Bill reaches the other place. However, there are also philosophical differences between us. I point out to the Government that the Opposition is prepared, particularly as Parliament will not be sitting next week, to see whether we can achieve certain common goals. That will involve a spirit of compromise on both sides, because neither the Opposition nor the Government can be guaranteed of getting their way in the Legislative Council. What we want to achieve out of this legislation is as much certainty as possible for all players, whether they be pastoralists, miners, Aboriginal groups or the community generally, and that desire would be best served if the Government and the alternative Government were able to sit down—

The Hon. S.J. Baker interjecting:

Mr CLARKE: I know you don't like considering us as the alternative Government, but in three years you will be in your rightful place on this side where you spent so much of the past 25 years.

The SPEAKER: Order! I point out to the Deputy Leader that the third reading is a narrow debate.

Mr CLARKE: I appreciate that, Mr Speaker. I am just stating a fact. I make the point that the Opposition, as the alternative Government, is prepared to work to ensure that these matters are settled as amicably as possible. Matters relating to Aboriginal land rights are at times extremely emotive. As we have enjoyed a fair degree of bipartisanship on Aboriginal matters over the past 20 years, we want to see it continue.

Mr Speaker, I should like to say how much I appreciated your sitting on the benches yesterday afternoon. It is not often that I have a chance to engage in constructive debate with you without your having the last word. I look forward to the debate on these matters in the Legislative Council.

The Hon. S.J. BAKER (Deputy Premier): I cannot leave that alone, Mr Speaker. If the Deputy Leader keeps losing the battle, he has a way of saying it is not quite lost. He takes the spirit not necessarily of friendship but of compromise and accommodation to its absolute boundary line. I suggest that he has had a very fair hearing on this Bill. We are in the process of seriously reconsidering the issues he has raised. Therefore, to suggest that he wants to sit down as the alternative Government is stretching my imagination and patience just a little too far.

There are some matters which we believe will add to aggravation and even disillusion with the process as a result of the amendments that have been moved. We can all have our opinion on this matter, but by obtaining more clarity we have the ability to reduce conflict, and that is what we are about. The Deputy Leader may feel very strongly about some of his amendments, but the Government's view is that those amendments will do a disservice to the Aboriginal community and everybody else involved, even though those amendments may contain an element that people can understand and appreciate.

The problem with the law is that, if we create the potential for conflict rather than for clarity, the conflict can destroy the very principle that we are trying to enhance in the process. There has been no difference of opinion on either side of the House on the principle; it is how it is put into practice. We have said that we want this legislation to work practically as soon as possible so that we can satisfy the demands that exist. If we broaden the question, as has been suggested, or suggest further amendments that will leave matters unstated, which will then involve issues which are normally dealt with by lawyers, we will be doing a disservice to everyone. We should give this legislation as much credibility and clarity as is humanly possible, and we believe that we are in the process of doing that. I thank members for their contributions.

Bill read a third time and passed.

ADJOURNMENT DEBATE

The Hon. S.J. BAKER (Deputy Premier): I move:

That the House do now adjourn.

Mr CONDOUS (Colton): In rising to speak in this debate, I hope I shall be seen as a responsible citizen concerned with the community and equally as a responsible father concerned about his child who, in about another nine years, will be eligible to start drinking in Adelaide's licensed premises. The matter I wish to discuss relates to a new youth craze called 'shooters', which are referred to by some hoteliers as the deadly cocktails.

Shooters come in a range of test tubes filled with full strength spirits. They are consumed by young people, six to 10 at a time, and cost somewhere between $2 to $4 each. The craze, which started interstate, is now spreading like wildfire right here in South Australia. As a matter of fact, I visited a few discos some time back and talked to some of the young people who were on this shooters program. They had a small box in front of them with six or seven test tubes containing different varieties or flavours—all potentially lethal and dangerous. When I spoke to those young people I could see the glaze in their eyes and the fact that the alcohol had had an enormous effect on them, and it was something that was quite horrific.

