LEGISLATIVE COUNCIL

Tuesday 10 September 1991

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 2.15 p.m. and read prayers.

SUPPLY BILL (No. 2)

Her Excellency the Governor, by message, intimated her assent to the Bill.

PETITION: PROSTITUTION

A petition signed by 26 residents of South Australia concerning prostitution in South Australia and praying that the Legislative Council will uphold the present laws against the exploitation of women by prostitution and not decriminalise the trade in any way was presented by the Hon. I. Gilfillan.

Petition received.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 1, 3, 5, 7 and 8.

LAND DIVISION STATISTICS

1. **The Hon. BERNICE PFITZNER** asked the Minister for the Arts and Cultural Heritage: With respect to the following table of statistics on land division:

Details of land division applications recommended for approval/refusal by SAPC and councils decision
Survey period—Decisions received between 1 June 1987 to 30 June 1987.

Area: Number of land division applications

	No objections by SAPC	Recommended for refusal by SAPC	Councils approved contrary to SAPC advice to refuse*	Councils refused in accordance with SAPC advice to refuse	SAPC—recommended for refusal but council decision not known to date
State	966	168*	72 (43% of *)	55 (33% of *)	41 (24% of *)
Metropolitan	404	20*	14 (70% of *)	1 (5% of *)	5 (25% of *)
Central	323	54*	18 (33% of *)	16 (30% of *)	20 (37% of *)
Country	239	93*	39 (42% of *)	38 (41% of *)	16 (17% of *)

1. Has the Minister for Environment and Planning seen this table before?

2. Does the table emanate from her department?

3. *(a)* Is she concerned about the large number of planning approvals given by local councils which are contrary to South Australian Planning Commission advice?

(b) If not, why not?

4. *(a)* Has the Minister, the South Australian Planning Commission or the Department of Environment and Planning written to the main councils involved or the Local Government Association expressing concern about the large number of decisions made by councils, contrary to the commission's advice?

(b) If not, why not?

5. Does the Minister consider many of the councils' decisions (which are contrary to commission advice) to have major implications in terms of the economic and efficient provision of services and infrastructure in the metropolitan and country areas?

6. *(a)* Has the Minister, the South Australian Planning Commission or the Department of Environment and Planning attempted to monitor the progress of councils in this matter since this table was first produced to establish whether any improvements have been made?

(b) If not, why not?

7. *(a)* Is the Minister concerned that similar situations could develop with respect to the matters on the 7th Schedule, which are proposed to be transferred to local councils?

(b) If not, why not?

8. Given the large number of land division applications which are approved by local councils contrary to South Australian Planning Commission advice, does the Minister consider that councils now have the expertise and resources to take on additional planning responsibilities likely to be brought about by the proposed changes to the 5th and 7th schedules?

The Hon. ANNE LEVY: The replies are as follows:

1. The Minister for Environment and Planning has been made aware of this table.

2. Yes. The table was produced by the Department of Environment and Planning. The table covers the period 1 January to 30 June 1987.

3. There are two areas of concern with the figures shown in the table. The South Australian Planning Commission may have been involved in unnecessary duplication in commenting on proposals and some councils were issuing a large number of decisions contrary to the South Australian Planning Commission advice. It was for this reason that action was taken to amend the development plan to ensure that land division became a prohibited form of development in important and sensitive parts of the State. Land division policies in this plan are also being progressively clarified in supplementary development plans for other parts of the State.

4. Yes. Letters were sent to the main offending councils.

5. Action has been taken to amend the development plan in these areas. This process of refinement is ongoing.

6. Reports similar to the one included in the question were produced for the following two-six-monthly periods and other relevant information has been produced subsequently. These reports provided the justification for changes to be made to the development plan in key areas. A report on the alienation of rural is currently being prepared by Government officers and this may lead to further policy refinements.

7. Developments of concern are now adequately controlled in the development plan.

8. Councils generally have the expertise and resources to deal with their planning responsibilities within the framework of the controls and policies laid down by the State Government. Councils are also able to take account of local knowledge in carrying out these responsibilities. It is not

intended that the proposed changes will apply to any individual council which has objected to the changes.

REGIONAL PLANNING AUTHORITY

3. **The Hon. BERNICE PFITZNER** asked the Minister for the Arts and Cultural Heritage:

1. Given the diverging views of the Department of Environment and Planning and the Planning Review Committee on the setting up of a Regional Planning Authority for the Adelaide Hills, does the Minister for Environment and Planning consider it to be unwise at this stage, to implement changes to the fifth and seventh schedules when, in the longer term, the current planning process may or may not be transferred to Regional Planning Authorities?

2. If the response to this question is 'no', could the Minister please explain the reason for this answer?

The Hon. ANNE LEVY: The notion of a regional authority is one of the concepts canvassed in the Mount Lofty Ranges Review. The merits of the proposal will be evaluated as part of the package of proposals for legislative change to be devised by the planning review. The proposed changes to the fifth and seventh schedules are consistent with the thrust of the planning review. They aim generally to avoid duplication in the process and to have decisions on local matters made at the local level. These proposals are relevant irrespective of any subsequent decisions made about a Regional Planning Authority.

The proposed schedule amendments do not make any significant change to the Planning Commission's decision-making role in the Mount Lofty Ranges. The current situation has to a large extent been retained pending the outcome of the current policy review for the ranges. The Regional Planning Authority evaluation does not provide a justifiable reason to defer implementation of the proposed changes to the schedules.

DEPARTMENT OF THE ARTS AND CULTURAL HERITAGE

5. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: How many officers from the former Department of Local Government, excluding Library Division staff, have been transferred to the new Department of the Arts and Cultural Heritage, and what are their names, new positions and current responsibilities?

The Hon. ANNE LEVY: One hundred and twenty-three officers from the former Department of Local Government (excluding State Library) have been transferred to the new Department of the Arts and Cultural Heritage. There names, new positions and current responsibilities are set out below:

CORPORATE SERVICES DIVISION AND EXECUTIVE SERVICES UNIT (PART 1)

Name	Previous Department of Local Government Department Position	Department of the Arts and Cultural Heritage Position	Current Responsibilities
R. Bargwanna	Administration Officer	Administration Officer	Minister's Office
S. Dombroyannis	Pay Clerk	Pay Clerk	Payroll
A.M. Dunn	Chief Executive Officer of Department of Local Government	Chief Executive Officer of Department of Arts and Cultural Heritage	Chief Executive Officer
A. Gabrielly	Manager, Personnel	Manager, Personnel	Human Resources
B. Hammond	Assistant Computer Consultant	Assistant Computer Consultant	Personal Computer Support
E. Hurrell	Clerical Officer	Clerical Officer	Administration
J. Hyland	Secretary	Secretary	Minister's Office
M.A. Johnson	Senior Pay Clerk	Senior Pay Clerk	Payroll
M. Kelly	Clerical Officer	Clerical Officer	Leave Records
M. Kidd	Assistant Personnel Consultant	Assistant Personnel Consultant	Human Resources
G. Kling	Senior Finance Officer	Senior Finance Officer	Financial Services
K. Klomp	Clerical Officer	Clerical Officer	Minister's Office
N. Kogoi	Secretary	Secretary	Secretarial Support
J. Komazec	Administration Assistant	Administration Assistant	Minister's Office
C. Nelligan	Senior Administration Officer	Senior Administration Officer	Minister's Office
D. O'Brien	Manager, Development Branch	Manager, Projects	Special Projects
A. Pavy	Clerk	Clerk	Personnel Services Clerk
M.U. Peisach	Manager, Financial	Manager, Financial	Financial Services
L. Poole	Manager, Program Review	Manager, Program Review	Program Review
I. Principe	Manager, Information Technology	Study Leave	Information Technology
P. Simmons	Clerical Officer	Clerical Officer	Minister's Office
D. Smith	Accounts Clerk	Accounts Clerk	Expenditure Control
S. H. Tully	Manager, Resources	Director, Corporate Services	Management Department Resources

CORPORATE SERVICES DIVISION AND EXECUTIVE SERVICES UNIT (PART 2)

(Employees reassigned as at 1 March 1991, but who have resigned since that date, or who have been temporarily reassigned elsewhere or who are on leave without pay)

Name	Previous Department of Local Government Position	Current Status
G. Basso	Clerical Officer	Temporary Reassignment to Agriculture
A. Boucher	Correspondence Clerk	Temporary Reassignment to State Records
A. Bourne	Occupational Health and Safety Officer	Resigned
R. Brebner	Project Officer	Temporary Reassignment to Labour
T. Cavallaro	Accounts Clerk	Temporary Reassignment to Labour
T. Davis	Clerical Officer	Temporary Reassignment to Public and Consumer Affairs

Name	Previous Department of Local Government Position	Current Status
M. Herrman	Manager, Support Services	Leave Without Pay
S. Kartinyeri	Clerical Officer	Leave Without Pay
A. Karydis	Administration Officer	Leave Without Pay
E. Korolis	Clerical Officer	Temporary Reassignment to Treasury
B. Leftheriotis	Pay Clerk	Temporary Reassignment to South Australian Museum
I. McGregor	Clerical Officer	Retired
M. O'Loughlin	Clerk	Leave Without Pay
L.P. Smith	Personal Assistant	Retired
D. Stone	Clerical Officer	Leave Without Pay
S. Tan	Finance Officer	Retired
R. Wall	Secretary	Leave Without Pay

PREVIOUS DEPARTMENT OF LOCAL GOVERNMENT EMPLOYEES WHO HAVE TRANSFERRED TO THE LOCAL GOVERNMENT SERVICES BUREAU (PART 3)

