LEGISLATIVE COUNCIL

Wednesday 25 November

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

PAPER TABLED

The following paper was laid on the table:

By the Minister of Transport Development, for the Attorney-General (Hon. C.J. Sumner)—

The Introduction of Contract Policing in the South Australian Police Department and Establishment of a Police Board in South Australia—Reports to Heads of Agencies Committee.

CONSTRUCTION INDUSTRY LONG SERVICE LEAVE (MISCELLANEOUS) AMENDMENT BILL

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

That the sitting of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA: I lay on the table the twenty-second report 1982 of the committee.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. T.G. ROBERTS: I bring up the report of the committee on the Mount Lofty Ranges management plan and supplementary development plan planning issues and move:

That the report be received.

Motion carried.

QUESTIONS

LAND BROKERS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question about land broking services.

Leave granted.

The Hon. K.T. GRIFFIN: A self-employed land broker has complained to me about two aspects. of a transaction involving a client. A client sold her house and had entered into a contract to buy a block of land with a HomeStart loan. The broker was given instructions to handle the settlement of the sale of the home and the purchase of the block, had prepared documents but had not at that stage quoted a price. The client arranged finance through the State Bank at its North Adelaide branch. When the client went to that branch, the bank told the client that the bank could have the broking work done more cheaply and referred the client to a broker employed in the South Australian Housing Trust.

The fees charged by the South Australian Housing Trust broker for the two transactions totalled $150, well below the maximum fee which was allowed by the regulations of about $450 to $500. The South Australian Housing Trust broker, whose name I will give to the Minister, is known to undertake broking work for private clients in addition to his work for the South Australian Housing Trust.

At least one other public servant is known to have an extensive private landbroking business, run in conjunction with his Public Service responsibilities. I will provide the name of that person and the name of the department to the Minister as it is under her responsibility. Both are believed to say that they only do broking work outside their Public Service responsibilities for family and friends, but the experience of the private landbroker to whom I have referred is that there was no such relationship between the SA Housing Trust broker and the client. The concern expressed to me is that the active referral by a State Bank officer of a borrower to a public sector broker, who is using public sector facilities and resources for private work, results in unfair competition. My questions to the Minister are:

1. Does the Minister agree that it is inappropriate for landbrokers in Government departments and agencies to use the resources and facilities of Government to undertaken private work and undercut private sector brokers who have to pay rent, cleaning costs, light and power, secretarial costs, WorkCover, other insurance, rates, taxes and other costs of operating when the Government broker does not?

2. Will the Minister investigate what approvals, if any, have been granted to landbrokers in Government departments to undertake broking outside their department or agency, with particular reference to the Government Management and Employment Act requirements?

3. Will the Minister ascertain the policy of the State Bank in relation to the use of Government brokers for borrowers, in preference to private sector brokers?

The Hon. ANNE LEVY: I will seek a report on the instances to which the honourable member refers. I appreciate that he will provide me with the names and perhaps also the name of the private broker and client who approached him and had dealings with the North Adelaide branch of the State Bank. With the information about the individuals concerned I will be able to get a report on the matter to which he has referred. I will certainly investigate the matter. I will refer the question to the Ministers responsible for the Housing Trust and the State Bank as obviously a number of agencies and portfolio responsibilities are involved. I will obtain a response and report back to the honourable member as soon as possible.

MARGARET DAY LIBRARY

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts

and Cultural Heritage a question about the State Theatre Company's Margaret Day Library.

Leave granted.

The Hon. DIANA LAIDLAW: Reviews of the State Theatre Company and State Opera released in May this year recommended that 'the feasibility of amalgamating individual performing arts libraries be assessed'. Recently the Department for the Arts and Cultural Heritage completed a feasibility study into the possibility of amalgamating the performing arts collection and the State Theatre Company's Margaret Day Library. A meeting is to be held this Friday between those two bodies, to be chaired by the State Librarian. The Department for the Arts and Cultural Heritage is to be represented, but the Public Service Association will not be, despite repeated requests to be represented at such meetings.

Speculation also exists that the Margaret Day Library could be absorbed into the State Reference Library. In the meantime, about 2 000 signatures have been collected since word got around that the Margaret Day Library is in danger. All such signatories are opposed to such a move. Theatre workers in particular have told me that they are agitated because they recognise that in South Australia the Margaret Day Library is a unique collection of performance and theatre art materials. It is professionally curated, staffed for 22 hours a week and available to all, with ancillary services such as the reading and reviewing of unsolicited play scripts, plus the maintenance of the State Theatre Company's photographic collection.

Amongst those currently employed in this field, the librarian is known to be the only person with the professional qualifications to run a library of performing arts, yet she has been offered a voluntary separation package—an offer that I understand she has refused. My questions to the Minister are:

1. Does the Minister support moves by her department to close down the State Theatre Company's Margaret Day Library?

2. Is it correct that the closure of the library would save $30 000, and does the Minister believe that that saving is worth pursuing, considering that the State would be losing a unique collection dedicated to performance and the performing arts?

The Hon. ANNE LEVY: I do not wish to see access to the Margaret Day Library denied to the public of South Australia and the many people with an interest in this library. It is generally agreed that the current situation is not very satisfactory: the library is currently not well housed; it is not available for many hours in the week; it is difficult to find; and it has been agreed that relocation of the library could provide much better access to the people who wish to use it. It is not just a question of the Margaret Day Library: the collection from Carclew has been under consideration, and there is the question of this being located with the Margaret Day Library, since both are libraries which relate to similar functions and which are likely to attract similar clientele. Convenience would be enhanced by having them together.

As the honourable member states, a number of options are being considered and a meeting will be held on Friday of this week to discuss various options, which are numerous. The fact that the meeting is being chaired by the Director of the State Library indicates that the matter is taken very seriously by the library community and that there is interest throughout that community that the collection should be available. I look forward to the outcome of that meeting and hope that a solution can be found that will be of benefit particularly to the people who wish to use the library. That is my main concern and would be, I imagine, the main concern of any trained librarian in the State as well as of people interested in the collection. It is universally agreed that the current situation is not very satisfactory, and the meeting will consider various options that would achieve the aim of making the library more accessible and more useful to the people of South Australia who wish to make use of the Margaret Day Library and of the other collections that I have mentioned.

The Hon. DIANA LAIDLAW: As a supplementary question, will the Minister confirm that closure of the Margaret Day Library would save $30 000, based on the studies undertaken earlier this year by the review and subsequently by the department?

The Hon. ANNE LEVY: I do not have the figures in my head and will need to obtain confirmation or otherwise of the figure stated by the honourable member. I presume that by 'saving' the honourable member means a saving to the State Theatre Company if it no longer housed the Margaret Day Library. The figure she quoted may or may not be the accurate one, but the question to me is not whether the Margaret Day Library is housed within the State Theatre Company: the question is—how do we make that library properly accessible and useful to the people of South Australia who wish to use it, recognising that its current location upstairs and behind doors and its very much reduced hours of opening do not make it as useful a collection as it could be if some of the various other options being considered were to come to pass.

STUDENT PORTFOLIOS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question about students' personal portfolios.

Leave granted.

The Hon. R.I. LUCAS: My office has received a copy of an internal memo issued to all Education Department principals regarding delays in the production of students' personal portfolio folders. The folders were to be issued to all year 10 students this year, together with printed material which, when matched with school and work experience records collected during the year, could be provided to prospective employers as a guide to the students' talents. The departmental memo states in part:

I am writing to inform you that delays in the production of the personal portfolio folders mean that they will not be available to schools this year. The folders are currently being manufactured and will be delivered to schools at the beginning of term 1, 1993.

Schools may wish to put in place some strategies to ensure that 1992 year 10 school leavers receive a personal portfolio (for example, asking students to return early next year to pick one up, or posting one). These students are among those at high risk in the labour market and a well organised personal portfolio could

assist them to find full-time or part-time employment, voluntary work or training opportunities.

A principal who has contacted my office is furious at the incompetence of the department and the inconvenience caused to schools and the hundreds of students who, in coming months, will join the existing 11 000 young people seeking employment. From speaking to Education Department sources, I understand that the delays in the production of the folders, which are to be made interstate, are largely due to GARG cut-backs, the fact that the department insisted on calling national tenders for the folders and the fact that the department simply underestimated the lead time necessary to produce the 18 000 folders, 13 500 of which are for State school students.

I am advised that the two officers originally allocated to work on the personal portfolios for 1992 were transferred back to other duties last December and, as a result, no-one was working fully on the project for four months. Also, considerable frustration has been voiced by some departmental staff at the need to call tenders nationally. The successful tenderer, while competitive in price, indicated that it needed eight weeks production time in which to fulfil the order. My questions to the Minister are:

1. Was it a condition of the tender that the successful bidder supply the order in time for year 10 students finishing their school year?

2. If so, will the department seek compensation from the supplier, given the inconvenience that students and schools will now be subjected to and, if not, why not?

3. Does the Minister agree with the view of some departmental staff that the delay in the procurement of the portfolio folders was in part due to GARG cut-backs, the department's insistence on tendering nationally and its incompetence in understanding the lead time that manufacturers need to supply orders of such size?

4. What was the tender price for supplying the folders to the department and what was the next best price and supply time offered by a South Australian supplier?

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

LOCAL GOVERNMENT ACT

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister representing the Minister of Housing, Urban Development and Local Government Relations a question about the Local Government Act.

Leave granted.

The Hon. J.C. IRWIN: The local government reform amendments were passed by Parliament in early April this year and most of the amendments came into operation in May and June of this year. However, the amendments to section 70b of the Act, which refers to a register of interests of officers and employees of councils, has yet to come into operation. In addition, the transitional provisions relating to the Local Government Advisory Commission have not come into operation as yet.

In relation to the register of interests, why has this section not come into operation, and when is it expected to come into operation given the three months it will take for the regulations to be adopted? In relation to the transitional provision for the commission, what is holding up its operation and when will it be operating? Is the Woodville/Port Adelaide/Hindmarsh amalgamation proposal the only matter now before the commission? If Port Adelaide withdraws from the original proposal, does the proposal for the amalgamation of Woodville and Hindmarsh represent a new proposal which should go before the newly constituted panel system, or is there still an option for the Woodville and Hindmarsh councils to opt for the Local Government Advisory Commission to hear their new proposal?

The Hon. ANNE LEVY: I will have to refer those questions to my colleague in another place. I do know that legal advice was being taken on whether the withdrawal of Port Adelaide meant that the remainder of Woodville and Hindmarsh was to be regarded as a new proposal or as a continuation in an amended form of the previous proposal, which would leave the option open to the councils involved as to whether they continued with the commission or went with the panel. I will leave the detailed advice on that matter to my colleague in another place.

With regard to regulations relating to the disclosure of interests of council officers, obviously negotiations have to take place with the Local Government Association regarding the details thereof. I am not sure what stage those negotiations have reached, but I am sure that my colleague will be able to supply an answer which I will be happy to bring back to the honourable member.

PLUTONIUM

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing Minister of Environment and Land Management a question in relation to a Japanese plutonium ship.

Leave granted.

The Hon. M.J. ELLIOTT: The world media has over the past three weeks tracked the supposedly secret route of what has been called the black ship, which is carrying 1.7 tonnes of weapons grade plutonium from France to Japan. The ship, the *Akatsuki Maru,* is currently rounding the Cape of Good Hope—a move which has been condemned by the African National Congress and other groups in South Africa.

South African authorities are keeping an eye on it with Air Force planes. The nations bordering the narrow Malacca Strait have banned the ship from taking that route to the Pacific Ocean. The only route available to the ship therefore is past southern and eastern Australia, through the Tasman Sea and past the French territories of the Pacific.

The *Akatsuki Maru* is being accompanied by a lightly armed support vessel and is being shadowed by a Greenpeace boat. This is the first of 20 planned shipments of plutonium destined for Japan's growing nuclear power industry. It is presumed that because of the ban on Malacca Strait, whatever route this shipment takes will be used for the 19 subsequent shipments.

The Commonwealth Environment Minister has been quoted as saying that, provided the ship stays 200 kilometres from Australian territory, there is no problem. However, if the ship has an accident, as ships happen to do from time to time, a problem could indeed eventuate. Should plutonium be released into the ocean anywhere south of Australia, currents will quickly take it to our shores, creating unimaginable problems of widespread environmental contamination. Today Adelaide is being visited by Mayor Matsuji Totani from our sister city of Himeji. I ask the Minister three questions:

1. Does the South Australian Government view the plutonium ship as a threat?

2. Has the South Australian Government raised those concerns about the ship's route with the Japanese Government?

3. At any stage during discussions with the mayor will concerns about the ship be raised and, if not, why not?

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

FLOOD DAMAGE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage, representing the Minister of Local Government Relations, a question about flood compensation to the Adelaide Hills councils.

Leave granted.

The Hon. BERNICE PFITZNER: One or two months ago I asked the Minister a question regarding flood compensation for the Adelaide Hills councils. I have since had new information in relation to this. The storm and flood in the Adelaide Hills between 30 August and 8 October has had an adverse financial impact on the councils of Gumeracha, East Torrens, Onkaparinga, Stirling, Mt Pleasant, Mt Barker, Burnside and Strathalbyn. Submissions have been sent to the Minister. There is a table of statistics that shows the financial impact on councils, and I seek leave to incorporate this table of statistics into *Hansard.*

The PRESIDENT: This is much the same situation as we had the other day. I do not mind when we are having a debate and members want to include statistics. However, when they are putting a question to the Minister and not supplying the full information, I find it a bit difficult to have it incorporated in *Hansard.* I am loath to give leave for that sort of incorporation.

The Hon. BERNICE PFITZNER: I shall identify then the details in this table. This table shows the financial impacts on councils. The Gumeracha council, which had a total damage of $806 150, has total revenue of approximately $1.5 million. The percentage of the total revenue of damages was 57.6 per cent, and this is beyond the council's financial capacity to address the damage. East Torrens had a total damage of approximately $600 000; it has a total revenue of $2.5 million; and its damage involved 24 per cent of its total revenue, and this again is beyond the council's financial capacity to address the situation.

Onkaparinga had a total damage bill of approximately $200 000; its total revenue is about $3 million, and the percentage of total revenue is 7.6 per cent; therefore, it will have difficulty, without assistance, in addressing this damage. Stirling had a total damage of $180 000; its total revenue is about $7 million, and its damage is of the order of 2.5 per cent. Mt Pleasant had damage of $35 000; its total revenue is approximately $1 million, and damage amounted to 2.7 per cent of total revenue. Mt Barker had a total damage bill of $45 000; its total revenue is around $9 million, so its percentage of total revenue was 0.5 per cent.

Burnside had a total damage bill of $68 000; its total revenue is about $16.5 million, and the percentage damage of its total revenue was 0.4 per cent. Finally, Strathalbyn had damage of $35 000; its total revenue is around $3 million, or 1.1 per cent of its total revenue.

You, Sir, will be able to observe that there is a variability in the nature of total damages and that some councils, in particular Gumeracha and East Torrens, will have an enormous difficulty in coping with this damage. My questions to the Minister are:

1. Has the Minister received the submissions for compensation by these councils?

2. What is the likelihood of these funding proposals being granted?

The Hon. ANNE LEVY: I will refer those questions to my colleague in another place for him to provide a response. I would point out to the honourable member that there is in existence a disaster fund for local government, which was brought into existence specifically to enable local councils to cope with natural disasters and the financial drain that this means for councils—here meaning damage to council property or damage for which the councils are financially responsible, not damage to private property arising from a natural disaster within a particular council area. That fund has its board of trustees, most of whom come from the local government sector. I presume that these councils are applying to the disaster fund and its board of trustees to enable them to cope with the damage.

I was not sure from what the honourable member said whether she was quoting rate revenue for these councils or total revenue. There is a considerable difference, of course; most councils receive about 50 per cent of their total income from rates, the other 50 per cent being made up of grants of various sorts from State and Federal Governments and from various charges and fees which they levy. Obviously, the degree to which the councils are affected—without in any way trying to minimise the effect—will depend on whether the figures the honourable member is quoting are percentages of rate or total revenue, and I felt that got somewhat confused as the honourable member was giving the information for her question. I will refer the question to my colleague for him to give a fuller response.

The Hon. BERNICE PFITZNER: As a supplementary question, could the Minister identify how much is in the disaster fund? Just to answer her question, I definitely said 'total revenue' each time I quoted the revenue. I am completely aware that there is a rate revenue as well, and this makes it even more significant.

The Hon. ANNE LEVY: I am interested to hear the honourable member say it was a percentage of total revenue. I am sure she quoted the total rates received by Onkaparinga.

The Hon. Bernice Pfitzner interjecting:

The Hon. ANNE LEVY: The honourable member did make mention of the rate revenue for some of the councils. With regard to the amount currently available in the disaster fund, I will refer that question to my colleague in another place. It is published annually. I think it can be found in the Auditor-General's Report, but presumably the honourable member would rather have the Minister find the figure than check it for herself.

FIREARMS

The Hon. I. GILFILLAN: I understand that the Attorney has an answer to my question concerning firearms asked on 27 October 1992.

The Hon. C.J. SUMNER: I have that answer, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

The Minister of Emergency Services has provided the following response:

1. The changes and controls included in the Firearms Act Amendment Act 1988, and the complimentary regulations proposed by the House of Assembly Select Committee, could not be implemented without a complete redevelopment of the firearms control system. This was not completed until early this year. In addition it was necessary to include the final resolution of the Australian Police Ministers' Council and the Premiers' conference. It would not be appropriate to proclaim legislation which did not have the required administration processes.

2. The Firearms Act Amendment 1988 and the Firearms (Miscellaneous) Amendment Bill 1992, currently before Parliament, will come into operation on the same day. A date has not been set but is expected that the proclamation will be early in 1993.

3. The number of firearms sold, but not registered by the new owner, is not rapidly increasing, but has built up since the introduction of the firearms legislation in January, 1980. The redeveloped firearms control system has made the number of these sold firearms more readily identifiable and steps are being taken to advise the new owners to register sold firearms currently in their possession.

SUPERDROME

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Public Infrastructure a question about the Adelaide velodrome.

Leave granted.

The Hon. J.F. STEFANI: Recently, the people of South Australia were informed that the building project at the Adelaide Velodrome was nearing completion. Once this project is finished, Adelaide will be able to utilise the world-class cycling facility which will have other flexible uses. Because of the size and design of the structure, the building will become a well-known landmark and will become a central focus point for cycling both at national and international level. My questions are: what were the initial budgeted costs for the project? What are the total construction costs that have been incurred by the State Government? What cost overruns have been incurred, if any, on the construction of the project? What were the conditions of the contract under which additional payments were made to each trade contractor? Which trade packages exceeded the original budget estimate, and by how much?

The Hon. ANNE LEVY: I will refer those questions to my colleague in another place and bring back a reply. I am sure any member who, like me, has been past the velodrome recently will be most impressed with the sight of it as it nears completion. It will obviously be a very exciting addition to the sporting facilities in South Australia.

STATE BANK

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about the State Bank.

Leave granted.

The Hon. L.H. DAVIS: Last week, in answer to my question, the Attorney-General admitted that he had become aware from his colleague the Hon. Frank Blevins that the State Bank was in some difficulties in December 1990, some several weeks before that announcement broke to an unsuspecting public when the Premier made known the fact that the State Bank was being bailed out to the tune of $1 billion. We now know, of course, that was only the beginning of the rot and the amount to date is $3.1 billion. My question to the Minister of Transport Development is: did the Minister become aware of any difficulties with the State Bank of South Australia before the Premier made that public announcement early in 1991? If so, who advised her of the difficulties—was it a colleague of hers, was it someone in the business community? What were the nature of the difficulties, if she was made aware of those difficulties before the date of the public announcement by the Premier and, if she was aware of any difficulties, what did she do about it?

The Hon. BARBARA WIESE: I did not learn of the financial difficulties of the State Bank until the Premier raised the matter with Cabinet. That was the first occasion that anyone who would have been expected to have a real knowledge rather than an anecdotal or rumour knowledge of anything that may have been happening with the State Bank was brought to my attention, and that was shortly before the Premier made the public announcement, as has become well known since.

POLICE ESCORTS

The Hon. PETER DUNN: I understand that the Attorney-General has an answer to a question I asked on 21 October regarding police escorts.

The Hon. C.J. SUMNER:. I have that, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

The Minister of Emergency Services has provided the following response:

There are no plans to phase out police involvement in the escorting of over-dimensional loads.

Certain over-dimensional loads are escorted throughout the State under permit from the Department of Road Transport. The escorts are provided by private contractors and, in some cases,

police. A review is under way at the present time in an endeavour to improve the service and to conform with recommendations of the National Road Transport Commission, on a national basis. The results of the review and what impact there will be on future escorts should be known by the end of December, 1992.

CHILD ABUSE

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister representing Minister of Health, Family and Community Services a question about child abuse.

Leave granted.

The Hon. J.C. BURDETT: On the front page of the *City Messenger* of last week, Wednesday 18 November, there is an article which states:

Fears of widespread child abuse in SA have been confirmed by improved records kept by Family and Community Services (FACE).

In 1991-92 FACS recorded 5 950 allegations of child abuse compared to 3 462 incidents in the previous year, and 2 898 in 1989-90. The 70 per cent jump in reports has been linked to a computerised system used by FACS for 1991-92, rather than a dramatic increase in child abuse in the past two years. Child Protection Unit spokeswoman Lee Wightman said the computer system as compared to FACS staff filling out forms was more thorough and gave a clearer picture of child abuse in South Australia. FACS expects to be able to accurately map any increase next year, using the second batch of computer listed figures. 'During a recession you can often see an increase, as people are under economic stress,' Ms Wightman said. Of the 5 950 incidents reported to FACS during 1991-92, 3 597 went on to be investigated.

The article continues:

A random poll by the Women's Emergency Shelter gives an horrific insight into child abuse. The shelter chose 126 children who passed through the North Adelaide centre with their mothers during the past two years and compiled a profile of abuse in an effort to highlight the tragedy, administrator Ele Wilde said. All 126 children had watched or heard abuse inflicted on their mothers, with some seeing rape, chases involving guns or knives, or severe physical assaults. Fifty-two per cent of the children had been physically abused, in some instances having faeces rubbed into their faces, while 16 per cent had been sexually abused. Ms Wilde said the figures reflected the range of child abuse, including emotional trauma, which was harder to detect. 'We are seeing the terrible psychological and emotional effects of witnessing domestic violence,' Ms Wilde said.

Recently my colleague, the Hon. Bernice Pfitzner, asked two questions concerning child abuse and cited a particular case and another based on an article in the *Public Service Review* headed 'Tampering with FACS'. Because she quoted it at some length, I will not quote it again at length except for this portion:

A management report from one of the major metropolitan offices found that about 600 to 800 cases reported between October 1991 and June 1992 were being closed without any or only partial investigation.

It is clear that, if the facts of both cases are accepted, there is a coincidence of, on the one hand, there being an increase in reported cases and, as has been said, not necessarily in actual cases. On the other hand, the lack of resources within FACS is such that these cases cannot be handled, even presently. My question to the Minister is: What steps are being taken to overcome the lack of resources at a time when reported cases are increasing?

The Hon. BARBARA WIESE: I will refer those questions to my colleague in another place and bring back a reply.

BUS SERVICES

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question about community bus services.

Leave granted.

The Hon. DIANA LAIDLAW: I received an article from the local Messenger paper in the Enfield area about the Minister's reply to concerns expressed by that council following the withdrawal of STA bus services on evenings, Sundays and public holidays. The council wrote to the Minister in September demanding that route 292 from the city to Hillcrest have its night and Sunday services reinstated. Subsequently I spoke to the council about this and it has confirmed that the reports were accurate as referred to in the paper. The Minister apparently replied to the council telling it that it should use its own community bus services and volunteer drivers to fill the gaps in services to the Enfield area that the STA had decided that it no longer wanted to run. Enfield council in turn at its meeting last week rejected the Minister's suggestion that it use its community buses and volunteer drivers to fill these gaps in STA services. Councillor Mark Basham said that the Minister was out of touch with people's needs. He also went on to say:

The gall of the Minister to say that we should use our council volunteers because the STA cannot get its bloody act together to provide a decent service in the area!

Councillor Basham's strong language reflects the feelings on council in general, particularly of the people in the area.

I have spoken to some of the people in the Crestview Retirement Village and they are extraordinarily upset and angry about the withdrawal of services from the area. A number of village residents now say that, because they can no longer drive their car, they no longer go out at night or on Sundays. What they are experiencing seems to be a far cry from the Government's social justice policy. Is the Minister prepared to reconsider the flat refusal to reinstate at least a number of the services 292 to the Enfield area in the evenings and on Sundays and public holidays? Why does she believe that it is fair and reasonable for the onus to be on local councils using their community buses driven by volunteers to meet the needs of the travelling public on evenings, Sundays and public holidays and why will she not allow private bus operators to plug the gap in STA services that the STA no longer wishes to operate?

The Hon. BARBARA WIESE: As the honourable member knows very well, in August this year a major reorganisation of various bus routes in the Adelaide metropolitan area was designed to move towards a reallocation of services in the various regions of metropolitan Adelaide to cater for the times of the day when most people want to use public transport and to

encourage an increase in the use of public transport at those peak periods of the day. Now, in many of those areas where such changes have taken place, there is a concentration on the provision of an efficient, effective, frequent service being provided for commuters in peak periods and, as I have indicated in this place before, the moves taken in that respect have proved to be very successful because the patronage on those services has risen. This was brought about by the fact that all the community, including the Opposition, has been calling for a very long time for the deficit funding for the public transport system to be brought down.

Over a period of years the Government has been working very hard to reduce the costs of the public transport system. There has been considerable success in this respect and, at the same time, the objective of the Government is to use available resources, and new resources as they become available, to provide a more effective public transport system at the times of day when people most want to use buses and trains. I fully acknowledge, as did my predecessor, that this has meant that some inconvenience has been caused to some people because of the withdrawal or rerouting of services in some parts of Adelaide, or the less frequent services that this reorganisation has brought about.

I am very sorry if, as the honourable member reports, the Enfield council has refused out of hand to entertain the idea that it might be possible for council resources to be used in such a way as to assist local people in getting around the area, but I do not think that anyone in South Australia expects the State Transport Authority to be able to please all of the people all of the time. It is simply not possible to achieve that. The organisation of services has been arranged in the best possible way. As I said, I acknowledge that some people have been inconvenienced by that. I hope that in areas where the resources exist and where local government authorities have a reasonable interest in servicing the needs of their local community, they might consider taking up some of those local community runs or cooperating with the State Transport Authority in a way that provides a more comprehensive community service in some of those areas.

As to the question of private operators, I am not aware of any move on the part of the State Transport Authority to cut out private operators from local community commuter services. In fact, I understand that discussions have taken place with some private operators with respect to feeder community services in the southern suburbs, and I have referred in this place previously to the recent pilot project that has been entered into with taxi operators providing a feeder service for residents of Hallett Cove.

That pilot project, which began a couple of months ago, has so far been very successful. The people who operate the taxis are private enterprise operators, and the Government is working cooperatively with them in this pilot project to establish whether or not such a service is considered desirable by commuters and whether such a service might be extended to other parts of the metropolitan area. So, there are many opportunities for innovative ideas to come from local government and from other people in the community as to how the community transport needs of local communities might be addressed. I am sure that, if some new ideas emerge from the Enfield area, those ideas will be assessed and investigated.

PUBLIC SECTOR SALARIES

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Public Sector Reform a question about public sector salaries.

Leave granted.

The Hon. R.I. LUCAS: On 15 October I asked a question of the Attorney-General, as Minister of Public Sector Reform, about Dr McPhail, who is returning to head up the education, employment and training super-department. I asked about Dr McPhail's remuneration package and length of contract, and the Attorney-General indicated that he represented the Minister of Labour Relations and Occupational Health and Safety, who was responsible for the Commissioner for Public Employment and the Premier, and said that he was sure that the details requested by me 'can be obtained by someone, possibly even by me. I will let him have the information'. Given that he eventually had success with the question about Club Keno after four goes, will the Attorney have another go before the session finishes at the end of this week?

The Hon. C.J. SUMNER: I will do my best. However, if that information is so difficult to obtain that I cannot provide it by tomorrow, I will undertake to write to the honourable member at the earliest possible opportunity.

MARBLE HILL

The Hon. J.C. IRWIN: Has the Minister for the Arts and Cultural Heritage a reply to a question I asked on 6 November about Marble Hill?

The Hon. ANNE LEVY: I have, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

The Minister of Environment and Land Management has provided the following response:

1. Since the National Trust had advised the Government that it is no longer in a position to manage Marble Hill, there has been consultation between the District Council of East Torrens, the National Parks and Wildlife Service, the State Heritage Branch of the Office of Planning and Urban Development and the National Trust to determine management options which are available to protect the site. The Government will ensure that the site is managed so that its heritage significance is protected.

2. No management plan has been prepared for Marble Hill.

3. The future plans for Marble Hill are currently under consideration as indicated. It is important to ensure that extensive consultation occurs before a final plan is adopted.

FLORISTS' WIRE

The Hon. J.C. BURDETT: Has the Minister for the Arts and Cultural Heritage a reply to a question I asked on 27 August concerning florists' wire?

The Hon. ANNE LEVY: I have, and I seek leave to incorporate the answer in *Hansard* without my reading it.

Leave granted.

From the information supplied it would appear that an officer or officers of the Department of Public and Consumer Affairs have found packages of florists' wire for sale at garden nurseries. The packs are either not marked with a quantity statement, that is a statement of the number of pieces in the pack and the length of the pieces of wire, or the packs are marked, for example, 'approximately 50 pieces'. Section 18 of the Packages Act 1967 requires a packer, when packing an article in a pack, to mark the pack with a true statement of the quantity of the article contained in the pack. The word 'approximate' in relation to the quantity is not acceptable.

Therefore, in this case, if a bundle of wires which constitutes the pack is marked, for example, '50 pieces each 30 cm long', the requirement of the legislation is satisfied. Packs which are packed on the premises for sale on those premises are not required to be marked with the name and address of the packer. If the honourable member would provide me with details of the nursery or nurseries involved, I will refer the matter back to the Department of Public and Consumer Affairs so that an appropriate officer may clarify the packaging requirements with the person or persons involved, thus ensuring a resumption of the supply of florist wire in the desired quantities to your constituents and other floral arrangers.

STATE CLOTHING CORPORATION

The Hon. J.F. STEFANI: Has the Minister of Transport Development an answer to a question I asked on 21 October?

The Hon. BARBARA WIESE: This question relates to the State Clothing Corporation and I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

1. The State Supply Board has requested that prior to calling tenders for sewn items, agencies are required to:

- contact State Clothing. to ascertain whether they can manufacture the item to the agency's requirements and if so:
- negotiate a supply arrangement at a fair market price where quality and delivery requirements can be met by State Clothing.

State Clothing has, therefore, an opportunity to quote for business but agencies have the opportunity to call tenders if they cannot successfully negotiate with State Clothing. This then results in an open tender call.

Orders received by State Clothing from its major customers were achieved on the following basis:

Central Linen Service - negotiation
S.A. Police Department - negotiation
State Transport Authority – negotiation
Road Transport - open tender and negotiation
ETSA - open tender

2. State Clothing, as a supplier, is not in a position to be aware of the numbers of tenders received by tendering agencies.

3. State Clothing has provided for a dividend of $66 000 to be paid to the consolidated account as a result of its profitable operation in 1991-92.

4. State Clothing manufacturers only trousers for the S.A. Police Department uniform store. This is the only garment, that by mutual agreement, it is able to provide at the appropriate quality, service level and price. All other items are the subject of open tender calls.

SCHOOL SPORT

The Hon. R.I. LUCAS: Has the Minister for the Arts and Cultural Heritage an answer to a question I asked on 21 October about school sport?

The Hon. ANNE LEVY: Yes, and I seek leave to have the answer incorporated in *Hansard* without my reading it.

Leave granted.

The Minister of Education, Employment and Training has advised that she has not been provided with any evidence that participation rates in junior sport have decreased since the introduction of the Junior Sports Policy. On the contrary, a study commissioned by the Australian Sports Commission (January 1992) states that over the last ten years there has been an increase of 11 per cent for boys and 15 per cent for girls in the number of children who play sport for a school or club. A 1991 research work published under the title Junior Sport in South Australia claims that in Year 8, 69 per cent of boys and 58 per cent of girls are playing school or community sport.

The Minister is confident that with a constantly increasing number of sports seeking inclusion in the Junior Sports Policy, the development of junior sport in South Australia is in a sound state. A draft policy called a National Policy for Junior Sport in Australia has been produced by the Australian Sports Commission. The National Policy is based on the South Australian Policy. Figures held by the Junior Sports Unit in relation to parent and teacher involvement in junior sport show that over the last twelve months there has been an increase of 15 per cent in the number of teachers/parents participating in coaching education courses.

The number of sports included in the Junior Sports Policy has increased since the introduction of the Policy. In December 1990, 47 sports had guidelines in the Policy, and by early 1993 approximately 61 sports will have guidelines in the Policy. This means that there is an increase in the variety of sports available to children. ACPHER's general criticism of the Policy does not seem to be supported by the evidence available, therefore further action is not warranted.

SOCIAL DEVELOPMENT COMMITTEE

The Hon. CAROLYN PICKLES: I move:

That the first report of the committee (social implications of population change in South Australia) be noted.

As this is the first report of the committee, I should like to thank members for their hard work on the committee. That includes some members who no longer serve on the committee, namely, Mr John Quirke, Mr John Oswald and Mr Paul Holloway, who have gone on to different committees and who have been replaced by Mr Michael Atkinson, Mr Vic Heron and Mrs Dorothy Kotz. The other members of the committee, besides me, are the Hon. Ian Gilfillan and the Hon. Legh Davis.

I should like to thank the secretary, Ms Ann McLennan, for her hard work on this report. She has now left the committee to take up a position in another

department. I should also like to thank Mr John Wright, the research officer to the committee. In looking at the social implications of population change in South Australia, the committee noted that changes in the size, composition and location of population are important determinants of the level and nature of the demand for social services. For the Government properly to meet its responsibilities for the provision of human services, it must have information about current and emerging demographic changes and trends. The committee felt that it was important for its first report to get some kind of handle on precisely what services were available in South Australia.

To this end, the committee has examined recent and probable future changes in the size and character of South Australia's population and considered the implications of these changes for the demand of social services. The committee has made some 20 recommendations, and I want to touch briefly on some of the main observations contained in the report. I urge honourable members to cast their eye over this report because it is a very interesting one. South Australia has a population of 1 400 656, which was from the 1991 census preliminary data. This was an increase of 54 711 since 1986. The average annual growth for the five years from 1986 to 1991 was .81 per cent, the lowest in Australia after Tasmania. All expectations are that South Australia's population will continue to grow for at least the next several decades.

Recent population projections up to the year 2021 indicate that the population will increase in size throughout that period, although the rate of growth is likely to fall below present levels. By the turn of the century it is expected that South Australia's population will have reached approximately 1.7 million and by 2021 1.9 million. Compared with other States, South Australia has the highest proportion of its population living in the State capital. The committee has noted the decline of population in non metropolitan South Australia and will examine a further report on this decline and its implications when the 1991 census data is completely available.

The committee addressed the issue of fertility rates and the effect that this has had on South Australia. Over the past two and a half decades there has been a marked decline in fertility levels, due to several factors, such as rising unemployment, the changing status of women—that is, their entry into the workforce, reliable contraception and higher levels of education. It is interesting to note that since 1988 there has been a slight increase in fertility levels, primarily the result of fertility increases amongst women aged in their mid to late 30s, who have delayed child bearing. Evidence given to the committee would indicate that it is too early to establish whether this increase marks the beginning of a turnaround in fertility levels, but international trends would indicate that this is so.