I have also read in the paper comments from Morrie Thompson, who is the Executive Director of Teen Challenge, which is a Hindley Street based youth agency. He is terribly concerned about this situation. He says that what we are doing to our young people is ensuring that either they will not live for a very long time or, if they do, the long-term damage will be quite irreparable. As a member of the public I cannot understand why nightclub proprietors and some hotel proprietors—and I want to make it quite clear that it is only some of them, and thank God we have a lot of responsible ones in the community—are serving shooters to these young people. I do not understand how they can be so irresponsible as to allow this practice, which, potentially, can kill our young people, to go on in their hotels simply and purely for the sake of profit.

It amazes me how hungry and ruthless people running a business can be for the sake of bottom line profit and dollars. They do not realise that, in the long run, it will cost the South Australian community millions of dollars through the provision of proper services to try to get these young people back to some sort of normality. The South Australian Drug and Alcohol Services Council has also criticised the shooter craze, and the DASC Education Unit Director, Mr Steven Allsop, said that the practice, which damaged the heart, the liver and the brain, was potentially lethal. There it is in black and white—that is what we are doing to our youth.

Some hotels and nightclubs, some of them in Hindley Street, are running shooter promotions where young drinkers, our children, are encouraged to down as many shooters in the shortest possible time to win a contest. If that is not irresponsibility on the part of the licensee, I would like to know exactly what it is. Hoteliers are looking for rapid turnover in a short time and high profitability. I am told by people in the know that shooters are being supplied to young drinkers in 90 per cent of licensed premises in Hindley Street and in the more popular discos in the suburbs.

I am totally opposed to this practice. Further, the police and our health services have been running a sensible education program—I cannot remember whether it is four for men and two for women—to encourage young people to enjoy alcohol, but to consume it in moderation and not use it as something to get high on, but something that you can go out and enjoy at night and have a couple of drinks and then come home in a civilised manner. What are we going to do as a Parliament—and I did not say as a Government, because it is the responsibility of everybody in this House? I would hate to think that any one of the 47 of us who are in this House tonight are not concerned enough about young people in our community to say, 'This is something that we should all tackle together.'

The Attorney-General must prepare a paper and find out from both DASC and Mr Thompson of Teen Challenge exactly what is going on, get the correct picture and then make a decision. We see Ian Horne, who is the Chief Executive of the Australian Hotels Association, getting in the paper every now and again and telling us what a marvellous job and how much money the hotels are making because they are turning over record profits from poker machines. In fact, they have to employ more staff because people are drinking more and they are enjoying more meals in the hotels.

Let us see how genuine his association is, and let us see him take a leadership role by coming out and condemning licensees who are selling these shooters and destroying the youth of South Australia. Mr Horne and his association should show some responsibility towards the kids of this State. We cannot sit back and watch our youth destroy itself. As politicians we have to be a little bit more responsible than that. We cannot stop them from going in and buying a Bacardi and Coke or whatever they want, but we can stop pure alcohol being served in test tubes and consumed in rapid succession, simply to give the kids a kick on large volumes of alcohol and get them addicted to alcohol.

It is no different to a pusher out in the street who is selling cocaine, heroin or marijuana, pushing it onto the kids and making them consume it so they set up a decent trade. The only difference is that one is sold secretly under the counter because it is a prohibited drug, while the other is a legal commodity which is being mistreated and misused by some unscrupulous hotel and nightclub owners who want to make a rapid dollar out of this practice. It is our responsibility to do something about it. I am certainly going to ask the Whip to put the issue down for Party room discussion next Tuesday. I expect that the Opposition would also join forces with us in demanding that there be a total change of practice. Let us stop destroying the young people of South Australia by educating them to enjoy alcohol sensibly and in moderation so that they enjoy a long and full life and not finish up as a group of brain and liver destroyed morons in the community. I raise this issue because I thought it should be brought up in the House tonight, and I certainly look forward to discussing it in the Party room next Tuesday.