Name	Previous Position	Current Position	Responsibilities
F. Ali	Librarian	Libarian	Cataloguing
K.R. Barnsley	Sewer/Repairer	Sewer/Repairer	Repairing of Books
M. Barry	Director	Director	Executive
C. S. Bingapore	Clerical Support	Leave Without Pay	Core Collection
C. Britain	Librarian	Librarian	Cataloguing
R.C. Brunker	Manager Information Technology	Manager Information Technology	Plains System Public Library
T. Bruno	Manager, Admin. and Fin.	Manager, Admin. and Fin.	Admin. and Finance
J.H. Chelley	Library Attendant	Library Attendant	Packing of Books
L.M. Clarke	Librarian Supervisor	Librarian Supervisor	Supp Com Svs
N. Crowe	Legal Officer	Legal Officer	Legal Advisory
W. Day	Clerical Officer	Clerical Officer	Administration
J. Dekort	Admin. Officer	Admin. Officer	Administration
B.M. Downey	Clerical Support	Clerical Support	Core Collection
M.L. Drummond	Clerical Support	Clerical Support	Core Collection
B.H. Duckmanton	Info. Technologist	Info. Technologist	Plain System Public Library
S. Edom	Clerical Officer	Clerical Officer	Data Entry Plain System
J.A. Francis	Clerical Officer	Clerical Officer	Personnel/Admin.
J.D. Francis	Librarian	Librarian	Cataloguing
P. Freeman	Clerical	Clerical	Administration
M.F. Furness	Librarian	Librarian	Cataloguing
J.C. Gauvin	Clerical Support	Clerical Support	Core Collection
A.E. Green	Library Technician	Library Technician	Supp Com Svs
B. Harvey	Health Surveyor	Health Surveyor	Sep. Tank Eff. Drn
C. Hayes	Librarian	Librarian	Cataloguing
J.L. Heath	Librarian	Librarian	Cataloguing
P. Holdcroft	Project Officer	Project Officer	Plain System Public Library
C. Hunt	Health Surveyor	Health Surveyor	Sep. Tank Eff. Drg
S. Jensen	Computer Serv. Officer	Computer Serv. Officer	Plain System Public Library
S.Y. Keiff	Librarian	Librarian	Cataloguing
C. Kennedy	Librarian	Librarian	Cataloguing
D. Kite	Clerical Officer	Clerical Officer	Administration
T.M. Knightley	Clerical Officer	Clerical Officer	Circulation Serv.
M. Kozuh	Clerk	Clerk	Core Collection
N. Longmire	Clerk	Clerk	Administration
E.C. Luke	Sewer/Repairer	Sewer/Repairer	Repairing of Books
R.A. Luxton	Manager	Manager	Cataloguing
M.R. Maddocks	Library Technician	Library Technician	Cataloguing
K.J. Magor	Clerical Officer	Clerical Officer	General Clerical Officer
P.A. Mocrackan	Librarian	Librarian	Cataloguing
S.J. McFall	Information Technologist	Information Technologist	Plain System Public Library
H.J. Meakins	Clerical Officer	Clerical Officer	Data Entry Plains System
C. Morrison	Clerical Officer	Clerical Officer	Circulation Serv
S.E. Mullner	Librarian	Librarian	Cataloguing
J.C. Murphy	Librarian	Librarian	Cataloguing
C.I. O'Brien	Clerical Officer	Clerical Officer	Core Collection
E.J. Packwood	Senior Attendant	Senior Attendant	Packing of Books
S. Penhall	Librarian	Librarian	Cataloguing
J. Phan	Library Technician	Library Technician	Cataloguing
K.M. Richardson	Librarian	Librarian	Supp Com Svs
P.F. Richardson	Clerical Officer	Clerical Officer	Circulation Serv.
H.R. Rodbourn	Clerical Officer	Clerical Officer	Core Collection
S. Sim	Computer Serv. Officer	Computer Serv. Officer	Plain System Public Library
U. Singh	Library Technician	Library Technician	Cataloguing
J. Smallman	Clerical Officer	Clerical Officer	Circulation Serv.
S.E. Stennett	Library Technician	Library Technician	Supp Com Svs
C. Subatino	Clerk	Clerk	Core Collection
T.M. Taylor	Clerical Officer	Clerical Officer	Core Collection
L. J. Terrell	Info. Technologist	Info. Technologist	Plain System Public Library
J.A. Thomas	Sewer/Repairer	Sewer/Repairer	Repairing of Books
M.F. Tonkiss	Librarian	Librarian	Supp Com Svs

Name	Previous Position	Current Position	Responsibilities
C.D. Trout	Sewer/Repairer	Sewer/Repairer	Repairing of Books
K. Walker	Clerk	Clerk	Advisory
J.N. Wardrop	Library Attendant	Library Attendant	Packing of Books
P.A. Warrior	Clerical Officer	Clerical Officer	Core Collection
D. Zaganjori	Secretary	Secretary	Secretariat

PREVIOUS DEPARTMENT OF LOCAL GOVERNMENT EMPLOYEES WHO HAVE TRANSFERRED TO THE LOCAL GOVERNMENT SERVICES BUREAU (PART 4)

(Employees reassigned as at 1 March 1991, but who have resigned since that date; or who have been temporarily reassigned elsewhere or who are on leave without pay)

Name	Previous Department of Local Government Position	Current Status
G. Botten	Senior Advisory	Resigned
A.M. Davies	Clerical Support	Leave without Pay
M. Dunstone	Librarian	Leave without Pay
E. Durward	Librarian	Temp. Reassignment to Premier and Cabinet
G. Gibson	Clerk	Resigned
B. Godfrey	Clerk	Unit Transferred to Treasury
M. Hall	Clerk	Temp. Reassignment to Public and Consumer Aff.
R. Kitto	Social Worker	Temp. Reassignment to Employment and Tafe
V. Laity	Clerical Officer	Temp. Reassignment to Labour
L. O'Loughlin	Librarian	Leave without Pay
E. Olivastri	Clerical Officer	Temp. Reassignment to Detafe
C. Proctor	Manager, Grants Comm.	Unit Transferred to Treasury
C.M. Purgacz	Clerk	Temp. Reassignment to Labour
G. Rimmington	Project Officer	Unit Transferred to Treasury
V. Siebert	Ass. Dir. L. G. Serv.	Temp. Reassignment to Deregulation Unit
M. Tuffin	Librarian	Leave Without Pay Unassigned Position
S. Ward	Admin. Officer	Temp. Reassignment to E. & W. S. Dept.
M. Williams	Project Officer	Resigned

7. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: Is it correct that the Department of the Arts and Cultural Heritage now employs five payroll clerks, whereas the former Department of the Arts employed only one, and, if so, what is the justification for this increase?

The Hon. ANNE LEVY: The Department of the Arts and Cultural Heritage payroll includes the former Department of Local Government employees transferred to the new agency, including the interim Local Government Services Bureau, and the former Department of the Arts payroll including the History Trust.

There are in all around 895 live records (not full-time equivalent employees) processed through the regular payroll cycle. To carry out the task there are three payroll clerks assigned to the function along with a leave records clerk who is available to assist in non-payroll activities if time permits. The Department of the Arts had one Payroll Officer and the input was checked by other employees. The Department of Local Government had two Payroll Officers and one Leave Records Clerk.

Since the creation of the new Department of the Arts and Cultural Heritage, employees in the payroll area have been involved in standardising payroll practices and procedures and have undergone a significant internal audit and external audit (from staff of the Auditor-General's Department). Such audits found scope for improvement in payroll practices that have now been implemented. In addition, staff have been involved in translating salaries for employees affected by award restructuring and preparing material and calculations with regard to voluntary separation packages. The area unfortunately has been subject to staff absences due to serious illness and therefore casual help has been required at various times.

The following table outlines the number of 'at work' employees (FTEs) (excluding employees on leave) working on the payroll since March 1991:

Month 1991	Payroll/Leave Records Employees (in FTE)
March	3.7
April	3.4
May	3.6
June	3.0
July	2.9
August	3.5

The current ratio of employees to 895 live payroll records is considered to be appropriate.

8. **The Hon. DIANA LAIDLAW** asked the Minister for the Arts and Cultural Heritage: Is it correct that Mr Steve Tully will assume the position of Acting Director of the Department of the Arts and Cultural Heritage when the Director, Ms Dunn, takes holidays in India in the near future and, if so, what experience has Mr Tully had in the arts to qualify for this responsible position?

The Hon. ANNE LEVY: Under section 36 of the Government Management and Employment Act 1985 I appointed Mr Steve Tully to act as Chief Executive Officer of the Department of the Arts and Cultural Heritage for the period 16 August 1991 to 16 September 1991 whilst Ms Anne Dunn is on recreation leave.

In making this temporary appointment I have had regard to the time of year and in particular to the current priority requirements for the department which are to complete financial and management reporting and to prepare for the required adjustments as a result of budget allocations and award restructuring. As the Director of Corporate Services, Mr Tully is well qualified and organisationally well positioned to manage these processes. He is receiving strong support from Divisional Directors and Senior Managers well experienced in the arts who are managing the reforms at divisional level.

AUDITOR-GENERAL'S REPORT

The PRESIDENT laid on the table the Auditor-General's Report for the financial year ended 30 June 1991.

PAPERS TABLED

The following papers were laid on the table:

By the Attorney-General (Hon. C.J. Sumner)—

Rules of Court—Supreme Court—Supreme Court Act, 1935—Discovery and Interrogatories.
Boating Act 1974—Regulations—Speed Limits.
Business Franchise (Petroleum Products) Act 1979—Regulations—Licences and Fees.

By the Minister of Tourism (Hon. Barbara Wiese)—

Egg Marketing Arrangements in South Australia—Report to the Minister of Agriculture.
Parliamentary Standing Committee on Public Works—64th General Report.
S.A. Totalizator Agency Board—Report, 1991.

By the Minister of Consumer Affairs (Hon. Barbara Wiese)—

Commercial Tribunal Act 1982—Regulations—Judgments and Orders.
Landlord and Tenant Act 1936—Regulations—Commercial Tenancies.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—

Metropolitan Taxi-Cab Act 1956—Applications to lease.

QUESTIONS

POLICE CORRUPTION

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question on the subject of police corruption.

Leave granted.

The Hon. R.I. LUCAS: I refer to the announcement by the Police Commissioner, Mr Hunt, yesterday that he would expand, from 12 to 20, the size of the special task force which has been set up to investigate claims of corruption within the South Australian Police Force. This follows the announcement last week by the Minister of Emergency Services and Mr Hunt of the formation of Operation Hygiene, after revealing that at least 10 officers had been breaking into businesses and commercial properties, with some of the offences allegedly dating back 10 years. Mr Hunt is reported in today's press as saying the public's response to an appeal for information about police corruption had exposed 'quality' information and that, 'There is lots of information about. I need proper analysis and intelligence to be able to judge that.' In this Chamber last November the Attorney-General had this to say about suggestions of corruption within the Police Force:

> There was a suggestion in the media—an atmosphere developed—which indicated that there was a high level of corruption in South Australia, including . . . police corruption. However, the Government's position has been and still is that there is no widespread institutionalised corruption in South Australia, either publicly or at the police level.