Unfortunately, all our social planning has been based on the expectation of further declines in the birth rate, and this blip, if you like, has caught social planners by surprise. It will therefore be important to closely monitor fertility trends in South Australia to gauge whether or not this is a permanent feature of our society, and the committee has made recommendations along these lines. The committee has also noted a disturbing trend that since the 1980s in Australia a growing proportion of children are being born into low income families, particularly single parent families and there has been an increase in the proportion of children living in poverty.

The most significant demographic challenge currently facing South Australia is the rapid ageing of our population. Since 1971 there has been a rapid growth in the size of older age groups, persons aged 65 years and over in the South Australian population. Between 1971 and 1986 the number of people aged 65 and over grew by 56.4 per cent, from 99 600 to 155 750. Some four years later in 1990 the number had increased by a further 25 931, or 17 per cent, to 181 681. At present, people aged 65 years and over make up 12.5 per cent of the population. This proportion is expected to continue to increase, reaching 13.9 per cent by the turn of the century and 19 per cent by the year 2021.

The continuing growth of the older population foreshadows considerable increases in the demand for a wide range of services specific to the aged, especially in the health area. Ageing, particularly among the older age groups, affects women more than men, because typically women outlive their male counterparts—and that trend is not changing at the present time. For example, of people aged 85 years or more, almost 75 per cent are women.

Evidence was presented to the committee indicating that, although the needs of older women were well recognised by service providers, there was a high level of unmet need for community care, that is, services such as domiciliary care, Meals on Wheels and the Royal District Nursing Service.

Evidence was presented to the committee indicating that the location of older people in metropolitan Adelaide is changing. Historically, the population aged 65 years and over has been concentrated in the inner and coastal suburbs. These are also the locations of the majority of services for the aged, such as transport, access to community services, shopping facilities, and so on. But now the greatest number of older people live in the middle and outer suburbs. This is producing a widening mismatch between the location of services for the aged and the aged themselves. The cyclic nature of the age structure of suburbs, demonstrated by the changing location of the elderly in metropolitan Adelaide, means that there will continue to be periodic shifts in the nature of demand for locally provided services.

In response to this, the committee recommended that Government agencies investigate the feasibility of constructing multi-purpose buildings that can be modified in response to changes in need arising from age structure, changes in an area; for example, buildings which can be modified for use as housing, schools and aged accommodation. To me that seems to be a very practical solution, and I understand that there have been some pilot projects in some areas.

Approximately one third of South Australia's population aged 65 years and over were born overseas. That is a staggering figure. Almost 40 per cent of these were born in non English speaking countries. Many of these older people have a limited proficiency in the English language, which reduces their ability to use services and it can isolate them in the community far more than their counterparts who have the ability to

speak English. Evidence was presented to the committee indicating that there was a particular need for service provision for older people from smaller ethnic communities.

It is also important to note that an older South Australian in 1992 can expect to live five years longer than an older South Australian could have expected 20 years ago. This may not seem a significant change but, when examined in the context of the number of people who will be living longer, it has enormous ramifications for the provision of services. Professor Hugo of Flinders University, in evidence to the committee, has calculated that at the national level the increases in longevity has already added 10 million extra years of Government outlays for pensions and specialised services for the aged. It is a fact that people are living longer at the frail-aged end of the spectrum, and this presents a service dilemma for providers and planners. The report deals in great depth with the issue of the aged.

The committee also addressed South Australia's Aboriginal population and notes the marked difference in life expectancy of Aboriginals compared to other races in South Australia, a high infant mortality rate and a gross over-representation of Aboriginal people in the criminal justice system. At 30 June 1991 Aboriginals accounted for 14.4 per cent of the prison population but only 1.1 per cent of the total South Australian population.

Finally, I would like to turn to the matter of hospitalisation and surgical rates in South Australia and to make the following observations, which were given in evidence to the committee and which are contained in the report. South Australia leads the nation in the use of hospital services. In 1989-90 South Australia had an acute hospital admission rate of 267.1 admissions per 1 000 population, which was 43.7 admissions, or 19.6 per cent, higher than the Australian average of 223.4 admissions per 1 000 population.

The Hon. Peter Dunn interjecting:

The Hon. CAROLYN PICKLES: The South Australian Health Commission was unable to explain the higher than average hospital admission rates in South Australia. Mr Dunn, there are ageing populations in other States and in other parts of the world.

The Hon. Anne Levy interjecting:

The Hon. CAROLYN PICKLES: We are having some statistical advice from the Minister. They did note, however, that there is a positive relationship between hospital bed supply and use and that South Australia has more beds her head of population than the national average—5.56 hospital beds per 1 000 population in South Australia compared with the Australian average of 5.0 beds. The South Australian Health Commission noted further that South Australia has 88 medical specialists and 149 general practitioners per 100 000 population compared with an Australian average of 78 and 138 per 100 000 population respectively.

Surgery rates in South Australia for some procedures are the highest in Australia. Data for 1986, the most recent available, indicate that South Australia had the highest surgery rates for tonsillectomy and cholecystectomy (the Hon. Dr Pfitzner will probably raise her eyebrows but I will do my best with this medical terminology), the second highest rate for hip replacement surgery and a higher rate for caesarean sections than Western Australia, New South Wales and Victoria.

Elizabeth is particularly remarkable in the extent to which its surgical rates exceed the metropolitan average. I think members were quite staggered by some of the statistics that I will reveal to the Council now, and we have made some recommendations about them.

Data for the period 1988-89 and 1989-90 indicate that the rate of appendicectomies in Elizabeth exceeded the metropolitan average by 91.6 per cent; the rate of caesarean sections was 132.4 per cent above the average; cholecystectomies were 107 per cent higher; female sterilisation were 104 per cent higher; tonsillectomies were 139.9 per cent above the average; hysterectomies were 71.7 per cent higher; prostatectomies were 57.4 per cent above the average; and haemorrhoidectomies exceeded the average for metropolitan Adelaide by 53.1 per cent. These are pretty amazing statistics.

A working party set up by the Health Commission in 1988 was unable to explain these elevated rates of surgery. The committee was not particularly satisfied with that lack of explanation and has therefore recommended that there should be an investigation of the higher hospitalisation rates in South Australia and the elevated rates of surgery in the Elizabeth local government area.

I hope that members in this Chamber, the Government and service deliverers will find this report informative and useful. We have presented it, I hope, in a user-friendly way and, as I have indicated, we will try to update and further investigate some aspects contained in the report. The committee, in setting out this term of reference, believed it was important to have an overview of change to our population and its social implications, and I believe that this report has served this purpose.

The committee is currently looking at other terms of reference including AIDS, youth unemployment, tariffs and the Prostitution Bill, and this morning it added another term of reference to its rather heavy work load to look at leave provisions for workers with sick dependants.

' I would like to make some general comments about the committee structure of the Parliament. One of the committees has received large amounts of publicly, if not to say notoriety, and has been called the all powerful Economic Committee of the Parliament. I think members of this committee like to think of themselves as the socially responsible members of Parliament who are looking at some serious issues within our society.

When I first came onto the committee, I indicated to committee members that I would like the committee to work with a spirit of consensus. I believe we have done this and that that is a very valuable role for these committees: that members of differing political and social views can work together on some very sensitive subjects. I believe we have in this first report, although it has only dealt with pure statistics, worked hard to present a report that all people can use. I hope that the committee system of the Parliament will continue along the lines that are set out by this committee.

I thank all members for working together in a spirit of cooperation, and I think this is something that the public does not often see of politicians. I think it is rather a pity that they do not, and that the only view they have of politics and Parliament is that we screech at one another

across the Chamber and never take into consideration other people's views and opinions. I think it is important that these parliamentary committees are given more publicity to show that we can work together. I urge members to support the motion.

The Hon. I. GILFILLAN: As a member of the standing committee, I would like to speak briefly in support of the motion. The standing committee structure was only recently, in parliamentary terms, introduced into our legislative requirements, and I think many members were concerned and, perhaps, apprehensive about how this new committee structure would be used or abused.

I endorse the comments that were made by the presiding member of the committee, the Hon. Carolyn Pickles, who has just spoken about how well the committee has operated to date and the lack of Party partisanship. Certainly, there have been, and will continue to be, different points of view, but my first observation would be to emphasise that I believe the committee is working well. This first report is a good and comprehensive report on a wide ranging subject, and it is a good indicator of the potential of standing committees in general and the Social Development Committee in particular. I urge all members to give themselves a Christmas treat by reading the report from stem to steam. They might like to do it before that.

The Hon. M.S. Feleppa interjecting:

The Hon. I. GILFILLAN: Someone has actually done it already! It just shows with what enthusiasm the work of the committee is awaited by members. I was assured that five sexy bits were picked out by the presiding member, ably assisted by the Hon. Legh Davis. However, to date those bits have not been drawn out and published. With that bit of enticement, I am sure that not only members but many others in the public will race to get their copies.

I pay a tribute to the staff of the committee, including Ms Ann McLennan, who has been Secretary from its inception. Unfortunately, we are losing her, because she is going to another position. I place on the record how pleasantly and efficiently I believe she performed her task. I also compliment our research officer, Mr John Wright, who is still in the position and is continuing. His attitude and service to the committee has been exemplary, and we are benefiting from his work in the quality of written material that is coming through and then out of the committee.

Finally, in giving bouquets I would like to compliment the presiding member, the Hon. Carolyn Pickles.

Members interjecting:

The Hon. I. GILFILLAN: I am not going to be drawn into qualifying it.

Members interjecting:

The Hon. I. GILFILLAN: No, not even a little bit. Absolutely straight down the middle, the Hon. Carolyn Pickles has chaired the committee with energy and enthusiasm and with just the right degree of discipline to keep some rambunctious members in order. I record my appreciation for the way in which the committee is being chaired. We have other interesting challenges in our terms of reference with which we will be dealing in due course. However, I believe that this report is a good example of what this standing committee can do, and I look forward to serving on it for some time and encourage the Council to warmly endorse the motion.

The Hon. L.H. DAVIS: As the third Legislative Councillor on the Social Development Committee, I am pleased to be associated with the remarks that have already been made by the Hon. Carolyn Pickles and the Hon. Ian Gilfillan. Speaking to this first report of the Social Development Committee on social implications of population change in South Australia, I must say that I think it is a significant document, and I want to put on record my appreciation of the enthusiasm and professionalism of the departing Secretary of the committee, Ms Ann McLennan and also Mr John Wright, its research officer. One of the qualities that is important in any parliamentary system is professionalism and enthusiasm and in those two officers the committee has been well served.

The document is significant in the sense that it does highlight the importance of population movements and demographic shifts in social and economic planning in South Australia. The recommendations which the committee has made are only the beginning of what is an important and ongoing commitment by this committee to analyse the data which is still flowing from the 1991 census.

The presiding member, Carolyn Pickles who, as my colleague the Hon. Mr Gilfillan said, chaired the committee so well, has already raised in her contribution the extraordinary hospitalisation and surgical rates in the Elizabeth and Salisbury areas. That, of course, was the subject of some public comment in the *Advertiser* this morning.

I was particularly alarmed to see that evidence, which has been a pattern over a number of years, and I was more than concerned that the South Australian Health Commission, when asked, was unable to provide any ready answer to that level of hospitalisation and surgery in that district, which was so much higher than State and national averages. Obviously, it is a matter which the committee will continue to pursue.

One of the ongoing interests I have had as a member of Parliament is the rate of population growth in South Australia. I was alarmed when quite recently it was revealed that the intercensual estimates of population by the Australian Bureau of Statistics had badly overestimated population growth in South Australia: that indeed during the period 1986 to 1991 South Australia's population growth continued to lag the rest of the nation.

Indeed, the population growth in that five year period (from 1986 to 1991) in South Australia was 0.81 per cent per annum, which was almost exactly half that for the nation as a whole at 1.6 per cent per annum over that same period. In fact, one can say that in the period 1976 to 1981, when our population growth was .7 per cent per annum as against a national growth rate of 1.24 per cent per annum, and from 1981 to 1986, when South Australia's population growth annually, on average, was 0.95 per cent as against the national growth rate of 1.4 per cent per annum, South Australia was continually outstripped by other States.

It is interesting to see that there have been only a few years—from 1947 to 1966—in South Australia's history when we have outstripped the national average. In those

golden years when Sir Thomas Playford's industrialisation of South Australia saw an influx of migrants to South Australia, we were easily outstripping population growth in other States.

Although we have 8.3 per cent of the national population in South Australia we are attracting only about 4.5 per cent of migration from other countries. Although population growth *per se* is not necessarily a panacea for economic problems, population growth certainly has brought benefits to States such as Western Australia and Queensland, which are consistently the quickest growing States, not to mention the Northern Territory and the Australian Capital Territory.

One of the other areas of concern which is reflected in this report and in which I have also had a long standing interest is the fact that the population of the regions outside the metropolitan area of Adelaide has continued to reduce over a period of time. The committee took care to recognise that there had been growth in the peri-urban areas, that is, the areas immediately adjacent to the metropolitan area of Adelaide—areas such as the Adelaide Hills, Victor Harbor, Gawler and so on. If one strips away the extraordinary growth in what is described as the outer Adelaide statistical division, which had a growth rate of 2.8 per cent in the period 1986 to 1991 (which is triple the State's growth rate for the same period) and the growth of the metropolitan area of Adelaide away, one sees that the remainder of South Australia's population has actually declined in that period 1986-91.

It saddens and distresses me to see the population decline in the great wheat sheep area of Eyre Peninsula, as well as the steady erosion of population from the Murray Mallee and the Far North, and that is something which any Government of whichever political persuasion must work hard to reverse. The Arthur D. Little report had some comments on that point.

The ageing population in South Australia is also a matter which was addressed in some detail by the committee. For some years now South Australia's share of the nation's population aged 65 years and over has been markedly higher than that of other States. In fact, as the most recent figures reveal, 12.5 per cent of our population is currently aged 65 years and over, and that figure continues to grow quite dramatically. In fact, there was a 56 per cent increase in the number of people aged 65 years and over in the period 1971 to 1986, and four years later in 1990 the figure had increased another 17 per cent.

That reflects an ageing population; a slow down in fertility rates; and a slow down in migration, both overseas and interstate migration coming into South Australia, and we do face the prospect that there are considerable burdens associated with supporting an ageing population, given that the costs of maintaining a health safety net for the ageing is much more expensive than equivalent services for young people.

The ageing population, which will naturally occur given demographic cohort that already exists, will be exacerbated by the fact that there has been a dramatic change in the expectation of life. One can see this most vividly by looking at the expectation of life at birth 20 years ago. In 1971, a male could expect to live to 69.4 years of age on average, but in 1990, the expectation of life for a male born in 1990 has moved up to 74.1 years. For a female born in 1971, the expectation was 75.6 years on average; that has moved up to 80.2 years by 1990. So in the two decades, in the space of just 19 years, the average expectancy of life has moved up by 4.5 to five years. That is a dramatic movement. Of course, that will mean that we will have more and more people over the age of 65, 75 and 85 years living in South Australia. I see that as an exciting challenge; I do not see that as something to be viewed negatively at all, because as a community, Australians have been—

The Hon. Carolyn Pickles: I hope they will be kind to us.

The Hon. L.H. DAVIS: As a politician, I am not used to anyone being kind to me at all. The point is that in Australia we are slowly discovering the richness of old age, that they can truly be golden years, that we have lacked sophistication and the realisation of the contribution which the elderly people can make in a community. I can remember leaving America some 15 years ago after my first visit to that country, with an indelible impression of how old age was revered, embraced and recognised in that country. There were people who were leaders in their community as octogenarians, whereas in Australia at that time they were seen as also-rans, given a pat on the head and welcomed maybe to an afternoon tea, but that was it. We are slowly recognising that through our age discrimination legislation, which allows people to work beyond the mandatory retirement age of 65 and 60 years for males and females respectively and in other measures recognising the virtues of old age—

The Hon. Anne Levy: Sixty is not a mandatory retiring age.

The Hon. L.H. DAVIS: Well, it was.

The Hon. Anne Levy: No, it was pensionable but not a mandatory retiring age.

The Hon. L.H. DAVIS: Well, okay; the Minister takes a semantic point.

The Hon. Anne Levy: It is more than a semantic point.

The Hon. L.H. DAVIS: For the benefit of the Minister, I will say that, before the introduction of age discrimination, it was customary to view 65 years for men and 60 years for women as retirement ages. One of the particular features of the report was to highlight that as people age more and more of those aged people are women. By the time that you reach the age of 85 years or more, almost three-quarters are women. That has particular application for social and economic planning—the large number of women living alone, for example; the support services which are provided by Federal, State and local governments to women; the security network that needs to be put in place in an aging community. Those factors, together with the particular challenge of appropriate housing and urban consolidation, are all touched on by this report.

Finally, the other exciting aspect of this examination of population change in South Australia is the recognition of the large number of people who were born overseas. One person in every five living in South Australia was born overseas. If one takes into account the number of people with one or more parents born overseas that figure grows to two in five. In other words, 40 per cent of this State's

population fits into the category of people with one or more parents born overseas or who themselves were born overseas.

With particular ethnic communities, the proportion of aged people is high indeed. Over 60 per cent of the population of communities such as the Latvian community, which came out in a large wave in a short period of time, will be over the age of 60 years. The Greek and Italian communities which came out predominantly in the 1950s and 1960s also have a high proportion of aged people. When one remembers there are 100 nationalities or thereabouts represented in South Australia, one can see that there are particular challenges involved in servicing the needs of aged ethnic groups.

In conclusion, I want to say that it has been a rewarding experience serving on the Social Development Committee. I am pleased that it has a sufficient support structure in contrast to the inadequate services, staff and equipment, which is still the lot of Opposition members in the Legislative Council. It is a delight to see the contrast in what can be done with adequate staff and with up-to-date equipment. I just hope that this embattled Government can see fit to provide this Opposition with more resources than it has at present, but I digress.

The Hon. Anne Levy: You have more than we had.

The Hon. L.H. DAVIS: We have more brains than you had; we have a lot more of everything than you had; that is absolutely true. I welcome this first report of the Social Development Committee. This committee system, as it has been put in place, has understandably had its teething problems, but this report is an example of the benefit of bipartisan work on committees which we all recognise can often produce fruitful results. We have seen that in evidence in past years in many of the select committee reports from this Legislative Council. In the case of the Social Development Committee which, of course, is a committee made up of members of both Houses, we have seen yet another example of the often unheralded work of members of Parliament working together for the common good. This report is a document which I commend to all members and which contains material that will be of benefit not only to the Parliament but to the community of South Australia.

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

FOREIGN OWNERSHIP OF LAND REGISTER BILL

The Hon. I. GILFILLAN: obtained leave and introduced a Bill for an Act to require persons acquiring interest in land to declare whether or not they are foreign entities, to require foreign entities to disclose interest in land held, acquired or disposed of, to prescribe a registration scheme in relation to interest disclosed and for connected purposes. Read a first time.

The Hon. I. GILFILLAN: I move:

That this Bill be now read a second time.

In introducing the Bill I recognise that we certainly do not have time to do more than receive it into this place and I hope that members will have a chance in the recess to look at it in detail. With that in mind, I intend to speak briefly to the Bill, introduce the clause notes and seek leave to conclude with a little more detail when we resume in February. Briefly, the Bill is introduced to achieve an accurate knowledge of the ownership of land and other interests in South Australia.

It has been a matter of considerable concern to the Democrats that we have been unable, both as a Party and as a member of the general public, to find out who owns land, property and enterprises within our State. One of the unfortunate and totally inaccurate interpretations of such a move is that it is in any way antagonistic to overseas ownership—it is not. We recognise that Australia has and will continue to benefit enormously from financial involvement by overseas sources and in many cases we would be actively seeking overseas funds to be involved in development projects in South Australia. I emphasise that point and make it absolutely clear.

The Bill is a large document because of the complications and ramifications of such a measure in identifying what indeed is foreign ownership or control because some will be seeking to disguise the ownership. We want to ensure that the legislation introduced is foolproof so that the facts and the truth can be easily ascertainable for the public and the Parliament of South Australia. Thanks to Parliamentary Counsel, I have prepared an explanation of the clauses and seek leave to have it incorporated without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 provides the measure will come into operation six months after the date of assent.

Clause 3 provides interpretation of terms.

Clause 4 binds the Crown.

Clause 5 is an explanatory provision.

Clause 6 determines when a Corporation is a foreign entity.

Clause 7 determines when voting power is controlled by a foreign entity.

Clause 8 determines when a Corporation is a subsidiary of another corporation.

Clause 9 determines when a unit trust is a foreign trust.

Clause 10 determines when a trust is a foreign trust.

Clause 11 determines when an interest in land is taken not to have been acquired by a foreign entity.

Clause 12 determines when a foreign entity is taken to have acquired an interest in land.

Clause 13 provides for the establishment of the Foreign Ownership of Land Register.

Clause 14 provides for the correct completion of forms.

Clause 15 provides for the Registrar-General to record and correct particulars.

Clause 16 provides for access to information contained in the Register.

Clause 17 provides that an agent may lodge the notification.

Clause 18 requires the declaration of foreign ownership.

Clause 19 requires a foreign entity to notify of an interest in land.

Clause 20 requires a foreign entity to notify of a security interest by way of transfer.

Clause 21 requires trustees to supply information.

Clause 22 requires a person ceasing to be or becoming a foreign entity to notify the Registrar-General.

Clause 23 determines when a foreign entity must notify of a change.

Clause 24 determines when it is necessary to notify of a disposal of interest.

Clause 25 provides for the lodging of joint notifications.

Clause 26 provides interpretation of terms.

Clause 27 provides that where a foreign entity is convicted of an offence the court must order the foreign entity to dispose of its interest in land.

Clause 28 provides that a foreign entity required to dispose of its interest in land must give notice of all persons who have an interest in the land.

Clause 29 provides for a foreign entity to show cause why a court should not require it to dispose of its interest in land.

Clause 30 provides for the Minister to determine that the interest in land is forfeited.

Clause 31 provides that where forfeiture occurs the Minister may deal with the interest in land until sale.

Clause 32 provides for the proceeds of sale after forfeiture.

Clause 33 provides for appeals against the Minister's declaration of an applicant's interest in land.

Clause 34 provides for the transfer of title of land sold through mandatory disposal and forfeiture.

Clause 35 requires a person holding documents of title in respect of an interest in land that has been forfeited to deliver them to the Minister.

Clause 36 requires a Minister selling forfeited land to attempt sale by public auction.

Clause 37 provides for the formation of a Trust Fund.

Clause 38 provides that where a foreign entity is to be charged with an offence the Supreme Court may make a restraining order in respect of the interest in land associated with the offence.

Clause 39 provides for the effect of a restraining order.

Clause 40 provides for the procedure required to obtain a restraining order.

Clause 41 provides for variation, discharge or revocation of a restraining order.

Clause 42 determines the Registrar-General's duties if a restraining order is revoked or discharged.

Clause 43 determines the powers of investigation of the Registrar-General.

Clause 44 makes it an offence not to comply with a requirement issued by the Registrar-General under clause 43.

Clause 45 provides for the Registrar-General to search records.

Clause 46 allows the Registrar-General to disclose information to a corresponding authority.

Clause 47 allows the Registrar-General to delegate any functions.

Clause 48 requires the Registrar-General to submit an Annual Report.

Clause 49 prohibits the Registrar-General from registering certain dealings.

Clause 50 provides that a person acquiring an interest in land is not required to inquire whether a person is a foreign entity.

Clause 51 provides that where a corporation is guilty of an offence every officer of the corporation is also guilty of that offence.

Clause 52 provides that public companies may rely on addresses in the share register in determining the nationality of a shareholder.

Clause 53 provides that public trustees may rely on addresses in the register of unit holders to determine the nationality of a unit holder.

Clause 54 provides time limits in which prosecutions are to be commenced.

Clause 55 provides for continuing offences.

Clause 56 provides defences.

Clause 57 protects the Minister and Registrar-General from liability.

Clause 58 provides for service of documents.

Clause 59 deals with evidentiary procedures.

Clause 60 provides for the making of Regulations.

Clause 61 requires a foreign entity holding an interest in land on commencement day to lodge a notification.

Clause 62 provides a person required to lodge a declaration under clause 18 may elect not to comply.

The Hon. I. GILFILLAN: With the clause notes and the Bill, which will be available to honourable members through the recess, I urge all members of this place and indeed anyone who has concerns that legislation to identify ownership of property has some form of discriminatory aspect, to study the Bill closely as certainly there is no objection on our part to intelligent, constructive amendments being considered. It is a debate that should be able to be approached without sectarian or Party hostility and recognising that it is in the common interest of all for us to know how much, how little or where foreign ownership exists in this State. True to my word when I began my second reading explanation, I will not go through the Bill in detail at this stage and seek leave to conclude my remarks later.

Leave granted; debate adjourned.

INFLUENZA

Adjourned debate on motion of Hon. Bernice Pfitzner:

That this Council requests that the State Government urges the Federal Government to implement a Haemophilus Influenza type B (Hib) immunisation program for all 0-5 year old children in South Australia as soon as the licensed vaccine is out for tender; and that if the Federal Government is unable to fund a program immediately, then it should explore ways and means to make this vaccine available and accessible.

(Continued from 28 October. Page 586.)

The Hon. CAROLYN PICKLES: I move to amend the motion as follows:

Leave out all words after 'requests' and insert the following—

the State Government to urge the Federal Government to fund a Haemophilus Influenza type B (Hib) immunisation program for all 0-5 year old children in South Australia as soon as an effective approved vaccine is available and if funding is not immediately available it should explore ways and means of making the vaccine available and accessible.

In principle, I support the motion moved by the Hon. Dr Pfitzner, but believe that my amendment is a more appropriate way of wording the motion to be relayed to the Federal Government. If we wish this motion to have some effect, it should be sent in the appropriate way.

Invasive Hib disease commonly presents as either meningitis (inflammation of the meninges of the brain) or epiglottitis (a swelling of the epiglottis). Other less common presentations are osteomyelitis, arthritis and sinusitis. Hib is a problem for children under five years, especially for Aborigines. Since 1987 when it was made a notifiable disease, South Australia has recorded 150 cases of Hib meningitis. The other presentations of Hib infection are in the process of being included in the notifiable diseases schedule.

Although invasive Hib disease is life-threatening, early diagnosis and adequate treatment usually result in full recovery. Severe disabilities, such as brain damage, may result if not diagnosed early and treated adequately. Of the recorded 150 cases of Hib meningitis since 1987, there have been three deaths and one case of residual brain damage. Studies indicate that Australian Aborigines who develop Hib disease are more likely to present with meningitis than epiglottitis. In South Australia, however, only three cases of Hib meningitis have been reported in Aborigines in the past six years. The Hon. Dr Pfitzner makes the point that 'the patterns in countries are different and that we should not extrapolate ... from one developed country to another ...'. Yet, much of her speech uses overseas data.

Also she indicates that 'two-thirds of cases of invasive Hib disease in Victoria occur after 18 months in Australia'. The incidence varies between States and, in South Australia, 60 per cent of Hib meningitis cases

occur in children below 18 months of age. Local data should be used for planning preventive services in this State. Hib vaccine (Prohibit) which became available in Australia in late June 1992 is for children aged 18 months to five years, that is, it is not relevant to the age group in which 60 per cent of Hib meningitis cases occur in this State. The South Australian Health Commission has recommended use of this vaccine especially for child care centres. However, it is not suitable for inclusion in the recommended immunisation schedule (that is, at two, four and six months).

Several vaccines effective in children under six months of age have been evaluated for marketing approval and are likely to be available shortly, and included in the national recommended immunisation schedule. This vaccine may cost approximately $20 per dose (not $10 as suggested by the Hon. Dr Pfitzner). Each infant child will require three to four doses to be fully immunised from two months of age. Thus to immunise 100 000 0-5 year olds in South Australia will cost in excess of $3 million, with an ongoing yearly cost of $1.6 million for 20 000 births. The initial 100 000 under five year olds would require three doses for the infant group (the two, four and six month old) and a booster for the other 80 000. The ongoing cost consists of the 20 000, who will then require the booster, and the 20 000 new infants who will require free doses at two, four and six months. If not funded by the Federal Government, it will involve significant reallocation of existing State funds. Therefore, in supporting the thrust of the motion, the Government is strongly of the opinion that the Federal Government should fund the program.

My amendment is a more appropriate way to word the motion and I hope that the Hon. Dr Pfitzner can support it so that we can have a unanimous view from the Council so that the motion can be forwarded to the Federal Government by the Minister of Health in another place. I urge members to support the amendment.

The Hon. M.J. ELLIOTT: I do not see a huge difference between these two versions of the motion. I support the sentiments of both. It is one of the problems with motions as distinct from Bills that they do not go into the Committee stage, where we can really examine all the wording in detail. I do not think that the initial motion caused any problem. I do not see that it says that the State Government should have to pay for the program. In fact, it is calling on the Federal Government to implement it. After all, the important matter is that this Council is expressing a very clear desire to see such a program in place. That is the important message that should come out and, on that basis, I will support the motion without amendment. I have no problems with the amendment, nor with the original wording, so I will be supporting the motion.

The Hon. BERNICE PFITZNER: I thank members for their contribution to the motion, as I feel that this is a matter of significance for all children under five years of age. It needs only an injection to give full protection to each and every child under that age, to protect him or her from a possibly fatal disease or, more mildly, from some disability, possibly physical and possibly mental. I thank the Hon. Ms Pickles for her contribution. In looking at her amendment, I feel that my original motion would possibly be more direct in trying to secure the vaccine for these children. It is not quite out for tender as yet, although it will be within the next few weeks. Because I feel very strongly about obtaining this vaccine as soon as possible, I feel that the emphasis of the original motion would secure a more definite response from the Federal Government. I thank the Hon. Mr Elliott for his contribution, knowing that he always keeps his eye on the health arena. With those few words, I close this debate.

The PRESIDENT: I draw to the attention of the Council that the words 'insert the following' will start after 'requests', so that it will read 'the State Government'. The amendment moved by the Hon. Ms Pickles states 'insert the following: That this Council requests...'; that is already there, so the amendment will pick up 'That this Council requests' and then we insert 'the State Government to urge the Federal Government'. I propose to put it in this form: I put the question that all words after 'requests' proposed to be struck out by the Hon. Ms Pickles stand part of the motion. All those in favour say 'Aye'; against say 'No'. The Noes have it. Therefore, we have that the words proposed to be inserted by the Hon. Ms Pickles—

Members interjecting.

The PRESIDENT: The Noes have it, so now we have that the words proposed to be inserted by the Hon. Ms Pickles—

Members interjecting:

The PRESIDENT: The Noes won.

Members interjecting:

The PRESIDENT: I called for it on the voices: the Noes got it, which means that the words come out, and then the Hon. Ms Pickles' amendment will go in. Is that what the Council was wanting? The Hon. Mr Elliott voted with the Noes. No division has been called. On the voices I take it for the Noes; therefore the question before the Chair now is that the words proposed to be inserted by the Hon. Ms Pickles be so inserted.

An honourable member: Divide!

The PRESIDENT: I am not taking it now: it is too late for a division. You have had plenty of opportunity and it was quite clear: the Noes won on the voices. No division was called, so the question is that the words proposed to be inserted by the Hon. Ms Pickles be so inserted.

Amendment carried; motion as amended carried.

NATIONAL PARKS AND WILDLIFE ACT 1972

Order of the Day, Private Business, No.2: Hon. M.S. Feleppa to move:

That the regulations made under the National Parks and Wildlife Act 1972, concerning fees (take, keep, sell native fauna), made on 11 June 1992 and laid on the table of this Council on 6 August 1992, be disallowed.

The Hon. M.S. FELEPPA: I move:

That this Order of the Day be discharged.

Order of the Day discharged.

LOCAL GOVERNMENT (PRESERVATION OF PUBLIC OPEN SPACE) AMENDMENT BILL

The Hon. M.J. ELLIOTT obtained leave and introduced a Bill for an Act to amend the Local Government Act 1934. Read a first time.

The Hon. M.J. ELLIOTT: I move:

That this Bill be now read a second time.

The initial catalyst for this legislation was in relation to proposals to develop Craigburn Farm, but what is proposed at Craigburn Farm is only one of many examples of what has been causing increasing concern throughout the metropolitan area and South Australia. That concern is that what many people had taken to be open space and understood to be so is bit by bit being subsumed for various purposes. While Craigburn Farm was the initial catalyst for this legislation, the ongoing debate we have seen in South Australia has centred on the parklands of Adelaide itself, where virtually since the city began what was set aside to be essentially public open space for the use and enjoyment of all South Australians has bit by bit been plundered, for a multitude of purposes. It is particularly tempting for Government instrumentalities because the Government already owns the land and when they want to construct a building they can just grab a piece of parklands and, by a process of attrition significant sections of the parklands have been alienated.

A previous Labor Government, to its credit, talked about second generation parklands, and I think many people in Adelaide had an active expectation as to what these second generation parklands would be and what they would become. I think that many people believed that the hills face zone was going to be protected and that areas such as the Onkaparinga Valley would be protected and continue to be available in perpetuity for the use and enjoyment of South Australians. But just as the Adelaide parklands have been nibbled away at, we have seen the second generation parklands, the metropolitan open space system, also progressively nibbled away. What I am doing at this stage is simply getting this piece of legislation up for consideration. I must say that I myself am not happy with the current form that this Bill is in, but at least it indicates the general direction.

The Hon. Diana Laidlaw: What don't you like about your own Bill?

The Hon. M.J. ELLIOTT: I am getting to that. The important thing is that the debate is opened up, and this Bill does go in the direction in which I am trying to take the debate. I suppose it is the finer detail of the Bill that I am not happy with. However, it does give other members of the council an opportunity to ask themselves over the next few months the fundamental question of whether we want to give extra protection to our metropolitan open space and, if so, what form that protection should take. Certainly in this legislation I have posed one *modus operandi,* one way that I think we can set about giving it protection.

I believe it should be possible for either local government or the State Government to establish a register upon which they can place land and declare it to be public open space. That is the essence of what this Bill is doing. Unfortunately, I do not think the draft of the Bill as it comes into the Council is as strong as I would like to see it and I expect to be moving amendments when we are considering this Bill after the Christmas break. It was certainly my intention that either local government or State Government can nominate a particular piece of space to be public open space and that, with the concurrence of the other level of government, it would then go on the register. It was also my proposal that it could only be removed with the concurrence of both levels of government. That would mean that it would be relatively difficult to get it on the register but also difficult to get it back off.

However, that is not quite the way the drafting has made things at present, although some of the details of appeal procedures, etc, and public notification which are here I believe are quite adequate. I also think it is important that privately owned land in some cases may be brought onto the register, and it is important that adequate compensation be made available. In clause 3, where we insert section 879b(10), this does entertain at that point the use of the Land Acquisition Act. Obviously, though, with that there is an expectation that there would have to be compensation. Craigburn Farm is actually one of the exceptions in the metropolitan open space system, as it is privately owned. I think it is only reasonable that if we want to take such land into the system, if it is to be preserved as public open space, the owners, in this case Minda, should receive compensation for that occurring. There could be some debate as to whether or not they should be compensated for land in terms of its value as development land, but that is not a debate that I will enter into at this stage. It is possibly something we can look at in Committee, assuming that we eventually get to the Committee stage.

It was not my intention to give a long speech on this occasion because I recognise that we are in the final days of the session and we have an awful lot of business to attend to. The important thing is that the issue was flagged.

I think the legislation is relatively self-explanatory, although I do not believe it is quite strong enough at this stage. I expect and want both levels of government to concur in a particular piece of land going on the register, and I also require that both levels of government concur in any removals that may occur. I want a system of open space which, once established, has a high level of protection.

