LEGISLATIVE COUNCIL

Wednesday 10 March 1993

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

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA brought up the twenty-fourth report of the Legislative Review Committee.

STATE BANK

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a ministerial statement about the future of the State Bank Royal Commission.

Leave granted.

The Hon. C.J. SUMNER: The Government has now received a formal request from the Royal Commissioner, Hon. S.J. Jacobs QC, to be relieved of his commission now that the report on terms of reference 1, 2 and 3 have been completed and tabled in Parliament. Mr Jacobs has outlined his reasons for wanting to be relieved of his duties in a letter to me, which I now seek leave to table.

Leave granted.

The Hon. C.J. SUMNER: The Government accepts his reasons and has agreed that he should relinquish his commission from this Friday 12 March. This now leaves the question of how to deal with term of reference 4 in the future. Term of reference 4 states:

You are required, subject to clause 8, to receive and consider any report by the Auditor-General made pursuant to section 25 of the Act and in the light of such report and such further material as you consider it appropriate to receive (including such material as you have received in the course of your inquiry from time to time) in relation to the matters the subject of the report of the Auditor-General:

(a) You are to inquire into and report upon whether any matter should be referred to an appropriate authority with a view to further investigation or the institution of civil or criminal proceedings; and

(b) You may, in your discretion, report further on any additional matters which you consider desirable to report upon touching the matters inquired into by you pursuant to clause 3 of these terms of reference.

As previously indicated, the Government is determined to ensure that term of reference 4 is completed following receipt of the Auditor-General's report. Discussions have been held with the Royal Commissioner and counsel assisting the commission, Mr John Mansfield QC, and it has been agreed that at an appropriate time Mr Mansfield will be granted a commission to complete term of reference 4. The exact timing of this will depend on when the Auditor-General's report is completed.

On this point, it should be noted that, at the request of the Auditor-General, his reporting date has been extended once again to 30 June 1993. This is the fifth extension granted. The Government expects the Auditor-General to report on 30 June and I have written to him indicating this is the Government's firm expectation. I seek leave to table a copy of that letter.

Leave granted.

The Hon. C.J. SUMNER: Nevertheless, there are some indications that the Auditor-General may be subject to further delays and that even this reporting date will not be met. This would be totally unacceptable to the Government and I suspect the Parliament and the public as well.

The Auditor-General has been delayed by legal proceedings and is now following certain procedures as laid down by the Supreme Court in its ruling of last year. While the Government has not seen the report, it is our understanding that it will be very detailed. I would further add that, if the Government forms the view that action by any of the parties subject to investigation further delays the report past 30 June, the Government will consider further action to get the report released to the public.

I mention these matters because Mr Mansfield's availability will depend upon the reporting date for the Auditor-General being met. Mr Mansfield will be available to begin his commission immediately on 30 June 1993.

In the event of Mr Mansfield's being unable to accept the appointment because of further delays in the Auditor-General's report, and his consequent unavailability because of other commitments, Mr Jacobs has indicated that, although he would prefer not to, he would accept the commission to complete term of reference 4. It is expected that, whoever becomes the commissioner for this final term of reference, it should be completed within three months of the receipt of the Auditor-General's report. In the meantime, Mr Mansfield has agreed to oversee the administrative affairs of the royal commission while it is in this period of recess, and to promptly set in train procedures to deal with the Auditor-General's first report, which deals with the State Bank, when it is completed in April.

QUESTION TIME

STATE BANK

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

Leave granted.

The Hon. K.T. GRIFFIN: Yesterday the Attorney-General said that he and the Government held the view that the relevant Minister ought to have the power to give directions to the State Bank, in other words, to exercise ministerial control and direction. This, as has already been pointed out yesterday, is in direct conflict with the views of the State Bank royal commission. At page 217 of the second report of the royal commission, the Royal Commissioner says:

Notwithstanding the changes to the Act that are suggested in the next chapter of this report, it is still fair to say that the Act itself was not a contributing cause or potent factor in the fate that befell the bank. The unsatisfactory relationship which existed between the Government and the bank and their respective failure adequately to address the clear warning signs

were substantially due to the failure of both parties properly to understand and use the existing provision of the Act.