In the light of the latest allegations about corruption within the Police Force, does the Attorney stand by the statement that he made in this Chamber on 14 November 1990?

The Hon. C.J. SUMNER: Yes, I do. I have not received any information to indicate that the situation is any different from what I indicated last year and what has consistently been the Government's position in this particular area. However, I have always said that that has been the advice that has been tendered to us by the National Crime Authority, which has been in this State since 1986 in some form or another. The advice that was given was that there was not institutionalised corruption in this State of a kind that existed in Queensland or New South Wales.

Whether the current revelations indicate anything different, I cannot say at this stage. Certainly, I have received no information to change the information which I gave to the Council last year, and indeed which I have given on a number of occasions in this Council and publicly. However, I have always said that the Government would make a final statement on this matter when the NCA had completed its inquiries in South Australia, and that is in the process of happening, as members know. I expect later in this session to provide the Council with a detailed report on its activities, and I would also expect to provide the Council with an assessment of the levels of corruption in the South Australian Police Force or public sector.

As I understand it, the current allegations relate to accusations that police officers while on duty were engaged in the break and enter and theft of material from a commercial premises. At the present time I am not aware whether or not there are any other allegations. On the information I have, I believe the situation I outlined last year still to be accurate. However, I emphasise again that, in coming to that conclusion, the Government has relied on the advice partially of the National Crime Authority and the Police Commissioner and that a statement will be given that will address this topic at the appropriate time when the NCA's inquiries and reports have been completed.

The Hon. R.I. LUCAS: I ask a supplementary question. Has the Attorney-General been provided with any recent advice that the number of police officers now under investigation under Operation Hygiene is larger than the original suggestion of about 10 officers?

The Hon. C.J. SUMNER: I have not been provided with that advice. This is a matter that is the political responsibility of the Minister of Emergency Services, and I will refer that question to him and bring back a reply.

FRANK PANGALLO

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about Frank Pangallo.

Leave granted.

The Hon. K.T. GRIFFIN: Last week there was a report that the case of Frank Pangallo was being reviewed by the Attorney-General. Pangallo killed his wife and two other people in the Riverland in 1987. In the police hunt that followed Pangallo shot and wounded two other people. In September 1989 he was found not guilty by reason of insanity and ordered to be detained at the Governor's plesure. According to reports, he was assessed as suffering from paranoid schizophrenia. A siege occurred on the property of a Mr and Mrs Delaine at Winkie, and both Mr and Mrs Delaine were threatened in their home by Pangallo, who was armed with a firearm.

Understandably, Mr and Mrs Delaine and the residents of Winkie and the area in the Riverland surrounding Winkie are concerned that Pangallo will be released soon and that they and others may be at risk if Pangallo's mental illness has not been cured. This is reflected in the presentation in the House of Assembly today, I understand, of a petition containing over 1 100 signatures. My questions to the Attorney-General are:

1. Has he received a recommendation from the Parole Board or any other body for Pangallo's release and, if so,

is the recommendation to release Pangallo on licence? If it is, what conditions might be attached to that release?

2. What course of action does the Attorney-General propose that the Government should take in relation to Pangallo?

3. On what criteria will a decision be taken to release Pangallo?

The Hon. C.J. SUMNER: Cabinet has decided that, on the information presently before it, it is not appropriate to release Mr Pangallo at this stage. I do not know that there is anything more I can add to the questions asked by the honourable member.

The Hon. K.T. GRIFFIN: As a supplementary question, will the Attorney indicate whether or not a recommendation was received from the Parole Board to release Pangallo on licence? Secondly, can he say what criteria have been applied by Cabinet in making that decision?

The Hon. C.J. SUMNER: I will not go through the criteria in specific detail, except to say that, as I said earlier, on the information presently before it, Cabinet believed that it was not appropriate to release Mr Pangallo, given that his release is a decision for Cabinet to recommend to the Governor.

As to the situation in respect of the Parole Board, that is a matter that has come through the Minister of Correctional Services, but the Parole Board did recommend that Pangallo be released. Cabinet considered that and, as I said, decided that on the information presently before it it was not appropriate to release Mr Pangallo at this stage.

ADELAIDE AIRPORT DOMESTIC TERMINAL

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Tourism a question about the Adelaide domestic air terminal.

Leave granted.

The Hon. DIANA LAIDLAW: It appears unclear when, if ever, Adelaide's domestic air terminal will be extended to accommodate additional flights. On 14 August last year in a question to the Minister on the same subject, I described as a hotch-potch the proposed plans by Australian Airlines and Ansett to extend their respective areas of the domestic terminal to accommodate extra flights. I also asked the Minister to use all means at her disposal to ensure that the exteriors of the proposed extensions were designed to complement each other, I have yet to receive an answer to those questions.

In the meantime, the two airline policy has been deregulated. Compass Airlines has commenced flights to and from Adelaide and fare discounting has reached extraordinary levels. I am advised that reduced profit due to fare discounting is the excuse now used by Australian Airlines to defer, and potentially abandon, its plans to extend its portion of the domestic terminal, extensions that were to resemble a space ship at the end of a stubby arm to the south-west of the terminal. Compass meanwhile is using cramped makeshift quarters for its arrival and departure purposes, while I note Ansett has completed a comprehensive expansion program. My questions to the Minister are:

1. Has the Minister yet prepared a reply to my question of over 12 months ago about the proposed extensions to the Adelaide Airport? When may I expect that reply?

2. What negotiations, if any, has the Minister undertaken with the Federal Airports Corporation and/or Australian Airlines and Compass to ascertain their plans to expand the domestic terminal to accommodate an anticipated increase in passenger numbers and flights in the next few years? Of course, one would hope that we would be successful in winning the bid for the Commonwealth Games, and for that reason alone we should have a domestic terminal that could accommodate increased numbers of passengers.

The Hon. BARBARA WIESE: As to the question that the honourable member asked last year, I do not recall offering to provide further information beyond that which I provided at the time, other than to indicate that I would examine the questions that she then raised. As I recall, the main topic of complaint in that question was the fact that the two airlines were using carpets of different colours and decorating their respective parts of the terminal in rather different ways. As a result of that question and, when I was later meeting with the representatives of the Federal Airports Corporation and separately with Australian Airlines on other matters, I raised the questions that the honourable member had raised in this place, and I discussed with them the future plans.

The dispute taking place at that time concerning the centre strip of carpet in the terminal had been, by the time I spoke to them (which was a very short time after the honourable member asked her question), resolved between the respective parties, and they continued their work. Further work on the terminal has taken place since then, with painting and other upgrading of facilities, on both the Ansett side and the Australian Airlines side of the terminal. I was rather concerned when I learnt that Australian Airlines had decided to delay the commencement time for the upgrading of its part of the Adelaide terminal because of the economic circumstances that have emerged since it first made its decision—and, I guess, those rather unpredictable circumstances that have arisen since deregulation—but I am not aware that Australian Airlines will potentially abandon its plans to upgrade, as the honourable member has suggested. As I understand it, it is still its intention to upgrade its part of the terminal. I cannot recall the timing for that upgrading but, as I understand it, it is still to take place. I will seek the information about the potential commencement time for the honourable member.

In the meantime, I am also pleased to note that the Federal Airports Corporation has revived its scheme to upgrade the international terminal facilities, and a working party, which had previously been established, has now been re-established to continue work on that proposal. Some considerable lobbying is taking place within the Federal Airports Corporation, on the part of South Australian officials lobbying their Federal counterparts and, of course, the Government is very much involved in this process of ongoing discussions with airlines and with the Federal Airports Corporation on these matters. From time to time I meet with relevant people to discuss these issues, as does the Managing Director of Tourism South Australia. On the staff of Tourism South Australia now we also have a consultant who is working largely on airline matters.

In addition, the Air Services Development Committee comprises Government and industry representatives whose job is not only to encourage foreign and domestic carriers to take up rights to come into Adelaide but also to take up these important questions of terminal facilities. So considerable work is going on behind the scenes with appropriate people to ensure that our airport facilities grow at a rate that is able to cope with the expected domestic and international demands on the facilities at Adelaide Airport. I am heartened by the responses that we have received to date from the respective parties about their intentions for the future and certainly their recognition of the need to provide facilities for the future.

MYER CREDIT CARD CHARGING

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question relating to credit card charging by Myer.

Leave granted.

The Hon. I. GILFILLAN: South Australia's financial situation is well known to honourable members and the public at large to be, to put it gently, in a troubled state. What is not so frequently focused on is the extraordinary extent of personal debt which has been incurred by many families and individuals in the State and which has blown out on certain occasions to the extent that people have sometimes filed personal bankruptcies, and have pawned essential items of household furniture and goods in order to survive. At the moment, statistics show that the current level of personal debt in this State runs at $4 568 per man, woman and child—

The Hon. L.H. Davis: That is less than the debt of State Bank, though.

The Hon. I. GILFILLAN: —and is growing. The difference between this and the State Bank debt is that these debts must be paid back.

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: These debts must be paid back to moneylenders, who are a lot more savage in the way they deal with it than is the State Government in dealing with our tax money. We are living in a period of economic recession, some might say depression, and an increasing level of financial burden is being placed on ordinary people. In this context I have viewed with both alarm and concern the current credit card promotion being undertaken by Myer in Adelaide. For some months now Myer has been promoting a so-called 'bonus point' scheme to card holders.

This scheme involves the active encouragement of card holders to use as much available credit as is available to them in exchange for points which accrue and can then be turned into vouchers of different values. The scheme requires card holders to book up a minimum of $750 to qualify for a $40 voucher, and this can increase as the level of personal debt increases. As an example, booked up credit from $750 to $999 wins the customer a $40 voucher, from $1 000 to $1 249 you receive a $50 voucher, and from $1 250 to $1 499 card holders receive a $65 000 voucher, and so on.

The Hon. Anne Levy: $65, not $65 000.

The Hon. I. GILFILLAN: I am sorry. I will delete a few noughts there. I meant to say a $65 voucher.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Gilfillan has the floor.