I am rather concerned, after looking at some recommendations (and I think it also happened in the metropolitan planning review), to see hints that perhaps we could be building on a lot of open space in Adelaide. I would be the first to concede there are some open spaces that need development. However, we must be ever conscious of the fact that, as we attempt urban consolidation in terms of using up former industrial space that has been laying vacant for long periods of time and as we intensify the level of domestic development, open space will become increasingly important.

As backyards and front yards become ever smaller metropolitan open space will be very important to individuals, and we must be careful that we do not take urban consolidation into these important breathing areas.

I think there is a temptation that we will allow either domestic dwellings to spread into some of this metropolitan open space or that perhaps Government

infrastructure that is needed to support the additional people who shift into the area will be allowed to do so. As I said, the big temptation for Governments—local, State and Commonwealth—is that if you have a piece of land you should use it for building on, and that a little bit here will not hurt. That is exactly the process that at one stage lost us a fair bit of Adelaide's parklands and threatened that we would lose a lot more. I urge members of the Council to give this Bill earnest consideration over the break, and I look forward to further debate when Parliament resumes in the new year.

The Hon. J.C. IRWIN secured the adjournment of the debate.

CLASSIFICATION OF PUBLICATIONS (DISPLAY OF INDECENT MATTER) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 November. Page 732.)

The Hon. M.J. ELLIOTT: This Bill has been one of the most difficult I have had to cope with in this place. A lot of legislation falls in the black and white category and some goes in shades of grey, but if it is suitably grey it is easy to decide in which way one will place one's support. I found this legislation to be extremely difficult. Two issues are raised in my mind when addressing a Bill such as this—two issues that are truly capable of being confused. The first is the issue of demeaning images, and the second is that of pornography. I suggest that those are separate issues and, although some people do not separate them, I do.

I personally have much greater concern about the subject of demeaning images and the implications of that than I do on much of the area of pornography, although I qualify that by saying that I find child pornography and violence linked to pornography abhorrent.

In having to analyse this legislation, I have had no difficulty in identifying with and supporting the thrust (at least what I understand to be the thrust) of what the Hon. Dr Pfitzner is seeking to achieve. I have had to ask myself one important question, that is, whether or not this Bill will achieve a great deal.

The situation which sparked much of the debate that we have had over recent months related to a woman in a particular demeaning pose on the cover of an issue of *People* magazine. Although the problem of demeaning images has been escalating for some time with publishers pushing at the limits of community acceptability, I believe that that particular cover of *People* magazine contained an image that was clearly demeaning and was not pornographic.

Once sufficient public objections had been recorded, the offending magazine was removed from sale when the South Australian Classification of Publications Board placed it in the restricted category 2. This meant that it could only be sold in so-called sex shops. Although it may have seemed to some to have been an over-reaction, it was the only way the image could be removed from the streets, as advertising posters for category 1 publications can still be displayed anywhere and the magazines must be in clear plastic wrapping only.

The action of the South Australian board, because it could only be taken in response to public complaints, occurred five days after the magazine first hit the streets and only days before the magazine's next issue was due. Procedures at that time were not adequate to prevent that demeaning photograph from being displayed publicly without the extreme sanction of restricting the outlets at which it was available, and they were not quick enough to have the magazine removed before it had been in locations of prominence for some time.

The incident was an indication that the classifications principle was out of step with community feeling—a situation which has since been rectified somewhat by the inclusion in the guidelines used by the Commonwealth censor of the sentence 'Material which condones or incites violence or is demeaning may be restricted or refused.' I view pictures of the nature of the infamous dog pose photograph as being a symptom of an attitude or value set which is unable to accept women as equals of men. Their danger is not that they may be morally shocking but that they may perpetuate the unspoken belief that women are objects of desire, and that their bodies are commodities to be bought and sold. It is an attitude that sees all women as a collection of sexually desirable and exploitable bits and not whole people.

Let me point out that I do not have problems with nudity, but I do have a problem with the marketing of an anonymous woman as a sexual object, particularly when the object is in a demeaning and submissive pose.

I understand the arguments about freedom of expression and the right to read what one wants. But the fact that category 1 and 2 publications already have restrictions on their sale and display is proof of the fact that society has decided that right must come with responsibilities.

I believe it is possible to differentiate between sexually explicit publications and videos produced for adults only and publications and videos which mix sex, violence and demeaning images. The former I do not have any particular problem with, the latter I do. During discussions I had on this Bill someone said to me, 'Your right to swing your arm ends where my nose begins.' I believe the community knows that attitude with respect to the portrayal of women as sex objects is on the move, and rightly so. Sexual vilification is viewed by many people, men and women, as being no different to racial vilification, just as sexual harassment and discrimination now attract penalties in the law, as do racial harassment and discrimination. Both cause embarrassment and discomfort to a section of the community, and both are argued away as harmless but hide a deeper attitude problem on the part of the perpetrator.

If it comes down to it, I can live with the fact that these magazines are available to people who feel that they must get their entertainment that way. What I found difficult to tolerate are the advertising posters for those magazines which visually assault passers-by from their wire cages outside newsagents and newsstands.

Since the ban on *Picture and People* was lifted, whether it is because they are being more cautious with what is displayed or the magazines are being more selective in the light of the expansion of the censor's guidelines, the railway station, which I pass through every morning, is a much more pleasant place to traverse

because of the absence of these sexually explicit and demeaning advertisements for magazines. I must say that I have been quite astounded over the difference in the last couple of months. To some extent, I think I had turned myself off to the fact that the display of magazine covers by way of posters was there, but I certainly noticed when it disappeared. It is a bit like that aggravating noise: it is only when it is gone that you think, 'Thank God it has stopped.' The display of the posters was something like that.

An excursion late last week, when preparing this contribution, took me through or past nine or 10 news-stands and newsagents in the city. In most locations where category 1 publications were stocked, little more than the title was visible because of the construction of the shelves on which they were placed. Most were of wooden construction which enabled each magazine to be slightly higher and behind the one in front.

At one shop the picture of the front magazine was obscured by a brightly coloured piece of cardboard, in essence, a home-made blinder rack. At another location those publications were located behind the counter and, although in wire racks, the racks were so crowded that little detail of the covers besides the titles was visible. Only one place displayed posters for the two magazines which had been the subject of most attention during this debate: *Picture* and *Post.* But others displayed posters advertising category 1 publications and the publications themselves, including *Penthouse* and *Playboy,* in prominent locations—on the footpath and in a display window on a busy intersection. The impact of this legislation on magazine advertising posters will only be in relation to those advertising category 1 publications.

I understand that, while the Commonwealth Censor is charged with reviewing magazine covers, he has no direct power over such posters. I have already recognised that the guidelines controlling unrestricted publications have been amended to include 'demeaning images' as a ground for restricting them to category 1 or 2. There is also, as my colleague the Hon. Ian Gilfillan and the Attorney-General have pointed out, a move to get a compulsory national system of classifying all publications. This process, however, will not be completed until the end of 1993 at the absolute earliest. I really hate to contemplate the number of areas in which, because we are still waiting for national guidelines, we are without State measures, and that happens very frequently.

Let me conclude by saying that I am largely supportive of the measures in this amendment Bill and that I had considered an amendment to include a sunset clause so that these measures would cease to operate once a reasonable amount of time had been allowed for national legislation to occur. I recognise that a uniform national classification system, if developed, would certainly -override this State legislation. When it is remembered that the national censor now has a guideline which was not in place when the dog pose photo was published, namely, to consider whether or not the particular magazine is demeaning, the law itself would appear to be as adequate as it can be in its present classification structure with the exception of the two areas covered by this Bill. Certainly, since that guideline was included, *Picture* and *People* seem to have behaved themselves as far as pictures go, the magazine content and captions on the cover being altogether another thing.

Magazines aimed at what I describe as the 'motor head'—motor cycle and car—culture are also unclassified and have photographs on the cover which are quite explicit and certainly demeaning. However, as with the category 1 publications, in most of the newsagents I looked at they were in racks where little more than titles were visible, and they were not advertised. The need now, I suggest, is to be vigilant, both about the magazines and the posters advertising the contents of unclassified publications.

The display of these magazines after sale is, as I understand it, also to be prohibited under this amending Bill. This will affect places such as waiting rooms, where the magazines may be inadvertently seen by minors or, for that matter, adults who would rather not see them. This vigilance of which I speak includes complaints as often as is necessary to the relevant authorities and publishers, and all people in our society will need to recognise that the problem is more so an educative than a legislative one. I recognise that clearly myself.

It will serve to keep the issue alive in the public arena, putting a note of urgency onto the Commonwealth/State negotiations for a national system and informing the publishers that they are on notice if they once again attempt to go beyond the bounds of what is tolerable. I support the Bill not because I believe it is the sole answer to the problems of demeaning images (in fact, I do not think it will take us an inordinately great distance from where we are at present) but I agree very much with the sentiments behind it.

This Bill will remove from public display advertising posters for category 1 publications. It will require those publications to be placed in racks at newsagents or in covers which do not display the full cover. That is something which should not be difficult for many outlets to comply with because, after what I have seen, many of them use this kind of rack already and it does, after all, relate to a relatively small number of publications.

I believe that, despite the change in the guidelines, more action is needed in the area of unclassified publications. Their submission to the Commonwealth Censor at present is on a voluntary basis only. I acknowledge that this Bill does not, and probably cannot, deal with these publications and welcome plans for a compulsory system of classification. As for being out of step nationally, Western Australia has still not lifted the ban that it imposed on these magazines at the same time that South Australia did so. That State is already way out of kilter, if you like, with the rest of the country. I see the measures which would take us only a little way out to be temporary and valid until a new national system is finalised.

It is my hope that attitudes in society are changing and that the female form will one day no longer be a commodity because men and women will no longer view it as such. This process, as with any attitudinal shift, is slow and one in which legislation *c*an only play a minute role. The vigilance of which I have already spoken, along with keeping the issue in the public arena, together with the reasons why such images and publications are opposed, is the main front on which battles such as this

are won. I see further debate on this Bill, which is essentially a stop-gap measure, as furthering this cause. As I said, I had to think long and hard about support for this Bill. I had to be convinced that it was going to achieve enough to justify its existence as distinct from whether or not I thought that the mover of the Bill was seeking something worthwhile. As I said, I agreed with what I understood the sentiments of the legislation to be, but I do think that it has some useful components. In the Committee stage, I will move one amendment to section 13, which talks about 'prescribed matters'. When one looks at the legislation, one sees that 'prescribed matters' refers to matters of sex, violence, cruelty and several other things, but what it does not include is the matter of demeaning images. To me, that is certainly far more important than some of the categories mentioned there. I will therefore move an amendment to having 'demeaning images' included as prescribed matters under the Classification of Publications Act.

I cannot say that the Democrats support this Bill. The Hon. Ian Gilfillan and I have actually divided on this, but both of us fall a fraction of a centimetre either side of the line. I have changed my mind on this legislation four times already.

It just so happens that I have swung to the 'Yes' at the time I am speaking. I have spoken with many groups in the community. I have spoken with Women Against Demeaning Images, the Women's Electoral Lobby and a number of other women's groups, and I find that they are in exactly the same quandary. The women's movement groups themselves are divided as to whether or not to support the legislation, and I found no individuals who have said that it absolutely must or must not get through.

The one group that has expressed the strongest view about it is some anti-pornography campaigners who hope this legislation will do a lot more than it is. But sometimes people support legislation for quite different reasons, and I find myself in this position on this occasion. The fact that Ian and I have fallen either side of the line does not indicate a significant difference in attitude. Ian has largely said that he wants to wait until there are national guidelines. I feel the issue is one worth giving a prod along now, and I am rather impatient to wait for Federal guidelines in a whole range of areas and for that reason I am supporting the legislation.

The Hon. BERNICE PFITZNER: I would like to acknowledge all contributors to this Bill, be it for or against it. Their thoughts have been considered and, although some have debated the issue *per se,* others have been tinged with Party political prejudices, and that is disappointing. Let me first discuss the technicalities of what is known as hard and soft pornographic material. The hard core porn (which is the jargon that is used in the community) is addressed in the Summary Offences Act 1953. The criteria in section 33 of that Act describes what is known as indecent material, and that relates to material of a more moralistic nature and also to offensive material which relates to material of a violent or a cruel nature. In that Act, if any such offensive or indecent material is produced, exhibited or sold, that agent is guilty of an offence.

Soft porn is addressed mainly in the Classification of Publications Act 1974. The criteria there is in section 13 of that Act and is described in what is known as prescribed matters in a manner that is likely to cause offence to reasonable adult persons. In increasing order of unacceptability the categories are: (i) unrestricted; (ii) restricted, category 1 and category 2, which has more explicit publications; and (iii) refused or not assigned a classification. This type of material may also be looked at under the Summary Offences Act. The controls of the restricted material are that they should not be sold to a child and that category 2 restricted publications can be sold only on premises where children are not allowed and must leave the premises in a plain wrapper. Category 1 restricted publications can be sold only in a sealed transparent wrapper. In this State, they are available at newsagents, at delis and at petrol stations. This Bill relates to this category 1 restricted publication, because of its sale outlets which are in very accessible areas throughout the general community.

As well as these criteria in the two Acts, there is also the National Classifications Board and South Australia adopts its classifications generally. However, South Australia also has its own board and the criteria to be applied by the board are:

> The board shall give effect to the principles which are:
>
> (a) that adult persons are entitled to read and view what they wish; and
>
> (b) that members of the community are entitled to protection from exposure to unsolicited material that they find offensive.

With these principles in mind, the South Australian board has published some guidelines for, first, covers and advertising posters and, secondly, contents which are unrestricted, restricted and refused. This Bill, as I mentioned, relates to restricted category 1 for covers, content and advertising material. The Bill requires that not only restricted category 1 material be placed in a sealed package or wrapper but also it be in opaque wrapping or in a special rack. This is necessary because category 1 material is sold, as I previously mentioned, mainly in service stations, delis and newsagents and is, therefore, visually accessible to the community and in particular to children.

I now return to the comments by individual contributors. It is disappointing and surprising that the Government, through its Attorney-General, does not support this Bill to visually restrict the display of demeaning images. I would have thought that the Government would support legislation that discourages the exploitation of the female form when that female form is projected into an offensive and demeaning image. This projection must lead to the female gender's status being placed as that of a second class member of the community, together with the degradation of that position. However, perhaps it is not surprising that the Government does not support this Bill in that it would be seen that the Opposition is doing something positive, and that would never do.

It is not lost on me that the Government in opposing the Bill adds the words 'at this stage'. The Government justifies its procrastination by declaring it is waiting for uniformity of legislation. We are aware that the Law Reform Commission last year put out a report on censorship procedure in an attempt to provide uniform guidelines and perhaps procedure. However, although the recommendations from the Law Reform Commission

suggest uniform procedures and uniform classification guidelines—

The Hon. C.J. Sumner: Have you spoken to small businesses about it?

The Hon. BERNICE PFITZNER: Yes, I have. I will come to that—these recommendations towards uniformity are only as good as the will of the States and Territories to take up the recommendations. The Attorney-General, in the second reading stage, in looking to implement a uniform scheme throughout Australia, states:

I should say that Tasmania and Queensland indicated that they did not want to be part of the national scheme, and New South Wales indicated that it was still considering it.

That is three States already perhaps not wanting uniformity, and now that Victoria has a Liberal Government perhaps it will want its own procedures. Yes, it is possible that we are debating not the issue but the Party politics of it all. Further, I understand that the track record of the Law Reform Commission on initiating uniformity of legislation throughout Australia is not all that brilliant; for example, the report in 1979 on Unfair Publications, Defamation and Privacy has not made much headway. That was 13 years ago. Are we to wait all that time to have these demeaning images visually restricted?

A further comment regarding the Law Reform Commission's recommendation to be implemented uniformly is that the recommendations deal with guidelines for classification of publication and procedure for this. It does briefly mention but does not take into detailed account the display restriction of demeaning images on publications or advertisements of the publications. So, why are we. waiting, since uniformity is the principal objection of the Government.

Since the objection cannot be sustained, the Government should reconsider its position as it seems to be doing so very frequently. The other objections are in relation to lack of consultation. I have consulted with publishers who have varied comments. I have consulted with the peak group Small Business Association and Mr McDonald, who said that it was really a publisher's problem. It is nice that this Government shows—

The Hon. C.J. Sumner: It will not be a publisher's problem if small businesses have to buy the racks to put them in.

The Hon. BERNICE PFITZNER: I will address that point in a moment. It is nice that the Government shows that it cares about the economic situation of small business. What is one blinder rack compared with all the taxes and charges with which small businesses are burdened by this Government? Besides, businesses already have their publications in racks, which could easily be adjusted to accommodate the requirement. Regarding the concern for the type of packaging, I would expect that the publishers put the restricted category 1 magazines into opaque plastic sealed packages with the title on view. As' to the objection that the customer is not able to see the magazine before it is purchased, that is the case now as the magazines are in sealed packages. The further restriction is that one is unable to view the front cover except for its title. Therefore, the Government's principal and other minor objections cannot be supported as a justification for opposing the Bill.

The Hon. C.J. Sumner: You have not consulted the groups who have to put in these things.

The Hon. BERNICE PFITZNER: As a response to that, I have consulted with the peak group which has advised me that it is not its problem and that I should not need to go any further.

The Hon. Mr Gilfillan's response is basically along the lines of the Government's in relation to uniformity and this issue has been responded to. The other reason given by the honourable member for not supporting the Bill is to state that the moves are an overreaction. This reason cannot be supported. The Bill seeks to implement a simple and balanced procedure, namely, to obscure a visually demeaning image of a male or female by means of either an opaque plastic sealed package or placement in special racks, but that the publications remain where they are, that is, in newsagents, service stations and delicatessens. Indeed, Tasmania is currently drafting a Bill to implement the same or similar restrictions. It is a small but effective and balanced reaction to an issue of significant community concern.

The Hon. Mr Elliott's response is encouraging and surprising to me as it is different from his own Party colleague's line. I am told by the Hon. Mr Elliott that there have been times when the two members have not always gone along in the same manner. His raising the issue of demeaning images being different from pornography is one that has been raised many times. My own view is that demeaning images are the thin end of the wedge. I am pleased to be aware that the Hon. Mr Elliott has basically agreed with the sentiment and thrust of the Bill.

I also note the response of WADI (Women Against Demeaning Images), which is rather confused. It seems to be a bet each way, in racing parlance. It is understandable as this issue is complex and covered at the moment by two. Acts and two classification boards, along with the issue of compulsory classification. WADI generally supports the Bill but has identified three main objections: first, the compulsory classification, which I think is a separate issue and more suited to be debated perhaps on a national basis; secondly, the extra expense for the publishers of opaque wrappers or for newsagents for special racks (perhaps with this extra expense it may be a disincentive for publishers or newsagents to produce or stock such publications); and, thirdly, WADI states that 'the covers and contents may become more provocative and offensive as there would be no need for concern about the effects on minors and others...'.

A misunderstanding exists because these publications must be classified by an authority before being placed in opaque wrappers. I would be surprised if any publisher would place any other type of material in a publication and risk the penalty or adverse publicity. Last, but certainly not least, the Hon. Mr Burdett's response was encouraging. He is experienced in legal matters and has seen much legislation waiting to go national and uniform that has not seen the light of day. Further, as the Hon. Mr Burdett remarks, different States have different requirements. Even the Law Reform Commission agrees to reflect community standards. Different States have different standards and as such we ought to take the lead.

'What is wrong with the nude female form being shown,' my daughter says. I am sure that I am not a puritan or a prude, but when the female form is placed in a posture or activity that sends a message that is

degrading of the gender, it must be restricted. In particular, I am concerned, as I stated in my second reading contribution, for the children of the next generation. We are sending a message that these postures and activities with their attendant implications are acceptable—an indelible imprint that will set the standards for these children, in my opinion undesirable standards. At present each State has its procedure according to the level of community concerns. We must strike a balance that takes into account the entitlement of adults to read what they want and the equal entitlement of the community to be protected from unsolicited material. This Bill will do just that. Although it does not cover all the issues, it is a step in the right direction and I urge my colleagues to consider the issues and support the Bill.

Bill read a second time.

PUBLIC CORPORATIONS BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to provide for the control of public corporations; and for other purposes. Read a first time.

The Hon. C.J. SUMNER: I move:

That this Bill be now read a second time.

On 17 November 1992, I made a ministerial statement on the release of the first of the Royal Commissioner's reports on the circumstances surrounding the financial problems of the State Bank of South Australia. In that statement, I referred to the Government's intention to introduce into Parliament a Public Corporations Bill to ensure that the duties of directors of public corporations are clearly defined and that the objectives, authority and accountability of the parties involved with commercial statutory authorities are well understood.

As stated on that occasion, the experience of the State Bank has made it abundantly clear that there is a need for the Government to set clear objectives, priorities and performance criteria for its statutory authorities and that these objectives must be defined and understood so that boards and management can get on with the job of managing while also accepting responsibility for the performance of the statutory authority.

However, this Bill is not intended just to be a response to problems with the State Bank. It is part of a package of reform measures directed towards commercial statutory authorities, designed to encourage better performance whilst safeguarding against the sort of failure which occurred with the Bank.

The recently completed study of the South Australian economy conducted by consultants A.D. Little, underlined the fact that problems in the South Australian economy are not derived just from a recession or even from the collapse of the State Bank, but are manifestations of the need for major structural changes, brought about by the increasing globalisation of the Australian economy as a whole.

At the State level, industries and businesses in South Australia are now competing not only with those interstate, but also with overseas companies. Many Government owned businesses are also subject, directly or indirectly, to this competition as well as providing important infrastructure and services upon which the private sector itself relies to be able to compete. These businesses are a very significant part of the South Australian economy, the major enterprises operating assets valued at over $12 billion and raising revenue of over $1.5 billion per annum. The Government acknowledges the need for its public trading enterprises to achieve standards of productivity and service equivalent to world best to help ensure that South Australia is competitive.

Much has already been achieved in this regard, in recent years the commercialisation reforms implemented by the South Australian Government have seen many public trading enterprises realise significant improvements in the way of:

- real reductions in charges for their services
- restructuring of tariffs and charges in line with user pays principles to encourage efficient resource use and conservation
- major improvements in capital and labour productivity

and

- improved return on assets for many enterprises.

Details of these reforms and their results may be found in the 1992/93 budget papers. Suffice it to say what whilst it is understandable that the problems of the State Bank should be foremost in our minds, these should not overshadow the many significant gains which have been made with other public enterprises, which have left those enterprises in a much improved position to compete and to provide services which are vital to this state's economy.

It is essential that an effective response be made to ensure that problems akin to those of the Bank do not occur again. However, we must also ensure that we do not introduce controls which make it impossible for it and other authorities to perform effectively and to act in a commercial manner. Rather it is necessary to implement a balanced system which encourages, and indeed requires, high standards of performance whilst strengthening accountability to the Government, and ultimately to Parliament.

The Public Corporations Bill is designed to overarch the legislation establishing each authority, and will put in place a consistent framework of duties, responsibilities, and relationships between each authority and the Government. As necessary, the incorporating legislation for each authority will also be amended to remove any inconsistent provisions.

The mechanisms contained in the Bill are based on the following principles:

- The establishment of clear and non conflicting objectives and targets for public corporations.
- An appropriate balance of Ministerial control and managerial responsibility and authority combined with a clear line of accountability from the corporation to the Minister and thence to Parliament.
- Ongoing monitoring of the performance of each corporation.
- An effective system of rewards and sanctions.

Whereas the State Bank Act removed the Government's capacity to control and direct the Bank, it is now clear that this policy was flawed, as it seriously restricts the Government's capacity to fulfil its

obligations as owner of an authority on behalf of the community, and guarantor of its debs. The Public Corporations Bill is predicated on the belief that if the Government is to accept final accountability for the functioning of its public trading enterprises, then the Government must have authority to control and direct these authorities, subject to safeguards to ensure that this power is not used inappropriately.

I have alluded to the fact that this Bill is intended to provide the framework for a wider package of reform measures designed to enhance both the performance and accountability of public corporations. In concert with the measures in the Bill the Government will implement or accelerate the following reforms:

- The composition of boards of public corporations will be reviewed progressively with a view to ensuring that membership has the optimal mix of skills having regard to the responsibilities of the boards under the Public Corporations Act.
- The process for recruiting, selecting and appointing directors will be reviewed to ensure that, on an ongoing basis, the persons appointed are the best available.
- Remuneration practices will be reviewed to ensure that whilst board fees adequately reflect the new accountabilities, directors are precluded from accepting fees for service on the boards of subsidiaries except as authorised by the Government.
- The charters for public corporations will ensure that any non commercial functions carried out by public corporations are explicitly identified in order to improve accountability. Accounting practices will be reformed to support these measures.
- New standards for annual reporting will require higher standards of public disclosure. These standards will be based on those applicable in the private sector but will contain additional requirements specifically to meet the needs of public corporations. Certain requirements are stated in the Bill, but will be dealt with more exhaustively in separate Treasurer's Instructions under the Public Finance and Audit Act.
- A handbook of practice and conduct will be prepared for directors, particularly new directors, explaining their obligations, relationships with Government and what represents 'best practice' for boards of this type

and

- A system of ongoing monitoring public corporation performance will be installed to provide the Government with advice regarding performance and early warning of any problems.

In summary, it is intended that the legislative arrangements, together with the policy changes will result in an arrangement for the management and oversight of the operations of public corporations which have the following essential components:

- The Government is responsible for setting the strategic framework for public corporation operations via a charter and a performance agreement. The Charter, which may limit the statutory objects of the corporation, authorises the board to pursue certain strategies (usually in the context of a three to five year strategic plan).
- The performance agreement will stipulate specific performance targets to be pursued, against which the board's performance will be assessed.
- Within this framework, each board is responsible for strategic leadership of the public corporation, for monitoring and evaluating management's performance and for stewardship over the assets of the corporation. The board's broad management functions will be specified in the legislation to ensure that there is no misunderstanding of their role vis-a-vis government. One particular responsibility will be that of ensuring that the corporation's Minister is advised of any material development that affects the financial or operating capacity of the corporation or any of its subsidiaries, or gives rise to an expectation that it may not be able to meet its debts as and when they fall due.

In addition, the board will be accountable for ensuring that each corporation and any subsidiaries operate within the corporation's statutory objectives and the charter agreed with the Government. In accordance with currently accepted standards of best practice, boards will be required to establish an audit committee to focus on the financial and management practices of each corporation and to ensure that adequate internal audit systems are in place.

The Minister retains power to direct a board and can do so either on broad policy or in relation to a specific operational issue. However, directions are to be given in writing, and unless there is no overriding reason (arising, for example, from the need for commercial confidentiality) any direction is to be reported in the annual report. Directors' legal duties will be clearly specified in the legislation, and in certain instances criminal sanctions will apply for failure to perform these duties.

The Bill provides a comprehensive framework of duties for directors of public corporations. These duties have been developed having regard both to the existing common law duties of persons holding public office and to the statutory and common law duties of directors in the private sector. However, effort has been made to finetune those duties to make them more relevant to the needs of public corporations in today's climate, where the boards will be required to operate in a commercial manner but also have accountability to the Government and Parliament. The duties have been written in a way which emphasises that directors of public corporations must operate according to the highest standards of ethics and probity, both as regards their own conduct and that of the corporation.

Whilst commercial transactions between a director and the public corporation of which he or she is a board member are not prohibited, as such transactions may be to the benefit of the corporation, the Bill requires both ministerial approval of any such transaction and full disclosure of the fact in the corporation's annual report, so that there is both public and parliamentary scrutiny of such transactions.

Supporting provisions apply to require full disclosure by a director to the Minister of any direct or indirect interest in a matter under consideration by a board of which he/she is a member and of any interests or offices which the director holds which may create a reasonable

expectation that a future conflict may raise. In these circumstances, the Minister may require the director to divest himself of a conflicting office or interest or to resign from the board. In appropriate circumstances, the Bill provides for criminal penalties to be applied where a director has breached his/her duties.

The Bill also specifies clear standards for directors to fulfil their duty of care to a corporation and provides for appropriate criminal penalties in circumstances where a director is culpably negligent.

A regime of routine monitoring of public corporation performance will be put in place in order to ensure that the Government has early advice of potential problems. The monitoring will not duplicate the work of the Auditor-General, but rather will focus on monitoring of commercial and non-commercial performance against the performance and prudential targets set in the performance agreement.

There will be greater authority for the Auditor-General to audit operations of corporations and their subsidiaries, including auditing the information provided for monitoring purposes, in order to ensure that the Government and Parliament are properly informed about the accuracy of information provided. As part of the audit, the Auditor-General will also be required to provide an opinion as to whether the corporation and its subsidiaries, if any, are operating within the requirements of its legislation and charter, and as to whether anything has come to his notice which may give rise to reasons to expect that problems may arise in the future.

While these arrangements presuppose that boards will generally have broad scope to make operating decisions, this will only occur within a framework of strategic objectives and targets agreed with the Government. Any necessary restrictions on a board's authority not dealt with in the legislation will be detailed in each corporation's charter. For example, the fixing of fees and charges would normally be subject to Government control.

This is pioneering legislation in South Australia and, as such, deserves a reasonable period of public exposure before passage. In introducing the Bill today, there is ample opportunity for consultation and public comment before debate is resumed in February. The Government invites comment and may move amendments to the Bill in the light of these. Further, before debate is resumed, it is likely that the report of the State Bank Royal Commission on term of reference 2 will be available to further inform the debate. A detailed clause by clause explanation follows and I seek leave to have it inserted in *Hansard* without my reading it. I also seek leave to table a policy statement providing a more detailed explanation of the Government's policy on public trading enterprises reform.

Leave granted.

Explanation of Clauses

PART 1
PRELIMINARY

Clause 1: Short title. This clause is formal.

Clause 2: Commencement. This clause provides for the measure to be brought into operation by proclamation.

Clause 3: Interpretation. This clause contains definitions of teens used in the measure. The definition of "public corporation" is a general one and should be read together with clause 5 which deals with the application of the measure to particular public corporations. Attention is drawn to subclause (2) which defines when a person will be taken to be an associate of another. This provision has application in relation to various provisions designed to regulate transactions and shareholding and other relationships between public corporations and subsidiaries of public corporations and their directors and executives.

Clause 4: References to board or directors where corporation does not have separately constituted board. The provisions of the measure make references to the board of a public corporation and directors of a public corporation. Some public corporations will continue to be constituted under their incorporating Acts without separately constituted boards of directors. This clause is designed to ensure that the provisions operate properly in relation to any such corporation so that references to the board will be taken to be references to the corporation itself and references to a director will be taken to be references to a member of the corporation.

Clause 5: Application of Act. This clause provides that a provision of the measure will apply to a public corporation if the corporation's incorporating Act so provides or if regulations under the measure so provide.

PART 2
MINISTERIAL CONTROL

Clause 6: Control and direction of public corporations. This clause provides that a public corporation is an instrumentality of the Crown, holds its property on behalf of the Crown and is subject to control and direction by its Minister. Any direction by the Minister must be in writing and published in the corporation's next annual report. A corporation may omit the actual wording of a direction from its next annual report and instead state that the direction was given and provide a general description of the direction if the corporation is of the opinion that the publication of the direction might detrimentally affect its commercial interests, constitute a breach of a duty of confidence or prejudice an investigation of misconduct or possible misconduct or would be inappropriate on any other ground.

Clause 7: Provision of information and records to Minister. This clause gives a public corporation's Minister full access to any information or records in the corporation's possession or control. The corporation may advise the Minister as to the confidential nature of any information or record, but any question as to public or other disclosure of the information or record remains a matter for decision by the Minister.

Clause 8: Minister's or Treasurer's representative may attend meetings. Under this clause a representative of a public corporation's Minister or the Treasurer may, at the initiative of the Minister or Treasurer, attend (but not participate in) meetings of the board of the corporation.

PART 3
PERFORMANCE AND SCOPE OF CORPORATION'S OPERATIONS

Clause 9: General performance principles. This clause requires a public corporation to perform its commercial operations in accordance with commercial principles and to use its best endeavours to achieve a level of profit consistent with its functions. The corporation is required to perform its non-commercial operations (if any) in an efficient and effective manner consistent with the requirements of the corporations' charter (for which see clause 10). The question whether particular operations are commercial or non-commercial may be determined by the classification given to the operations by the corporation's charter.

Clause 10: Corporation's charter. Under this clause a charter must be prepared for a public corporation by the corporation's Minister and the Treasurer after consultation with the corporation. The charter must deal with the following:

- the nature and scope of the commercial operations to be undertaken, including—
  - the nature and scope of any investment activities;

- the nature and scope of any operations or transactions outside the State;
- the nature and scope of any operations or transactions that may be undertaken by subsidiaries of the corporation, by other companies or entities associated with the corporation or pursuant to a trust scheme or a partnership or other scheme or arrangement for sharing of profits, co-operation or joint venture with another person;

- the nature and scope of any non-commercial operations to be undertaken and the arrangements for their costing and funding;

and

- all requirements of the corporation's Minister or the Treasurer as to—
  - the corporation's obligations to report on its operations;
  - the form and contents of the corporation's accounts and financial statements;
  - any accounting, internal auditing or financial systems or practices to be established or observed by the corporation;
  - the setting of fees or charges, the acquisition or disposal of capital or assets or the borrowing or lending of money.

The charter may limit the functions or powers of the corporation and deal with any other matter.

The charter must be reviewed by the corporation's Minister and the Treasurer at the end of each financial year and may be amended at any time by the corporation's Minister and the Treasurer, in either case, after consultation with the corporation.

On the charter or an amendment to the charter coming into force, the corporation's Minister must within six sitting days, cause a copy of the charter, or the charter in its amended form, to be laid before both Houses of Parliament and, within 14 days (unless such a copy is sooner laid before both Houses of Parliament), cause a copy of the charter, or the charter in its amended form, to be presented to the Economic and Finance Committee of the Parliament.

Clause 11: Performance statements. Under this clause the corporation's Minister and the Treasurer must, when preparing the charter for a public corporation, also prepare, after consultation with the corporation, a performance statement setting the various performance targets that the corporation is to pursue in the coming financial year or other period specified in the statement and dealing with such other matters as the Minister and the Treasurer consider appropriate.

This must be reviewed when the corporation's charter is reviewed and may be amended at any time by the Minister and the Treasurer after consultation with the corporation.

PART 4
DUTIES AND LIABILITIES OF BOARD AND DIRECTORS

Clause 12: General management duties of board. This clause provides that the board of a public corporation is to be responsible to its Minister for overseeing the operations of the corporation and its subsidiaries with the goal of securing continuing improvements of performance and protecting the interests of the Crown.

In particular, the board must ensure—

- that appropriate strategic and business plans and targets are established that are consistent with the corporation's charter and performance statement;
- that the corporation and its subsidiaries have appropriate management structures and systems for monitoring management performance against plans and targets and that corrective action is taken when necessary;
- that appropriate systems and practices are established for management and financial planning and control, including systems and practices for the maintenance of accurate and comprehensive records of all transactions, assets and liabilities and physical and human resources of the corporation and its subsidiaries;
- that all such plans, targets, structures, systems and practices are regularly reviewed and revised as necessary to address changing circumstances and reflect best current commercial practices;
- that the corporation and its subsidiaries operate within the limits imposed by the corporation's incorporating Act and charter and comply with the requirements imposed by or under this measure or any other Act or law;
- that the corporation and its subsidiaries observe high standards of corporate and business ethics;
- that the corporation's Minister receives regular reports on the performance of the corporation and, its subsidiaries and on the initiatives of the board;
- that the corporation's Minister is advised, as soon as practicable, of any material development that affects the financial or operating capacity of the corporation or any of its subsidiaries or gives rise to an expectation that the corporation or any of its subsidiaries may not be able to meet its debts as and when they fall due;

and

- that all information furnished to the corporation's Minister by the corporation or any of its subsidiaries is accurate and comprehensive.