The royal commission clearly is of the view that the Government and the former Treasurer failed to use the powers which they had under the existing Act. The Royal Commissioner also says at page 216, in relation to wide ranging changes which some parties had proposed to the royal commission should be made to the Act:

> ...the commission is unable to conclude that past experience and losses alone call for such wide ranging powers of control as are now suggested, and the existing arrangements between the bank and the Government, as referred to above, suggest that such far reaching controls are not necessary.

One can understand that the Government and the Attorney-General want to promote the view that there was a problem with the State Bank Act which prevented the former Treasurer and the Government from controlling the bank's excesses, but that, I would suggest, is a clever smokescreen and denies the findings of the Royal Commissioner. I draw attention to SGIC, for example, which suffered significant losses and where the Minister did have power to give directions; to the West Beach Trust, where there is ministerial control, and that is a mess, having lost over $10 million in relation to one series of transactions; and to State Clothing Corporation which, again, is subject to ministerial control and direction and is always losing money; and there are a number of others.

So, in the context of that, my question to the Attorney-General is: if the Treasurer had power to exercise control over the bank, as both the Government and the Attorney-General say he should, and in the light of the attitude of the former Treasurer and the Government in relation to the State Bank, which is described in the Royal Commissioner's reports, and in the light of the experience that we have had with other statutory corporation disasters where statutory corporations are, in fact, subject to ministerial control and direction, will the Attorney-General indicate how the problems of the State Bank would have been any different from what they are now?

The Hon. C.J. SUMNER: That comes into the realm of a hypothetical question, I think, but I repeat what I said yesterday that there is no doubt in my mind that if, when you establish a statutory corporation, you set out clearly the guidelines as to who is responsible, that then makes it easier for that responsibility to be accepted and for the powers under the Act to be exercised. I do not think that can be denied by anyone who looks at the situation objectively. Undoubtedly, the Royal Commissioner came to the conclusion that there were certain powers that could have been used under the existing State Bank Act, and that they were not used.

In that sense he is critical of the former Treasurer. I am not saying that there were not some powers in the State Bank Act that could have been used in these circumstances. What I am saying is that there is a problem, not just with the State Bank but with other statutory authorities, where this relationship is not clearly spelt out. Indeed, there are some authorities where there is a power of direction, but even there there is still this culture within statutory authorities that somehow or other they are different from the Government, they are separate, they operate commercially, they do not have to pursue the charters established by Government and that—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: That attitude develops if you do not have very clear lines of authority established, and I think that, if the Government is going to have to take the ultimate accountability for the operations of its statutory authorities, whether or not they operate in the commercial arena, it is very important that the guidelines for that responsibility be laid down quite clearly at the start and that the Minister, the Government, has, in the final analysis, the ultimate authority to direct.

Of course, in the day to day running that power to direct would not normally be exercised, but if it is there it is at least a fail-safe mechanism for the Government to ensure that statutory authorities can be brought to book if they are getting into difficulties. If the Government or the Minister has to accept that responsibility it follows, naturally, that the legislation should give the Minister the ultimate power to control. The Public Corporations Bill is before us at the moment and the power is clearly set out.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: That power is clearly set out in the Public Corporations Bill with an important qualification, namely, that, if the Minister does give such a direction, it should be given openly and it should be reported upon in the annual report so that the line of accountability in the audit trail, if you like, is fully spelt out.

There is no doubt in my mind that there were ambiguities in the relationship between the Minister and the bank in the State Bank Act as it was conceived. It is very interesting for people in the Opposition now to come and criticise the Government when, of course, they were very strong at the time that the State Bank Act was brought in in 1984 about there being this commercial independence.

There is no doubt that there was, at that time, a culture of the bank being commercially independent and at arms length from the Government. That cannot be denied, and I think that for honourable members opposite to try to deny it now is really an attempt to justify their own position. And that is fair enough: they are the Opposition, and they have a line to run, so they run it. But, there is no doubt, as I said, in my mind, about this. You only have to be in public administration for a short period of time. The Hon. Mr Griffin was there and might have had some inkling of what can happen in these circumstances. When you get a crunch point, when you get a problem, it really is extraordinarily difficult to rely on commonsense, as the Commissioner thinks you can do in these sorts of circumstances. You do have to have the powers. You do have to have the accountability.