The Hon. I. GILFILLAN: I would like to acknowledge how astutely at least one member of this Chamber is listening, and I thank the Minister for that correction. However, a direct inquiry to Myer's credit department has revealed that there is no limit, although the top level for a voucher is set at $500 in exchange for booking up $10 000 in credit. The customer can take part only by using their credit card, and the current interest charged by Myer for their credit service is approximately 24 per cent. All Myer staff have been instructed by management actively to promote the scheme to each customer, and I have been told first-hand of one recent incident where a customer had spent approximately $700 on credit and was then encouraged to spend the extra $50 to qualify for the bonus scheme, and did so. My questions to the Minister are:

1. Does the Minister regard as appropriate this form of promotion which is based on encouraging an increase in personal debt?

2. Will the Minister investigate whether credit card customers are being actively encouraged by Myer staff, on direction of management, to increase their personal debt level?

3. If so, will the Minister approach Myer management to have this form of high interest, high debt promotion cease?

The Hon. BARBARA WIESE: I do not think there is anything wrong in principle with the use of credit cards. Credit cards can be a very useful and valuable facility for consumers.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: As long as credit facilities are used wisely and within the financial limits that the consumers have, they can be a useful and valuable facility. I am not very familiar with the Myer scheme that is currently being promoted. As I understand it, if a consumer pays the account before the due date, the interest rate does not apply and the bonus points can be kept. So, used wisely and appropriately, the scheme being promoted by Myer could in fact be just what it appears, namely, a bonus scheme for the consumer.

Having said that, I must say that the honourable member's references to the growing level of consumer debt in South Australia—indeed, Australia—is a matter of some concern to me. The rates of consumer indebtedness in Australia are very high compared to other similar countries, as I understand it. A proportion of the population is not managing its personal debt well. One of the objectives that both I and the Government have is the targeting of groups of people within the community who are potentially at risk in this area to ensure that they understand their rights and obligations when a credit facility is taken advantage of, in whatever form it might be.

Just a few months ago I launched a credit kit for use primarily in secondary schools in South Australia and also in community organisations to teach young people and others who may be at risk exactly what the risks might be and to encourage people to understand their rights and obligations and to know what they are getting into before they take credit cards or borrow money by whatever means. Those kits, which are now being distributed throughout schools in South Australia and are beginning to be used very effectively, are one step in the right direction in warning people about the pitfalls that may occur if they are unable to repay a debt. It is a serious matter, and one that I take seriously. We are doing as much as we can to make sure that people are aware of the problems that exist.

As to the points that I have made about the wise use of the Myer scheme, it appears to me that it can in fact be a helpful facility for consumers. If the honourable member has any evidence that it is not being used appropriately or within the law, I would certainly be happy to take up his inquiry.

The Hon. I. GILFILLAN: As a supplementary question, would the Minister consider it appropriate that she approach Myer management and urge them to distribute the information kit on how most wisely to handle one's personal debt at the same time that the staff are encouraging customers to spend possibly beyond the decision that they have made to extend their debt?

The Hon. BARBARA WIESE: I suggest that the honourable member might like to draw that to the attention of Myer, if he considers that there may be a problem.

The Hon. I. Gilfillan interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: I must say that the credit kit to which I refer would not be suitable for distribution to Myer consumers, since it contains videos and all sorts of other teaching material which is certainly useful for secondary school students and community organisations but which would be extremely expensive to distribute with the Myer card or the Myer account. I do not consider that to be appropriate but, if the honourable member feels that Myer should be taking the action that he has suggested, I invite him to contact Myer and make that suggestion personally.

MENTALLY ABNORMAL OFFENDERS

The Hon. R.J. RITSON: I seek leave to make an explanation before asking the Attorney-General a question about mentally abnormal offenders.

Leave granted.

The Hon. R.J. RITSON: We have read in the newspapers recently of public dispute about the possible release of Mr Pangallo, and we have just heard the Attorney-General say that Cabinet has decided 'No', without giving reasons to this Parliament. It is indeed an emotional issue. The law relating to the handling, treatment and detention of persons acquitted on the grounds of insanity is archaic and needs updating. The order of the court is that the person be detained in secure custody until the Governor's pleasure be known. Of course, the Governor's pleasure can be almost anything but, until it is known, those having the treatment and care of the patient cannot even take the patient for a ride in a wheelchair two feet beyond the secure perimeter.

These people have not been convicted of any crime. They are not considered morally guilty. Therefore, the questions of retribution, time in custody, and general and specific deterrents are irrelevant. The things that matter are the care of the patient, public protection and fitness to release, which include the environment into which the person will be released. The time has come for some modifications of this law to be made.

I put to the Attorney-General that, since a person is detained by the order of a court, as a consequence of a finding of the court, it ought to be a court that determines disputed matters surrounding the question of release and the conditions of that release. At the moment it is an administrative pathway: the buck stops at Cabinet and quite clearly politics influences that decision.

If a case were controversial and the details not known or understood by the public; if a Government were seeking to preserve its electoral stocks; and if scientific evidence favoured release (from custody costing $90 000 a year or four university places), a Government might overrule the recommendation, being mindful of its political position.

I believe that the concerns of relatives and friends of victims ought to be considered. If the psychiatric authorities were required to lodge with the court a management plan, which included considerations of the friends of victims and counselling thereof, and, if any greater degree of freedom for the patient was desirable, were required to lodge with the court variations to such patient management plan, the court could decide, free of politics and free of fear of any form of public frenzy, whether or not such a person should be released and under what conditions they should be released. Of course, a court could give a formal hearing to relatives, friends and interested parties in the environment into which the person was to be released so that the anxieties and safety of victims would be taken into account in determining the terms of the further progress of that patient out of the system.

In view of the general difficulty of persisting with a century-old system, will the Attorney-General consider enacting legislation to provide for the courts to review and approve of any release or partial release from care and costody of these patients, including giving the courts the right to take into account the feelings and attitudes of victims, and friends and relatives of victims? My suggestion has much to recommend it, and it will relieve the Attorney-General of the crises of conscience that politicians have at night when, for perhaps political reasons, they feel constrained to go against the scientific recommendations.

The Hon. C.J. SUMNER: Just to repeat what I said earlier, the Parole Board did recommend Mr Pangallo's release. I have indicated that to the Council in response to a question from the Hon. Mr Griffin. I am not sure whether the Hon. Dr Ritson heard that, but that is the situation. I also repeat that the Cabinet—

The Hon. R.J. Ritson: We are talking about the Cabinet.

The Hon. C.J. SUMNER: Yes, I know. But, I gathered from the honourable member's question that he may not have been aware that I said that the Parole Board—

The Hon. R.J. Ritson: The Parole Board is just a carrier pigeon on the way to the Minister.

The Hon. C.J. SUMNER: But the Parole Board did make the recommendation. I wanted to make that clear, and that I did indicate that earlier. I also said that the Cabinet's decision was based on the information that was before it, and that it was not appropriate to release Mr Pangallo at this stage. Obviously, difficult issues have to be determined in a case such as this because, as the Hon. Dr Ritson says, Pangallo was not convicted of any offence; in fact, he was acquitted on the grounds of insanity. So, it obviously does raise very serious questions and issues of principle. However, I can say and repeat that Cabinet's decision, at present at least, is based on the information that it had before it.

With respect to the substantive issue raised by the Hon. Dr Ritson, I can only say that once again Dr Ritson has raised an important issue and has, I believe, argued quite cogently for a review of the law in this area. I will certainly examine his comments and see whether or not it is appropriate in cases such as this for the courts to have the ultimate power. In other areas dealt with, for instance, habitual sexual offenders, we have removed the role of the Governor-in-Council from decisions to release persons who have been detained on the basis that they cannot control their sexual instincts and, in amendments to the sentencing legislation in 1988, that power was handed over to the courts.

So, there is no doubt that questions raised by the Hon. Dr Ritson are important. I think that his proposition is worthy of very serious consideration. Rather than give an off-the-cuff response to it immediately. I will consider it and let him know what my or the Government's view is on the topic. It may be that I might wish to consult with him about the matter as the matter proceeds.

PARKING REGULATIONS

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister for Local Government Relations a question about parking regulations.

Leave granted.

The Hon. J.C. IRWIN: Since my question to the Minister recently on the new parking regulations, I have continued to hear complaints about the new regulations and indeed how some councils have behaved under the old regulations. No-one can be confident that some councils will be more accurate and explicit under the new regulations than they were previously.

An example in the old regulations came to light recently in a prosecution where signs erected prior to 4 June 1980 had remained, where the time limit area had not been re-declared. This case and many others have resulted in the issuing of thousands of offence notices and an unknown number of prosecutions. Many people have paid up, not knowing the signs were illegal. Inquiries at a council have shown that the City Manager made a declaration as follows:

> Pursuant to regulation 11 of the local government (parking) regulations 1991 and exercising the powers of the council under regulation 5, I hereby impose the following parking controls on a temporary basis on Anzac Highway, Ashford, as incorporated in council plans numbered . . . to apply from 22 August 1991.

About six areas are shown on the plans, with each 'area' being shown in a diagram. Unfortunately, as far as the declaration goes, it does not state the areas are to be prohibited zones; it does not state when the zone is to operate; it does not state the 'prohibited zones' are to be 'no standing zones'; and it does not abolish or suspend the existing time limit areas, as is also a requirement under the new regulations.

The declaration is to apply from 22 August 1991, but regulation 11 states the parking control 'takes effect when so denoted'. It appears that the plans were given to a sign maker who did not understand that the signs had to have inward-pointing arrows at both ends and a double-pointing arrow in the middle. Instead, the signs had double-headed arrows, partly marking only two of the areas.

The regulations are unclear on what has to be done with any line markings and, presumably, the existing signs should be removed or covered. As with the council's plans for declarations under the repealed regulations, I doubt whether they indicate any area, despite the width specified by regulation 8 *(a)*. I am also informed that the Victorian regulations made in July this year incorporating the new Australian standards, as do our regulations, contain at least 25 relevant definitions and 19 diagrams of signs. Our regulations contain five definitions and no diagrams of signs.

The Motor Registration Division publishes a road traffic code book, used widely by many people and authorities. It was not notified of the new regulations or of the Australian standard signs to be used. The Minister may find that there is no prohibition on parking on the right hand half of carriageways of divided roads. I do not think it is intended that vehicles be parked on the right hand of the carriageways of Anzac Highway and King William Street, but it appears now not to be an offence.

The Hon. Diana Laidlaw: What about North Terrace?