Clause 13: Directors' duties of care, etc. A director of a public corporation is required by this clause to take all reasonable steps within the processes of the board to ensure that the board discharges its duties.

He or she must, as soon as practicable, advise the corporation's Minister of any matter of which the Minister has not been advised by the board but should have been advised in pursuance of the board's duties.

He or she must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.

In particular, the director must—

- properly inform himself or herself about the corporation and its subsidiaries, their businesses and activities and the circumstances in which they operate;
- actively seek to obtain sufficient information and advice about all matters to be decided by the board or pursuant to a delegation to enable him or her to make conscientious and informed decisions;

and

- exercise an active discretion with respect to all matters to be decided by the board or pursuant to a delegation.

In determining the degree of care and diligence required to be exercised by a director, regard is to be had to any special skills, knowledge or acumen possessed by the director and to the degree of risk involved in any particular circumstances.

A director is to be guilty of an offence punishable by a maximum of a Division 4 fine ($15 000) if the directors culpably negligent in the performance of his or her functions. For this purpose, a director will not be culpably negligent unless the court is satisfied the director's conduct fell sufficiently short of the standards required to warrant the imposition of a criminal sanction.

Clause 14: Directors' duties of honesty. This clause sets out offences in the same terms as apply to company directors under the Corporations Law.

A director of a public corporation must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

A director or former director of a public corporation must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation or any of its subsidiaries.

A director of a public corporation must not, whether within or outside the State, make improper use of his or her position as a director to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation or any of its subsidiaries.

Each of these offences attracts a maximum penalty of a Division 4 fine ($15 000) or Division 4 imprisonment (4 years), or both.

Clause 15: Transactions with directors or associates of directors. This clause requires the Minister's approval for any transaction with the corporation or a subsidiary in which a director of the corporation or an associate of a director is directly or indirectly involved. Subclause (2) provides that a person has an indirect involvement in a transaction if the person initiates, promotes or takes any part in negotiations or steps leading to the making of the transaction with a view to that person or an associate of that person gaining some financial or other benefit (whether immediately or at a time after the making of the

transaction). This will be so despite the fact that neither that person nor an agent, nominee or trustee of that person becomes a party to the transaction.

The clause makes an exception from this requirement for transactions of an ordinary retail non-commercial nature:

- the receipt by the corporation or a subsidiary of the corporation of deposits of money or investments;
- the provision of loans or other financial accommodation by the corporation or a subsidiary of the corporation for domestic or non-commercial purposes;
- the provision of accident, health, life, property damage or income protection insurance or insurance against other risks (excluding credit or financial risks) by the corporation or a subsidiary of the corporation;
- the provision of services (other than financial or insurance services) by the corporation or a subsidiary of the corporation,

in the ordinary course of its ordinary business and on ordinary commercial terms.

The clause also allows other exceptions to be made by regulation.

Any transaction made in contravention of this provision may be avoided by the corporation or the corporation's Minister.

The clause provides that a director is to be guilty of an offence if he or she counsels, procures, induces or is in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of this provision. This offence is, if an intention to deceive or defraud is proved, punishable by a Division 4 fine ($15 000) or Division 4 imprisonment (4 years), or both, or in any other case, by a Division 6 fine ($4 000).

Clause 16: Directors' and associates' interests in corporation or subsidiary. Under this clause, the Minister's approval is required for a director or an associate of a director to have a beneficial interest in, or a right or option or other contractual entitlement in respect of, shares in, or debentures issued or prescribed interests made available by, the corporation or a subsidiary of the corporation. The same offence and penalties apply to a contravention of this provision as apply under the previous clause.

Clause 17: Conflict of interest. This clause provides that a director of a public corporation who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the board—

- must, as soon as reasonably practicable, disclose to the board full and accurate details of the interest;
- must not take part in any discussion by the board relating to that matter;
- must not vote in relation to that matter;

and

- must be absent from the meeting room when any such discussion or voting is taking place.

Contravention of this provision is to be an offence punishable by a division 4 fine ($15 000).

If these requirements are complied with in respect of a proposed contract, the contract is not liable to be avoided by the corporation and the director is not liable to account to the corporation for profits derived from the contract.

Failure to comply with these requirements entitles the corporation or the corporation's Minister to avoid the contract.

Further disclosure is required where a director of a public corporation has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a director of the corporation. Contravention of this requirement is also to be an offence punishable by a division 4 fine ($15 000).

Any disclosure under this provision is to be recorded in the minutes of the board and reported to the corporation's Minister.

If the corporation's Minister forms the opinion that a particular interest or office of a director is of such significance that the

holding of the interest or office is not consistent with the proper discharge of the duties of the director, the Minister may require the director either to divest himself or herself of the interest or office or to resign from the board (and non-compliance with the requirement will constitute misconduct and hence a ground for removal of the director from the board).

The clause makes it clear that a director will be taken to have an interest in a matter if an associate of the director has an interest in the matter.

These requirements will not apply in relation to a matter in which a director has an interest while the director remains unaware that he or she has an interest in the matter, but in any proceedings against the director the burden will lie on the director to prove that he or she was not, at the material time, aware of his or her interest.

Clause 18: Removal of director. This clause is intended to make it clear that breach by a director of a duty imposed under this measure will constitute a ground for removal from office.

Clause 19: Civil liability if director or former director contravenes this Part. This clause allows the recovery of profit gained by a person or loss or damage suffered by a corporation or subsidiary as a result of the contravention by a director or former director of any provision of Part 4 of the measure. This may occur by order of the court convicting the director of an offence in respect of the contravention or by action in a court of competent jurisdiction commenced by the corporation or the corporation's Minister.

Clause 20: Immunity for directors. This clause provides an immunity from civil liability for honest acts or omissions of a director in the performance or discharge, or purported performance or discharge of, functions or duties as such a director. Any liability that would otherwise have been incurred by a director of a corporation will become a liability of the corporation. This immunity does not detract from a liability otherwise imposed under the measure.

PART 5
SUBSIDIARIES AND INDIRECT OR JOINT OPERATIONS

Clause 21: Formation, etc., of subsidiary companies. Under this clause the Treasurer's approval is required before a public corporation may form or acquire a subsidiary company (that is, a company under the Corporations Law). Any such approval may be conditional on inclusion in the company's memorandum or articles of association of provisions imposing limitations, controls or practices consistent with those applicable to the parent public corporation.

Clause 22: Formation of subsidiary by regulation. This clause empowers the Governor to establish a body corporate as a subsidiary of a public corporation by regulation. Regulations establishing a subsidiary of a public corporation—

- must name the body;
- must constitute a board of directors as the body's governing body and provide for the appointment, term and conditions of office and removal of the directors;
- must provide for the procedures governing the board's proceedings;
- may limit the powers and functions of the body;

and

- may make any other provision (not inconsistent with this measure or the public corporation's incorporating Act) that is necessary or expedient for the purposes of the subsidiary.

The powers and functions of the subsidiary are to be the same as those of its parent corporation, subject to any limitations in the regulations establishing the subsidiary and any directions given by its parent corporation.

The clause makes it clear that any such subsidiary will be an instrumentality of the Crown and hold its property on behalf of the Crown.

Clause 23: Dissolution of subsidiary established by regulation. This clause provides for the dissolution by regulation of a subsidiary established by regulation.

Clause 24: Guarantee or indemnity for subsidiary subject to Treasurer's approval. Under this clause the Treasurer's approval is required before a parent public corporation may provide a guarantee or indemnity in respect of any liabilities of a subsidiary.

Clause 25: Indirect or joint operations by public corporations. This clause requires the Treasurer's approval before a public corporation may establish a trust scheme, partnership or other scheme or arrangement for sharing of profits, co-operation or joint venture with another person or undertake any operations or transactions pursuant to such a scheme or arrangement.

PART 6
FINANCIAL AND OTHER PROVISIONS

Clause 26: Guarantee by Treasurer of corporation's liability. This clause is the usual provision providing the Treasurer's guarantee in respect of liabilities of a public corporation.

Clause 27: Tax and other liabilities of corporation. Under this clause a public corporation will be liable to all such rates (other than rates payable to a council), duties, taxes and imposts and have all such other liabilities and duties as would apply under the law of the State if the corporation were not an instrumentality of the Crown.

Amounts equivalent to income tax and other Commonwealth taxes will be payable to the Treasurer for the credit of the Consolidated Account. Similar provision is made in respect of local government rates. In each case, this is to be subject to any exception or limitation determined by the Treasurer. Subclause (4) makes it clear that these provisions do not affect any liability to pay rates to a council that would apply apart from these provisions.

Clause 28: Dividends. Under this clause, a public corporation must, before the end of each financial year, recommend by writing to the Treasurer, that the corporation pay a specified dividend, or not pay any dividend, for that financial year. Any such recommendation may be accepted by the Treasurer or subject to variation by the Treasurer.

Provision is made for interim dividends in the same way, that is, first a recommendation from the corporation and then final determination by the Treasurer.

Any dividends or interim dividends are to be payable to the Treasurer for the credit of the Consolidated Account at times and in a manner determined by the Treasurer after consultation with the corporation.

Clause 29: Internal audits and audit committee. Under this clause a public corporation must, unless exempted by the Treasurer, establish and maintain effective internal auditing of its operations and the operations of its subsidiaries.

The public corporation must, unless exempted by the Treasurer, establish an audit committee to be comprised of the board or members of the board together with such other person or persons as the board may from time to time appoint.

Such a committee may not include the chief executive officer of the corporation.

The functions of a corporation's audit committee are to include—

- the reviewing of annual financial statements prior to their approval by the board to ensure that the statements provide a true and fair view of the state of affairs of the corporation and its subsidiaries;
- liaising with external auditors on all matters concerning the conduct and outcome of annual audits of the corporation and its subsidiaries;

and

- regular reviewing of the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the corporation and its subsidiaries.

Clause 30: Accounts and external audit. This clause provides that a public corporation must cause proper accounts to be kept of its financial affairs and financial statements to be prepared in respect of each financial year.

Unless exempted by the Treasurer, the corporation must include in its financial statements the financial statements of its subsidiaries on a consolidated basis.

The accounts and financial statements must comply with the requirements of the Treasurer contained in the corporation's charter and any applicable instructions of the Treasurer issued under the Public Finance and Audit Act 1987.

The Auditor-General may at any time, and must in respect of each financial year, audit the accounts and financial statements of the corporation.

Finally, the clause requires that the Auditor-General must, in conducting the audit in respect of each financial year—

- audit the financial and other information relating to the corporation or its subsidiaries provided to the corporation's Minister or the Treasurer during the year for the purpose of monitoring the performance of the corporation or its subsidiaries and report on whether the information was, in the Auditor-General's opinion, accurate and comprehensive;
- report on whether the transactions examined in the audit were, in the Auditor-General's opinion, within the limits imposed by the corporation's incorporating Act and charter and in compliance with any directions given to the corporation;

and

- report on whether the audit has disclosed any matter or matters that might, in the Auditor-General's opinion, impair the future financial or operating capacity of the corporation or any of its subsidiaries.

Clause 31: Annual reports. A public corporation is required by this clause to report to its Minister, within three months after the end of each financial year, on the operations of the corporation and its subsidiaries during that financial year.

Each such report is to—

- incorporate the audited accounts and financial statements for the financial year,
- incorporate the corporation's charter as in force for that financial year,
- set out any approval or exemption given or determination made by its Minister or the Treasurer under this measure or the corporation's incorporating Act in respect of the corporation or any of its subsidiaries during that financial year or that has effect in respect of that financial year;
- set out any disclosure made during that financial year by a director of the corporation or a subsidiary of the corporation of an interest in a matter decided or under consideration by the board of the corporation or subsidiary;
- contain the prescribed information relating to the remuneration of executives of the corporation and executives of its subsidiaries;
- contain any information required by or under the provisions of this measure or any other Act.

The Minister is required to cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report.

Clause 32: Remuneration of corporation's directors. Under this clause the Minister's approval is required before a director of a public corporation may become entitled to any remuneration (apart from that determined by the Governor) for or in connection with membership of the board of the corporation or membership of the board of a subsidiary of the corporation.

Clause 33: Minister to be consulted as to appointment or removal of chief executive officer. This clause requires a public corporation to consult its Minister before appointing or removing a person as chief executive officer of the corporation.

Clause 34: Delegation. This clause provides for delegation by the board of a public corporation. The clause prohibits a delegate from acting in a matter in which the delegate has a direct or indirect pecuniary or personal interest. The clause provides for recovery of any profit gained by a person or loss or damage suffered by the corporation as a result of contravention of this provision and allows any contract made in contravention of the provision to be avoided by the corporation or the corporation's Minister.

Clause 35: Transactions with executives or associates of executives. This clause limits the involvement of executives of a public corporation in transactions with the corporation in the same way as does clause 15 in relation to directors of a public corporation.

Clause 36: Executives' and associates' interests in corporation or subsidiary. Similarly, this clause regulates executives' interests or rights in respect of shares, debentures or prescribed interests of the corporation in the same way as does clause 16 in relation to directors of a public corporation.

Clause 37: Validity of transactions of corporation. This clause provides that a transaction to which a public corporation is a party or apparently a party (whether made or apparently made under the corporation's common seal or by a person with authority to bind the corporation) is not invalid because of—

- any deficiency of power on the part of the corporation;
- any procedural irregularity on the part of the board or any director, employee or agent of the corporation;

or

- any procedural irregularity affecting the appointment of a director, employee or agent of the corporation.

However, the provision will not validate a transaction in favour of a party who enters into the transaction with actual knowledge of the deficiency or irregularity or who has a

connection or relationship with the corporation such that the person ought to know of the deficiency or irregularity.

Clause 38: Power to investigate corporation's or subsidiary's operations. This clause confers a power to investigate the operations of a public corporation or a subsidiary of a public corporation that corresponds to the power under section 25 of the State Bank of South Australia Act 1983. Under the provision, the Minister responsible for a public corporation may appoint the Auditor-General or any other suitable person to carry out such an investigation.

Clause 39: Formation of public corporation by regulation. This clause empowers the Governor to establish, by regulation, a body corporate with a board of directors as its, governing body comprised of persons to be appointed by the Governor or a Minister.

Any such regulations—

- must name the body;
- must provide for the appointment, term and conditions of office and removal of the directors of the body;
- must provide for the procedures governing the proceedings of the board of directors of the body;
- must define the powers and functions of the body;
- must designate the Minister to whom the body is to be responsible;
- may make any other provision (not inconsistent with this measure) that is necessary or expedient for the purposes of the body.

A body corporate so established is to be an instrumentality of the Crown and hold its property on behalf of the Crown.

The clause applies the other provisions of this measure to such a body—

- as if a reference to a public corporation includes a reference to the body;
- as if a reference to a public corporation's Minister includes a reference to the Minister designated by regulation as the Minister to whom the body is responsible;

and

- as if a reference to a public corporation's incorporating Act includes a reference to the regulations by which the body is established.

The clause goes on to provide for the dissolution of such a body by regulation.

Clause 40: Approvals and exemptions. This clause allows any approval or exemption given by a Minister under the measure to be specific or general and conditional or unconditional and to be varied or revoked by the Minister at any time.

Clause 41: Proceedings for offences. Under this clause, a complaint for an offence against the measure may only be made with the consent of the Minister.

The time for commencing proceedings for a summary offence is extended to three years after the date on which the offence is alleged to have been committed and may be further extended by the Minister.

Clause 42: Regulations. This clause confers the usual regulation-making power.

SCHEDULE

Provisions applicable to subsidiaries

Clause 1 of the schedule applies the schedule to a body corporate that is established by regulation under Part 5 of the measure as a subsidiary of a public corporation and, subject to the regulations, to a company (under the Corporations Law) that is a subsidiary of a public corporation.

The remaining clauses of the schedule deal with the following matters in relation to subsidiaries and correspond to the clauses of the measure (as shown in brackets) dealing with those matters in relation to public corporations:

Direction by board of parent corporation (clause 6)

General management duties of board (clause 12)

Directors' duties of care, etc. (clause 13)

Directors' duties of honesty (clause 14)

Transactions with directors or associates of directors (clause 15)

Directors' and associates' interests in subsidiary or parent corporation (clause 16)

Conflict of interest (clause 17)

Removal of director (clause 18)

Civil liability if director or former director of subsidiary contravenes this schedule (clause 19)

Immunity for directors of subsidiaries (clause 20)

Tax and other liabilities of subsidiary (clause 27)

Accounts and external audit (clause 30)

Delegation (clause 34)

Transactions with executives or associates of executives (clause 35)

Executives' and associates' interests in subsidiary or parent corporation (clause 36)

Validity of transactions of subsidiary (clause 37)

The Hon. K.T. GRIFFIN secured the adjournment of the debate.

ROAD TRAFFIC (PEDAL CYCLES) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Road Traffic Act 1961. Read a first time.

The Hon. C.J. SUMNER: I move:

That this Bill be now read a second time.

The purpose of this Bill is to permit the shared use of designated paths and bikeways by pedal cyclists and pedestrians and to provide specific rules for them when using these areas. A bikeway is defined as a path, lane or other place physically separated from a carriageway for the use of persons riding pedal cycles or for shared use by both pedestrians and cyclists. On the other hand, a bicycle lane is one forming part of a carriageway for exclusive use by cyclists. Appropriate signs or linemarking will be used to identify bikeways and bicycle lanes. The Bill will also permit cyclists, when making a right-turn at an intersection or junction, to proceed across the intersection or junction on the left-hand side before making the turn. This is commonly known as a 'box turn'.

The introduction of these measures involves a number of consequential amendments to the Act. For instance, the methods for passing or overtaking pedestrians on a shared use bikeway are dealt with. The Bill provides for cyclists to pass to the right of pedestrians or cyclists when overtaking and to keep to the left when passing pedestrians and cyclists from the opposite direction. The Bill also recognises people in wheelchairs and clarifies their rights and duties along with pedestrians and cyclists. It also recognises Australia Post employees when using these facilities.

Provision is made for the duty of cyclists and other road users when giving way at intersections and junctions as well as for cyclists when leaving a bikeway and entering a carriageway. An amendment to section 63(1)(ba) has been made to correct an anomaly, by making it clear that the driver not only must give way to a vehicle approaching the junction but also to a vehicle already in the junction.

The regulations will exempt cyclists from giving hand signals when intending to turn or diverge to the left and also when stopping. No hand signals will be required for cyclists making a 'box turn'. However, signals to turn or to diverge to the right in all other situations will be retained. The reason for this change is to enable cyclists better control over their vehicle without compromising safety. All these changes are in line with national requirements. Consultation has taken place with the State Bicycle Committee (which has representation of cycling

groups), the police and local government. It is considered that all these measures will not only clarify rights and duties of cyclists and pedestrians and other vehicle users but will also assist in the promotion and encouragement of cycling in general. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for commencement on a day to be fixed by proclamation.

Clause 3: Amendment of s. 5—Interpretation

This clause amends section 5 of the principal Act, the interpretation section. It inserts definitions of "bicycle lane" "bikeway" "box right turn" and "wheelchair". A bicycle lane is defined as a lane on the carriageway of a road that is indicated by a traffic control device to be reserved for the use of pedal cyclists (or to be so reserved for certain periods). A "bikeway" is defined as a path or lane that does not form part of the carriageway of a road and is indicated by a traffic control device to be reserved for the use of pedal cyclists, or pedal cyclists and pedestrians. A "box right turn" is defined as a right turn at an intersection or junction that may be made by a pedal cyclist in accordance with new section 70a of the principal Act. "Wheelchair" is defined to include a wheelchair propelled or capable of being propelled otherwise than solely by muscular force. Wheelchair is currently so defined in section 61 of the principal Act. This amendment makes it clear that wheelchair has that same meaning throughout the principal Act. Clause 3 also substitutes a new definition of "carriageway". The new definition makes it clear that a reference in the principal Act to the carriageway of a road does not include a bikeway that is separated by a physical barrier from the part of the road used by other vehicles. Clause 3 also amends the definition of "road" in section 5 to make it clear that "road" includes a bikeway.

Clause 4: Amendment of s. 54—Duty to keep to the left

This clause amends section 54 of the principal Act by inserting new subsection (3). Section 54 requires the driver of a vehicle on the carriageway of a road to keep as near as is reasonably practicable to the left boundary of the carriageway. New subsection (3) applies the same "keep to the left" rule to pedestrians and pedal cyclists on a bikeway.

Clause 5: Amendment of s. 55—Passing oncoming vehicle

This clause amends section 55 of the principal Act by inserting new subsection (2). Section 55 requires the driver of a vehicle to pass to the left of an oncoming vehicle. New subsection (2) makes it clear that this rule does not apply where one vehicle is on the carriageway of the road and the other is on an adjacent footpath or bikeway.

Clause 6: Insertion of s. 55a

This clause inserts new section 55a into the principal Act. Section 55 of the principal Act requires the driver of a vehicle to pass to the left of an oncoming vehicle. New section 55a specifies that this same rule applies to both pedestrians and pedal cyclists on a bikeway in relation to an oncoming pedestrian or vehicle on that part of the bikeway.

Clause 7: Amendment of s. 58—Passing vehicles

This clause amends section 58 of the principal Act. Section 58(2) provides that the driver of a vehicle must overtake on the right. Subsection (3) provides an exception to that requirement where there are two or more lanes for vehicles proceeding in the same direction and it is safe to overtake on the left. This amendment makes it clear that subsection (3) is referring to overtaking on the left on a carriageway.

Clause 8: Insertion of s. 58a

This clause inserts new section 58a. Section 58 sets out the rule that drivers of vehicles must overtake other vehicles on the right. New section 58a applies the same rule to the overtaking of pedestrians on bikeways.

Clause 9: Amendment of s. 59—Passing trams

This clause amends section 59 of the principal Act. Section 59 requires drivers of vehicles to overtake trams on the left except in certain circumstances. This amendment makes it clear that this rule does not apply to a person riding a cycle or other vehicle on a footpath or bikeway.

Clause 10: Amendment of s. 60—Duty of driver or pedestrian being overtaken

This clause amends section 60 of the principal Act by inserting new subsection (3). Section 60 requires the driver of a vehicle to move to the left (if it is safe to do so) and not increase speed on hearing the warning instrument of a vehicle approaching from behind. New subsection (3) applies the same rule to a pedestrian on a bikeway, on hearing a warning given by the rider of a cycle approaching from behind.

Clause 11: Substitution of s. 61

This clause repeals section 61 of the principal Act and substitutes new section 61.

The existing section 61 forbids the driving of vehicles on footpaths, other than to enter or leave adjacent land. It makes an exception in the case of persons in wheelchairs and Australia Post employees riding pedal cycles or motor cycles, provided that they do not exceed 10 kilometres per hour and comply with the regulations.

New section 61 forbids the driving of vehicles on footpaths or bikeways, other than to enter or leave adjacent land. It then makes an exception in the case of—

(a) persons operating wheelchairs on footpaths or bikeways;

(b) Australia Post employees riding pedal cycles or motor cycles on footpaths or bikeways while making their deliveries,

and

(c) pedal cyclists riding on bikeways (other than on parts of bikeways set apart for pedestrians only).

Each of the exceptions to the general rule is subject to certain restrictions. A person who operates a wheelchair on a footpath must not do so at a speed greater than 10 kilometres per hour. Where a person operates a wheelchair on a part of a bikeway that is reserved for the use of pedal cyclists only, that person must comply with the rules (on keeping to the left and passing other vehicles or pedestrians) that are applicable to pedal cyclists. An Australia Post employee must not ride on a footpath or bikeway at a speed greater than 10 kilometres per hour when delivering mail and, when riding a motor cycle on a bikeway, must comply with the rules (on keeping to the left and passing other vehicles or pedestrians) that are applicable to pedal cyclists.

Clause 12: Amendment of s. 63—Giving way at intersections and junctions

This clause amends section 63 of the principal Act. Section 63 sets out the "give way" rules applicable at an intersection or junction. Section 63(l)*(ba)* provides that the driver of a vehicle approaching a junction on a road that does not cross the junction must (subject to certain exceptions) give way to any vehicle approaching the junction on another road. This clause corrects an anomaly in section 63(l)*(ba)* by making it clear that the driver must also give way to a vehicle that has already entered the junction (not just to a vehicle approaching the junction).

This clause also amends section 63 by inserting new subsection (lc). Under new section 70a(2)*(c)*(ii), the rider of a pedal cycle making a box right turn is required, in certain circumstances, to give way to any vehicle approaching or in the intersection or junction. New subsection (lc) recognises that rule by providing that a driver approaching an intersection or junction is not required to give way to a pedal cyclist making a box right turn in the circumstances to which section 70a(2)*(c)*(ii) refers.

Clause 13: Insertion of s. 65a

This clause inserts new section 65a into the principal Act. New section 65a provides that the driver of a vehicle about to enter or entering the carriageway of a road from a footpath or bikeway must give way to any vehicle on the carriageway.

Clause 14: Amendment of s. 70—Course to be followed by vehicles turning right

This clause amends section 70 of the principal Act to remove an anomaly. The existing reference in subsection (9) to the "footpath or road" is unnecessary, as "road" is defined in section 5(1) to include a footpath. This amendment removes the reference to "footpath".

Clause 15: Insertion of s. 70a

This clause inserts new section 70a into the principal Act. New section 70a sets out the circumstances in which a pedal cyclist may make a box right turn and the rules to be followed in doing so.

A box right turn may be made by the rider of a pedal cycle approaching an intersection or junction if a road joins that intersection or junction on the rider's left at a point opposite or nearly opposite the road into which the right turn is to be made and access from the road on the left is permitted under the Act to the road into which the turn is to be made. In the case of a junction, a box right turn may also be made if the rider is approaching the junction on the road that continues beyond the junction (unless the road into which the turn is to be made is not one into which a turn may otherwise be made under the Act). A box right turn may not be made at a roundabout.

The rider must approach the intersection or junction as near as is practicable to the left boundary of the carriageway of the road from which the turn is to be made. On entering the intersection or junction the rider must proceed directly to a point—

(a) that is opposite or nearly opposite the left boundary of the carriageway of the road into which the turn is to be made;

and

(b) where there is a road on the left hand side of the intersection or junction at the point referred to in *(a)* from which access is permitted under the Act to the road into which the turn is to be made—that is as near as practicable to the left boundary of the carriageway of that road at the point at which it joins the intersection or junction.

The rider must then stop, turn to the right and proceed through the intersection or junction. For that purpose, where the rider is proceeding through the intersection or junction from the boundary of the road that was on the rider's left as he or she approached the intersection or junction, the provisions of the Act (including the "give way" rules) apply as if the rider had entered the intersection or junction from that road on the left. In any other case, in proceeding through the intersection or junction, the rider must give way to any other vehicle that is approaching or is in the intersection or junction.

In making a box right turn, a pedal cyclist is not bound to comply with instructions indicated by a traffic signal that is operating at the intersection or junction for the purpose of regulating right turns other than box right turns.

Clause 16: Amendment of s. 74—Duty to give signals

This clause amends section 74 of the principal Act. Section 74 requires the driver of a vehicle to give a signal in accordance with the regulations before diverging right or left, turning, stopping or carrying out various other manoeuvres. This amendment makes it clear that the regulations may specify that no signal is required.

Clause 17: Amendment of s. 86—Removal of vehicles causing obstruction or danger

This clause amends section 86 of the principal Act. Section 86 empowers members of the police force and council officers to remove vehicles that have been left unattended on a road, where they are likely to obstruct traffic, cause injury or hinder access to adjacent land. This amendment makes it clear that this power also applies in these circumstances to vehicles left on footpaths or bikeways.

Clause 18: Amendment of s. 88—Walking on footpath, bikeway or right of road

This clause amends section 88 of the principal Act. Section 88 provides that a person must not walk along the carriageway of a road if there is a footpath on that road. Where a person does walk on the carriageway of a road, he or she must—

(a) if walking on a two-way carriageway, keep to the right hand side of the carriageway;

and

(b) if walking on a one-way carriageway, walk on the right hand side of the carriageway in the opposite direction to the traffic.

These provisions do not apply to a pedestrian drawing or pushing a vehicle or leading an animal, or to lawful processions. This amendment provides that a person must not walk on the carriageway of a road if there is a bikeway on that road. It also provides that a person must not walk along a bikeway reserved for the use of pedal cyclists if there is a footpath or other place nearby (other than the carriageway of a road) that it is lawful for pedestrians to use. Where a person does walk on a bikeway reserved for pedal cyclists he or she must keep to the left hand side of that bikeway. These provisions do not apply to a pedestrian drawing or pushing a pedal cycle, or to lawful processions.

Clause 19: Amendment of s. 93—Prohibition of opening vehicle doors

This clause amends section 93 of the principal Act, which makes it an offence to open the door of a vehicle on a road, or alight from a vehicle onto the carriageway of a road, so as to cause danger to other road users or so as to impede traffic. This amendment expands the scope of section 93 by making it an offence to alight from a vehicle onto a footpath or bikeway so as to cause danger to other persons or so as to impede traffic.

Clause 20: Amendment of s. 97—Driving abreast

This clause amends section 97 of the principal Act. Section 97 makes it an offence to drive a vehicle abreast of another vehicle that is going in the same direction (other than when overtaking or where there is more than one lane for vehicles proceeding in the same direction). However a pedal cyclist may ride abreast of one other pedal cyclist or, on a part of the road set apart exclusively for pedal cycles, of more than one other pedal cyclist. This amendment permits a pedal cyclist to ride abreast of more than one other pedal cyclist when on a bicycle lane on the carriageway or when on a bikeway. It also makes it clear that the prohibition on driving abreast does not apply where one vehicle is on the carriageway and the other is on an adjacent footpath or bikeway.

Clause 21: Insertion of s. 99a

This clause inserts new section 99a into the principal Act. New section 99a requires a person riding a pedal cycle on a footpath or bikeway to give warning to other persons using the footpath or bikeway where it is necessary to do so in order to avert danger.

Clause 22: Amendment of s. 176—Regulations

This clause amends section 176of the principal Act, the regulation-making power. It inserts a power to make regulations regulating or prohibiting the use of footpaths, bicycle lanes and bikeways by pedestrians and drivers of vehicles.

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

FIREARMS (MISCELLANEOUS) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General): I move:

That this Bill be now read a second time.

As this matter has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The violent and tragic use of firearms in August 1991 in New South Wales and in 1987 in Victoria focused public scrutiny on firearms legislation throughout Australia.

Here in South Australia, the Minister for the administration of the Firearms Act, undertook to review the effectiveness of controls. The Minister took into consideration the resolutions of the Australian Police Ministers' Council and the Premiers Conference, submissions from the Commissioner of Police and other interested parties, such as the promoters of paintball activities.

This Bill seeks to bring into effect the resolutions of the Police Ministers' Council and Premiers' Conference, together with the recommendations of the Commissioner of Police, paintball operators, and other interested parties, which are not yet embodied in this State's firearms controls. Honourable members should clearly understand that the changes are not an emotional response or knee-jerk reaction to the multiple murders which occurred last year.

The objective of this legislation and the Firearms Act Amendment Act 1988 is to prevent, so far as is possible, death and injury as a result of firearms misuse. Honourable members

and the community generally should not suffer under the illusion that this legislation will eliminate firearms misuse. The Government makes no exaggerated claims for this legislation and does not regard it as a panacea. No firearms or criminal legislation can of itself eliminate crime. Nevertheless, it is imperative that appropriate controls, together with firearm education programs, exist to promote the safe and responsible possession and use of firearms. This Bill embodies such controls.

In October and November 1991, the Australian Police Ministers' Council met to discuss the adoption of national uniform minimum standards for firearms controls and agreed to a number of resolutions. At the November 1991 Premiers' Conference, the Premiers and Chief Ministers concurred with the resolutions of the police Ministers' Council and recommended that all necessary administrative and legislative changes should be implemented in all jurisdictions by 1 July 1992.

Of the 19 resolutions agreed to be adopted, some will require multiple legislative changes, others can be more appropriately implemented by regulation and the rest will require no legislative or regulatory change. Amendments have been included embodying the following resolutions:

- confirmation of the existing prohibition on the possession of fully automatic firearms;
- to prohibit, subject to carefully defined exemptions, the sale of military style self-loading centre-fire rifles, and all self-loading centre-fire rifles and self-loading shotguns which have a detachable magazine capable of holding more than five rounds;
- confirmation of the existing restriction on the possession of hand-guns;
- consistent minimum licensing procedures which include issue only to residents of proven identity who have the appropriate qualifications, training and genuine reason;
- all firearms be registered in the licence holder's jurisdiction of residence;
- to limit the sale of ammunition to appropriate licence holders and collectors;
- to ban, other than in the case of Government or Government authorised users, the possession and use of detachable magazines of more than five rounds capacity for self-loading centre- fire rifles and self-loading shotguns;
- to impose an obligation on sellers and purchasers of firearms to ensure purchasers are appropriately licensed;
- to require the suspension of relevant firearms licences, prohibit the issue or renewal of licences, and require the seizure of firearms in the possession or control of a violent offender or a person against whom a protection order is in effect, and grant police a discretion to seize firearms temporarily where such action is warranted.

While the Government is prepared to limit access to self-loading firearms, we will not make such controls retrospective. Persons who have legally purchased firearms in good faith will not be deprived of their rights to possess and use those particular firearms. Transitional provisions in this Bill, and the Firearms Act Amendment Act 1988, will ensure that those rights are preserved.

The legislation will prohibit the possession of a detachable magazine of more than five rounds capacity for a self-loading centre-fire rifle or a self-loading shotgun unless the person has possession of that magazine for use on the grounds of a recognised firearms club, as part of a collection or in accordance with the transitional provisions.

For a number of years, promoters of paintball activities have made representations to the Government requesting that participants in paintball activities on properly controlled grounds should be exempted from the requirement of holding a firearms licence for the possession of a firearm, in the same manner as a person on the grounds of a recognised firearms club. The Government believes that properly controlled activities should be permitted in South Australia as they have a popular following in many other countries. The legislation will facilitate the application for recognition and the approval of grounds by paintball operators. Once recognised, paintball operators will benefit from the legislation in respect to persons participating in paintball activities on approved grounds and the sale of paintball ammunition in much the same way as the recognised firearms clubs. The paintball operators support these amendments.

Under the Firearms Act Amendment Act 1988 an application for the firearms licence cannot be validly made by a person under the age of 18. To enable younger persons to possess firearms for appropriate shooting activities, this Bill will allow an application for a licence to possess an air rifle or air gun to be made by a person of or above the age of 16.

The amendments provide for a police officer to seize a firearm if he or she suspects on reasonable grounds that continued possession of the firearm would be likely to result in undue danger to life or property or if a person has failed to comply with an order under section 99a of the Summary Procedure Act in relation to the firearm. The legislation will give the Registrar the power to temporarily suspend the licence of a person who is not a fit and proper person to hold the licence pending the consideration of cancellation of the licence by the Firearms Consultative Committee. A police officer will be empowered to seize a licence if the licence has been suspended or cancelled, if a person has possession of the licence contrary to an order under section 99a of the Summary Procedure Act or if the firearm possessed under the licence has been seized.

To ensure the Registrar can give proper consideration to the granting, refusal, temporary suspension and cancellation of licences under this Act, medical practitioners will have a duty to report to the Registrar any case where they have reasonable cause to believe it is or would be unsafe for a patient to possess firearms. The amendment protects the practitioner from civil or criminal liability where such report is made.

The Bill enables a licence holder and the Registrar to vary classes, purposes of use and conditions on a licence, setting out the required procedures. In addition, requirements are placed on the Registrar and the licence holder in relation to licences and approval to purchase firearm permits. If a person is aggrieved by a decision of the Registrar, in relation to a licence, permit or grounds of a recognised firearms club or recognised paintball operator, he may appeal that decision to a magistrate in chambers.