Mrs GERAGHTY (Torrens): I must say I certainly agree with the honourable member's contribution. He has raised a very important issue. Tonight I would like to speak to an issue that is of much concern to me and also other residents in Torrens, and particularly a lot of families in Torrens. Recently I spoke to the Director of the Ain Karim community, which is based in the Torrens electorate. For those members in the House who are not aware of the Ain Karim community, I will provide some details. The Ain Karim community cares for some of the intellectually disabled members of our society. Sister Genevieve Secker is the Director.

The first accommodation was made available in 1984 with four houses being rented from the South Australian Housing Trust. Seven residents required high level support. In 1988 the Sisters of St Joseph's purchased two units for them, and a further unit in 1994. The Ain Karim community rents these units from the Sisters of St Joseph's. In April 1993 they rented two more units from the Housing Trust. At present they have three sites in total and care for 15 people.

The Ain Karim community relies on grants from IDSC for seven people who are at Bristol Avenue. The grants from the IDSC are for only seven residents, and they are the original seven residents. The Roman Catholic Archdiocese Charity Trust also provides financial support. The Ain Karim community conducts fundraising to supplement the financial shortfall that often occurs. I might say that they are particularly successful, and no doubt many members in this House would like to have them on their campaign fundraising team.

There is much need in our community for such caring and supportive people. Sister Secker has 74 intellectually disabled people on her waiting list. Last month she decided to close her books because she did not wish to give people false hopes and expectations that they may be accommodated in the short term. Since that time, she has had more calls and these have caused her and her staff a great deal more concern. What can one say when one is asked to take in a 52 year old man because his mother, who is the carer, wants to go into a retirement home? It is an appalling situation. This situation is just far too often the case today, with many elderly relatives caring for their children who are intellectually disabled, and the carers are almost at the age of retirement themselves. One could not imagine the difficulties that must be faced by these families. I have even heard of a 91 year old mother who is caring for her adult child because there is nowhere for him to go.

People who have intellectual disabilities need special attention. Often they cannot be left alone and the families must be with them for 24 hours a day and often with little support. When these children leave the school system, there is little prospect of work or other activities for them. If both parents are working, one is forced to give up their job to care for the child. They often become prisoners in their own home. In fact, I met with a group of parents who felt great frustration with the current situation. They would have liked to have a little bit of a social life of their own. They would have liked to see a little bit of light at the end of the tunnel, but they simply cannot do so. Other children in these families are also affected by this situation.

I point out that 5 per cent of populations around the world are intellectually disabled. In South Australia, about 7 000 people are intellectually disabled. A total of 6 050 are registered with IDSC. Of these, 4 200 live with their family. Some 260 of these people are over the age of 50, whilst 1 050

are over the age of 40. Over 330 people urgently need accommodation. This situation is absolutely appalling. If these people were institutionalised and the cost to care for all these persons was to be borne by Governments, both State and Federal, it would amount to approximately $2 billion per annum.

There is no doubt that the families are happy to provide support. They love their children, there is no doubt about it, but they need support, and much more than they are getting at the moment. In South Australia we have parents and carers like the Ain Karim community taking on that responsibility with very little support, if any, at times. I know that Ain Karim has an urgent request for a grant of $6 000, a small amount when it comes to the service that it provides. The parents of intellectually disabled people are desperate for assistance and respite. As I have said, they receive little support. We must support groups like Ain Karim to ease the burden on families. It is an outrage to do nothing when there are parents in their latter years of life caring for aged children. This is something that we simply cannot tolerate. If we do not make proper provision for them now, we will simply be forced to do so later on when their carers are deceased.

Communities such as Ain Karim provide an excellent caring service, but it is on a small scale, and the evidence I have seen shows that we need much, much more. It is vital that we make suitable provision for our intellectually disabled by providing adequate funding to ensure that these people are given proper care and proper housing. Like us, they are members of our community and are entitled to good care and good housing. They are not asking for sympathy but to have dignity, to which they, their families and carers are entitled. In conclusion, I point out to the House that Ain Karim was a little village outside Jerusalem where John the Baptist and his parents lived. Ain Karim means ‘source of generosity’, and I believe that that is most appropriate with regard to this issue.

Motion carried.

At 9.25 p.m. the House adjourned until Thursday 3 November at 10.30 a.m.