The Hon. J.C. IRWIN: Similarly, North Terrace. The signs erected—many with different wordings—that allowed parking on the parklands during the recent Adelaide Show may not be parking zones. The charging of $2 per vehicle may be illegal. I do not expect the Minister to comment on the detail of the examples I have used but, rather, concentrate on not duplicating what has been described to me as a mess under the old regulations. My questions to the Minister are:

1. Does the Minister know that there were many examples under the old parking regulations where some councils were not following the correct procedures and frequently erecting illegal parking signs?

2. As the Government brings in parking regulations, will the Minister ensure that there is a coordinated public campaign to educate motorists to the new signs and their meaning?

I understand that the Minister was on radio some time last week complaining that she had put out a press release but the press did not pick it up. I believe that it is up to the Government to make sure that members of the public understand the new regulations that have been brought in, and particularly new signs. Will the Minister encourage the Local Government Association to conduct seminars and give advice to individual councils so that they may update their proceedings in light of the new regulations effective from 5 August this year, and try to ensure that the use of illegal signs is eliminated for the benefit of the unsuspecting motorist?

The Hon. ANNE LEVY: I am glad that the honourable member does not expect me to comment on the detailed regulations he has presented to this Council. I suspect that he has been speaking to a parking regulation enthusiast, of whom several are well known in Adelaide. With regard to his particular questions, there has already been contact with the Local Government Association regarding not only seminars but also a coordinated campaign by councils through the Local Government Association (LGA) to inform the public.

It is true that the Government proclaims parking regulations, but under the Local Government Act the control of parking is the responsibility of local government. Decisions have been made that the Australian standard parking signs will be used not only throughout South Australia but throughout the whole country. They are being gradually brought in throughout the country. While they became operative in this State just over a month ago, they will be phased in over the next two or three years; in particular, as old parking signs wear out they will be replaced by new ones.

There is agreement that for this intervening period the old and new signs will co-exist, but I hope that before too long there will be only the new signs; that will obviously make things much simpler for motorists. As regards further campaigns to inform the public, I have put out not only one press release but also detailed explanations, and I hope that, with the controversy attached to the Show last week, the media will take note of the importance of giving publicity to these new signs.

The policing of parking regulations is the responsibility of local government. From those who offend, it is local government that collects the fine, so there is no financial implication for the Government at all. Local government polices the parking and recoups, through fines, the expense of so doing. I hope that the LGA will take up the suggestion that local government, as the tier of government that will benefit from the fines, should undertake a concerted education campaign on the new signs. The RAA is undertaking to give publicity to the new signs through its journal. I imagine that this will be hitting the letterboxes of members of the RAA before very long. Certainly, an attempt is being made to make the signs familiar to members of the public.

The signs are moderately self-explanatory: P for parking, S for standing and C for clearway. Those are about the only letters of the alphabet that are used. Green, in terms of traffic lights, usually means 'go' and 'okay', and a green P means that parking is permitted. A green 2P means that parking is permitted for two hours; a green ½P means that parking is permitted for half an hour. Any sign with a red slash through it means that the activity depicted is not permitted. I should have thought that a very large number

of people would be familiar with that symbolism from the frequency of 'no smoking' signs apparent in many places.

The red slash through a letter indicates that an activity is not permitted, be it no parking, no standing or whatever. I should also say, although it did not form part of the honourable member's question, that in relation to some of the problems experienced with parking at the Show last week, I commend the Unley council for its efforts to instruct its residents on the meaning of the new parking signs in its area.

Of course, an occasion such as the Show draws attendances from people throughout the State, not just from those resident in the Unley area. As other councils have not as yet undertaken any education campaign regarding their new parking signs, many people from outside the Unley council area will not be familiar with the signs, although I am quite sure that many managed to work out what they meant. I have recommended to Unley council that it take a lenient attitude towards people who, because of their unfamiliarity with the new signs, have received expiation notices.

I certainly trust that in this new period councils will take a compassionate attitude towards people who may inadvertently break the rules regarding the new parking signs. I repeat: these parking signs will become common throughout the State. People will become used to them, and I certainly hope that campaigns through the Local Government Association, local councils and bodies such as the RAA will rapidly bring the new signs and their meanings to the attention of everyone in South Australia.

RADIOACTIVE WASTE DISPOSAL

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister for Environment and Planning, a question relating to radioactive waste disposal.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to the waste disposal provisions for a rare earths plant proposed for Port Pirie. The proposal is in three stages. Stage 1 involves the partial clean-up of existing uranium tailings on site. Stage 2 involves the importation of what has been described as essentially non-radioactive rare earths for treatment, and Stage 3 offers treatment of imported radioactive monazite, with the resultant radioactive waste being discharged both on site and off site. The project site would need to be licensed under the Radiation Protection and Control Act.

The first two stages were deemed by the former Minister for Environment and Planning, Dr Hopgood, not to require an environmental impact statement. The last stage has gone through an EIS, a supplement to the EIS and an assessment by the Department of Environment and Planning. In the supplement to the EIS, the proponent, SX Holdings, proposes to create a waste disposal zone, equivalent again in size to the existing site. This will be a ponding system to accommodate both liquid and solid wastes. This disposal area will be licensed as a waste depot under section 16 of the Waste Management Act 1988, and an exemption would be sought from Regulation 8 *(a)* of the Waste Management Regulations 1988.

It is worth noting that when section 8 *(a)* of the Waste Management Act was inserted into the Act in 1990 the acting Minister for Environment and Planning, Bob Gregory, publicly stated:

Some exemptions from the new regulations will be allowed for the disposal of small amounts of liquid waste in remote country areas.

It takes some imagination to see Port Pirie as a remote country area. The waste disposal site in question is situated on tidal flats in the intertidal zone on the edge of Spencer Gulf. The proponent proposes to cap each of the ponds after they have been filled to capacity. No excavation of the ponding area is planned on completion of the project.

There is currently a Commonwealth Draft 'Code of Practice for Near-Surface Disposal of Low-Level Solid Radioactive Waste in Australia (1992)' and this proposed site meets the requirements to be deemed to be subject to that code. Under the code, public usage or alternative use of such sites must be restricted for a period of not less than 200 years. How does the Minister justify the use of the qualified privilege exemption from section 8 *(a)* of the Waste Management Act 1988 when, in essence, she will be authorising the establishment of another toxic waste dump in South Australia, especially considering that this site is in an area prone to flooding by the sea and probably at increasing risk over the next couple of decades?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply.

The PRESIDENT: Order! The time for questions having expired, I call on the business of the day.

CLEAN AIR (OPEN AIR BURNING) AMENDMENT BILL

Second reading.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That this Bill be now read a second time.

Its principal purpose is to aid the administration of regulations relating to fires on domestic, commercial and industrial premises. The amendments are being sought in response to requests by local councils which have delegated responsibility for administering the provisions controlling fires in the open on non-domestic premises and both fires in the open and in incinerators on domestic premises.

The first provision of this Bill seeks to clarify what is meant by a fire in the open and, additionally, to empower local councils to administer the provisions controlling domestic incinerators that are used by occupiers of flats and other multiple household dwellings. The clean air regulations 1984 prohibit a fire in the open on non-domestic premises except by written consent of council and subject to such conditions that the council may wish to impose to minimise nuisance.

The Minister for Environment and Planning, through the Department of Environment and Planning, has responsibility for controlling emissions from incinerators on non-domestic premises. Some units, depending on type and capacity, require a licence to operate under the Clean Air Act. These units are often technically complex, designed to burn specific materials. Local councils generally do not have the technical expertise or equipment necessary to assess the design and operation of these incinerators; hence the State provides this service.

A problem encountered by local councils is determining what constitutes an incinerator on non-domestic premises and whether a fire within a semi-permanent construction is a fire in the open. A notable example of this dilemma is that faced by a council officer when responding to the nuisance caused by the disposal of waste by burning in a

205 litre drum. This means of waste disposal does not meet the department's incinerator criteria and provides an inefficient means of combustion. There is no means by which the burning or the emission of pollutants can be controlled.

Nevertheless, these problems hardly need the technical expertise of the authorised officers appointed by the Minister for industrial air pollution control, and could be solved more quickly and effectively by local council officers. The Bill seeks to clarify the position by regarding any fire in the open air, that is, any fire not within a building, as an open fire unless the products of combustion are discharged into the atmosphere via a chimney.

There is no point in simply adding a chimney to a rudimentary container and calling it an incinerator. I would point out that such action would allow air pollutants to be tested and the unit would most surely fail the statutory emission standards. This amendment therefore will eliminate a problem of interpretation and provide local councils with the opportunity to control what is essentially a matter of local nuisance.

The second provision of this Bill is also intended to assist authorised officers appointed by a local council in the execution of their duties under the Act. Currently, despite a fire in the open or in a domestic incinerator adversely affecting the public, a council officer has the power only to issue a notice of an offence against the Act.

There is no power to eliminate the source of the complaint by either requiring the fire to be extinguished or causing it to be extinguished. This has led to the unacceptable situation of the law appearing to be administered, yet the air pollution problem remains. The Bill therefore contains a provision to provide authorised officers with specific power to require a person to extinguish a fire where it contravenes the regulations.

Recognising that some offenders may refuse, the officer is also empowered to extinguish the fire personally or through another appropriate agency. These provisions are necessary to ensure the effective administration of air pollution regulations relating to burning rubbish, and to prevent unwarranted nuisance associated with that activity. I commend the Bill to honourable members and I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides for the operation of the Act to be by proclamation.

Clause 3 amends section 3 of the principal Act, which is an interpretation provision. The definition of 'domestic incinerator' has been broadened by the removal of the restriction that for an incinerator to be regarded as domestic, it must be used to burn refuse from less than three private households.

New subsection (2) provides an interpretation of the term 'fire in the open'. For the purposes of the principal Act and the regulations, a fire burning in the open air will be regarded as a fire in the open notwithstanding that it is burning in connection with the operation of any fuel burning equipment or within a container, unless such fuel burning equipment or container has a chimney.

Clause 4 amends section 53 of the principal Act, which deals with the powers of authorised officers.

New subsection (1a) widens the powers of authorised officers. If it appears to such an officer while on any premises that matter is being burned by a fire in the open or in a domestic incinerator in contravention of the regulations, the authorised officer may require the fire to be extinguished. If it is not extinguished, or if there is apparently no person in charge of the fire, the authorised officer may extinguish the fire himself or herself.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

ABORIGINAL LANDS TRUST (COPLEY)

Consideration of the House of Assembly's resolution:

That this House resolves to recommend to Her Excellency the Governor that, pursuant to section 16 (1) of the Aboriginal Lands Trust Act 1966, section 1278, out of hundreds (Copley), be transferred to the Aboriginal Lands Trust.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That the resolution be agreed to.