The Bill includes an amendment which provides that the Crown is not bound by the Act. This amendment arises from a decision of the High Court which raised doubt as to when the Crown is bound by an Act.

The Bill amends the Firearms Act 1977 and the Firearms Act Amendment Act 1988 and it is proposed that it will come into operation on the day on which the Firearms Act Amendment Act 1988 comes into operation.

The Government has taken into consideration the rights of ordinary citizens and shooters, and believes that this Bill will not unduly affect the interests of the legitimate firearms user. The community expect the Government to ensure that only fit and proper persons own firearms, that those persons be held accountable for the use of their firearms, and that there are proper controls over the proliferation of firearms in this State. I commend the Bill to the House.

The Bill amends the Firearms Act 1977 as if the Firearms Act Amendment Act 1988 was in operation.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for commencement of the measure.

Clause 3 amends the interpretation provision.

Definitions of 'paint-ball firearm', 'paint-ball operator' and 'recognised paint-ball operator' are inserted for the purposes of new provisions relating to paint-ball activities.

A definition of 'restricted firearm' is inserted for the purposes of a new provision limiting the availability of such firearms. The definition allows the regulations to specify the types of firearms that are to be restricted.

The definition of 'silencer' is amended to ensure that it includes devices that comprise part of the firearm as well as devices designed to be attached to a firearm.

The definition of 'special firearms permit' is deleted although the concept of a firearms licence being specially endorsed so as to authorise the possession of a dangerous firearm is retained.

Subsection (5) of the current interpretation provision (as amended in 1988) provides that a person who purchases or sells more than 50 000 rounds of ammunition per year will be taken to be carrying on the business of dealing in ammunition. The amendment provides that this does not apply in relation to a recognised paint-ball operator. This is similar to the exclusion of recognised firearms clubs.

The amendment also inserts provisions to explain what is meant in the Act by references to grounds of a recognised firearms club or recognised paint-ball operator. Any grounds

provided or arranged to be provided by the club or operator are to be considered to be grounds of the club or operator.

Clause 4 inserts a new section 5a which provides that the Crown is not bound by the Act.

Clause 5 is an amendment relating to paint-ball activities. Section 11 is amended by providing that a person who uses a paint-ball firearm as part of an organised activity on the grounds of a recognised paint-ball operator is not required to hold a firearms licence.

Clause 6 amends section 12. It requires the Registrar to be satisfied as to the identity, age and address of an applicant for a firearms licence before granting the licence. It enables the Registrar to refuse to grant a firearms licence to a person who is not usually resident in the State.

It also removes the ability of the Registrar to grant a firearms licence authorising possession of a 'dangerous firearm' on the grounds that the firearm is of historical, archaeological or cultural value but the ability of the Registrar to grant such a licence on the grounds that the firearm is required for the purposes of a theatrical production or for some other purpose authorised by the regulations is retained.

Clause 7 amends the administrative processes relating to conditions of firearms licences set out in section 13.

The requirement of reporting to the consultative committee any licence conditions imposed by the Registrar with the agreement of the licence holder is removed.

The Registrar is empowered on his or her own initiative to vary or revoke licence conditions, extend or restrict the classes of firearms to which the licence relates or vary or revoke endorsements on the licence. The current provision (as amended in 1988) only allows this on application by the licensee.

Clause 8 amends section 14 which requires various permits to be obtained in relation to the purchase or sale of firearms. The current provision (as inserted by the 1988 amendment) provides that in the case of an auction of firearms a purchaser does not need a permit although the auctioneer is required to ascertain that the purchaser holds an appropriate firearms licence or is a licensed dealer. The amendment requires the purchaser to seek a permit approving the purchase retrospectively. If that permit is refused, the amendment provides that the licence will be taken not to authorise the possession of the firearm. New section 31a sets out the steps that must then be taken in relation to the firearm.

The amendment also provides that restricted firearms may only be sold pursuant to permit. The amendment in clause 9 to section 15 provides that such a permit will only be granted if the Registrar is satisfied that special circumstances exist justifying the granting of the permit.

Clause 9 contains amendments to the administrative processes related to permits set out in section 15 and is consequential to the amendments to section 14 contained in clause 8.

Clause 10 alters the conditions to which a dealer's licence is subject, as set out in section 17. The amendment makes it a condition of licence that the dealer must not deal in dangerous firearms and enables the Registrar to impose conditions on the licence with the agreement of the licence.

Section 17 is further altered to bring the legislation relating to conditions of dealer's licences into line with that relating to conditions of firearms licences.

Clause 11 amends the cancellation of licence process set out in section 20 and introduces a process for suspending a licence.

The current provision (as inserted by the 1988 amendment) provides that one of the grounds for cancellation is if the licensee has committed some act that shows that he or she is not a fit and proper person to hold the licence. The amendment removes the need to point a specific act to establish lack of fitness.

The suspension process is such that the Registrar may suspend a licence pending an investigation as to whether the licence should be cancelled for a period of up to 3 months or such longer period as the consultative committee allows. The Registrar is also specifically empowered to revoke a suspension.

Clause 12 inserts a new section 20a obliging medical practitioners to report to the Registrar cases where they believe it is or would be unsafe for a patient to have possession of a firearm. The section protects the practitioner for civil or criminal liability where such a report is made.

Clause 13 inserts a new section 21ab. The section requires a person whose licence has been suspended or cancelled to return the licence to the Registrar. It also enables the Registrar to require a licence to be returned so that further endorsements can be made on it.

Clause 14 is an amendment relating to paint-ball activities. Section 21b (as inserted by the 1988 amendment) requires permits for the purchase of ammunition in certain circumstances. The amendment provides that a permit is not required for the acquisition of ammunition by a recognised paint-ball operator for distribution to participants in paint-ball activities. The exemption is similar to that given to recognised firearms clubs.

Clause 15 amends section 21d (as inserted by the 1988 amendment) by adding to the decisions of the Registrar against which an appeal may be taken the following: refusal of an application for a permit authorising the purchase of a firearm at auction, variation of licence conditions, suspension of a licence, refusal to approve the grounds of a recognised firearms club or paint-ball operator and the imposition or variation of conditions imposed on such an approval.

Clause 16 amends section 22 by removing a reference to a special firearms permit and referring instead to a firearms licence that authorises possession of a dangerous firearm.

Clause 17 adds new subsections to section 23 of the principal Act. Subsection 3 makes it an offence to own a firearm that is not registered in the owner's name. It should be noted that section 23 (1) makes it an offence to be in possession of an unregistered firearm. The new provision supports the existing practice of re-registering a firearm on transfer to a new owner in the name of the new owner.

Clause 18 amends section 24 of the principal Act by adding a subsection that provides that previous registration is cancelled on registration of a firearm in the name of a new owner. This provision is inserted simply for the sake of tidiness.

Clause 19 is an amendment mainly relating to paint-ball activities. Two new sections are inserted. new section 26b provides for the recognition by the Minister of paint-ball operators. The exemptions given in relation to paint-ball activities only apply in relation to operators to whom such recognition has been given. The provision is similar to that relating to recognition of firearms clubs.

Section 26c institutes a system for the approval of the grounds of a recognised club or operator by the Registrar.

Clause 20 amends section 29. This section currently makes it an offence to possess a silencer. The amendment creates an additional offence of possessing a detachable magazine of more than 5 rounds capacity for a centre-fire self loading rifle or self loading shotgun. Paragraphs *(a)* and *(b)* set out exceptions to the general rule.

Clause 21 substitutes section 31a (inserted by 1988 amendment). The current provision allows retention of a firearm for a specified period after cancellation of a licence or registration of a firearm or refusal to renew a licence in order for the firearm to be disposed of. The amendment extends the provision to cover suspension of a licence, refusal to grant a licence (in the case of applications by residents new to the State who have brought firearms with them) and refusal to grant a permit authorising purchase of a firearm at auction. The period for which the firearm may be retained is reduced from two months to one month.

In addition, if a licence is simply suspended provision is made for the former licensee to retain the power of disposition over the firearm if the firearm is stored by a dealer or other authorised person.

Clause 22 amends section 32. The amendment makes it clear that a police officer may seize a firearm if he or she suspects on reasonable grounds that continued possession of the firearm by the person would be likely to result in undue danger to life or property or if the person has failed to comply with a restraining order under section 99a of the Summary Procedure Act 1921.

The amendment also introduces a power for the police to seize a licence in certain circumstances—where the firearm is seized, the licence is suspended or cancelled, the person possesses the licence for an improper purpose or the police officer suspects on reasonable grounds that the holder is not a fit and proper person to have possession of the licence.

Clause 23 inserts a new section 34aa which governs return of a licence seized under section 32. If the licence is not suspended or cancelled and the associated firearm has not been seized, the licence must be returned within 14 days. If the firearm has been seized, the licence must be returned when the firearm is returned.

Clause 24 amends section 34a which gives the court power to order forfeiture of firearms. The amendment requires the court to make an order under the section if a person is convicted of an offence involving a firearm or if the court forms a view that a party to proceedings is not a fit and proper person to have possession of a firearm. The orders that can be made are expanded to include imposition of licence conditions, suspend licence and disqualification from holding a licence.

Clause 25 amends the evidentiary provision consequential to the amendments contained in the measure.

Clause 26 amends the regulation making power set out in section 39.

The amendment makes it clear that the regulations may provide, or empower the Registrar to determine, requirements for the safe keeping of ammunition.

The amendment also enables the regulations to require recognised paint-ball operators to keep records and furnish information to the Registrar (similarly to recognised firearms clubs).

Clause 27 amends the transitional provision. The provisions relating to the possession of firearms under existing licences are modified. The second amendment relates to the possession of large detachable magazines for self loading firearms. New section 29(2) outlaws possession of certain magazines. The transitional provision allows persons in possession of such magazines as at the introduction of the measure to retain possession if they inform the Registrar of that possession together with certain details.

The schedule contains amendments of a statute law revision nature.

The Hon. R.I. LUCAS secured the adjournment of the debate.

INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 965.)

The Hon. DIANA LAIDLAW: I commend the Hon. Trevor Griffin on his contribution to this Bill: it was a long, well-researched and thoughtful contribution. The Bill presents a number of dilemmas for me. I find a number of its provisions, namely, certified industrial agreements and those relating to unfair contracts, abhorrent. However, there are others provisions which I welcome as being long overdue reforms. I will be interested to see how the debate unfolds in Committee, as that will ultimately determine how I vote on this Bill.

Only one aspect of this important Bill has received much media attention to date. The *Advertiser* in particular has been vigorous in highlighting its distaste for the provisions of clause 3 as it relates to the definition of 'employee'. The Bill proposes to extend the definition of 'employee' to include any person engaged for personal reward to distribute any of the following items, namely, newspapers, catalogues or other publications, advertising or promotional products or materials, where the person distributes the items by going from place to place or distributes the items to members of the public who are passing by, and the items are supplied to the public free of charge.

I object to this extension of the definition of 'employee'. I know of a number of people of my age and younger who have children at home and who actually enjoy earning a little bit of money while they are out walking with their children and gaining some exercise.

Never in their wildest dreams did they believe that they would be deemed by this Parliament, particularly by the Government, to be an employee.

I see other people walking the streets distributing literature, and I often speak to them when I am doing the same thing—distributing Liberal Party pamphlets or propaganda. Clearly, they are enjoying the exercise, as do I: looking over people's fences and seeing what is going on in the neighbourhood. They are doing it for reward, but I am not doing so. No person to whom I have spoken while we have been doing our rounds has ever grumbled about their work conditions. I think they are essentially pleased to have a relatively pleasant occupation.

I find this matter difficult, as I found it difficult when debating the industrial relations legislation in 1988 or 1989 when the Government was then trying to deem more people to be employees—and at that time it was transport subcontractors. Members may recall the huge protests outside this place as massive semitrailers went up and down North Terrace beeping their horns, flashing their lights, indicating to all who wanted to listen and see that they objected very strongly to the Government's moves at that time. I object equally as strongly to the Government's moves at this time to classify as employees in clause 3 the people to whom I have referred.

One thing that disturbs me most about the Labor Party and its attitude as reflected this Bill is that it still seems to have this belief that the workplace can be so neatly defined as the exploited and the exploiter or the managed and the manager. I do not believe that those distinctions in our workplace today are healthy. They register a great deal of ugliness that was probably fair in the nineteenth century, as it was probably fair for the trade union movement to feed off the divisive nature of a workplace as referred to as 'master and servant' in this Bill, or 'exploiter and exploited' or 'managed and manager'.

That is changing in so many work situations, and I do not think it is healthy that we see people who are employed as being vulnerable to exploitation. That may be the case, but I suspect that it arises more from the fact that we have such horrific unemployment at this time. People are searching for jobs and essentially will take what they can get to keep their heads above water and to help feed their families. To find that we are now, through this legislation, seeking to cope with some of the outcomes of an unemployment crisis rather than dealing with the causes of unemployment to my mind seems to reflect very poor priorities.

Clause 4 deals with outworkers. I recall speaking at some length in April 1989 about the circumstances of outworkers when the Government sought to define 'outworkers' as people who work on, process or pack articles or materials. That same definition is included in this clause, but the Government seeks to extend it by including people who perform any clerical service, solicit funds, sell goods or offer services, carry out advertising or promotional activities by phone or perform a journalistic or public relations service. That is a hotchpotch of activities that the Government is seeking now to classify as outwork.

The people to whom I have spoken in many of these circumstances would not deem themselves to be outworkers, and many of them are making the decision by choice to work from home rather than to work within a more organised office environment or workplace. My

reflection on their circumstances is to be seen in the large increase in women who are now establishing their own businesses from home. Again I say that, at a time of extremely high unemployment in this State, people will be seeking to work from home and any means to improve their lot and their income to help their families. I do not think it is wise for us to seek to classify and neatly box all those people under the label of 'outworkers'. By doing so, of course, there are other significant ramifications.

I feel strongly that this Government does not appreciate that the drive by people, particularly by women, at this time for more flexible working hours, conditions and arrangements can equally be translated into their drive for different employment status to suit their various circumstances. I feel that at a time of enterprise bargaining at the workplace, when we are all being tested to look at a variety of flexible work conditions, we should not seek to confine, restrict and box people into categories that they do not necessarily wish to be in and that do not necessarily give them the flexibility to choose work that they want to do when they wish to do it.

I know that that was the case in the clothing industry some years ago, when the respective clothing union sought to address this issue of outwork and a minimum number of hours. Many women who had jobs enjoyed doing what they were doing when they wanted to do it—in some weeks many hours, in other weeks not so many hours. They actually lost their ability to pursue those activities because this helpful union, which was meant to be working in the best interests of workers, went over the top and what it thought was best for people did not suit the circumstances of many people working in that industry. I strongly believe that what the Government is seeking to do with this extension of the definition or categorisation of people as outworkers will have the same result.

I am also suspicious regarding the reasons why the Government is so enthusiastic about this measure. What appears in this Bill in part reflects recommendations from a study entitled 'Home is where the work is', which is a report on research into home-based computer workers in the clerical industry in South Australia. Written by Michelle Hogan in April 1991, it is a project by the Working Womens Centre funded by the South Australian Department of Labour. At page 27 of that report, under the heading 'Government Initiatives', I was interested to read the conclusion reached, as follows:

> However, many of these home-based workers to be other than isolated, unorganised and exploited, require regulation and unionisation.

It was deemed by the writer of this report that regulation and unionisation was essential for these home-based workers who were doing clerical work. I argue that what that report deemed as an essential prerequisite for these workers (unionisation) is an unacceptable conclusion to reach, and I strongly believe that it is equally unacceptable to see the measures in this Bill which are seeking the same result, that is, regulation and unionisation.

There is no doubt that the trade union movement in this country is being rejected by more and more people. It is not seen as acceptable to the majority of women in the workplace, and I do not see why this Parliament should be used as an exercise for the Government to endear itself to the trade union movement or, secondly, to help the union gain more members and therefore more money for the Labor Party.

I note in the *Public Service Review* of December 1991 that it also looks at this issue of home-based clerical work in terms of union membership. The article states:

> At present few, if any, PSA members could be described as outworkers in the sense referred to in the report. However, we must be vigilant in ensuring that members, under the guise of more flexible working conditions, do not end up worse off through working in such conditions.

The article goes on to say that trade union membership is important and believes that such workers should have this access to industrial support and the protection of the trade union movement. This call by the Government, under the guise of seeking to help women who are working at home, is no more than an umbrella for increased unionism in this State. I strongly believe that there is a role for unions, but they must go out and do their own work and prove to the people that they are seeking to gain members and that they are an organisation that is worth joining. However, I do not see that we in this Parliament should be used as a pawn in that process.

With respect to women and unionism, I refer to an article by John Lesses on this subject in November 1991, when he talked about the very survival of unions depending on increasing the union participation of women. The article notes that in South Australia 44 per cent of the labour force are union members, with union membership declining by 2 per cent over the past 10 years. Mr Lesses is anxious to support a survey on why women are not joining unions in this country. I am sure he would have discovered in the survey, if it was undertaken, that women do not find that unions are relevant to their circumstances, and they do not find that unions have been extremely helpful in assisting women in many of their concerns in relation to family and workplace responsibilities. I suspect that women have not found the union movement terribly sympathetic to the fact that so many young people are unemployed, and that the unions support a Government which has been so poor in generating new jobs in this State.

I also want to speak about clause 9 in relation to the jurisdiction of the commission. New subsection (1a) of section 25 provides:

> The jurisdiction of the Commission includes the ability, by award, to regulate or prohibit the performance of work where the employee is required to work nude or partially nude, or in transparent clothing.

I feel very strongly that this provision is needed in the Act. A number of my colleagues equally feel that it should remain a matter negotiated simply by awards to be argued before the commission. We have had considerable discussion about this matter in the Party room. To my knowledge, no member has found this practice of employing a person, particularly a woman, to work nude as a waitress or a bar assistant to be an acceptable practice—perhaps the member for Davenport is the one exception to that broad statement. But generally I was pleased to hear from my colleagues that, overall, they find the practice to be unacceptable. However, some members of the Party did not support this provision being in the Bill for the reasons to which I have alluded and

which were well outlined by the Hon. Mr Griffin in his contribution.

In the tourism industry—and I held the position of shadow Minister for Tourism for some years—I have had a great deal of admiration for the efforts being made by the Australian Hotels Association and the Liquor Trades Union to try to improve standards and to increase training for those who work in that industry. I therefore applaud them for their efforts in more recent times to raise the standards required for those who work in the area of bar duties. I believe very strongly that, as an employment condition applicable to a person who is working in bar conditions or in serving alcohol or food, to be clothed is important.

To be required to work nude or partially nude is totally inappropriate and unacceptable. It is my view that it is an argument not of morals but of employment conditions and of employment standards appropriate to the lines of work they are doing. If women or men wish to work nude as strippers or other activities and get paid for it, although it may not be a job that I would wish to take on, I do not have a great deal of objection to their doing so. But it should be considered on a work by workplace and type basis and judged accordingly.

So, I do praise those who have been trying to raise standards in this field, and I do commend the Government for taking this further step to reinforce the capacity of the commission to make judgments on this matter. I indicate that this measure in the Bill in clause 9 does not require the commission to order people not to work nude or partially nude: it simply allows the commission to hear that case and make a determination.

I note that on 12 November 1992 the Australian Liquor Hospitality and Miscellaneous Workers Union joint secretary John Drumm wrote to the Minister of Consumer Affairs, Ms Levy, seeking changes to the State's Liquor Licensing Act which would ban strippers. He said:

> The union would also seek ALP support for the move at a meeting of State council to be held that evening.

I would be interested to know from the Minister what response she has provided to the union in terms of any amendments to the Liquor Licensing Act to ban strippers. I am not too sure how that could be enforced, but it will be interesting to see her response. I have taken an interest in this issue for a number of years. I remember raising it with respect to topless waitresses on 2 December 1987. At that time, I indicated *very* strongly in correspondence I received from a number of irate men that I had considerable sympathy with the Liquor Trades Union's goal to ensure that waitresses are employed, promoted and remunerated for their professional skills capacity and not on the basis of their physical qualities or manner of dress. I also indicated that I deplore the whole notion of restaurant owners and hoteliers employing topless waitresses for profit. The fact that over-award payments induce some women to work topless simply reinforces the unsavoury nature of this work pattern for the nature of the work.

In 1987, 1 indicated that I remain saddened and troubled by the realities of our economic, education and social system which encourages women to believe that they have no other avenues for gaining rewarding employment than to work topless. I remain strongly of that view, and I commend the Government equally strongly for taking this measure at this time.

The last provision in the Bill to which I wish to refer is in relation to family leave, which is included in the second schedule. This is a most important provision. When the Liberal Party announced the minimum conditions that we believed must be part of any enterprise bargaining arrangement, we included maternity leave. I was very pleased to see that my colleagues respected the fact that an increasing number of women are in the work force, an increasing number of families are having children and an increasing number of women, after bearing a child, wish to return for any number of reasons to the paid work force. This issue of family leave, as outlined in the Bill, refers not only to maternity leave but also to paternity leave and to adoption leave. All of them are important initiatives. They also show that we are finally starting as a Parliament, if not necessarily in the employer bodies, to recognise that we must be establishing family friendly workplaces.

One of the things that I respected most about the report tabled yesterday by the Social Development Committee on the social implications of population change in South Australia is the fact that not only are there more women in the workplace but more women are having children later in life. Therefore, those women are used to being in the workplace and are keen to return to their former job. Many employers are equally pleased to accommodate that return, because they invested heavily in their training. I also believe it is important to extend the responsibility for children from simply the responsibility of a mother to one of a shared responsibility with their partner. Therefore, I am pleased to see this paternity leave provision.

I note that Annette Manner is talking on 5AN these mornings because Keith Conlon has time off on paternity leave supporting his wife and his new member of the family, his daughter.

It is wonderful to see that that exercise is so obvious over the radio to so many people. It may encourage more families, fathers in particular, to experience the joy and also the responsibility for a further member of the family. I have had contact over time with Ms Stephanie Key, an industrial officer with the United Trades and Labor Council who is now working with the Transport Workers Union. I have been discussing these issues of family leave for some years. I know when the UTLC was first seeking to pursue this issue that it was looking for a minimum of three weeks paternity leave, to be available immediately after the birth, with the remaining 52 weeks available at the employee's choice as extended paternity leave.

The Bill provides for one week and not three weeks, so the unions did not get entirely what they wanted in this respect. Back in 1989 the union was also seeking the right of fathers and mothers to take extended leave at a time of their choice up to the child's second birthday. The Bill does not go as far as that but, in respect of paternity leave, it is noted in clause 11(2)(d) that paternity leave cannot extend beyond the child's first birthday. The UTLC was also seeking five days paid leave per year to take up family responsibilities, that is, to look after sick children and other dependants and to meet school commitments.

I welcomed learning today from the Chairperson of the parliamentary Social Development Committee that one of its new references will be family leave with respect to sick children. This is a most important matter for the parliament to be addressing. It is a fact that many employees today take time off to care for sick children or elderly parents. They lie in order to do so by claiming that they themselves are sick and can therefore use their own sick leave. We see high rates of absenteeism in the workplace and I know that a study by the Australian Institute of Family Studies recognised, when it interviewed employers recently, that high levels of absenteeism are due to the circumstances of sick children. It is a classic dilemma presently of work and family tension that involves parents of pre-school children, who are more vulnerable to infection, and those with chronically ill dependants. Again, the Social Development Committee talked about the ageing of our population.

I know that the test case that the ACTU has been looking at for some time with regard to sick leave is before the Australian Industrial Relations Commission and it has decided to put that case on hold because of the recession. It is therefore timely that this parliament look at the issue further. I have a dilemma with this Bill as I find some parts quite abhorrent whilst applauding other parts. I look forward to the conduct of the debate and ultimately making my decision on the final vote.

[Sitting suspended from 6 to 7.45 p.m.]

The Hon. R.I. LUCAS (Leader of the Opposition): I congratulate our lead speaker on this Bill, the Hon. Trevor Griffin (as did my colleague the Hon. Diana Laidlaw), and agree with the views expressed by him. Whilst there are some good parts to this legislation, most of the Bill is objectionable and ought to be opposed. I do not intend to canvass all the issues canvassed by my colleague, the only one that I intend to look at being that of conscientious objection clauses and conscientious objection under the industrial relations legislation. One of the first issues I addressed soon after being elected back in 1982 was the Industrial Relations Bill, in early 1984.

Amongst a range of issues that I canvassed on that occasion, I moved an amendment to clause 144, the conscientious objection clause of the Industrial Conciliation and Arbitration Bill, as it then was, to widen the provisions for conscientious objection in South Australia. The amendment would have sought to implement a less formal process that conscientious objectors would need to go through to achieve the status of being a conscientious objector to union membership. The views that I expressed on that occasion remain my views.

I indicated on that occasion that the Cawthorne report, which looked at the Industrial Conciliation and Arbitration Act in the early 1980s, had strongly endorsed a widening of clause 144, and that the amendment that I was moving was similar to legislation that existed in the United Kingdom in relation to persons who wanted to express conscientious objection to union membership. Without again going through all the arguments for the amendment, the basic premise for the view I put on that occasion and put again today is that our current provision in South Australia is too restrictive. It really only allows conscientious objection on religious grounds and not on other grounds.

If one looks at those in the community who argued in the early 1970s and late 1960s against conscription and the Vietnam war and who were involved in moratorium marches—perhaps the Hon. Terry Roberts, I do not know, but certainly the Hon. Lynn Arnold and others—their conscientious objection to conscription and to the draft was not always based on religious grounds but, for many, was based on an abhorrence of war, on opposing the fighting, on opposing the cause and a whole range of other reasons why they conscientiously objected to conscription and to the draft.

Certainly, it was not restricted just to religious grounds. Similarly, there are many people who, for a variety of reasons other than religious grounds, conscientiously object to being compelled to join a trade union. It may be because the trade union movement is the industrial wing of the Labor party, or a variety of other reasons, but people do object to being members of a trade union for many reasons other than religious grounds. It is for those reasons that I sought to broaden the conscientious objection provisions and, as I said, that remains my view.

Given the fact that we will be moving a whole raft of amendments to this Bill and that, in the end, we find the Bill objectionable and do not believe it ought to be supported, I do not intend to test the support or otherwise for a widening of the conscientious objection provision specifically during debate on this occasion. I am mindful of the fact that the Government is strongly opposed and that the Australian Democrats, on previous occasions, have opposed a broadening of the conscientious objection provision. The Hon. Ian Gilfillan and other Democrats have previously opposed the amendment that I moved in 1984 to widen that provision.

I want to place on record again that it is my view, and a view that I will continue to argue within the forums of the Liberal party and, I hope, at some stage in the future, a Liberal Government. These sorts of moves may well not be required if there is voluntary union membership but, in the absence of voluntary union membership, the next step back would be a broadening of the conscientious objection provision of the legislation.

In addressing that provision I want to acknowledge that small groups of persons with an interest in a particular issue can have an effect on the parliamentary process and on the legislation that governs the law of the land. Many groups feel powerless and believe that the parliament does not listen. They believe that they can have no influence on the legislative process. I want to place on record that conscientious objection is a good example of where a small group of Australians and South Australians with a strongly held view, held for many decades, have been able to affect the parliamentary process and have achieved legislative amendment because of the persistence and good sense, in the end, of the views they put to parliament.

The small group to which I refer is a very small group about which I knew nothing until about a month ago. It is a group in South Australia called the Brethren, a group of Christians represented in 21 countries throughout the world who, they say, uphold and maintain the truth of God as contained in the holy scriptures, which they

believe is the inspired word of God indicted by the holy spirit.

I am told that there are approximately 2 500 families of Brethren living throughout the country and 160 of those families are living in South Australia. The majority of the workers are employed in Brethren family businesses, which have both Brethren and non Brethren employees, covering a variety of areas such as farming, building, steel fabrication, furniture and furnishing, transport, clothing, retailing, accounting, printing, painting, vehicle repairs, etc. This guiding section of the scriptures which relates to the industrial relations Bill is, and I quote:

Because of clear directions in the Holy Scriptures, such as 2 Corinthians 6 'Be not diversely yoked with unbelievers...', and many others, Brethren do not become members of any association, industrial or otherwise.

Members interjecting:

The Hon. R.I. LUCAS: I will not be diverted, even by my colleagues behind me. I shall be relentless. As I said, I knew nothing of the group the Brethren or their beliefs until about a month ago. Interestingly, as my colleague the Hon. Leigh Davis indicates, they have a strong view in relation to Eastern Standard Time—a view that I do not share. They also have had their views publicised recently in relation to the Education Act and what goes on in schools and now, interestingly, I have learnt of the Brethren's interest and experience in industrial relations. That guiding light from the Holy Scriptures is an argument not just in relation to trade unions but in relation to any association. So it is not a group that only dislikes trade unions as a group—

The Hon. Anne Levy: I have never heard industrial relations argued from the scriptures.

The Hon. R.I. LUCAS: Well even at your age, Minister, you are still able to learn. I am pleased to hear that, and if you listen attentively rather than interject you will learn a lot more.

The Hon. Anne Levy: I doubt it, and I doubt whether you could teach me much about the scriptures, either.

The Hon. R.I. LUCAS: I do not think we ought to make light of people's religious views. We ought to be a tolerant society. Whilst I, and perhaps the Minister, do not share the views of the Brethren, we ought not make light of those religious views. In a tolerant society we ought to allow small groups, as they are, and as long as they are not doing harm to others, to believe what they want to believe.

The Hon. Anne Levy: I never suggested otherwise.

The Hon. R.I. LUCAS: If those beliefs reflect on the way they operate industrially, which the Minister was surprised to hear, then, as I said, it would do members well to listen to the views of this small group and to at least give consideration to the views that they have put. As I said, I share some of their views about the changes they wish to see in industrial relations.

The Hon. T. Crothers: Hitler was member No. 7 in the original National Socialist Party.

The Hon. R.I. LUCAS: I am indebted to the Hon. Mr Trevor Crothers for that gem of information. I am not in a position to rebut; I will have to pursue that later with him. It is important that the Brethren's religious views are not that they are just opposed to becoming members of trade unions. They are opposed to becoming members of any association, whether it be employee or employer, or any other community association. They believe that they should not mix with non believers, and they believe, and I suspect that they may be right, that there may well be some non believers in trade unions and that therefore they should not become members of trade unions.

Equally, I suspect that there are non believers amongst employer associations, and they cannot therefore as a result of their beliefs become members of employer associations, like the Employers Federation, the Chamber of Commerce, and a variety of other employee associations. As I said, it is a small group of people, with 160 in South Australia and some 2 500 in Australia, which has had an effect on Parliaments and on industrial legislation, and I quote from information the Brethren have provided to me:

Until 1956 there was no provision in the Federal Conciliation and Arbitration Act 1904 for conscience, but in the middle of that year an approach was made by the Brethren to the Liberal Government of the day through the then Minister for Labour to make provision in the Act for conscientious objectors. At his request, the Leader of the Opposition was interviewed, and as a consequence, section 47 of the 1904 Act was included. This permitted exemption certificates to be granted to both employees and employers on conscience grounds.

This was the original genesis for the conscience provision in the Federal Conciliation and Arbitration Act. Members will be riveted to hear of the experience in South Australia, as outlined in the Brethren submission:

Up until 1972 there was no conscience clause in the Industrial Relations Act, nor was one proposed when the Act was rewritten at that time. Following representation to the Labor Government of the day, section 144 was inserted to a suggested draft clause submitted by the Brethren...

In relation to the history of this 1972 amendment they state:

In October 1972, the industrial writer for the *Advertiser* wrote warningly of a Bill before Parliament which embraced preference for unionists. This Bill had no provision for conscience so an immediate approach was made to members of Parliament. At first the reception was not very encouraging. However, eventually the Minister of Labour (David McKee) became very helpful. It was he who had proposed the Bill, which by this stage had passed through the Lower House and was before the Upper House, and he suggested we speak to the Chief Secretary who was setting the Bill forward in the Upper House. They were sympathetic and suggested that we see the main Opposition spokesman in the Upper House (Frank Potter) with a view to him proposing the necessary amendment, which they would not oppose. This Opposition spokesman was not so ready to hear, as he wanted to make conscience on a very broad matter, but in the end asked us to prepare the necessary amendment. This was done with the concurrence of the Minister of Labour. This amendment became section 144 of the Act. We found David McKee very helpful.

The Brethren then go on to describe how he was very helpful when there were some union problems in the South-East and how he sorted out the problems.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: It is interesting the way that the Labor Government of the day obviously agreed but felt that it was not politic for them to be suggesting a conscience amendment provision to the Act and so suggested that the Brethren should go and speak to the

Liberal Party, that the Liberal Party would propose the amendment and the Labor Party would run dead on it, so that it could go through Parliament as a conscientious objection to the industrial legislation. In both those areas, in South Australian law and in Federal law, the catalyst for the conscience provision in legislation has been due to the activities of a small group of conscientious objectors who have objected, on religious grounds, to joining trade unions or the trade union movement. It is an interesting example, and we ought to congratulate this small group of South Australians, even though most of us probably do not share their religious views, on their persistence and beliefs, which have affected the parliamentary process and resulted in change in legislation in South Australia and nationally.

As a flow-on of those views, the Brethren would like members of the Legislative Council to consider a number of matters in relation to the Bill. They maintain that new section 113k makes it an offence for employers to discriminate against holders of a conscientious objection certificate, and obviously they agree with that. However, they say that the discrimination that many of them suffer is not always from an employer but may come from representatives of the trade union movement. They would like to see a further protection in the legislation so that it would be unlawful not only for an employer but also a member of the trade union movement or any association, in their terms, to discriminate against the holder of a conscientious objection certificate.

Good trade unionists such as the Hon. Terry Roberts ought have no objection to the prevention of discrimination by anyone against this very small group of South Australians who managed to qualify for this restrictive conscientious objection provision. I have been given a whole stack of examples of complaints from holders of conscientious objection certificates with the Brethren about representatives of the trade union movement. I shall refer to only one of them to give an example of the sort of discrimination, harassment and, in some cases, intimidation that they suffer and the reason that they seek some protection under the law for their genuinely held religious views. The example I cite concerns the company Crestware Contracting and relates to a proposed bowling centre in Golden Way, Golden Grove, South Australia. The statement reads:

A contract was undertaken with the builder of the centre for Crestware Contracting to supply and install suspended ceilings and plasterboard. Those working on site were David and Colin Wright, partners of Crestware, who belong to the Christian fellowship known as Brethren and hold current exemptions under section 144. Part way through the contract, a Construction, Mining and Energy Union representative, Mr Stephen Rowe, entered the site and requested the Wright brothers to produce union tickets. They were not willing to have any dealings with him or his fellow members and therefore ignored him and continued with their work.

Mr Stephen Rowe returned after three quarters of an hour with another representative who was abusive and heated to David and Colin Wright. David and Colin stated their love for the Lord Jesus and told the men they carried union exemptions. The representatives demanded to see them but David and Colin, still not wishing to deal with them in any way, left the site to contact the DLI in regard to a petty claim the unions had imposed on their equipment, which was simply rectified. The following day, the builder informed David and Colin that the unions were demanding he pay $500 for David and Colin's union fees and had left him with membership forms to complete. The unions had said if this was done they may not give the builder any more trouble.

The two union representatives returned again and asked for David and Colin's union tickets or exemptions if they had them. David and Colin did not reply. The unions threatened that, if they 'blacked' the job, Crestware Contracting would be responsible for the wages of those on the site until they fixed themselves up and the builder would deduct it from their contract sum. The site was black banned and six to eight tradesmen sent off. The immediate ban excuse was due to a non-conforming lunchroom. David and Colin were told to pack up and go (by the union representatives) because the site was closed. The unions left but David and Colin continued working.

The union representatives returned again in the afternoon and approved the lunchroom, then approached David and Cohn with the builder. The builder spoke to them and relayed that they wanted the money for the membership fees and to see the certificates. They continued the same threats from the morning that Crestware would be held responsible for the loss of wages and that there would be a definite ban on the site until the issue was resolved. Abusive and obscene language was being used throughout the time and threats made as to future work if the Wright brothers did not accept their presumed authority.

The Hon. T.G. Roberts: Who was swearing?

The Hon. R.I. LUCAS: The union representatives. There is more detail accompanying that statement and I have information about 10 or 12 case histories, but I will not take the time of the Chamber in reading them. They show that this small group of people with strongly held religious views are being harassed, intimidated and discriminated against because of those views, yet they comply with the conscientious objection provisions of the legislation that is before us. Members should consider an amendment to that provision.

In addition, the Brethren would like one or two other matters to be considered during the Committee stage, and they relate to which associations or individuals can enter into certified agreements. Because members of the Brethren cannot and will not join trade unions or any other association, they are restricted by the provisions in this legislation which allow certified agreements to be entered into only by trade unions or representative bodies. The Brethren would like consideration made for them in the legislation so that, as conscientious objectors to trade union membership, they may enter into certified agreements. While members of the Labor Party do not support the broad views of the Liberal Party in relation to certified agreements, at least in relation to this very small group of people, I hope they will be prepared to consider their genuinely held religious views.

The Brethren also have a problem concerning the rights of entry provisions that union representatives have under this legislation. They maintain that, because of their religious views, because they do not have union shops in their businesses, because their people are conscientious objectors and because they do not have trade union members working on their sites, trade union representatives ought not have untrammelled right of entry onto their premises, That practice, allied with the intimidating and harassing behaviour demonstrated by some union representatives towards this small group of

South Australians, is discomfiting for them. I urge members to consider the views that have been expressed by the Brethren in relation to their needs and this Bill.

The Hon. CAROLYN PICKLES: The issues in this Bill are very relevant for women workers. I received some correspondence from the United Trades and Labor Council which stated that women workers are winners under the provisions in this new industrial relations Bill. That is a very accurate statement.

The five areas which are addressed and which will specifically aid women are family leave provisions, allowing access to the industrial umpire for clerical outworkers who are working at home, allowing the industrial umpire to ensure that women can work in dignity and not topless, allowing individual women workers the right to challenge an unfair contract and new provisions for certified industrial agreements.

I was quite disturbed to hear the comments of the Hon. Ms Laidlaw in relation to outworkers, and I understand that the Hon. Mr Gilfillan will be opposing that clause or moving an amendment to it. I do not think that they really understand the situation of women who are forced to work in the home with no proper award provisions and who often work in quite unsatisfactory conditions.

I do not wish to dwell overly long on this Bill. I think it has been discussed quite widely. I have been lobbied very heavily by women who want to see this Bill pass because they see that at long last it provides them with some protection in the workplace and gives them some provisions that they presently do not have.

I will now address another provision that I would have liked to see in a Bill of this nature, and the only reason it probably is not included at present is that this matter has not had very wide consultation in the community. In this respect, I refer to leave provisions for workers who have to meet the emergency care of their dependants, and this can be either children or the aged.

Any member in this Chamber who has been a working parent would understand the difficulties that exist when one has to go to work for certain hours when a child is sick and there is no flexibility or leave provisions.

I am pleased to say that the Social Development Committee unanimously supported a motion to investigate this matter, and I am also pleased that the Hon. Mr Davis supported it. Although it is not contained in this Bill, if the committee recommended that such a provision should be included in the Act it would have to be looked at again in the light of this.

I am disappointed that the Hon. Ms Laidlaw in particular cannot support the provisions contained in this Bill which relates to women, although I note that she has made some comments about the issue of women who work as topless waitresses.

As to the other issues, I think the Opposition fails to understand the industrial situation. The Australian Democrats, who have always been very loud in their support for the cause for women, will yet again let down women workers. I can only hope that during the Committee stage of the Bill the Hon. Mr Gilfillan will see the error of his ways.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I know it is not usual for a Minister to speak to a Bill of another Minister, but in view of my portfolio of Minister for the Status of Women I wish to comment on this Bill, which is of enormous significance to many women workers in this State. It is incomprehensible to me how anyone who purports to have the interests of women workers at heart can oppose any part of this Bill.

Five main aspects of this legislation are of crucial importance to women workers. Mention has been made of the family leave provisions which, while not exclusively pertaining to women, very largely pertain to women as in our community it is generally still women who take the responsibility for the care of children and other dependants.

In our society today many women are still not entitled to maternity leave. Unless the provisions in this Bill relating to family leave are passed, these women will remain unable to get maternity leave. Without maternity leave provisions, women wishing to have children have no job security, and that is most unfair and discriminatory, particularly in these times when jobs are not easy to get.

Secondly, and very importantly, the Bill will do something for clerical outworkers. It will enable them to go to the Industrial Court and obtain a fair hearing for their needs, which currently they are not able to do. According to the Australian Bureau of Statistics, outworkers in the clerical area alone in South Australia currently number about 8 000, and nearly all of these are women. I understand that it is estimated that 94 per cent of them are women.

These women, as has been shown by comprehensive research, have grossly inferior working conditions compared to their counterparts who are not outworkers but who are undertaking clerical work in offices throughout South Australia. They are earning less than the hourly award rate, less than the standard rate which has been decided by the umpire.

The average weekly wage for outworkers is about half the national average weekly wage. They are not entitled to any sick pay or holiday pay; they have no workers compensation coverage; and they are not entitled to any paid recreation leave at all.

This is not something which we should tolerate in a civilised community in 1992. The provisions in this Bill will give these women an opportunity to go to the Industrial Commission and argue their case so that they will be able to get holiday pay, sick pay, workers compensation and decent award wages. Without the provisions in this Bill they are not able to do so, and this applies to a very large number of South Australian women.

This Bill will further greatly benefit women in that it will permit the industrial umpire, the commission, to take into account the dress codes (or undress codes) which have been suggested for jobs where beauty and state of dress should play no part whatsoever in the employment of individuals. I am referring here to topless waitressing. It will enable this to be argued in the Industrial Court and is a recognition that this is not a moral issue but an industrial issue concerned with the criteria which should be used in selecting people for particular jobs.

Waitressing jobs should be awarded on the skills of waitressing alone, not on irrelevant matters such as

beauty or being topless. This is an industrial issue. I gather that no-one is arguing against that clause, and it is interesting that, whilst I support it entirely and its recognition of the true basis of objections to topless waitressing, far fewer women are affected by the topless waitressing which currently occurs than are affected by clerical outworking conditions.

The two other areas which will certainly affect women employers include the ability to challenge an unfair contract. Certainly, in times of unemployment and consequent intense competition for work, there are increasing numbers of women who are pressured into accepting unfair working conditions, and the provisions in the Bill will allow these women the opportunity to argue that their contract is unfair; and it will be for the industrial umpire to determine whether or not they have made out a case. Moreover, it is identical to Federal legislation which has already been passed and is currently the law, and this is merely extending this provision to the South Australian commission so that it will be able to act in the same way as the Federal commission.

Finally, the Bill refers to certified industrial agreements and makes clear that in enterprise bargaining workers cannot be forced to go below award conditions but that they will be able, through enterprise bargaining, to improve wages through productivity bargaining above current award wage provisions. Many women in the work force do find themselves in a weak bargaining position, so this legislation will provide them with legal protection against possible exploitation. If people say that exploitation does not occur, then they have no reason to object to this provision because, if it does not occur, methods to redress it should it occur will, according to that argument, never be used. If there is no exploitation it means that there will be no unfair contracts and no-one will be forced to work below award wages.

These provisions allow for the fact that we do not live in a perfect world. There is the danger of exploitation, and as a Parliament we should be concerned to ensure that it does not occur. I support the second reading.

The Hon. T.G. ROBERTS: I rise to support the initiatives in this Bill and some of the contributions that have been made to date surprise me, particularly—

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: Yours was a bit of a surprise because I was not expecting the length of the speech around the one issue of conscientious objections and drawing a long bow across conscription and all sorts of other issues. However, I do take the point, and the honourable member is jogging some consciences across the way—

An honourable member interjecting:

The Hon. T.G. ROBERTS: One hundred and fifty, and that is part of the point.

The Hon. Anne Levy: There are 8 000 women clerical outworkers.

The Hon. Diana Laidlaw: All exploited, according to you.

The Hon. Anne Levy: No, but all should have the ability to make sure that they are not exploited.

The ACTING PRESIDENT (Hon. M.S. Feleppa): Order!

The Hon. Anne Levy: The relative importance of 8 000 versus 160.

The ACTING PRESIDENT: Order!

The Hon. T.G. ROBERTS: Thank you for your protection, Mr Acting President.

Members interjecting:

The ACTING PRESIDENT: Order! There will be no more interjections.

The Hon. T.G. ROBERTS: Thank you, Sir. In relation to the philosophical difference that I was going to raise in relation to the differences between the two positions on both sides of the Council, it appears by the contributions made by members on the other side that there is not a lot of difference between their position and ours. But clearly if one looks at *Hansard* and discerns the philosophical variations that are coming from the contributions, one sees that there are concerned differences between the two positions that anybody who has an understanding of industrial relations would pick up as being fairly wide rifts, and it disappoints and surprises me. At this point in time I would have thought that there would have been a consensus about how to proceed.

The Minister who spoke previously said that the standards have been set in the community by the Federal legislation, plus the fact that a lot of the provisions within this Act are already provided for in a lot of existing awards and agreements. A lot of awards and agreements do have the same provisions which are included in this Bill and which some people see as obnoxious or unacceptable.

In relation to conscientious objectors, the union movement has always made provision for conscientious objection.

The Hon. R.I. Lucas: On religious grounds.

The Hon. T.G. ROBERTS: On religious grounds. The union investigating the individual's application takes it very seriously, and there is not an issue or an instance of which I am aware—

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: I was not aware of that. I guess there would be the odd circumstance that does make it look bad or does not look as if there is a policy within the trade union movement for conscientious objection on religious grounds. However, there are, and I have handled a number myself. I was not aware that the Brethren was an organisation that claimed conscientious objections, but certainly Jehovah's Witnesses and the Seventh Day Adventists from time to time raise objections. Generally, unions make provision for their union dues to be paid into a charity nominated by the individual; they are paid into a Christmas fund; or perhaps they—

An honourable member: The Children's Hospital.

The Hon. T.G. ROBERTS: Yes, or the Children's Hospital, which is a charity that is recognised by most people as being worth while. It is the principle that working people have: in collected labour people pay their way. It is like belonging to a golf club: everybody has to pay their fees and get the benefits of the services that are provided.

The Hon. G. Weatherill: Or the Adelaide Club.

The Hon. T.G. ROBERTS: Yes. It is the same with conscientious objectors. There are people with genuine grounds, and there are people who try it on inside

industries and workplaces. They try to give the impression that they are conscientious objectors when indeed they are not and, if that is found to be the case, they are not tolerated either by the people in that work premise or by the organisation itself. So, there are ways of handling genuine conscientious objectors without legislation; you can do that by agreement.

If the honourable member wants to introduce an amendment, I am sure the Government will look at it. However, the individual position can be examined *in situ* and the merits of the arguments being put forward by conscientious objectors can be examined without too much legislative oversight.

The Hon. Mr Griffin last night made his points in a very animated way. I have not seen the Hon. Mr Griffin give such an animated contribution as last night; it was almost straight from the heart.

An honourable member interjecting:

The Hon. T.G. ROBERTS: Yes, almost Brethren like. I thought that the preselections were almost open again and it was a contribution befitting of the Lower House. I know that the honourable member is quite happy where he is and quite able to sit tightly in the position that he is in. It is just that he was probably practising for the local high school play at the end of year break-up.

I must say that the contribution was basically related to the fact that legislation was not required on a lot of the issues raised in the Bill that we had before us. I would have to take some umbrage at that because in general terms the standards that have been set inside the Bill have been picked up, as I said before, both at Federal and State level in a lot of awards and agreements. There is no new ground being broken in relation to outworkers. The nature of work itself is changing and has been for the past 15 years and there has been a recognition that the nature of work and the organisational structure of work will change and that the large numbers of people working in large business premises will be a thing of the past. Some of the monolithic structures that stand in the city today will not be filled because the break-down of work will go back into the suburbs and homes because of the nature of technology.

Certainly, there is the information industry and those industries that we seek to protect, such as those mentioned in clause 4, namely, those that work on, process or pack articles or materials, perform any clerical service, solicit funds, sell goods or offer services or carry out advertising or promotion by telephone, facsimile machine or other similar means of telecommunication (which is a recognition of the communication revolution), and perform any journalistic service or public relations work. That should interest the journos but they are not here at the moment. That will need protection, because that work will be able to be performed from home. They will not have to work in large organisations, because the nature of that work is changing. But those people will need protection. It is no good to say that individuals—

The Hon. Diana Laidlaw: Why will they need protection?

The Hon. T.G. ROBERTS: Well, it is not good to say that these individuals will be able to strike up meaningful contracts with their employers when indeed the power/weight relationship between the two groups is far out of kilter. The people who are doing the bargaining in relation to how these contracts will be made—

Members interjecting:

The Hon. T.G. ROBERTS: Well, the power/weight relationship between the two groups is out of kilter. I will give an example of the problem we are faced with. I was living in Britain in a flat, two up, two down—

The Hon. Diana Laidlaw: How many years ago was that?

The Hon. T.G. ROBERTS: This is just an illustration.

The Hon. R.I. Lucas: Have you got two passports?

The Hon. T.G. ROBERTS: No, I haven't got two passports: I've only got one passport. It is an Australian passport.

The Hon. Diana Laidlaw: When were you living in England?

The Hon. T.G. ROBERTS: This is in the mid 1970s, and the nature of work was changing then; that is when the revolution was starting. The nature of the work of one of the women who lived in this two up, two down, involved the use of an industrial sewing machine, and the industrial sewing machine was switched on at about 6 o'clock in the morning, and I knew that because it woke us up. It was good; it was an alarm clock for me because I had to get to work, and it took me about an hour to travel. Work would be carried in to this woman, who was a migrant. She worked for two hours before breakfast, she would get the children off to school, and the machine would go back on again at—according to my wife because I was not there; I was at work at 7 o'clock—at 9 o'clock. It would stop at about 12.30 for lunch for about a 15 minute break. It would then go on again at about 12.45 or 1 o'clock until five o'clock at night until the husband and the children came home. The machine would then stop and the dinner would be made. It would go on again at about 8 o'clock and it would go through to about 10 or 11 o'clock at night. That work was performed basically by one women and her very young daughter and, in some cases, by the husband.

The power/weight relationship of that woman's ability to negotiate any fair system of pay was impossible, because the collective weight—and she was working in the rag trade; she was making up dresses and clothes—of the people who dropped off and delivered the materials and picked up the finished article was such that the women had no hope of negotiating anything other than the price structure that was given to her by her employers. If she had not agreed with those prices, the machine would have been taken from her house and put into someone else's house who would agree with those conditions. That is the problem with which we are dealing.

If some members opposite were exposed to some of the exploitative tactics that are developed by some employers—and I say some of them—they would see that that is what the legislation has been drafted for: to protect people from the worst aspects of those exploitative programs. As I have said, in many cases the standards have been set by negotiations between good employers and unions which you do not hear about and which have already negotiated these wages and conditions around outwork and around collective bargaining programs within their own premises without any fuss or bother. That is where people tend to use the worse possible

circumstance to give rise to their own arguments. And I certainly have—

The Hon. Diana Laidlaw: If your Government provided full employment, there would not be what you talk about now.

The Hon. T.G. ROBERTS: I am saying that the industrial revolution has moved to a further stage where other legislation is required to protect workers from those exploitative forces. I support the introduction of the Bill and, as other contributors have said, it is a timely Bill that, hopefully, will stand us in good stead to allow relationships between outworkers and employers to be struck on a level playing field where the power/weight relationship between those doing the work in the home and those that are getting the financial benefits collectively from them as employers are able to look at the rate of work. The commission can then decide, if there are objections, whether it is a fair rate for the work performed. I do not think that any member in this Chamber would argue that that is not a fair concept.

If we look at why we need legislation, it is not only to catch up and to make even the standards across the State and the nation but also to prevent a revisionist strategy, mainly by the conservative elements within the business sector and within some sections of the Liberal Party—and I will not put the wets into this category—who want open slather on work contracts; they do not want any impediments. They do not want a commission; they just want the individual employer and individual employee to strike a rate for work and then, while unemployment is high, they will be able to strike benefits that certainly do not advantage those people who are engaged in outwork in any way and that can benefit only the employers. For those reasons, the legislation is required.

If people are inclined to drop their guard and think 'Well we can't move back 100 years,' I ask them to look at the New Zealand and the Victorian circumstances. I rule out New South Wales because they have struck a reasonable balance in relationships, although it is not an industrial relations program with which I would agree. However, they have certainly not sunk to the depths of pitting individual workers against each other and individual—

Members interjecting:

The Hon. T.G. ROBERTS: Well, they have taken a wet, sort of middle of the ground, road. They have not taken the Kennett dry approach, turn everybody inward and hope that out of that you somehow get a caring loving society. I just cannot see it. Individuals would be pitted against each other, and you will have a breakdown in all sorts of community relationships. Unfortunately, when you cast legislation and industrial relations at the lowest common denominator position of survival, you cannot hope to come away with a working relationship that breeds anything but contempt.

As soon as the wheel turns and as soon as the economy picks up, you will find that those employers will feel the full weight and toll of the changed negotiating circumstances in which workers find themselves. I would hope that many employers in Victoria will resist the temptation to abandon the award networks, and many of them will, because many of them have been working for at least the past eight or nine years under a system that has brought about very good industrial relations.

This has included the lowest amount of time stoppages for 30 years, and surely someone should have looked at that before changing the whole system in a period when they think they have the upper hand. If the South Australian industrial scene were looked at in terms of taking advantage of the Victorian turmoil, one would have thought that we would have achieved some sort of consensus about the whole process of this Bill, introduced in a way that brought about all the benefits inherent in the legislation. Unfortunately, we cannot achieve consensus where people think that they can gain some advantage, and it is unfortunate in this case that some of the clauses are being contested. For all those reasons, I support the second reading.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

STATE BANK OF SOUTH AUSTRAL (INVESTIGATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 952.)

The Hon. K.T. GRIFFIN: It is very difficult to divorce consideration of this Bill from all the publicity of the past 18 months or so about the royal commission and the Auditor-General's inquiry, but one must try to do that to look at some of the issues involved in the Bill that was introduced last night. In the short time I have had to consider this Bill, I have tried to consult with a number of people who have either an interest in it or some expertise in the rather difficult issues that arise under it. It has not been easy to do that, and I hate legislating on the run, but I recognise that this is the last sitting week and it is important for this issue to be resolved once and for all, rather than allowing it to be deferred until next year with consequent claims and counterclaims, I suppose, on both sides of the political fence as to what may or may not happen in consequence of that.

I will probably be a little longer in speaking on this, if only to explore whilst on my feet a number of the issues that this raises. I suppose the other difficulty is that what this Bill seeks to do is to legislate in the middle of an inquiry and, applying the provisions of the Bill specifically to that inquiry, in effect, to change the goal posts on the field during a game, and even to remove the umpire—the umpire in this context being the Supreme Court. Two principal considerations must be addressed in relation to this Bill. One is the issue of retrospectivity, which seeks to apply those new parts of section 25 back to the time when the current Auditor-General's inquiry commenced, and the other is clause 4 (3) of the Bill, which seeks to prevent any party who might have an interest in aspects of the Auditor-General's inquiry from hereafter taking any action to challenge any aspect of that inquiry. They are two very difficult issues of principle that must be addressed.

It is very difficult not to make some judgment about the claims and counterclaims of the Auditor-General, on the one hand, and of the former directors, on the other, in

relation to the way in which the Auditor-General's inquiry has been conducted. I am aware that there is some concern that the former directors are being obstructive, seeking to delay proceedings, taking technical points and refusing to cooperate with the Auditor-General so that the substance of the issue can be properly investigated, the facts collected and then for the Auditor-General to reach an opinion.

On the other hand, I am also aware that the former directors and others who have been required to give evidence are critical of the way in which the Auditor-General has conducted his inquiry. They take the view and assert that they certainly have not been obstructive, seeking not to cooperate, taking technical points and so on but, rather, that the Auditor-General has not complied with the rules of natural justice in undertaking his inquiry and has sought to require them to make responses without having adequate access to information upon which alternative conclusions might have been reached by the Auditor-General, and also requiring them to respond on major documentation and issues within a very limited period of time.

The reference to that conflict is made in the Supreme Court judgment involving former directors, on the one hand; the Auditor-General, on the other, as defendant; the Attorney-General, who intervened; and Mr Marcus Clark, in respect of allegations against the Auditor-General. The full Supreme Court heard the proceedings on 7 September and delivered a judgment on 25 September. If the Council will bear with me, I will refer to aspects of that judgment, which I will seek to read into the *Hansard,* because they all throw some light on the two specific issues to which I have referred, which are addressed by the Bill. First, I refer to that part of the judgment that deals with conflict. The Chief Justice, in whose judgment the two other judges concurred, made the following observations about the conflict between the parties. He states:

> During the course of the inquiry there has been considerable conflict between the defendant [the Auditor-General] and his legal representatives, on the one hand, and the plaintiffs and their legal representatives, on the other. In general, it may be said that the latter have taken the stand that their clients have been denied access to information which is necessary to enable them to present their case.
>
> The defendant and his advisers have taken the stand that the plaintiffs, instead of endeavouring to supply the information sought from them, have met requests for information with demands which were excessive and which sought to take control of the investigation out of the hands of the defendant. It is clear, moreover, that the defendant took the view that the plaintiffs were giving insufficient attention to the time constraints imposed upon the defendant by the terms of his appointment. There are clear indications that the defendant was experiencing difficulty in reconciling the constant demands of the plaintiffs for what they regarded as the requirements of natural justice and the time constraints imposed upon him.

The Chief Justice makes reference to the fact that the Auditor-General did provide reports from investigators to the former directors. The Auditor-General apparently provided those reports on the basis that their conclusions did not represent his views and were not to be regarded even as his tentative views. So they were very conditional but they were made available in order to facilitate consideration of the issues by the former directors. The Chief Justice goes on to say:

> The procedure broke down in July 1992 because of an impasse between the defendant and the plaintiffs as to the status of these investigators' reports. The defendant required from the plaintiffs as a condition of receiving them that they acknowledge that they did not represent the defendant's views and were not even his tentative conclusion. The plaintiffs refused to give this acknowledgment, apparently wishing to keep open an argument based upon these reports that they had been denied natural justice. The defendant thereupon discontinued the furnishing of those reports. The defendant was critical of the plaintiffs' attitude and expressed the view that they were obstructing the investigation.

It was subsequent to that that the Auditor-General did provide seven draft chapters of the proposed report to solicitors for the plaintiffs and sought to have responses close to a period of 14 days. The solicitors for the former directors then requested that they be given an additional three months within which to make submissions as well as to be given the opportunity to personally appear and give sworn evidence, as well as to have the opportunity to call evidence and to obtain a copy of the transcript of witnesses which might be relevant to the subject matter of the draft reports, copies of relevant documents, as well as a transcript of their own evidence.

The Auditor-General's solicitor did respond to that, and following that there were proceedings taken, after some further exchange of correspondence. It was fairly obvious that there was the constraint of time by which the Auditor-General was required to report, which had required him to place some constraints upon the parties to whom the drafts had been supplied. So there was the tension between those parties on the issue of sufficient time to consider the drafts, on the one hand, but on the other, the reporting date for the Auditor-General which was approaching quite rapidly.

The matter went to the Supreme Court and a number of findings were made by the Chief Justice. Again, I think it is important that they be on the *Hansard* record, even though they are from a judgment which is on the public record in any event. He made some observations about the principles of natural justice or procedural fairness, which were required to be complied with, after concluding that in relation to one of the draft reports the tentative conclusions of the Auditor-General were actually beyond par. The Chief Justice said that it was beyond question that the plaintiffs were entitled to an appropriate measure of natural justice or procedural fairness, and then he identified some of the principles, and I quote:

> Natural justice in connection with an investigation such as that under consideration requires that there be no taint of bias in the investigation. The investigator must be free of actual bias and there must be nothing in his actions which would create in the mind of a reasonable observer a suspicion of bias.

He then goes on to refer to the specific allegation of bias and says:

> The allegation of bias and conduct giving rise to a suspicion of bias is largely based upon the manner in which the defendant has conducted his investigation. It must be remembered that the defendant is in charge of the investigation and is entitled to conduct it in the way which seems best to him. It has undoubtedly been a difficult and complex investigation, not made easier by the time constraints under which he has laboured.

Whatever criticisms might be made of the course of the investigation, it is apparent that the actions of the defendant have been conditioned and are explained by the complexity of the task and the time available in which to complete it. I can draw conclusion of bias on the way in which the defendant has conducted his investigation.

There is then reference to the fact that the defendant, that is the Auditor-General, has a clear responsibility to proceed expeditiously with his investigation. There is reference made to the attitude of the former directors, and the Chief Justice says:

It is understandable that the plaintiffs are disappointed in some of the tentative findings, but there is no reason to suppose that they have not been arrived at by the defendant on a tentative basis in good faith. They have been communicated to the plaintiffs to enable them to respond to them. It is a perfectly proper procedure and probably the only way in which the defendant could have proceeded, having regard to the nature of the investigation. I see no foundation for the allegation that the defendant is biased against the plaintiffs, and nor is there anything in his actions which could give rise to a reasonable suspicion of bias.

That I think clears up one of the major contentions that was the subject of the submissions in that case. It is very difficult to identify what rules of natural justice of procedural fairness ought to apply. They will probably vary from investigation to investigation and depend very much on the nature of the person making an inquiry, whether it be under this Act or some other Act, so one really has to look at each case on its merits, although the pre-eminent principles to which I have referred must be applied. The Chief Justice also makes reference to the fact that the inquiry, under section 25, is not a judicial or quasi-judicial proceeding, and the person who is conducting the inquiry is not a person who is conducting an inquiry analogous to a judicial inquiry.

The person who conducts the inquiry is to make an investigation and report. There is no reference to the need to hold a hearing. There is no conferring of any right to legal representation or to cross-examine witnesses. The statutory provisions do not even confer a right on any person to be heard. It is not a judicial or quasi-judicial inquiry, and I shall make some reference to that later in the light of the content of the Bill. It is important to note that the court goes on to say:

The potential injury to the plaintiffs' reputations requires that they have a fair opportunity to answer matters which might affect their reputations. I do not think, however, that that consideration can be permitted to convert an Auditor-General's investigation into something akin to a judicial inquiry. The report of the defendant may affect reputations but it cannot affect legal rights, nor can it result in the imposition of penalties. If there are subsequent proceedings, either civil or criminal, arising out of the report, the plaintiffs will have their opportunity to cross-examine witnesses and to test the evidence against them. I think that the plaintiffs' claims go much too far, having regard to the nature and purpose of the investigation. Despite criticisms of counsel for the plaintiffs, I consider that the defendant's conduct of the investigation up to the time of delivering the draft chapters has been proper and reasonable and has not involved any infringement of the plaintiffs' rights.

Later the court makes reference to the standards which the Auditor-General should be required to meet in relation to the inquiry and in order to meet the object of procedural fairness. The court also gives the plaintiffs some further time within which to consider the drafts and tentative findings and allows opportunities to present evidence and make oral submissions. As I mentioned earlier, there is one area to which the Chief Justice refers (chapter 44) where he asserts that the conclusions tentatively reached by the Auditor-General would be beyond the powers of the defendant and of no legal effect. It is quite obvious from that judgment that, whilst the former directors may have some concerns about the tentative findings, in essence, the inquiry is being conducted fairly.

I know that, in making their submissions on this Bill, the former directors have asserted that a distinction should be made between existing section 25 (2) and section 25 (6). Subsection (6) provides that, if the Auditor-General has a reasonable suspicion as to certain matters, certain consequences flow. Their argument is that there is a different obligation with respect to natural justice in that sort of procedure than there is under section 25 (2). They also make the point that, if the Bill is passed and new subsections to section 25 are enacted retrospectively, that will change the requirements with respect to natural justice. I do not believe that is so and I will explore that in a little more detail shortly. There is no doubt that there is a problem with the principal Act and that there is also a problem—

The Hon. C.J. Sumner: It is not a matter that there is no doubt there is a problem. We don't concede that there is a problem.

The Hon. K.T. GRIFFIN: I will rephrase it. There is argument, at least, that there is a problem with section 25 and the apparent difference in emphases between subsection (2) and subsection (6). There is also a concern that the terms of reference may not be sufficiently coherent when read in conjunction with section 25 to put beyond doubt all the concerns that have been raised by the former directors. I have no difficulty with the proposition that those doubts should be removed. In making that observation, I point out that there is a potential, at least, that by amending section 25 it is arguable that the Supreme Court will still have some involvement in determining the propriety of the investigation or aspects of the investigation, particularly where the Supreme Court is required or empowered to undertake certain responsibilities relating to summonses, the seizure of records, and so on, under proposed new subsection (7a).

The preamble to proposed new subsection (7a) provides that, where on the application of the investigator or an authorised person, the Supreme Court is satisfied on the balance of probabilities that a person who has been served with a summons has failed to appear without reasonable excuse, has failed to produce records without reasonable excuse, has been required to provide information but has failed to do so without reasonable excuse, or has hindered or obstructed the investigator, there is an argument that, for example, one of the persons in respect of whom the Auditor-General wishes to provide information might refuse to answer or might hinder or obstruct, and the matter would then go to the Supreme Court. The Supreme Court is then required to examine that conduct as well as the conduct of the

Auditor-General. That might be a long bow, but it is an issue that needs to be addressed.

The other aspect of proposed new subsection (7a) is that, perhaps by including those powers, in some way or another it can be argued that the investigation which is to be undertaken or is being undertaken may be more likely to be construed as a quasi-judicial inquiry. I would like the Attorney-General to address that point in his reply or at least during the Committee consideration of the Bill.

In respect of the Auditor-General's inquiry, one of the matters that I took into consideration was whether something could be incorporated akin to the powers or status of special investigators under the Corporations Law and whether that would provide any advantage to the Auditor-General. It seems to me that that probably would not make the situation any better because, as I understand it, the proceedings of special investigators under the Corporations Law are still subject to challenge, particularly in respect of the rules of natural justice.

One of the aspects of special investigations, though, as I understand it, is that a special investigator has the immunities of a High Court judge, and the question is whether in respect of this Bill it would be appropriate to give to the Auditor-General, at least in respect of the conduct of hearings as opposed to the undertaking of other inquiries, the immunities of a Supreme Court judge. I have not had time to examine that but I would like that issue to be canvassed. If it does assist the Auditor-General in undertaking the inquiry, I think one ought to try to adopt that course.

In respect of the proposed amendments to section 25 which relate to subsection (7a), in his second reading explanation the Attorney-General does say that these are some of the powers that the Government proposed to grant to the Auditor-General under the Public Finance and Audit Act Amendment Bill which will not be passed in this part of the parliamentary session.

When I looked at the Public Finance and Audit Act Amendment Bill, I saw that only subsection (7b) seemed to be proposed as an additional power to the Auditor-General. Certainly, there is power under the Public Finance and Audit Act to issue summonses, but I did not see the range of opportunities to go to the Supreme Court for summonses as proposed in subsection (7a) included in that Public Finance and Audit Act Amendment Bill. I wonder if that can be clarified in the course of the debate.

In respect of the proposal to replace subsections (2) and (6) of section 25, the only observation I make in relation to retrospective application of this is that, whilst I generally have concerns about the retrospective application of legislation, particularly where it might affect a current inquiry as this does, I can see difficulties if the new provisions are enacted and not made retrospective, because it would seem to me that that would provide an opportunity for someone to challenge whether or not what had been done before this legislation came into operation had in fact to be re-done—that is, whether new evidence had to be called to cover the field previously.

I think that that would be unfortunate, particularly in the light of what the Chief Justice and the other members of the Full Court have said about the way in which the Auditor-General is presently conducting his inquiry. I know that there are arguments about the Auditor-General conducting an inquiry *ultra vires,* but it seems to me that that is arguable notwithstanding the judgment of the Chief Justice and the Full Court. So, it is an issue that, whilst it does cause concern in that it has retrospective application, nevertheless is probably necessary in the circumstances of this matter.

The only other matter in respect of section 25 and the amendments which I want to raise is the question whether the Government proposes to amend the terms of reference of the Auditor-General's inquiry. I can see an argument that there is still some inconsistency between, on the one hand, paragraphs *(a)* to *(d)* of the terms of reference of the Auditor-General and, on the other hand, term of reference *(e)*. I wonder if passing the Bill without amending the terms of reference will achieve the objective.

The primary focus of the existing terms are contained in paragraphs *(a)* to *(d)* of the Auditor-General's appointment. They require the Auditor-General to investigate and inquire into the bank's processes, procedures, operations, affairs and transactions. Term of reference *(e)* provides:

> Having regard to the material considered by him in respect of teens *(a)* to *(d),* the Auditor-General is in any report on such matter to report on any matters which in his opinion may disclose a conflict of interest or breach of fiduciary duty or other unlawful, corrupt or improper activity; and the Auditor-General is to report on whether in his opinion such matters should be further investigated. Thus term of reference (e) empowers the Auditor-General to report whether conflicts of interest, etc., should be further investigated.

In other words, it is envisaged that the Auditor-General in this inquiry will not himself specifically report on conflicts of interest etc.; he will merely report whether such matters should be further investigated. The Chief Justice, at least by way of passing comment, did suggest that that is not a problem, but I suggest that that was not the key issue upon which the Full Court ruled, and it may be open to argument that the terms of reference actually reduce the powers of the Auditor-General. For that reason, I think some focus needs to be given to that in reply.

The other matter that needs to be addressed (and it is one of the two matters to which I previously referred as a matter that causes concern) is clause 4 of the Bill, which applies the clause only in relation to the current investigation of the Auditor-General. It validates the authorisation of those who are acting on behalf of the Auditor-General in assisting him with his inquiry—persons whom the Auditor-General has appointed under section 34 of the Public Finance and Audit Act. The third subclause is the one that causes the most concern and is as follows:

> No decision, determination or other act or proceeding of the Auditor-General or an authorised person or any act or omission or proposed act or omission by the Auditor-General or an authorised person may, in any manner whatsoever, be questioned or reviewed, or be restrained or removed by prohibition, injunction, *certiorari,* or in any other manner whatsoever.

What that effectively does is say that the Auditor-General is now no longer to be subject to any review or other accountability, at least legally. Whilst I have sympathy with that view, there is a contrary point of view that the

Auditor-General will be most anxious to ensure that the report which he ultimately publishes does have credibility and that justice is not only done but seen to be done in the preparation and publication of those reports. So, there is at least a public accountability aspect to the way in which the Auditor-General will undertake his inquiries.

Another view is that this is essentially a private inquiry and, whilst the Royal Commission's Act does provide that no decision of a royal commission may be subject to challenge in the courts, there is a significant distinction between a royal commission on the one hand, which is usually open and which is a quasi judicial proceeding and the Auditor-General's inquiry on the other, which is essentially a private inquiry and is not a judicial or quasi judicial investigation. So, there is a distinction in that respect and, whilst the Attorney-General does argue that a similar provision which is proposed here is in the Royal Commission Act, there is a significant distinction to be made between the two sorts of inquiries.

In any event, one does have to note that this prohibition on action applies only to the current inquiry and not to all inquiries which might be undertaken by the Auditor-General under section 25. One could ask, 'Why is it good enough to include it in respect of this inquiry and not in respect of others?' The concern which has been expressed is that this will prevent those who believe that their rights have been infringed from seeking a remedy within the civil courts; there is no doubt about that.