Section 1278, out of hundreds (Copley), was dedicated as a community purposes reserve under the care, control and management of the Minister for Community Welfare in *Government Gazette* dated 21 May 1981. Section 1278, out of hundreds (Copley) is situated adjacent to the town of Copley and contains a transportable building consisting of four offices, reception, waiting area, toilets and kitchen, with a double carport and double garage adjacent. A copy of the plan is available for perusal by members.

The Northern Flinders District Office of the Department for Family and Community Services provided two half-day services per week to the Copley community from this building. The Aroona Aboriginal Community Council uses the offices for their administration and to arrange community activities, while another office is used by the Pika Wiya Aboriginal Health Service, which is based in Copley, to provide services to Marree, Copley, Leigh Creek and Nepabunna communities.

In September 1989, the then Department of Community Welfare decided to rationalise services and minimise running costs by disposing of the Copley building. The Aroona Aboriginal Community Council has experienced difficulty in obtaining a building suitable for their requirements and requested that the property be transferred to them for use as an administration centre.

As the property is being used by two Aboriginal groups, it is considered that it would be preferable that section 1278 be transferred to the Aboriginal Lands Trust as the umbrella body which could determine future usage if one or both of the present users vacated the premises. The Aroona council has agreed to the property being held in trust by the Aboriginal Lands Trust.

The community purposes reserve over section 1278, out of hundreds (Copley) was resumed on 13 September 1990 and the land is now Crown land awaiting the transfer to the Aboriginal Lands Trust. I seek the support of the Council to the transfer and have pleasure in moving this motion.

The Hon. L.H. DAVIS: The Opposition is prepared to support this resolution. I have consulted with my colleague Mr Graham Gunn the member for Eyre in another place who is familiar with this piece of land on which this rectangular hall is contained. I am satisfied that the correct survey has been carried out and that it is appropriate to transfer this property from the Department of Community Welfare to the Aboriginal Lands Trust. It is significant that, in fact, the hall is already used, as the Minister has said, by the Aroona Aboriginal Community Council and the Pika Wiya Aboriginal Health Service, so this resolution really

confirms a use for the hall which is already occurring. It is a matter of no great moment in the scheme of things on a State level but, certainly, it is a most important initiative for the people of Copley.

I understand that there is a shortage of facilities for the Aboriginal community in Copley, and the transfer of section 1278, out of hundreds (Copley) to the Aboriginal Lands Trust will serve a worthwhile community purpose. Therefore, the Opposition has no concern whatsoever in supporting this resolution.

Motion carried.

ABORIGINAL LANDS TRUST (WANILLA)

Consideration of the House of Assembly's resolution:

That this House resolves to recommend to Her Excellency the Governor that, pursuant to section 16 (1) of the Aboriginal Lands Trust Act 1966, sections 160 and 166, hundred of Wanilla be transferred to the Aboriginal Lands Trust.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I move:

That the resolution be agreed to.

Located 22 km north-west of Port Lincoln, sections 160 and 166 comprised the Wanilla forest reserve which was dedicated in 1897. By the mid 1980s it had become apparent that this forest could not be sustained as a commercial operation. Following a public calling for expressions of interest and detailed negotiations, involving the Ministers of Aboriginal Affairs and Forests and the Port Lincoln Aboriginal Organisation Inc. (PLAO), the following proposals have been developed. They have as their ultimate aim the benefit of the Aboriginal people of Port Lincoln and district.

1. The Wanilla forest should be placed under the control of the Aboriginal Lands Trust. To that end, sections 160 and 166 were recently resumed and are now Crown land.

2. The next step, and the subject of this resolution, is that the forest should vest in the Aboriginal Lands Trust.

3. The PLAO Inc. will then be charged with management of the Wanilla forest under lease from the trust. Its management program will provide training and jobs for about 30 Aboriginal people in five years time in four major areas: forestry operations, conservation, information and other commercial enterprises. Funding sources already secured to support these programs include the Australian National Parks and Wildlife Service and the (Federal) Department of Education, Employment and Training. I seek the support of the Council for this proposal and have pleasure in moving this motion.

The Hon. L.H. DAVIS: This is a more complex matter than the regulation that we have already addressed. We are here seeking to transfer the hundred of Wanilla, located 22 kilometres north-west of Port Lincoln, to the Port Lincoln Aboriginal Organisation Incorporated, known under its acronym PLAO. Certainly, I accept that there has been consultation with the District Council of Lower Eyre Peninsula, which believes that proper negotiations have taken place and that this is an equitable solution. Certainly, my colleagues in this Chamber who represent that area, such as the Hon. Peter Dunn in this place, and Mr Blacker the member for Flinders in another place, are aware of the situation with respect to the transfer of land at Wanilla to the Aboriginal Lands Trust.

We are talking about an area of 1 750 hectares or approximately 3 square miles—an area which has not proved to be viable from a forest growing point of view. The trees in that area are about 60 to 70 years old, I understand, and have still not reached maturity. Quite clearly, a pine forest operation at Wanilla will always be a difficult commercial proposition given the experience of the past 60 to 70 years. Members familiar with pine plantations would realise that a regular cycle would be 40 to 45 years, so I have some doubts as to whether the Wanilla forest will ever be commercially viable.

The resolution mentions the fact that, in a four or five year period, this program to give the Wanilla forest area over to PLAO will provide training and jobs for about 30 Aboriginal people, not only in the forestry operations which I have mentioned but also in conservation, information and other commercial enterprises. I must say that the proposal is somewhat vague. I understand that less than a handful of people are currently engaged in that operation, and I have some grave doubts as to whether the operation can really sustain 30 people.

Perhaps the Minister, either in her response or on a later occasion after seeking appropriate advice, could inform the Council as to how many people are employed in this operation at the moment and, more specifically, what programs are planned in conservation, information and other commercial enterprises. I accept that there is merit in giving PLAO responsibility for this area in providing an opportunity for them in training and, more importantly, in jobs. I accept quite readily that there is funding support for this operation. However, as a Parliament, we have a responsibility to ensure that the funding is spent responsibly and the jobs that are provided are sustainable. We must not resile from that important fact.

Whilst I respect the observations of the Minister of Lands (Hon. Susan Lenehan) in this matter, and the acceptance of the proposition by the local member, Mr Blacker, in another place, I believe it is important for the Minister perhaps to flesh out in some little detail exactly what is proposed in the four major areas of forestry operations, conservation, information and other commercial enterprises. I accept that there are other areas of concern. Adequate fire control is important, and I believe that that has been considered.

Adjacent to the forest was a pressure treatment plant which has resulted in some contamination of the soil. I understand that the Department of Woods and Forests has given assurances that the land will be properly restored. In all other respects, the Opposition is satisfied that this resolution deserves support, but with the caveat that we would appreciate on the record some more information about the five-year program in those four areas mentioned in the resolution.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (SELF-DEFENCE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 August. Page 541.)

The Hon. K.T. GRIFFIN: At the last State election, the Liberal Party proposed that the law relating to self defence should be reviewed. A lot of concern was expressed to the Liberal Party that the law relating to self-defence was not clear and that there were other offences for which members of the community had been charged on occasions where they had sought to protect their property or themselves. At the time we indicated a number of those cases which had prompted our concern. Subsequent to the election, I intro-

duced a Bill which sought to clarify the law relating to self-defence. That private member's Bill introduced last year I think was the catalyst for the Government to propose, through Mr Groom in the House of Assembly, the establishment of a select committee.

What also prompted the formation of the select committee was a petition organised by two Adelaide women who were concerned about the way in which the law was perceived to apply and the concerns that they had about the need to clarify it. They organised a petition, and such was the strength of feeling in the community that approximately 40 000 or more South Australians put their signatures to that petition calling upon the Government to take some positive action to review the law relating to self-defence and to introduce legislation to clarify it.

The select committee met and heard submissions from a number of witnesses. As a result of the evidence, a report was brought down at the end of the last session, with a Bill which dealt not only with the law relating to self-defence but also with the question of offences committed by persons who were so much under the influence of alcohol or a drug that they were not capable of forming the necessary criminal intent, an essential ingredient in all criminal cases.

In addition to those matters, the select committee did examine the issue of strict liability under, I think, section 52 of the Dog Control Act which provides that any person who owns a dog that causes damage either by an attack, by running at a person or by frightening a person is absolutely liable for the damages that are incurred. The select committee proposed that in relation to the keeping of dogs for protection against intruders, both to protect the individual owner and to protect his or her property, the Dog Control Act should be amended to soften its strict liability provisions and to provide an appropriate defence that, at the material time, the dog was being used genuinely in the reasonable defence of any person or property, and that is an issue that is not taken up in the Bill before us. At the appropriate time I would like the Attorney-General to indicate whether that issue is to be addressed by the Government.

The Bill was introduced in the last session of the Parliament, and for a time it was not envisaged that it would be debated in the closing weeks of that parliamentary session. That conclusion was reached because Mr Wells QC, a former Justice of the Supreme Court and former Solicitor-General, and before that a Crown Solicitor, had made an extensive review of the Bill that the Government had introduced, found it wanting and was highly critical of it on the basis that, in his opinion, it weakened the rights of a person seeking to defend himself or herself or his or her property and was not as supportive as the present common law.

For some reason of publicity Mr Wells, who now lives at Carrickalinga, near Normanville, was not aware that the select committee was calling for submissions and as a result he was not able to make a submission to that select committee. However, he did prepare a comprehensive paper that he forwarded to the Government, to the Opposition and to other members of Parliament for consideration. Towards the end of the last session it was believed that that paper had thrown concern on the Bill that was before the Parliament, and that that would be sufficient to defer the consideration of it until this current session.

That did not occur in the end because the Government ran out of legislative business in the House of Assembly and debate was brought on at very short notice. At that time members of the Liberal Party in the House of Assembly spoke on the Bill, drawing attention to the concerns that Mr Wells had raised, and indicated that, while they supported the concept of the legislation, they were concerned that there should be no watering down of individual rights and that careful consideration should be given to the way in which the legislation was to be enacted.

The Bill was restored to the Notice Paper in this Chamber several weeks ago. Since that time, and over the recess, I have had an opportunity to arrange for a number of people to look at the Government Bill. Also, the Law Society's Criminal Law Committee has given consideration to it, along with consideration of the commentary and proposals by Mr Wells QC. I understand that there has not been a detailed consideration of the Law Society's submission or the commentary and proposals of Mr Wells. I must say that I am surprised at that because I would have thought that if we were to codify the law relating to self-defence we should take advantage of all responsible commentaries on the Bill and seek to ensure that it did at least what the common law does now, and probably take the matter somewhat further.

I have had the advantage of being able to consult with a number of people, and I must confess that that consultation has heightened my concern about the form of the Bill that is currently before us. The issue is a complex one. It is difficult to draft into law reasonable protections for people who seek to protect themselves, their property and others. What I would propose to the Attorney-General for consideration, on the basis that we wish to have some legislation pass the Parliament in a form that provides protection for defenders at least equal to what is currently the common law, is that he convene a discussion where we can have present members of the Government and the Opposition, and the Hon. Mr Gilfillan as a member of the Australian Democrats with an interest in this area, together with Mr Wells, Parliamentary Counsel and representatives of the Law Society with a view to trying to resolve the disagreements about the drafting.

If that is not something that is attractive to the Attorney-General, I would be disappointed. I would hope that he would concur and that within the month, after the Estimates Committees, we would be in a position to consider amendments to resolve the problems with this Bill. If that is not acceptable to the Attorney-General there are other options, including amendments, but the difficulty I see with amendments on the floor of the Chamber is that it is very difficult to throw amendments around, to worry them and to reach a conclusion in this forum on the satisfactory form of a Bill of this nature. That may still occur, and it may have to occur, but a conference of all interested parties and experts who have very extensive knowledge of the criminal law would, I suggest, be a positive step forward. The Criminal Law Committee, whose comments I understand have been endorsed by the Law Society, in its submission that I received towards the end of August, makes the following observation:

> The committee endorses Mr Andrew Wells' concerns about the problems in this proposed legislation. Self defence is fundamental to the criminal law and arises for consideration in the criminal courts of this State on a daily basis. It is a key element in a wide range of offences from common assault to murder. We are most concerned that the proposed legislation has not treated this fundamental and crucial area of the common law deeply enough. We predict that the legislation will spawn much confusion and consequential public and judicial debate.

In his commentary, among other things Mr Wells says:

> As I understand the plan, one broad aim of the Bill was to make clear to ordinary citizens, more especially the old, the frail, the fearful and residents of houses and other properties, how they stand with respect to the law. It seems to me that executive instructions to the draftsman have not permitted him to realise that aim.

Further, he states:

I have not been able to grasp the underlying philosophy of the Bill. Such a philosophy must be made clear, or judges will have difficulty in applying the law, and juries will have difficulty in understanding the judge's directions.

Later, he proceeds as follows:

Provisions that are important to the practical working of a law on defence have been omitted, and grave harm has been done to the interests of persons fairly and reasonably seeking to rely on its provisions.

He then proceeds to examine carefully the provisions of the Bill and to provide an address to the jury by the presiding judge in a murder trial in which self defence was claimed by the defendant.

The issue of the law at present needs careful examination. In its submission, the Law Society says that the decision of the jury or the tribunal of fact will be whether the defender believed on reasonable grounds that he was justified in doing what he did. There is a High Court case of *Zecevic v the DPP* in 1987, in which the High Court addressed this mental element and said:

The question to be asked in the end is quite simple. It is whether the accused believed upon reasonable grounds that it was necessary in self defence to do what he did. If he had that belief and there were reasonable grounds for it, or if the jury is left in reasonable doubt about the matter, then he is entitled to an acquittal. Stated in that form, the question is one of a general application and is not limited to cases of homicide. Where homicide is involved, some elaboration may be necessary.

The Law Society sets out what it discerns as the six important rules or principles referred to by Mr Andrew Wells, and I adopt those rather than attempting some distillation of my own. Those six are as follows:

1. Self defence is not a guise for a fight.
2. Self defence cannot be a cover for aggression.
3. Self defence will cease to be such if it becomes retaliation and punishment.
4. In defending oneself, one can respond to the threat of force before it materialises.
5. There is a duty to retreat and avoid confrontation if that be reasonably possible.
6. The response to the threat of or the attack itself ought to bear some relationship to the violence offered; that is, the defender must not overstep the mark.

This notion of reasonableness in self defence and the way in which the criminal law has regard to not only the community's notion of what is an appropriate response (that is, what is objectively reasonable) but also the defendant's own response, (that is, subjectively reasonable) is commonplace.

Of course, one must recognise that a person who is confronted with the threat of violence or with an intruder in the home or who is seeking to protect his or her property may have no time for detached reflection or even an opportunity to contemplate what might be reasonable in the circumstances, what the threat actually is or how the threat should be responded to. In the general application of the law of self defence, the courts have held that the conduct of the defender will not be weighed with golden scales or, in other words, as Mr Wells states:

The defendant must not plainly overstep the mark.

The Law Society reaches the following conclusion:

The proposed legislation erodes this flexible means of assessing the multitude of factual circumstances which arise, and lays down a statutory straightjacket.

Certainly, I do not want to be party to legislation that, in practice, may lay down a statutory straightjacket. It is important to refer to other observations by the Law Society, observations that have also been made to me by other persons. In relation to the language of the Bill, the Law Society says:

It has not eliminated this concept of reasonableness and, moreover, it has introduced a number of generalised concepts of a legal nature, such as 'genuine belief', 'reasonably necessary', 'intentional or reckless', 'grievous bodily harm', 'criminal trespass', 'lawful arrest', 'unlawfully at large', 'grossly unreasonable belief', 'reckless indifference', 'unlawful imprisonment' and 'lawful authority'. Certainly, all of these concepts have been addressed by the criminal law in one context or another, but they will all need to be redefined by the courts in the context of this piece of proposed legislation if it becomes law.

One of the lawyers who wrote to me after perusing the Bill observed that, over the centuries, the law has had sufficient trouble defining 'reasonable doubt', and questions how it will cope with defining 'grossly unreasonable belief' with 'reckless indifference', which appears in proposed section 15 (2). That is a legitimate question.

The Law Society asks whether the proposed legislation addresses the concerns of the householder. It refers to the fact that many of the submissions made to the select committee came from citizen groups concerned about their vulnerability to attacks and intrusions by house breakers and burglars. The Law Society states in relation to the proposed Bill:

... it confuses the rights and, as Mr Andrew Wells' submission makes clear, it restricts protection, albeit unwittingly.

In relation to any codification of the law, the observation is again made by the Law Society (and this is an issue that needs to be kept in view) that:

The potential mischief of a code is that if it is bad law, then its error is enshrined in legislation which the courts must interpret 'warts and all'. It is our view that legislation in such a crucial area, be it a code or not, must 'get it right'.

At this point I ought to reiterate that the Liberal Opposition prefers to see an expression of the law in statute, and will certainly assist in whatever way is possible to see that that is achieved, with the objective of ensuring adequate protection for persons who seek to defend themselves, others, their property or the property of others, and would certainly not wish to delay the consideration of legislation in an appropriate form.

Before I deal with the Law Society's examination of Mr Wells' paper, there is one aspect of the Bill to which I want to direct attention. Subsection (2) of proposed section 15 provides that a person who seeks to defend himself or herself, or his property or her property, is not protected from criminal liability if the person acts on the basis of a grossly unreasonable belief, with reckless indifference to whether it is true or false but, if a person while so acting but genuinely believing the action to be reasonably necessary for the defence of himself, herself or another, causes the death of the person against whom the action is taken in circumstances that would otherwise amount to murder, the homicide is manslaughter and not murder. No option is provided by that for the jury but to find that person in those circumstances guilty of manslaughter—not guilty of murder—but not to take the alternative of saying either murder or no criminal act. In relation to reintroduction of manslaughter for excessive self-defence the Law Society observes:

On page 6 under the heading 'The Partial Defence of Excessive Defence', the select committee recommends against the authority of the High Court, the reintroduction of the verdict of manslaughter where homicide results from excessive self-defence. This is enshrined in the proposed section 15 (2) of the Bill. In our view this is wholly undesirable for reasons made clear by Mr Andrew Wells. To reason that flexibility in sentencing will deal with the problem is a shallow justification. The defendant, who is convicted of the rather serious charge of manslaughter by way of a compromise verdict, might feel rather aggrieved, despite the leniency of a penalty imposed on him.

The further observations made by the Law Society refer to the 1958 High Court case of *Howe v the Queen* and states that the principle was that the defendant who killed his assailant when purporting to defend himself from violent assault and in so doing exceeded what was reasonably necessary for his defence upon a charge of murder could be

convicted only of manslaughter. Both the Law Society and Mr Wells say that there are powerful reasons why the Howe principle should not be reintroduced by legislation. The objections to this by Mr Wells are summarised as follows:

(i) The principle has been comprehensively rejected by the High Court in *Zecevic v DPP* (1987) 71 ALR 641. Further, it was authoritatively rejected by the Privy Council 16 years earlier in the case of Palmer (1971) AC 814.

(ii) The argument that the principle ought to be reintroduced to make room for the man who killed 'because he exceeded what was reasonably necessary for his defence by no more than a hair's breadth' is not tenable because a jury will not be so instructed, but rather will be told that they cannot reject the defence of self-defence unless they find beyond reasonable doubt that the accused 'plainly overstepped the mark'.

(iii) The rejection of self-defence without the Howe principle in place does not necessarily lead to a verdict of murder.

(iv) The Howe principle can work injustice by encouraging a compromise verdict of manslaughter where otherwise an acquittal could result.

(v) The reintroduction of the Howe principle in section 15 (2) does not confine it to excessively defending oneself from 'violent and felonious assaults' as was the case in the circumstances of Howe's case, but rather it applies all too liberally to all assaults, major or minor. This is a dangerous widening of the Howe principle.

So, that issue has to be addressed in the contemplation of the Bill.

For the purposes of the record, I will now relate the Law Society's summary of the views of Mr Wells and its own observations on the particular provisions of the Bill, which he addresses. The first relates to section 15 (1) *(a)*, which provides:

Subject to subsection (2) *(a)* a person does not commit an offence by using force against another if that person has a genuine belief that the force is reasonably necessary to defend himself, herself or another.