A proposition which the Liberal Party will put forward by way of a compromise on this—and there will be an amendment which, hopefully, I will be able to circulate shortly—is to provide for subclause (3) to remain in the Bill but to qualify it so that at the end of the day when reports are presented the rights of those who might be named in the reports may then be exercised after the reports have been published.

I draw the Attorney-General's attention to the fact that this is a procedure which is similar to that which occurred in the case of, I think, *Mahon v Air New Zealand,* where there was a commission of inquiry. The report was published and then action was taken in the High Court of New Zealand with a view to challenging the basis upon which the findings had been made. I think the findings were actually quashed on the basis that there had not been a compliance with the rules of natural justice in that inquiry.

The advantage of that procedure, if I could commend it to the Attorney-General, is this: first of all, it allows the Auditor-General's inquiry to continue without concern about immediate litigation. It also has hovering over the Auditor-General the possibility of some challenge if he has not conducted the inquiry in accordance with the rules of natural justice; and it preserves for those who might be subject to criticism an opportunity ultimately to have their reputations protected and their rights preserved after the reports have been tabled or otherwise published. Whilst this is not ideal, it at least facilitates the conduct of the inquiry but preserves some rights. It is important to ensure that those rights are preserved.

The other proposition which I want to put is this: if, as the Attorney-General has indicated, the Auditor-General intends to comply with the rules of natural justice, I think there would be an advantage to have an additional subclause to clause 4 which actually reflects that proposition: that, in respect of this inquiry, because rights are being terminated by legislative action, there should be at least an obligation which is not challengeable at this point for the Auditor-General to conduct the inquiry in accordance with the rules of natural justice. So, the package of two provisions does redress some of the perceived injustice which occurs by the enactment of subclause (3).

There is only one other point I want to make about that. It may be speculative but, in the light of recent High Court decisions, one must speculate that perhaps, if this legislation were passed as it is and one of the directors or all the former directors took action ultimately to the High Court to challenge the provision which purported to exclude any jurisdiction of the Supreme Court, they might end up with a judgment which said that it was not competent for any Legislature to exclude the jurisdiction of the court. As I say, that may be speculative and far-fetched.

The Hon. C.J. Sumner: Garbage!

The Hon. K.T. GRIFFIN: It is all very well for the Attorney-General to interject and say that it is garbage. I have an obligation to raise it as a possibility. I have already acknowledged that it is speculative, but I am just flagging that there is always that possibility.

The Hon. C.J. Sumner: We would be living in a funny sort of society if that could happen.

The Hon. K.T. GRIFFIN: That might be so, but the Attorney should have a look at what the High Court has done in relation to recent matters—political advertising, ad ban legislation, the *terra nullius* issue in relation to Aboriginal lands, and I suppose today's case where persons who have foreign citizenship must not only be naturalised but must also renounce their citizenship of origin.

The Hon. C.J. Sumner: You cannot put that in the same category as the earlier one.

The Hon. K.T. GRIFFIN: I am not promoting it as a view which I hold as one of any substance. I am only flagging that there is always that possibility—

The Hon. C.J. Sumner: Are they going to override the Parliament?

The Hon. K.T. GRIFFIN: Who knows? They overrode the Parliament in respect of the political ad ban legislation.

The Hon. C.J. Sumner: They would have to use the Federal Constitution to do it.

The Hon. K.T. GRIFFIN: They have. It is a controversial decision, and I am merely saying that there is always that possibility.

The Hon. C.J. Sumner: You can't have an entrenched constitution.

The Hon. K.T. GRIFFIN: That is so. I am just flagging it so that it can be taken into consideration. In summary, the Liberal Party will support the second reading of the Bill. We will seek to move amendments in Committee to do those two things to which I have referred.

The Hon. R.I. LUCAS (Leader of the Opposition): I support the second reading of the legislation. I want to express some concern that, 24 hours prior to the scheduled ending of this session of the Parliament, the

Parliament is required to address such a significant issue as—

The Hon. C.J. Sumner: You are not required to; you don't have to.

The Hon. R.I. LUCAS: Well, the Attorney-General says that we do not have to. I guess we could all come back next week and do it, if the Attorney would like to discuss it next week. If that is what the Attorney is suggesting (and that would give time for further consultation), he should take it up with the Liberal Party and we will discuss it. This issue has obviously been around for some time—

The Hon. C.J. Sumner: It hasn't! What's wrong with you?

The Hon. R.I. LUCAS: Well, it has been around for some time. The questions in relation to alleged obstruction of the Auditor-General's inquiry have been around for quite some time, as the Attorney-General would know—

The Hon. C.J. Sumner: The issue was first raised with me on 22 November in a letter from the Auditor-General to the Attorney-General.

The Hon. R.I. LUCAS: If that is the first the Attorney-General knew about the issues of alleged obstruction in relation to the Auditor-General's inquiry, then he really ought to talk to some of his colleagues and some members of the Liberal Party who have for quite some time been freely discussing issues in relation to allegations regarding this general area. It is a concern to members of the Liberal Party that, 24 hours prior to the scheduled end of the session of the Parliament, legislation of such a significant nature is introduced with little time for consultation, discussion, or consideration, at the same time, as the Attorney-General will know—and I am not pointing my finger solely at the Attorney-General—that Ministers are running around wanting their Bills done on this day, this hour and rushed through. I understand that another Bill has now been introduced in another place and that Minister wants that Bill through before the end of the session.

It is a difficult time for all members, and I acknowledge that, but it is made more difficult when significant pieces of legislation are introduced at the death-knock, and Parliament, for a variety of reasons, in the end decides that the issues must be considered. Certainly, with more time, the Parliament could give greater, more efficient and effective consideration to important pieces of legislation such as the one before us this evening. I commend my colleague the Hon. Trevor Griffin for the extraordinary amount of work that he has entered into in the past 24 hours since the Bill was first introduced in this place by the Attorney-General in trying to get the views of at least some of the interested parties in relation to this vexed question.

The Auditor-General's inquiry in relation to the State Bank debacle is obviously critical. Whilst my view is that the State Labor Government must accept prime responsibility for the debacle that has unfolded before South Australians, there is no doubt that the board and some sections of the management obviously must accept some share of the responsibility as well, as the first report of the Royal Commissioner has indicated—and I am sure as the Auditor-General's report and subsequent royal commission reports will also indicate. For what it is worth, my view is that perhaps some sections of the board of management might have to accept a greater degree of responsibility than other sections. The degrees of responsibility, in my judgment any way, will be differential.

Our goal in relation to the role of the Parliament in the Auditor-General's inquiry should be essentially and fundamentally that he not be prevented in any way from eventually getting to the truth of the investigations before him. That ought to be a fundamental, sole and prime purpose in relation to our attitude to this legislation and anything else that might be put before the Parliament. Whilst the timing of the Auditor-General's report, because of its direct relationship with the cost ultimately to taxpayers, is an important factor, in my judgment it is not the absolutely critical factor, which was the first issue that I raised, that is, the Auditor-General ought not be prevented from getting to the truth of the matter.

There is no doubt that some directors and sections of management will have been using—and I obviously do not have inside knowledge—every means at their disposal to not make life easy for the Auditor-General regarding his ongoing inquiries. Again, I guess if I were in their position I would probably be attempting to do the same; nevertheless the Parliament is now being asked to address, through this legislation, some means of attempting to correct what is obviously, from the Auditor-General's viewpoint, an ongoing problem for his investigation.

So, with that background to the way I have approached the legislation, I therefore support, almost wholeheartedly, the first three pages of what is a Bill of only 3¼ pages. The first three pages are directed toward, in my judgment, ensuring that the Auditor-General is not prevented from getting at the truth of the matter and is about providing certainty and clarification of power and also assistance in ensuring proper response from persons that the Auditor-General might be interviewing from time to time. Those first three pages make quite clear what, if there is any doubt or disputation—as the Hon. Trevor Griffin has indicated there obviously has been—the bounds of the inquiry of the Auditor-General ought to be. I acknowledge that the Hon. Trevor Griffin has raised further questions in relation to the terms of reference of the inquiry and I, with the Hon. Mr Griffin, await with interest the response from the Attorney-General to those questions.

I do not have any problem with those first three pages with regard to trying to clarify the responsibilities and the task of the Auditor-General. New subsection (7a) contains an attempt to try to beef-up the powers and the ability of the Auditor-General to complete his task. It provides that, where, on the application of the investigator, the Supreme Court is satisfied on the balance of probabilities that, if a person has been served with a summons to appear before the investigator or an authorised person, and fails, without reasonable excuse, to appear in obedience to the summons, or has been served with a summons to produce documents and does not, without reasonable excuse, comply with the summons, or has been required to provide information and fails, without reasonable excuse to do so, or provides information knowing it to be false or inaccurate, refuses to be sworn, or to affirm or fails to answer truthfully any relevant question, or hinders or

obstructs the investigator in the exercise of powers, and so on, the Supreme Court may order the person to take such action or to refrain from taking such action as is necessary in the court's opinion.

As I indicated, I give my wholehearted support to all those powers and the attempt to beef-up the Auditor-General's powers and the ability to get to the truth of the matter. I do have some concerns about clause 4 (3), which provides:

> No decision, determination or other act or proceeding of the Auditor-General or an authorised person or any act or omission or proposed act or omission by the Auditor-General or an authorised person may, in any manner whatsoever, be questioned or reviewed, or be restrained or removed by prohibition, injunction, *certiorari,* or in any other manner whatsoever.

I have said this before and say it again publicly now: I believe the Auditor-General to be a good and competent person not only in his task as Auditor-General but in this task that he is undertaking—but I do not believe that the Auditor-General is God. I do not believe he is omnipotent. No matter how good or competent a person is, it is always possible for someone to make a mistake. A provision as broad and as wide as clause 4 (3), which provides that any omission or proposed act or omission by the Auditor-General may not in any manner whatsoever be questioned or reviewed, restrained or removed by prohibition, injunction, etc, is to me an extraordinarily, wide power. I again note the point which the Hon. Trevor Griffin made and which has been made to me by certain people that, whilst there is a similar provision in the Royal Commissions Act, royal commissions are conducted in the full glare of public inquiry.

The Hon. C.J. Sumner: Do you want to have this one in public?

The Hon. R.I. LUCAS: The Attorney is being difficult: I am not suggesting that at all. I am just trying to argue that there is a distinction.

The Hon. C.J. Sumner: It might smarten things up a bit.

The Hon. R.I. LUCAS: If the Attorney wants to have it in public, let him stand up and say so.

The Hon. C.J. Sumner: It is an option, isn't it?

The Hon. R.I. LUCAS: If that is the Attorney's option, let him stand up and say that. I will be pleased to hear him argue his case, and we will give due consideration to the Attorney's position if he wants to argue that case.

The Hon. C.J. Sumner: We might get a unity ticket on this one.

The Hon. R.I. LUCAS: I am not suggesting a unity ticket: I just said we would give due consideration. In this Parliament we will give due consideration to all sorts of things.

The Hon. K.T. Griffin: No ticket, no start.

The Hon. R.I. LUCAS: No ticket, no start, as my colleague the Hon. Mr Griffin says.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: The Attorney has all sorts of good suggestions, so I will let him explore those during his contribution. They are good from his viewpoint: I do not always agree with it. The point I make is not to argue for an open inquiry but to argue, as the Hon. Mr Griffin did, that there is a difference between an open royal commission and a private inquiry being conducted by the Auditor-General. That distinction has been made in submissions to me, to the Hon. Mr Griffin and to other members in both Houses of the Parliament.

So, whilst expressing my concerns and reservations about clause 4 (3), 1 acknowledge the work that the Hon. Mr Griffin has attempted to do to bring together the varying views there always are in the community and political Parties on difficult issues. The Hon. Mr Griffin will have before this Chamber an amendment that seems, at least, to ameliorate in part some of the worst excesses of clause 4 (3), and, given that we are doing this, as he says, on the run, I look forward to the debate from all members who wish to contribute in relation to that amendment or, indeed, to other amendments that the Australian Democrats or other members of this Chamber might be seeking to move.

The Hon. I. GILFILLAN: I support the Bill. I acknowledge that I consider that these are somewhat extraordinary circumstances which would bring us to consider particularly clause 4 of the Bill. As I understand it from comments and advice that I have had from those with no particular vested interest, the other matters dealt with in the Bill are commendable, and I say that because I have had conversation with those people representing the directors. In fact, they have identified for me two points on which they take exception to the Bill. First, there is the retrospectivity of clause 3, which is spelled out in clause 2 (2), which provides:

> Section 3 will be taken to have come into operation when the State Bank of South Australia (Investigations) Amendment Act 1991 came into operation,

Then there is the notorious clause 3 (4). In conversations with the legal representatives of the directors, from Piper Alderman, I asked for some detail of the successful actions in which they had been involved in the Supreme Court. I took only very brief notes and this was not an exhaustive list, but it was on the basis that too short a time was allowed for the plaintiffs, as they are referred to in the action, to provide material; there was an apparent failure to provide tapes of clients' conversations by the Auditor-General to the directors; and there was an alleged failure to provide the substance of hostile evidence to the plaintiffs for proper analysis. I was not over impressed with the substance of those points. No doubt, they were legally well argued, and it is not for me to question the Supreme Court's judgment—

The Hon. C.J. Sumner: You've never been timid about that before.

The Hon. I. GILFILLAN: About what?

The Hon. C.J. Sumner: Questioning the Supreme Court's judgment.

The Hon. I. GILFILLAN: No, I have not questioned the Supreme Court's judgment: I questioned—in the gentlest way—the propriety of a justice who had a vested interest hearing the matter. But we will leave that to one side. I cite the case of *Bakewell and others v MacPherson,* 1893 of 1992, page 8 of the document I have, which states:

> The plaintiffs [the directors] in both actions were at all material times represented by solicitors and had the services of counsel including senior counsel. Over the period of the inquiry there has been a considerable exchange of correspondence

between solicitors for the plaintiffs and solicitors for the defendant and frequent conferences between the respective legal representatives. Plaintiffs in these actions were among the witnesses interviewed.

During the course of the inquiry there has been considerable conflict between the defendant and his legal representatives on the one hand and the plaintiffs and their legal representatives on the other. In general it may be said that the latter have taken the stand that their clients have been denied access to information which is necessary to enable them to present their case. The defendant and his advisers have taken the stand that the plaintiffs, instead of endeavouring to supply the information sought from them, have met requests for information with demands which were excessive and which sought to take control of the investigation out of the hands of the defendant. It is clear moreover that the defendant took the view that the plaintiffs were giving insufficient attention to the time constraints imposed upon the defendant by the terms of his appointment.

There are clear indications that the defendant was experiencing difficulty in reconciling the constant demands of the plaintiffs for what they regarded as the requirements of natural justice and the time constraints imposed upon him. In an endeavour to meet the requirements of the plaintiffs without undue delay, the defendant adopted an informal procedure of consultation with the legal advisers of the plaintiffs.

I interpret this as being clear evidence of a very earnest and sincere attempt by the Auditor-General to cooperate and to facilitate this inquiry to the best of his ability, with a notable absence of ill-will. The quote continues:

As part of that procedure, he furnished a number of reports by persons to whom he had delegated the responsibility of investigating certain facets of the bank group's activities. He provided those reports on the basis that their conclusions did not represent his views and were not to be regarded even as his tentative views. The idea was to give the plaintiffs an early intimation of the sort of issues which had arisen and an early opportunity to consider what representations they wished to make in connection with them.

The procedure broke down in July 1992 because of an impasse between the defendant and the plaintiffs as to the status of these investigators' reports. The defendant required from the plaintiffs, as a condition of receiving them, that they acknowledge that they did not represent the defendant's views and were not even his tentative conclusions.

The plaintiffs in action No. 1983 of 1992 refused to give this acknowledgment, apparently wishing to keep open an argument based upon these reports that they had been denied natural justice. The defendant thereupon discontinued the furnishing of those reports. The defendant was critical of the plaintiff directors' attitude and expressed the view that they were obstructing the investigation.

I must say that I tend to agree. I do not think there is any doubt that the motivation of the directors and their legal representatives is to obstruct, interfere with and generally delay this inquiry. If I were convinced that the major purpose was a genuine search to get the truth and to have a thorough investigation in place and optimise the effectiveness of it, I would have far more sympathy for the directors and the argument they put up through their legal counsel. So I do not find it difficult at all to support clause 4 (3) of the Bill. I also believe that the Auditor-General's Report is regarded as a sincere and objective attempt to elicit facts and present them in a way which can be interpreted and then either agreed with or disagreed with as one may wish to do, or commented on. The same situation will apply, and when the Auditor-General, we hope not too far into the future, does complete his report and it is tabled, it will be available for substantial contradiction and argument by the forces representing the directors, if they see fit to do so—and it is a presumption that they would see fit to do so. There may be no motive on their part to do so. So I believe that we have good grounds, in the circumstances, for accepting in this Bill an extraordinary measure for an extraordinary situation.

As to the amendment, I acknowledge the apology from the Hon. Trevor Griffin that this has not been in our hands for very long. I have had no opportunity to have other than a cursory glance at it and to listen to his observations about how it will be put into effect, and I am not quite clear what its ramifications will be. I would like to look at it more intently and perhaps have more discussions about its ramifications in Committee before saying categorically how I would react to it. I do not see any necessity for proposed subclause (5), which provides:

Without limiting the effect of subsection (3), it is the intention of Parliament that the Auditor-General and any other person on whom investigative powers have been conferred for the purposes of the investigation observe the rules of natural justice.

In my opinion the Auditor-General is, in his judgment, observing the rules of natural justice. He feels frustrated that his processes are being deliberately filibustered and obstructed and I do not feel mindful to support the proposed new subsection (5).

In relation to proposed new subclause (4), which specifies a person's rights in relation to the Auditor-General's Report, it provides in relation to the controversial subsection (3):

Subsection (3) does not prevent a person from exercising any rights in relation to a report of the Auditor-General on the results of the investigation—

(a) in the case of a report that is under section 25 (5) of the State Bank of South Australia Act 1983 presented to the President of the Legislative Council and the Speaker of the House of Assembly—after the report is laid before either House of Parliament;

(b) in the case of any other report that is presented to the Governor—after the report is presented to the Governor.

I need to hear more argument that those rights would not exist in any case after the Auditor-General's Report has been tabled in this place, and I will be listening to argument about that. The main point, and the one that I certainly would not be persuaded to divert from, is that clause 4 (3) is essential if we are to expect the Auditor-General to do an effective, efficient job in reporting on the terms of reference as he has been asked to do. In those circumstances, I indicate Democrat support for the Bill.

The Hon. DIANA LAIDLAW: I want to make a very brief contribution to the debate on this Bill. I do appreciate and will support the amendments to be moved by my colleague the Hon. Mr Griffin, but I remain very strongly of the view that if the former board members had been as diligent in exercising their responsibilities as board members as they are now in pursuing their 'social justice/natural justice' rights I do not think we would

even need to be bothering now about natural justice provisions in this Bill.

The Hon. C.J. SUMNER (Attorney-General): I think that very short contribution from the Hon. Ms Laidlaw was one of the best ones we have heard from her in recent times.

The Hon. R.I. Lucas: You agree with that?

The Hon. C.J. SUMNER: Yes, I do agree with it. I thank honourable members for dealing with this Bill. The Hon. Mr Lucas said that he objected to it being dealt with in such a short space of time, having been introduced, as it was, yesterday. I acknowledge that the Opposition facilitated the introduction of the Bill by enabling the suspension of Standing Orders. I can respond to the Hon. Mr Lucas's point by saying that I only became aware of these difficulties last Friday at 5 o'clock. The specific details of them were transmitted to me by letter from the Auditor-General dated 22 November, which I received on Monday. The Government is not requiring the Council to deal with this matter, as I made quite clear. I asked the Opposition if they would facilitate its introduction and they agreed. I said that members of the Opposition could reserve their rights on the substance of the matter. So we are not requiring anyone to deal with it.

The Hon. K.T. Griffin: You said that you would appreciate it if we also facilitated consideration of it.

The Hon. C.J. SUMNER: Yes indeed; but we requested you to deal with it.

The Hon. I. Gilfillan: What else can you do?

The Hon. C.J. SUMNER: That's right, because we believed that it was in the public interest to do so, and obviously members opposite feel it is in the public interest to do so as well. So I appreciate the fact that it has come in only this week, but that is because the circumstance has only just arisen. A number of points have been raised, which I will attempt briefly to answer. The question whether this is a judicial or quasi-judicial inquiry is resolved, I believe, and has been resolved by the Supreme Court in the negative. They have determined that it is not an inquiry of that character. An inquiry of that character is one that affects legal rights or status and, on this basis, the inquiry, whether under the old section 25 (2) or existing section 25 (2) or section 25 (6) is not a judicial or quasi-judicial inquiry. It is a report to Parliament and the Government, the Auditor-General being required to report in accordance with the terms of reference.

The report does not affect legal rights or status. That would only occur if any subsequent proceedings were taken following the Auditor-General's Report, of either a civil or criminal nature, and obviously those options are available subsequent to the report of the Auditor-General, and indeed have been specifically provided for by both the Auditor-General's terms of reference and the Royal Commission's terms of reference, where any concern about illegality is to be referred to the appropriate authorities.

The Hon. Mr Griffin referred also to the Auditor-General's protections. Section 25 (11) provides those protections and it is the Crown Solicitor's view that that is sufficient. The terms in the Bill before us are exactly the same as those in the Public Finance and Audit (Miscellaneous) Amendment Bill, which has been introduced but not passed. I understand that it is a direct take from that Bill. Another question asked was whether we propose to vary the terms of reference. At present, the only proposal is to ensure that the external auditors for Beneficial Finance are included. It was possible that that point about the scope of the inquiry would be raised. Obviously, we will take advice on matters raised by the Hon. Mr Griffin and we will make further alterations to the terms of reference that are needed.

Reference has also been made to clause 4 (3), the so-called ouster clause, and it would appear that the Council will support the Bill in that form. I understand that it is in substantially the same terms as exist in the Royal Commissions Act. It was referred to in the case that was taken by the ABC against the Royal Commissioner relating to his powers of suppression under the Royal Commissions Act. That matter was dealt with by Justice Matheson. In his ruling, he referred to the authorities dealing with sections similar to section 9 of the Royal Commissions Act or clause 4 (3) of this Bill. I commend those comments to members who want to see the judicial interpretation of such ouster clauses. It is worth while quoting from a High Court case, *O'Toole v Charles David Pty Ltd* (1990) 96 ALR 1, where an ouster clause in the Conciliation and Arbitration Act (1904) was considered. I will refer to only one quotation, which appears on page 450 of the royal commission report. In O'Toole's case, Chief Justice Mason said:

> There is little point in reviewing the history of the antecedents of this provision. It is recounted elsewhere: see Aronson and Franklin, *Review of Administrative Action* (1987), pp. 691-701. It is sufficient if I begin by saying that, ever since the well-known judgment of Dixon J. in *R v Hickman; ex parte Fox* (1945) 70 CLR 598, it has been accepted that the provision is subject to significant limitations.

It is not just a *carte blanche* block of actions to the courts. Chief Justice Mason continued (this is the relevant part):

> His Honour said (at 615): 'Such a clause is interpreted as meaning that no decision which is in fact given by the body concerned shall be invalidated on the ground that it has not conformed to the requirements governing its proceedings or the exercise of its authority or has not confined its acts within the limits laid down by the instrument giving it authority, provided always that its decision is a *bona fide* attempt to exercise its power, that it relates to the subject matter of the legislation, and that it is reasonably capable of reference to the power given to the body.'

I will not refer to the other authorities but the cases referred to by Justice Matheson in his judgment indicate that section 9 of the Royal Commissions Act is not a complete barrier to judicial review proceedings. It is, however, a substantial barrier and, in the Government's view, so it ought to be. If the Hon. Mr Lucas's argument were to be taken up, we should remove the ouster clause from the Royal Commissions Act, as well, and that would have enabled the proceedings to have been taken—

The Hon. R.I. Lucas: It is not my argument.

The Hon. C.J. SUMNER: The honourable member said that there should be some way of reviewing the decision, and I am merely saying that, if the honourable member thinks that is applicable to the Auditor-General, he could argue that it ought to be applicable to royal

commissions. He could also argue that the former Premier might have decided to argue the toss with Samuel Jacobs, QC, in the Supreme Court, no doubt using taxpayers' funds, which have been available to everyone else in this exercise. That is not possible under the Royal Commissions Act and it will not be possible for the Auditor-General under the State Bank Act in relation to this particular inquiry. The Government's view is that that is reasonable in the circumstances. If it good enough for the royal commission to have an ouster clause of this kind, it is good enough for the Auditor-General.

New subsection (7a) of this Bill is a direct take from section 34 (2) of the Public Finance and Audit Act as it was to be varied by the amending Bill. The Hon. Mr Griffin can ask further questions about it if he wishes, but that is the advice I have received from Parliamentary Counsel, namely, that provisions in the Bill before us are exactly the same as those that were to be put into the Public Finance and Audit Act, but they were not put in because time did not permit the passage of that Bill.

The Hon. Mr Gilfillan quoted from the Supreme court decision in *Bakewell v MacPherson,* and came to the conclusion that there was an attempt by the directors to obstruct and delay the inquiry. The honourable member quite rightly believes that attempts at deliberately filibustering and frustrating the Auditor-General's inquiry should not be tolerated by the Parliament, and nor should it be tolerated by the public of South Australia.

Last week, an article which was given to the *Advertiser* by some source, suggested that the Government was going to pull the plug on the Auditor-General's inquiry because of its length and cost. I do not know for sure from where that suggestion came, but the article was totally wrong. It appeared in the *Advertiser* on Friday, 20 November. With the heading 'Threat to banking inquiry', the suggestion was that senior Ministers in the Government, including the Premier, were going to pull the plug on the inquiry because it was going on too long. That was then taken up in a very aggressive manner in the *Sunday Mail* in its editorial about how the inquiry should go on, and was taken up by the *Advertiser* on Monday of this week.

The fact of the matter is that there was never any intention on the part of the Government to curtail a full inquiry by the Auditor-General. One can only suspect that this article was got into the press by people with interests close to those of the former directors to try to suggest to the Government that, because of problems of the inquiry going on close to an election, if they continued to frustrate and delay the inquiry and they made their intentions clear to do this, the Government would back off the inquiry for fear of having it come close to an election.

I assure the Council again that that will not happen. The suggestion from the directors that if they continue these actions against the Auditor-General the Government would back off the inquiry has no foundation. They just have to know (and I will put it on the record in *Hansard*) that the Government will not be diverted from having this inquiry completed as fully as is necessary, and they will not defeat the Government's resolve to do that by taking legal proceedings or other actions to frustrate the Auditor-General's inquiry.

The question of natural justice has been raised. The Auditor-General intends to comply with the court's ruling on that topic in the *Bakewell v MacPherson* case. The Hon. Mr Gilfillan was not prepared to disagree with the Supreme Court on the matter. I will not make a great deal of it, but my view is simply that two months was too long to give the directors time to respond to the Auditor-General's tentative findings or the reports of his investigators. It is two months for people who have been living with this exercise now for nearly two years. I think that was more than generous to the directors of the bank.

However, it was a decision of the court, and as I understand it the directors have used their two months to make their responses. In my view it could have been done much quicker, and it should have been, because surely they and their lawyers got on top of these issues during the course of this nearly two years' inquiry. So, I think the Supreme Court was more than fair. The Auditor-General will comply with the requirements of natural justice that have been laid down by the court, as of course he must unless it is altered by Parliament.

In this Bill there is no attempt to alter those procedures that have been laid down by the Supreme Court. However, I make it clear that, if it appears that there are deliberate attempts to frustrate the Auditor-General by resort to technical challenges or by resort to tactics which have no basis of getting at the substance of the issue, the Government will review the position. It is as simple as that. If further legislation is necessary to stop those sorts of tactics we will have absolutely no compunction about introducing them into the Parliament.

The other issue that was raised in passing was the question whether or not these inquiries could be made public. There is an option for the Government to turn the Auditor-General's inquiry into a royal commission—make the whole thing public—and direct that these draft reports be tabled in public by the Royal Commissioner. The Government thinks, because this inquiry has been set up in this way, even though it has taken a different course in many respects than we originally anticipated, that it should continue.

However, that is another option, and I merely throw it in for consideration in case the people who are conducting these proceedings on behalf of the directors and the directors themselves think that they can continue, by the actions of taking technical points and by their conduct before the inquiry, to delay and frustrate it. The Government is determined that it should proceed.

The one reason we are determined it should proceed, apart from the fact that we want the inquiry out quickly, and want a full inquiry because it is clearly in the public interest, is this: these inquiries have cost the taxpayers an enormous amount of money. I would like to put on the record this evening what those costs have been. The total cost of the royal commission has been $6.9 million. Of that, counsel and solicitors assisting the commission have cost $3.8 million, and other costs were $3.1 million. The lawyers' total costs were $9.49 million.

The Hon. K.T. Griffin: Which lawyers?

The Hon. C.J. SUMNER: That is Finlaysons, $3.6 million, which includes the cost of counsel for the bank; Piper Alderman, $4.2 million, which includes the costs of counsel for the former directors; Goldberg and Company, $1.6 million, which includes the cost of counsel for the

former Managing Director; and Corrs, a miserly $90 000. In addition to that, I know that the SGIC was represented before the commission for a good bit of the time, and the figures here do not include the SGIC. So, it was $9.49 for that batch of lawyers. The Opposition lawyers' total cost is $748 000; the Government, $1.3 million—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, you didn't do much there, either.

Members interjecting:

The Hon. C.J. SUMNER: Well, you didn't do much. You obviously didn't have to do much, did you?

Members interjecting:

The Hon. C.J. SUMNER: I don't know whether it was responsible. You had two counsel there all the time at $1 800 a day for a QC (Mr Lawson) and $1 000 a day—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It was the Government, not the Opposition, that was under challenge. There was $1 800 a day for Mr Lawson QC; $1 000 a day for his assistant; and some solicitors' costs as well—relatively modest sums for the Opposition totalling $748 000. The Government's legal representation was $1.3 million. However, that was not an additional cost to taxpayers but was the cost of in-house work and in-house counsel, including the Solicitor-General and Crown counsel.

The Auditor-General's inquiry to date has cost $11.4 million, and as members know that is still progressing. Of that, some $3 million is attributable to consultants, who were lawyers. So the total cost—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: No. If you take in consultants I think it is $6 or $7 million, and I am being conservative with a figure of $3 million for lawyers. If I get the accurate figure it would be more than that. However, what is $1 million between friends?

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. C.J. SUMNER: The total cost of the royal commission to date is $29.83 million, and the legal costs involved in that are conservatively estimated at $17 million.

The Hon. L.H. Davis: What do you think the in costs are going to be? Do you have an estimate of what the final costs are likely to be?

The Hon. C.J. SUMNER: No. That depends on the lawyers acting for the directors and, if they spin it out for as long as they seem to want to spin it out for, we could be here for another two years. Add another $10 million or so to it. No, I really do not know. I am being—

The Hon. K.T. Griffin: Don't go over the top.

The Hon. C.J. SUMNER: No, I will not go over the top. However, the fact of the matter is that the lawyers were, I believe, taking as many legal points as they possibly could to try to delay the inquiry and force the Government out of it. I said that is not going to happen. I do not know how much more it will cost, but I can get the honourable member a daily count, if he likes, to see for each day that it goes on how much more it will cost. The lawyers are still working on the royal commission. That will not report until mid February. Hopefully, that can then be wound down but, if the Auditor-General's inquiry goes on as he wants it to until 30 June, obviously I think one could add another $4 million or $5 million to those figures. That is an incredible amount of money.

Once you set up these inquiries, once you get lawyers involved in them and once you pay them the sorts of rates that they have been paid, they are the sorts of figures that you are talking about. I wanted to put that on the record for the Council. I think the public are absolutely fed up with it. I think that they want the thing brought to a close; they want the inquiry made public; they want it completed; they want it done as quickly as possible; and they do not want the legal costs to blow out much beyond those that I have indicated.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Investigations.'

The Hon. K.T. GRIFFIN: I did raise previously this question of the terms of reference, and I think the Attorney-General said in response that he did not presently intend to amend them. The question relates to the drafting of new subsection (2), which provides that the investigator must investigate such matters as are determined by the Governor, which matters may include certain things. Then, paragraph *(b)* provides that the investigator:

> may investigate a matter of a kind referred to in subparagraph (i) or (ii) that the investigator has not been required by the Governor to investigate if, in his or her opinion, the matter should be investigated.

Then, under subsection (2a), some further matters are referred to. Paragraph *(b)* is designed to overcome the fact that the existing terms of reference do not include a determination that the Auditor-General shall investigate possible conflicts of interest because, if one looks at paragraph *(e)* of the terms of reference, one sees the following:

> Having regard to the material considered by him in respect of the matters set out in paragraphs A to D above, the Auditor-General is, in any report on such matter, to report on any matters which in his opinion may disclose a conflict of interest or breach of fiduciary duty or other unlawful, corrupt or improper activity and the Auditor-General is to report whether in his opinion such matters should be further investigated.

So, I would suggest there is some ambiguity about whether it is an obligation to investigate the conflicts of interest or whether it is to identify them and then indicate the extent to which they should be further investigated. I do not want to press it now if there is no immediate response available and the Attorney needs time to consider it. However, I am flagging it again because of his response at the second reading stage.

The Hon. C.J. SUMNER: I am not sure that I fully understand what problem the honourable member has with the terms of reference but, as I understand paragraph *(e)*, the Auditor-General can report on any matters that disclose a conflict of interest or breach of fiduciary duty or other unlawful, corrupt or improper activity. He is entitled to report on those matters, and he may further report on whether they should be further investigated. One must realise that when the structure of this inquiry was established the report on those matters was to go to the Royal Commissioner who, under term of reference

No. 4, was to report on whether any potential breaches of the law were to be referred to the appropriate authorities.

I do not see that there was any restraint on the Auditor-General reporting on those matters. There might have been perhaps some question whether all those matters would be immediately made public. If it looked as though there was potential for criminal proceedings, some care might have had to be shown about whether they would be made public or whether they would be included in a confidential part of the report. But all that material was supposed to go to the Royal Commissioner; he was supposed to look at it and then he had to make further determinations under term of reference No. 4.

Assuming that term of reference No. 4 of the Royal Commissioner remains—and there may be some doubt as to whether it will now because of the delay—and if he finishes his terms of reference Nos 2 and 3 and has to wait until June, July, August, October, or the middle of 1994 before the Auditor-General's report comes along, I am not sure that he will be very keen about waiting around to finalise term of reference No. 4. If he does not, maybe some amendment has to be made to term of reference (e) of the Auditor-General's report. However, I do not quite understand what the honourable member's problem is, but we will look at it and see if any change is necessary.

The Hon. K.T. GRIFFIN: I just take it a step further. Under terms *(a)* to *(d)* there is no requirement to investigate conflicts of interest. Paragraph *(e)* requires him to report on any matters which may disclose a conflict of interest. So, there is a subtle distinction between the power to investigate, which does not include the power to investigate conflicts of interest but, if any of the material discloses conflicts of interest, then to report on the conflicts of interest, and if you look at new subsection (2), an investigator must investigate such matters relating to the operations and financial position of the bank or the bank group as are determined by the Governor, and the Governor has not determined that there should be an investigation of conflicts of interest. Paragraph *(b)* refers to 'may investigate a matter of a kind referred to in subparagraphs (i) or (ii) that the investigator has not been required to investigate...if, in his or her opinion, the matter should be investigated'. So, it is really a focus on investigation and reporting. I do not want to take it any further. I have raised it; the Attorney-General has indicated that he will give it some further consideration and I am content with that.

In relation to proposed subsection (2a), the investigator must report to the Governor on the results of an investigation or investigations under subsection (2) and advise the Governor whether in his or her opinion any matter should be the subject of further action. It is probably implicit in that that the investigator identifies what action should be taken but, having in mind some of the technicalities that have been raised, would it be advisable to add, after 'should be the subject of further action' 'and, if so, what action'? There can then be no doubt at all that the investigator not only says 'Look, there should be some further action; these are the matters that should be the subject of further action, and the further action which I suggest ought to be taken includes the following.' It may be pedantic but it may be something that needs to be resolved. I raise that also in relation to paragraph *(b)* of proposed subsection (2a) where it refers to whether, in his or her opinion, the matter should be the subject of any or further investigation or other action and whether that should also refer to 'and, if so, what investigation or what action'. I raise that issue in the interests of trying to make sure there are no loopholes.

The Hon. C.J. SUMNER: I guess the matter could be looked at before it is passed in another place, but that will be tomorrow. However, it is really a drafting matter that the honourable member is raising. Parliamentary counsel have conveniently disappeared. The Government's view is that there is not a problem, but if there is a problem that is one of the reasons that clause 4(3) is being included in the Bill.

The Hon. K.T. GRIFFIN: If it can be resolved at some stage that would be good. I do not think we should be relying on 4 (3) to clear up all those sorts of problems, but I understand the point the Attorney-General is making. The point I raised in relation to subsection (7a) was really the extent to which this was in the Public Finance and Audit Act as proposed to be amended by the Bill in the House of Assembly, and nothing much turns on it. It would just seem to me that the major focus of the amending legislation in the House of Assembly was more on paragraph (7) subsection (7b) rather than the power to apply to the Supreme Court for certain action to be taken on summons or in relation to the provision of information or where there was some hindrance or obstruction to an investigator or authorised person. I was really seeking to clarify as a matter of my own interest whether I had misread the Public Finance and Audit Act and the amending Bill or whether I had misinterpreted the second reading speech.

The Hon. C.J. SUMNER: Proposed subclause (7a), paragraphs *(a)* to *(e)*, is currently in the Public Finance and Audit Act, and what has been proposed to be added by the Public Finance and Audit (Miscellaneous) Amendment Bill 1992 was effectively the power of the Supreme Court to order the person to take such action or to refrain from taking such action as is necessary in the court's opinion. That has now been added to the powers that were in the Public Finance and Audit Act, but the Supreme Court provisions have been added to those provisions which are currently completely contained in new proposed subsection (7a).

The Hon. K.T. Griffin: And (7b) is added.

The Hon. C.J. SUMNER: Subsection (7b) in this Bill picks up what was being proposed in clause 17c of the Public Finance and Audit (Miscellaneous) Amendment Bill 1992 where that clause was amending section 34 of the principle Act by inserting a new subclause (5). It is that subclause (5) that has been picked up—it is not in exactly the same wording but it has the same effect—in subsection (7b) of the Bill before us.

Clause passed.

Clause 4—'Validation and exclusion of judicial review.'

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

Page 4, line 13—Insert subclauses as follows:—

(4) Subsection (3) does not prevent a person from exercising any rights in relation to a report of the Auditor-General on the results of the investigation—

(a) in the case of a report that is under section 25 (5) of the State Bank of South Australia Act 1983 presented to the President of the Legislative Council and the Speaker of the House of Assembly—after the report is laid before either House of Parliament;

(b) in the case of any other report that is presented to the Governor—after the report is presented to the Governor.

(5) Without limiting the effect of subsection (3) it is the intention of Parliament that the Auditor-General and any other person on whom investigative powers have been conferred for the purposes of the investigation observe the rules of natural justice.

I note that the Hon. Mr Gilfillan is not much enamoured of proposed subclause (5). It may be appropriate to take these amendments separately if the Government similarly is not enamoured of subclause (5), but I move them together. As I said during my second reading contribution, regardless of the parties involved, it is important, at least, to recognise that ultimately, if there is significant disagreement with the methodology and the result, a person ought not to be deprived of his or her rights to challenge the validity of that result. On the information in the Supreme Court judgment alone, one can see very little prospect of that occurring and I suspect that, following that judgment, the Auditor-General would be bending over backwards to ensure that there was nothing that would cause an adverse reflection on his reputation and capacity.

But I still think it important to have some mechanism to preserve rights, but after the report has been presented, if that is required to be exercised by those who might be the subject of an adverse report. Recognising that it will have a significant impact on reputation, although that may not concern some people, I think that, as a basic principle of justice, one ought at least to preserve that right to have, ultimately, access to the civil court. It is consistent with what happened in the Air New Zealand case to which I referred earlier.

In so far as the principles of natural justice are concerned, it is important that, proposing to take away substantial rights, the principle of the observance of the rules of natural justice ought, at least, to be reflected in the written statute. Anyone who has concerns about the withdrawal of rights under subclause (3) would, at least, have that concern moderated by seeing an expression of Parliament's concern to reflect what the Auditor-General has said he will do, anyway, but which ought to be there for all to see. The two provisions are important.

The Hon. I. GILFILLAN: While the Attorney is further deliberating, I repeat what I said earlier during my second reading contribution: that I do not intend to support proposed subclause (5). My lingering concern about subclause (4) is its necessity, in light of my understanding of subclause (3), and in that respect I do not think that subclause (3) puts any hindrance on any person disagreeing with the contents of the Auditor-General's report, taking whatever action is appropriate to challenge that and to put up counter argument, and to have that in the public forum.

What does concern me is that if proposed subclause (4) allows any right to be exercised after the Auditor-General's report has been tabled, there may well be a plethora of actions that challenge every action and process, and virtually throw into turmoil the Auditor-General's report. Perhaps I am exaggerating what the effect might be, but that is the thing that concerns me. I do not object to someone, at the tabling of the report, taking issue with its findings, and that can be argued publicly. In fact, I think that is the least to which a person can be entitled. What I am concerned about from the track record to date is that there may well be argued advantage to totally discredit the Auditor-General's report by attacking its processes and nitpicking on the alleged denial of natural justice. On that basis, I still have some reluctance in supporting proposed subclause (4).

The Hon. C.J. SUMNER: I am not quite sure that I understood what the Hon. Mr Gilfillan is saying. When he said that he has no problem with people taking issue with the findings of the Auditor-General, the honourable member did not actually spell out how he thought people were entitled to do that. Is he saying that, if people want to take issue with the findings, they can do that only by debate in the public arena, or is he saying they should have some recourse to the courts to correct findings?

The Hon. I. Gilfillan: I do not see that the court would be the appropriate place. The area that I see would be disagreement with the Auditor-General's report, but the risk is that the disagreement would emerge as a whole train of Supreme Court actions attacking the process.

The Hon. C.J. SUMNER: I think that is a bit unlikely, particularly if the bank stopped paying for them. That seems to me to be the most important aspect of the matter. It is unlikely that too many Supreme Court actions could be mounted without someone backing the legal costs involved, because if you took a big challenge on to the Auditor-General's findings and lost, then you would need to pay not only your own lawyer's costs but the costs of the Auditor-General's lawyers as well.

The Hon. I. Gilflllan: They have won a few along the way now: they may very well win.

The Hon. C.J. SUMNER: I understand the concerns of the honourable member, which is why we have introduced the Bill. I was just trying to find out whether the Hon. Mr Gilfillan was saying that there should be no challenges to court available. That is what you are saying—no challenges to court and if you want to take issue with the Auditor-General's findings you have to do it in the public arena?

The Hon. K.T. Griffin: You could put out a press release.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: We could do it in the Parliament and all sorts of places. I see.

The Hon. K.T. GRIFFIN: I think that we should not lose sight of the seriousness of the issue. It may be that the public forum, as the Hon. Mr Gilfillan suggests, will give some publicity to it, but there is nothing in just a bit of publicity that will counter the stigma of criticism and the status of the report of the Auditor-General, by merely putting out a press release. It seems to me that we are saying that, although this inquiry has been going on, and for whatever reasons, you are no longer to have the right to challenge, even if it is a substantive issue rather than just a procedural issue.

If it is a substantive issue where you complain about some aspect of the Auditor-General's inquiry, or even the

conclusion he has reached, because he has not called certain evidence or he has misinterpreted certain evidence, we are saying that a person can no longer challenge that, even if it is a matter of substance which goes to the heart of the report. The Auditor-General publishes a report. He may do it in good faith, but there may be a problem with the evidence upon which he has relied or the interpretation of it. What the Hon. Mr Gilfillan appears to be saying that, even though that might be a fundamentally wrong conclusion of the report, which has all the status of the Auditor-General's Report, and will wreck a person's life, career, business opportunities, and whatever, all one does is put out a press release or gives a press statement on the day that the report hits the public arena, and that is it. We can be sure that the way things operate a person is not going to get much continuing satisfaction from merely putting out a press release or having an interview on the *7.30 Report,* for one or two days.

If there is something fundamentally wrong, I think that because of action that is being proposed in the clause we really do have an obligation, at least to provide the rights to challenge the report when it is made—not interfering with the preparation of the report—and have the fundamental problem corrected by the only body which can do it, the Supreme Court. As the Attorney-General says, that will cost some money, but if someone wants to sell up their house or borrow money or spend their life savings, because they believe they have been fundamentally and incorrectly blamed for something, they ought to be able to do it. I draw attention to the fact that in the New Zealand case—

The Hon. C.J. Sumner: Are you saying that they are given rights to challenge the substantive findings of the Auditor-General?

The Hon. K.T. GRIFFIN: Well, I think ultimately it is the report—and that is basically what happened in the Air New Zealand case, and let's face it, that is what happened in the ICAC case, where Greiner challenged the report of ICAC and was able to go to the court. All I am saying is that this is not going to prevent the Auditor-General completing the report, tabling it and presenting the confidential report to the Governor, but if it is fundamentally flawed then this is to give a person at least the right which they would otherwise have had, without subclause (3), to maintain that right. I would not have thought that that would create a major problem, in the light of the rights that are being taken away by this investigation, in mid investigation.

The Hon. I. GILFILLAN: I want to make three points which I think are relevant to the argument. First, I think it is reasonable to make a comparison with the royal commission. I do not accept that the difference between the hearing being in public as compared with the hearing being *in camera* is substantial and that there should be a totally different set of ground rules as to how one can react to the findings of the royal commissions as compared to the finding of the Attorney-General.

I know this issue is very highly charged with the publicity and focus of information and so on attached to this report, but previous Auditors-General Reports have been quite scathing in their criticism of groups and people who may, very predictably, feel aggrieved and angry about the fording. But the finding is there in the Auditor-General's Report, and that is the sort of procedure we expect. I do not think it is a fair comparison to compare what may predictably occur at the end of the Auditor-General's Report in this case with the Greiner challenge to ICAC. My opinion is that the challenge there was to the enabling legislation to establish ICAC and to the interpretation of corruption rather than the process with which ICAC undertook its investigation. So I am still awaiting the Attorney-General's opinion; but to this stage I fail to be persuaded that subclause (4) is justified.

The Hon. C.J. SUMNER: I think there is a difference between what the Hon. Mr Griffin wants and what the amendment says. The Hon. Mr Griffin seems to be saying that, following the report of the Auditor-General, there should be a right to challenge the findings of the Auditor-General. He may well argue that the same should happen in the case of a royal commission, as happened, he argues, in the Air New Zealand Mount Erobus case. However, the way that the amendment he has moved is drafted I think limits the challenge that can be made in relation to rights which already exist. So the challenge can be that there was a lack of natural justice or findings of *ultra vires,* but under this draft it would not be possible for people aggrieved by the findings to challenge the actual findings at large. They could only challenge the procedure or challenge whether or not what was being done was able to be done in accordance with the terms of reference.

So I am not quite sure what an aggrieved person could achieve by taking these proceedings, using the powers that this clause as drafted gives to them. In other words, it does not enable people aggrieved to challenge the substance of the findings. It only enables them to exercise rights which they already have, and those rights are not to challenge the substantive findings at the present time, because they cannot do that. The only rights they have are the rights to challenge procedural matters and matters of *ultra vires.*

The Hon. K.T. Griffin: You are suggesting that if subclause (3) was not there there would be no rights to challenge substantive findings?

The Hon. C.J. SUMNER: Clause 4 (3), which replicates section 9 in the Royal Commission Act, does in fact ouster the possibility to challenge on natural justice grounds, but it probably would not ouster a challenge based on an *ultra vires* argument, in accordance with those authorities that I referred to in the judgment of Matheson J. in the ABC and Jacobs. I think the best thing to do on this matter is to say that there is no real case for making a distinction between the royal commission and the Auditor-General's inquiry. The royal commission has an ouster clause. The former premier had no rights to challenge. Other people who might have felt aggrieved by the Royal Commissioner's findings had no rights to challenge, so why then should we be providing those rights to people who are the subject of investigation by the Auditor-General?

In the context of this inquiry, it is best to oppose the amendment. The way it is drafted, I am not sure that it does what the honourable member wants it to do, anyhow. It does not give an aggrieved party rights to challenge the substance of the findings, so the amendment is fairly limited. My own view is that what

has been applicable in the royal commission for this inquiry should also be applicable in the Auditor-General's inquiry and that the general question of whether there should be power to review findings of royal commissions and other such inquiries should be looked at from first principles.

It is probably true that courts now adopt a more activist role in reviewing the findings of such bodies and it is accepted that they have a more activist role than they did when the Royal Commissions Act was enacted, where measures such as section 9 of the Royal Commissions Act were probably not then seen to be as strange as they are now, given the greater emphasis that there now seems to be in the courts towards providing opportunities for the challenge of findings. In the context of these inquiries, I cannot make any distinction between the royal commission and the Auditor-General's inquiry and I am fearful to some extent of opening up the issue again to further challenge, further litigation and further cost to the public. Accordingly, while it is an issue that needs to be looked at, I feel it should be looked at outside the context of these inquiries.

The Hon. K.T. GRIFFIN: I know there is the ouster provision in the Royal Commissions Act, but that has been applicable right through the proceedings of the royal commission. At the moment, before this Bill is passed, parties are entitled to take court proceedings. Regardless of whether we think that is a good thing or a bad thing, they have the right to do it, and they may well have a right to challenge the findings when the reports are published. We are starting off with a situation where those rights exist. This Bill seeks to completely remove those rights in the middle of an investigation.

Parties to the investigation have started off with a whole bag of rights. When the Bill passes, they will have no rights, unless there is some saving provision which preserves at least some of those rights at the end of the day when the report is tabled. That is my concern. Regardless of what judgments we make about these citizens from what we believe we know about them from the media or from attendance at the royal commission, they have a bundle of rights. This Bill removes the rights. I am saying that we may remove the rights in relation to the conduct of the proceedings now but, when the reports are all tabled, we should preserve the rights which they had but for this legislation. Part of the rights are removed and some are retained. Whether or not I have misinterpreted the law as to what their rights may be at the end of the day but for this legislation, all I want to do by this amendment is ensure that, at the end of the day, in respect of the reports—not the conduct of proceedings—they have the rights that they would have had but for this legislation. That is the way I put it.

I do not deny that there is an issue that must be explored in a broader context, and we can do that at some stage. It is pretty rough to get rid of all the rights and say that if at the end of the day a citizen has a substantive complaint about what has happened and what was said, we will not allow that person to pursue that right because, by the strike of the legislative pen, Parliament has determined that those rights be removed, and too bad about the consequences.

Clause 4 applies only to this investigation. Unlike the Royal Commissions Act, which applies to all royal commissions, under section 25 the Government does not seek to limit the rights of those who might be the subject of other investigations. This clause applies only to the current investigation. It is quite inconsistent to argue that at the end of the day we should not try to preserve some rights. If my amendment is drafted in a form which limits it, so be it. At least it preserves some rights. That is the important issue. Regardless of the Royal Commissions Act and what the former Premier is or is not able to do, the fact is that a body of citizens have a bundle of rights now. When this law is passed, they will not have them.

That is a very serious step for Parliament to take. I want to try to moderate the consequences of that and provide that, at the end of the day, a bundle of rights is still available in a more limited context than at present, remembering that the measure applies only to this situation.

I hope that I can persuade the Attorney-General to change his mind and support this amendment on the basis of those important issues of principle. It will not affect the progress of the inquiry because there will be no more challenges. At least it will be a signal to the Auditor-General, not that he needs a signal. However, it is important to have it there because we are taking away this large bundle of rights. It is important to signal that, at the end of the day, someone who believes genuinely that there is an injustice—and the court will uphold only genuine cases—will at least have the opportunity to test it before the civil courts and give it the status which it requires in the light of the status of the report of the Auditor-General. That is what I am concerned about and I hope that the Attorney-General can be persuaded that that is a fair and reasonable course to follow in the light of the provisions in clause 4 (3).

The Hon. I. GILFILLAN: I continue my opposition to the amendment. In my opinion the directors in their action up until now have forfeited sympathy for their position. Their legal counsel has given me a document attacking this Bill with statements such as: 'The Auditor-General's track record on procedural fairness has not been good. In other words this Bill is designed to cover up a bungle made by the Government.' It is a very aggressive approach being taken—

The Hon. C.J. Sumner: What are they saying? Read it out. I haven't heard this one. They haven't sent it to me yet.

The Hon. I. GILFILLAN: It is a document that was sent to me. There is no confidentially about it. It is marked 'Urgent'. It is a summary of points showing why the Bill must be opposed or amended, and I have had some discussions about it. I have no subjective sympathy for the position of the directors, but that should not be justification for our casting aside a sense of fair play.

Let us look at the results of this. The Auditor-General produces a report. If the directors think that the findings of that report are not to their liking and they want to challenge the recommendations, statements, observations and findings made by the Auditor-General, I doubt whether that can be done by legal process, which action would open up an adversarial argument and a further analysis of the material that the Auditor-General had to assess to come to the findings which he made.

However, the procedural challenges which they have been taking up until now are those which, I understand,

they could take to the court at the conclusion of the finding and say, 'The Auditor-General did not follow procedural processes lining up with natural justice.' If they win that case, what is the consequence? Either they say rather contentedly, 'The process was not compliant with natural justice and therefore there is a bad mark for the Auditor-General,' or it totally discredits the Auditor-General's report. Now where are we?

I see no point in leaving this door open for legal challenge to the Auditor-General either in process or in finding. If there is dispute with the findings or facts they can be presented and, as a parliament, we should take those into account when the Auditor-General's report is being considered in this place. I am not persuaded that we will do anything more than just expose the Auditor-General's report (when it is eventually tabled) to another series of counterproductive and obstructive legal actions.

The Committee divided on the amendment:

Ayes (10)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. GRIFFIN (teller), J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

Noes (11)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Title passed.

Bill read a third time and passed.

STAMP DUTIES (PENALTIES, REASSESSMENTS AND SECURITIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 November. Page 885.)

The Hon. L.H. DAVIS: This is a major piece of legislation. There is no denying that stamp duty legislation, particularly of the nature that we are debating in this Bill, is very complex indeed. But there can be no excuse for lack of consultation, and there can be no excuse for the fiasco which has been associated with this piece of legislation. It seems that the Bannon Government never learns, because it was that Government which initially introduced this legislation.

In 1987 the Bannon Government was introducing significant changes to stamp duties legislation without even talking to the Law Society, the Taxation Institute, the Institute of Chartered Accountants or the Australian Society of Accountants.

On this occasion we see a Government yet again that has failed to do its homework, because if it had done its homework it would have recognised straightaway that the legislation introduced was like a colander: full of holes, inappropriate, ill-conceived and diabolical in its operation.

Let me put in perspective the role of stamp duty in South Australia. Stamp duty this year is estimated to reap the Government some $356.7 million: that is up 11.5 per cent from the $320 million collected in 1991-92. The financial statement for this financial year claims that the bulk of this increase will come—

The Hon. R.J. RITSON: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

The Hon. L.H. DAVIS: The financial statement for 1992-93 claims that a large part of this increase will come from a single transaction, which will reap $10 million, and that stamp duty receipts, excluding this and other one-off measures, will not increase at all. Nevertheless, it is unsatisfactory to see such a large increase in stamp duty in a year of little economic growth and a very small increase in inflation.

It is important to recognise that stamp duty accounts for 22.8 per cent of all State taxation. It is the second largest revenue measure for the Government. Pay-roll tax, which raises 31.8 per cent of all Government revenue, is the largest.

It is interesting to reflect on the fact that taxation measures, once introduced, invariably become permanent. Stamp duty was introduced for the first time in the reign of William and Mary of Orange, who came across from Holland bringing with them the notion of stamp duty. It was introduced allegedly to help raise revenue for war and with the promise, I suspect, that it would not continue. However, it has, of course, remained for over three centuries, and it is particularly common to countries in the British Commonwealth.

Stamp duty originally was a document tax on instruments such as cheques, and the duty, as is still the case today, is paid before the instrument is used. For a long time stamp duty was primarily a document tax. It is still very much in vogue in that area and there are five main areas where stamp duty is used to tax a document: conveyance duty, mortgage duty, cheques, leases and the registration of a motor vehicle. In addition to that, it has been extended in recent times also to be a transaction tax on rental agreements, insurance, and security transactions involving the Stock Exchange. In New South Wales a recent proposal to abolish stamp duty on share transactions in that State, which may well force all other States to follow suit. In South Australia the main revenue raisers from stamp duty are indeed conveyance duty, the registration of motor vehicles and stamp duty relating to insurance transactions.

In respect of this measure, it is appropriate to reflect on the sordid history associated with stamp duty legislation in South Australia this year. In June 1992, Premier Bannon announced that he was going to have a package of tax increases, and he used those announcements in June to try to break down the public reaction to the inevitable increases in taxes and charges in the State budget to cover the massive losses flowing from the gaping wound of the State Bank of South Australia.

At that time the premier announced that he was going to increase from 20 cents to $10 the stamp duty rate charged on agreements, and legislation to put this tax increase in place was introduced in Parliament in August this year, assented to late in August and came into force on 1 September.

The impact of that legislation was dramatic, and members will no doubt recall exactly what happened. The telephones of members of Parliament ran hot when banks,

building societies and credit unions—all the financial institutions—together with rental car companies, real estate companies and consumers, suddenly discovered that they were paying stamp duty of $10 on agreements which previously had not attracted any more than 20 cents. In fact, the Minister later admitted that for most of those agreements stamp duty had never been paid.

The fact was that the institutions concerned had not received a warning to prepare for these massive increases in charges. The first that many of them knew about it was a fax from the Commissioner on the morning of 1 September 1992. What a way to begin spring! That was the Bannon Government in action: thinking of new ways to surprise the unsuspecting public. It found another one there, that is for sure.

The fact is that when this matter was debated in the House under questioning from the Liberal Party we were assured that this measure would raise no more than $2.5 million to $3 million in 1992-93. We were told it was legislation of limited application, of a minor nature, and that it would raise only $3.3 million in a full year.

But, as a result of the application of this measure financial institutions, consumers and rental businesses realised to their horror that this would cost them in many cases tens of thousands of dollars. There was great uncertainty as to how this would operate; for example, in the field of education, the Flinders University, which provided loans for some 1 200 or 1 300 students, small loans from $200 or $300 upwards, may well be paying that duty, and it could cost that university many thousands of dollars. That was the practical application of the legislation.

The fiasco was recognised by the Government. It had no alternative but to recognise the flurry of protests which came flooding into the Treasurer's office. The Government investigated, through the Commissioner, and found that in fact the 20c duty, which it claimed had not been increased for decades, generally was not paid anyway and that quite clearly the $10 duty on agreements in many cases was impractical and inequitable. So, the Government admitted its gross error and introduced legislation which we are now debating. In fact, we see that a provision is inserted into the Stamp Duties Act to provide for the ability to exempt by way of regulation any class of agreements should that be necessary to do so in the future.

This legislation, as it comes into the Council, is much more satisfactory, and I must say has been carefully researched with the assistance of a broad discussion with the various sectors of industry that could be affected by its operation. I have had the benefit of a briefing from the Commissioner, and I must say I welcome that briefing. It is always helpful in understanding complex legislation. The Liberal Party, in debating this measure tonight, accepts the general thrust of the legislation, recognises that it is largely designed to overcome anti-avoidance techniques that have been developed in recent years, ironically, in particular by State Government instrumentalities—and I will talk about that in a minute—and recognises that the Stamp Duties (Penalties, Reassessments and Securities) Amendment Bill, as we debate it, is a necessary piece of legislation. We have only a few amendments which we will be putting on file.

The legislation is designed, as I have said, to crack down on avoidance measures. It will in particular ensure that duty is paid on a range of transactions involving mortgages, mortgage-backed guarantee schemes, bill facilities supported by mortgages, the depositing of documents of title and put options which are supported by mortgages. These measures to tighten up stamp duty legislation have been made necessary by a growing tendency to avoid stamp duty by a range of devices.

It is ironic and also symbolic that this legislation has been largely driven by the fact that it was the infamous No. 1 Anzac Highway property transaction involving the Electricity Trust of South Australia and Mr Vin Dean's company which sparked Government interest in avoidance of stamp duty. While the Electricity Trust was not involved, it was the investigation by the Economic and Finance Committee in another place which uncovered the fact that some $70 000 had not been paid on a mortgage transaction on 1 Anzac Highway but money rather had been advanced under a deed and not a mortgage, so the stamp duty was avoided. That is one of the areas of non-payment which has been overcome in this legislation. Deposits of title to protect unregistered mortgages were based, as the second reading explains, on the principle that stamp duty is payable according to the nature of the instrument at the time of its execution.

So, by advancing money under a deed and not a mortgage, it was possible to avoid stamp duty. Another area of non-payment has been the use of secured bill facilities. A bill of exchange is a very old instrument; it has been used for centuries, particularly in shipping transactions. But bills of exchange have come back into vogue to be used widely in commercial circles, generally with the backing of security to provide flexible finance, with the ability to roll the bills on a 30, 60, 90 or 180 day rollover arrangement. Unlike most other States, South Australians, entering into arrangements with bills of exchange, were not required to pay stamp duty. So, I have no hesitation in recognising that we should be brought into line with other States. Obviously, it is inequitable that people entering into a traditional mortgage arrangement using property as a security for a mortgage loan have to pay stamp duty on the mortgage, but if a bill of exchange had been used that stamp duty could be avoided.

Therefore, there is no retrospectivity in this provision, but it means that, in future, people entering into a bill facility arrangement will be required to pay stamp duty at the time that arrangement is entered into. They will not be required to pay stamp duty on each roll-over but would be required to pay additional stamp duty if the amount they had borrowed under the bill facility increased in any way.

There is another area of non-payment known as a put option scheme, which is also recognised and counted in the legislation, and a third party guarantee scheme, where a guarantee is placed between the mortgage over the property and the loan security to which it is related.

So, a person can arrange for a company controlled by that person to borrow funds from a lender who required the loan to be secured by mortgage, which is a device which has become fashionable in avoiding stamp duty. Obviously, the moneys involved can be very large sums.

In the case of 1 Anzac Highway, the amount of duty avoided was $70 000.

I understand that, by introducing these anti-avoidance provisions, $1.4 million will be raised in 1992-93 for bills of exchange and $2.3 million in the full year 1993-94 and, in. countering those other conveyancing avoidance measures, an additional $1.1 million will be collected in the balance of this year, 1992-93, and $2 million in the full year 1993-94.

I found the Commissioner most helpful in providing this information and, as I have said on more than one occasion, it is important to have the economic impact of important financial measures in debating this legislation. That is the nub of the anti-avoidance provisions that have been introduced in this legislation.

Although I welcome the briefing by the Commissioner and although I recognise that there were an enormous number of amendments to this legislation in another place, I am underwhelmed and not at all gruntled by the fact that this legislation passed another place last Tuesday, 17 November, but that it was not until this Monday, 23 November, that a clean copy of the Bill was available.

I find that totally unacceptable. I draw it to your attention, Mr President, as much as to the attention of the Government, because it interrupts the orderly working of this Chamber. I do not blame the Government for this but, obviously, it is a problem with State Print. It may be a problem with another place, but it simply is not good enough for an Opposition that takes Bills of a major nature such as this very seriously and wishes to have a reaction from the business community to the legislation. It is quite clearly unsatisfactory for me to provide to business leaders the original copy from another place together with a rash of amendments in a very random fashion and to say, 'There you are: make of it what you can. Good luck.' It is very unsatisfactory.

I do not say that it is the fault of the Government, but it is a problem and, if State Print cannot cope with what I think is a pretty basic requirement in the parliamentary system, perhaps we should be looking at whether the private sector can do better. It is very unprofessional to see such disorganisation, particularly—

The Hon. Diana Laidlaw interjecting:

The Hon. L.H. DAVIS: It could be the change of Minister. Is it the Minister of public structures who is in charge of that, statutes and things, the Hon. Mr Klunder? Is it his role?

The Hon. Anne Levy: State Services?

The Hon. L.H. DAVIS: Is that the Hon. Mr Klunder?

The Hon. Anne Levy: No.

The Hon. L.H. DAVIS: I thought it could have been, because everything else he touches folds.

The Hon. Anne Levy: It is the Hon. Mr Rann.

The Hon. Carolyn Pickles: It might not be State Print at all; it might be the other place.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: Anyway, I have drawn that to your attention, Mr President, and I am sure that you will be interested in those remarks.

The Hon. T.G. Roberts: The greenhouse effect.

The Hon. L.H. DAVIS: I do not know what that has to do with it.

The Hon. T.G. Roberts: It is about as close as any of the suggestions you threw about.

Members interjecting:

The Hon. L.H. DAVIS: I am feeling a bit weak tonight, because I was watching the Whitlam documentary and, after 100 minutes of that, I was quite exhausted.

The Hon. M.J. Elliott: Is this the man who said he didn't have enough time to look at this Bill?

The PRESIDENT: Order! The Hon. Mr Davis.

The Hon. L.H. DAVIS: The Bill addresses the current weaknesses in rental legislation. The outcome of the 1992 Supreme Court decision of Esanda Finance Corporation and Esanda Wholesale Pty Ltd jeopardised stamp duty from rental businesses. As a result, under clause 13 amendments have been made to correct this measure and to ensure that the revenue from rental duty in 1992-93 of some $12.4 million is protected. It is important to recognise that the Government is seeking in almost all these provisions to protect its revenue base rather than to enhance it, although there is an increase in conveyancing stamp duties, which I will discuss later. What effectively occurred in the Esanda case was that Esanda used a device to avoid stamp duty on a floor plan arrangement, and a dealer paid Esanda Wholesale a guarantee fee to guarantee the performance of his obligation to Esanda Finance and so escape the provisions of the Stamp Duties Act.

The Australian Finance Conference has obviously been consulted on this. I am assured that the provisions of clause 13 *(d)* do cover any unintended consequences that flow from these amendments, namely, that any business which should not fall within the ambit of the definition of 'rental business' can be exempted by regulation. The Bill not only corrects those anti avoidance measures in mortgage arrangement bill facilities, which I discussed earlier, but also it classifies the problem with agreements which, as I mentioned, have been honoured in the breach rather than in the observance.

Had the original legislation that was introduced been properly policed it could have seen, for example, major retailers paying as much as $300 000 a year. So the Retail Traders Association, Motor Trade Association, Chamber of Commerce, Australian Finance Conference, Australian Bankers Association—all of these groups—have made representation to the Government, and so now in South Australia agreements are going to be exempted from duty in almost all cases. That will bring South Australia, I understand, into line with all other States. As I mentioned earlier, of course the Government has recognised that in virtually all these areas the 20c duty was not being paid, anyway.

Clause 10 provides for reassessment of duty, and where the Commissioner is of the opinion that a mistake has occurred in the assessment of duty under this Act he may reassess duty payable under the Act. I have a question for the Committee stage, namely, that if an instrument has been properly stamped pursuant to the interpretation at the time of stamping and a subsequent ruling comes in saying that that was not the correct interpretation but that we now prefer another interpretation, therefore the transaction that took place 12 months ago is going to be reassessed for stamp duty, does this legislation cover that point? I suspect that may

well require an amendment. I will be interested if the Government can provide an answer on that point.

The Government has proposed in clause 10 that a reassessment of duty under this section must be made within five years after the date of the original assessment. I think the argument is that would bring us into line with what the procedure is in income tax legislation. The Opposition is not convinced that the period should be as long as five years and we will be moving an amendment to make it less than that.

In clause 10, proposed subsection (5) provides:

If duty is decreased as a result of a reassessment, the Commissioner must refund any amount of overpaid duty.

But, of course, there is no provision in this amending legislation to provide that if someone has paid too much duty they are entitled to interest. It seems grossly unfair to me that penalty duty can be applied if amounts have been underpaid in certain circumstances but that if amounts have been overpaid there is no ability to have interest added on the amount that has been overpaid. The principal Act already provides for interest to be paid on objection and appeal. There is that existing power and the Liberal Party proposes to amend clause 10, in line with that existing legislation.

There is a penalty for not duly stamping (provided for in clause 8) and, for example, if a business is sold and then the stock is valued at a later date and maybe in valuing the stock at a later date stamp duty is avoided, clause 8 can ensure that payment of stamp duty will be made.

There are numerous provisions in the Act which recognise that we have changed from the Companies (South Australia) Code to Corporations Law. Also, the penalty provisions and duty provisions are made consistent throughout the Act. Clauses 19 through to 24 relate to consistency of penalty and recoveries, and the Opposition accepts the necessity for those.

Another question that we have relates to the transactions on mortgages, which are covered in a number of clauses. We are talking about clauses 30 onwards relating to the anti avoidance provisions. One question that I would like answered in Committee concerns the fact that quite often banks use an all money clause guarantee for credit on a security document; in other words, if people are borrowing a large amount on a bill facility or mortgage, in the instrument as a whole they may well include credit cards and overdrafts, which are treated as unsecured borrowing, but in the certification the bank may well be in fact including these unsecured borrowings, such as credit cards and overdrafts. For certification purposes there may well be a technical breach. So that is obviously something to be considered in Committee.

The penultimate point that I want to make is that the conveyancing scales have been increased. These are revenue raising measures to counter some of the losses that flow from the provisions of the Bill. The second reading explanation claims that the increase in the top rate of duty at 4.5 per cent for properties with a value in excess of $1 million will raise additional revenue of about $2 million in a full year. Looking at the scales, one can see that in South Australia for properties up to $100 000 the stamp duty will be the highest in Australia. The proposed tax will be $2 830—much higher than Queensland, at $2 350. For other properties of about $10 million—we are talking about commercial properties—South Australia ranks third behind Victoria and New South Wales. The stamp duty here on a property of $10 million under the new scale with the proposed increase will be $443 830, which is $70 000 more than in Queensland, $46 000 more than in Tasmania and $23 000 more than in Western Australia. It is hardly an encouragement for people to do business in South Australia.

Finally, transitional provisions ensure that the provisions of the Bill apply to events occurring only after the legislation comes into operation.

As I have said, this Bill is in a tidier form than it was when matters were first debated. I am pleased that the Government has consulted widely. Generally speaking, this legislation is acceptable to the Opposition, and it seems to have been fairly well supported by the business community at large. Nevertheless, there are some amendments which will be moved in Committee. I support the second reading.

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

SUPERANNUATION (BENEFIT SCHEME) BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

SUPERANNUATION (SCHEME REVISION) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

AMBULANCE SERVICES BILL

The House of Assembly intimated that it had agreed to amendment No. 1, had disagreed to amendments Nos 4 and 5, and had disagreed to amendments Nos 2 and 3 to which it had made alternative amendments.

SUPPORTED RESIDENTIAL FACILITIES BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments and made a consequential amendment.

ADJOURNMENT

At 12.10 a.m. the Council adjourned until Thursday 26 November at 11 a.m.