Mr Wells' criticism is based on his view that the section imposes on the defender the necessity of establishing that he had a genuine belief that the force was reasonably necessary to defend himself, herself or another. The Law Society states:

To bring himself within the section the defender must necessarily advert to and satisfy this test. The essence of Mr Wells' criticism is that it does not cover the man who acts instinctively in the stress of the moment fending off his attacker. Such a defender cannot be expected to have the detachment to advert to and qualify under this subsection. The existing law of self-defence does not require it. We respectfully agree with Mr Wells when he says of this subsection, at the top of page 4 of his submission, as follows:

> The function of a good defence law is to recognise the human response, confer its approval on that response in general terms, and then, on the assumption that the defender is genuine in his fear and response, specify broad and fair limits to which the defender may go and still retain the approval of the law.

The next subsection provides:

Subject to subsection (2), a person does not commit an offence by using force not amounting to the intentional or reckless infliction of death or grievous bodily harm against another if that person has a genuine belief that the force is reasonably necessary:

1. To protect property from lawful appropriation, destruction, damage or interference;

2. To prevent criminal trespass to any land or premises, or to remove from any land or premises a person who is committing a criminal trespass; or

3. To effect or assist in the lawful arrest of an offender or alleged offender or a person unlawfully at large.

What Mr Wells does is maintain his criticism of this subsection for much the same reasons as in relation to section 15 (1) *(a)*. The Law Society observes that it provides a formalised test to a dynamic human situation of stress. The society goes on to say:

In summary, for a defender to claim the protection of the section, in respect of defending property, preventing trespass and in respect of making or assisting in an arrest, the force he or she uses:

(a) must not amount to intentional or reckless infliction of death or grievous bodily harm; and

(b) must arise from a genuine belief that it is reasonably necessary.

The example of how the subsection is deficient is provided by Mr Wells, who gives the facts of a terrorist intent on poisoning a reservoir or reservoirs, blowing up a naval ship, or destroying a store of life-saving drugs. The Law Society observes as follows:

Surely in order to deny the terrorist such goals by disarming and capturing him may he not be shot in the legs or in the arms, such clearly being the infliction of grievous bodily harm. In such an example, Mr Wells points out that such force, that is shooting the terrorist in order to capture and disarm him, would amount to force which is reasonably necessary but, as it is an intentional infliction of grievous bodily harm, the section would not protect the defender or law officer taking such a step.

There is then expressed by Mr Wells to be an internal conflict between section 15 (1) *(a)* on the one hand and section 15 (1) *(b)* (i) on the other. He gives the example of armed bank robbers who not only threaten life and limb of bank staff but also intend to steal the property of the bank, namely, the money. The Law Society's observation on this is as follows:

Police or bank security officers may view it as necessary to shoot one of the robbers in an effort to defend the bank staff and protect the property of the bank. In so doing, the police officer will no doubt believe that such action was reasonably necessary, and he will also have intentionally caused grievous bodily harm. If so, the police officer might well be protected by section 15 (1) *(a)* in relation to protecting the bank staff, but not by section 15 (1) *(b)* (i) in relation to protecting the bank's property.

The prevention of criminal trespass to land is also the subject of comment, and an example given by Mr Wells is that of a malicious intruder repeatedly coming onto property and inflicting damage. The Law Society observes in relation to this that Mr Wells postulates that it may be necessary, intentionally, to inflict grievous bodily harm on the trespasser and so, again, there will be no protection to the owner or law enforcement officer causing such force, notwithstanding that it may well be reasonably necessary.

Then there is the situation of a person effecting or assisting in the arrest of an offender. Again, Mr Wells gives an example of an offender who may have murdered several people and who may be departing the scene in a fast car. A policeman shoots at the car with the intention of stopping it. In that event, the Law Society concludes that the police officer would not have the protection of the section if it was within his contemplation that the car might crash, thereby causing the occupants grievous bodily harm. The Law Society suggests that Mr Wells demonstrates how the person effecting an arrest would arguably not have the protection of section 1 *(b)* (iii). The Law Society goes on to say:

Mr Wells summarises his objection to section 15 (1) *(b)* by emphasising that the fundamental problem with the section is that it is using a style of drafting more appropriate to the creation of an offence than to a setting of limits to a defence. The defender is reacting, often instinctively, and cannot be expected to monitor his reaction and specifically advert to his state of mind. He is not an offender who is in jeopardy if he breaches a specific prohibition. Yet, the language of the proposed sections speak in those terms.

I now turn to proposed subsection (3) of section 15 which provides that:

For the purposes of this section—

(a) a person will be taken to be acting in defence of himself, herself or another if he or she acts to prevent or terminate the unlawful imprisonment of himself, herself or another; and

(b) a person who resists another whom he or she knows to be acting in pursuance of a lawful authority will not

be taken to be acting in defence of himself, herself or another.

In the Law Society's submission, there is reference to Mr Wells' comments on this subsection; it suggests that it uses a fiction and that it imports into the law relating to escape from unlawful imprisonment rules relating to self-defence and thereby confines the person seeking to escape to doing only what is reasonably necessary to secure his freedom, whereas the common law allows him to go further and do what is necessary to secure his freedom. 'Why has the common law been changed in this area?' says Mr Wells.

The Law Society's conclusion is that the Bill ought to be opposed. I do not support that view. I think that there is an appropriate alternative to which I referred at the opening of my second reading contribution. I think it is important for us to endeavour to try to meet the observations of Mr Wells and the Law Society and to endeavour to obtain from a consideration of the Bill and possible amendments something which will not give rise to concerns that have been expressed.

I want to refer briefly to some other matters. One could look far and wide at the way in which the law relating to self defence has been addressed in statute. Tasmania has a series of amendments in its Criminal Code Act 1924, and amendments inserted as far back as about 1973 seek to provide some statutory recognition of the defence of self defence. I will do nothing more than read section 49 which I am not claiming is the solution but which is an example to be taken into consideration. It provides:

(1) Everyone is justified in using force in defence of his own person, or of the person of anyone under his protection against unlawful assault, if he uses no more force than is necessary to prevent such assault or the repetition of it.

(1A) In any case in which it is lawful for a person to use force of any degree for the purpose of defending himself against assault, it is lawful for any other person acting in good faith in the aid of that person, to use a like degree of force for the purpose of defending him.

Of course, that section itself could be subject to some comment about the use of no more force than is necessary to prevent such assault or the repetition of it, which suggests that that might provide a strict cut off point rather than the flexibility to which Mr Wells is referring as a necessary ingredient of any law relating to self defence.

I understand that the select committee of the House of Assembly was considering an alternative form prior to that which ultimately was appended to its report. Among other things it contained a provision that a person does not commit an offence by using such force as it would be reasonable for that person to use in defence of himself or herself or another if the circumstances were as he or she genuinely believes them to be. Of course, that has some difficulties when one examines it closely. Other provisions of that draft were considered by the select committee.

I introduced towards the latter part of last year a private member's Bill which sought to establish a justifiable defence relating to self defence and defence of another as well as defence of property. Whilst I do not claim that that Bill is the answer, either, it provided that a person is justified in using in the defence of himself or herself or another such force as is reasonable in the circumstances as they actually exist or as the person believes them to be. It seems to me that that gets closer to the mark because it recognises that, if the circumstances are believed by that person to be as they may be, such force as is reasonable may be used, even though those circumstances do not actually exist. Again, I am not claiming that that is the solution to the difficult drafting problem.

In the United Kingdom Criminal Law Act, section 3 contains a different form of words. It provides:

A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

That imports its own difficulties of interpretation, and is limited in relation to the prevention of crime. The Mitchell committee gave some attention to this issue as far back as 1977. Since that time many articles have been written and many decisions made in cases relating to the law of self defence. I think it would be helpful if I were to read some aspects of the Mitchell committee's comments in relation to defence. Paragraph 12.2 states:

The primary question here [in relation to defence] is whether the defendant, when he killed the victim in response to an attack or threat of attack, was genuinely defending himself. If the jury believe that he was not, that in effect he used the victim's actions as an excuse for his own, the normal law of murder should apply. The possible defence factor becomes irrelevant to the defendant's criminal responsibility. If at the other extreme the jury conclude that the defendant acted as he did because he believed that it was necessary to defend himself, they should either acquit him altogether or convict him of some lesser offence than unlawful homicide if that is appropriate on the facts and available to them in law. It is to be observed that there are two different situations in which this should be the correct result. They correspond to the two different types of defendant that we have mentioned already. The defendant may have acted as he did with awareness of the likely consequences, or intending them; alternatively, he may have acted in a panic or instinctively, not directing his mind to any consequence except warding off the danger.

Although we refer in this connection to two different types of defendant it is of course equally possible that the same person acts differently in different situations. If a woman believes she is threatened with rape and kills her assailant with a knife, she need not have been in a panic to have acted without forethought. She may have been attacked suddenly in her own kitchen and struck back immediately with the nearest object to hand. The same woman in a situation where she had more time to think might have used the knife as a last resort.

The essential point is that, whatever the reason, if the defendant was acting genuinely in self-defence and either believed the consequences to the victim to be necessary or did not advert to them at all, he should be acquitted altogether. It is immaterial that he may have misunderstood the situation, whether reasonably or not.

Between the extremes of genuine self-defence (or defence of others) and no self-defence (or defence of others), there is however the possibility of genuine defence combined with conscious over-reaction. This is the case where the defendant took stronger measurers than he believed were necessary but did not intend to kill or realise that he was creating a high likelihood of death. The difference from the first case we put, of the defendant's using the victim's assault or threat as an excuse for killing him, is that here the mental element of murder is not present although the element of deliberate over-reaction is.

The verdict should be guilty either of manslaughter or of a non-homicidal offence, depending on the view taken by the jury of the defendant's actual state of mind. In this way the law of defence of oneself or others becomes consistent with our recommended law of provocation and similarly leaves an adequate range of verdicts open to the jury.

Other matters are commented on by the Mitchell committee in that report, but I do not think I need to deal with them at length on this occasion. I would like to address several other matters, and I hope to be able to conclude my remarks tomorrow so that the issues that I have raised can be considered by the Attorney-General. In view of that, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

HOLIDAYS (LABOUR DAY) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 4.33 p.m. the Council adjourned until Wednesday 11 September at 2.15 p.m.