If the Public Corporations Bill is passed and makes it quite clear that across the board these are rules, a different culture will be established, and people who come to be managing directors of these corporations and those who go on the boards of these corporations will know right from the start what the rules are, and the sorts of ambiguities that existed in the State Bank Act and the problems that emanated from that will not recur.

I am not resiling from the fact that more could have been done, quite clearly. However, I just repeat what we said yesterday, namely that, at least from my point of view, I disagree with the Royal Commissioner's conclusions on this point, in so far as he says that we do not need to have an ultimate power for ministerial direction.

The Hon. K.T. GRIFFIN: Mr President, I ask a supplementary question. Does the Attorney-General then acknowledge that it is all very well to have the power to give a direction, but the power is only so effective as the Minister who exercises the power, and depends upon the diligence and competence of the Minister who has the responsibility for exercising that power, and in the context of the State Bank nothing would have changed in the light of the evidence which has come to light even if the Minister had the power of ministerial direction?

The Hon. C.J. SUMNER: I do not concede that. I think the situation could have been different. Certainly one would hope that it would have been different had there been a different culture and different policy position laid out at the time that the two banks were brought together and had it been spelt out in the Act that there was ministerial power to direct the bank. I think the situation would have been clearer. I think there would have been a capacity for the Government to move more quickly, and one only has to read these reports to see how precious and sensitive the bank was, and certainly Mr Marcus Clark was, about Government interference. He did not want a Treasury representative on the board, for instance, and resisted it time and time—

The Hon. K.T. Griffin: You reappointed him.

The Hon. C.J. SUMNER: The Government did not reappoint him. His appointment as Managing Director was recommended by the implementation committee when the two banks came together, and that was advised to Mr Bannon. Mr Bannon at the time was told that Mr Marcus Clark would only accept the position if he also took a position on the board and Mr Bannon, then Premier and Treasurer, agreed to him going on the board.

The Hon. K.T. Griffin: For three years.

The Hon. C.J. SUMNER: Sure, for the initial appointment. And then his appointment was recommended by the board for continuation. Obviously in retrospect that was a mistake. I have said before, yesterday and last year, when this matter was debated, that there is no doubt that the most fateful decision in this whole saga and disaster was the appointment of Mr Marcus Clark as the Managing Director of the new bank and, again, I do not think that can be gainsayed in this Council or anywhere else in the public arena. One has only to read the first and second reports and what the Royal Commissioner says to find out that the biggest mistake was the appointment of Mr Marcus Clark despite the fact that he developed some sort of quasi hero status in this community while he was here.

He was far from it as it turned out, and really I do not think was competent to handle the affairs of the bank. However, he was appointed by the implementation committee. I went through the people who were involved in recommending his appointment. There was Professor Keith Hancock, who was a Vice Chancellor of Flinders University, Mr Maurice O'Loughlin, now Justice O'Loughlin, and Mr Adrian McEwin, a well-known Adelaide accountant and prominent Liberal, I understand. They all interviewed him and recommended his appointment.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: And, of course, he was put up by a group of head-hunters for consideration by the Government. So, I think those factors need to be taken into account. The other thing on this point is that there is no doubt that there was a lot of sensitivity about Government relations with the State Bank in the 1960s and 1970s, and at various stages when there were suggestions that the banks should be merged there were runs on the bank because accusations were made in the community that this would then be used by the Government to do a whole lot of terrible things to the South Australian community.

So, that is why the whole tenor of the debate in this Parliament, when the banks were brought together in 1984, was towards ensuring the so-called commercial independence of the bank. That is why a power of direction was not put in the Act, although there is no doubt it should have been there, given that the banks were coming together, operating in a deregulated environment and with a somewhat different charter to what the old State Bank and the old Savings Bank of South Australia had. So, more could have been done; that is acknowledged. However, I am still firmly of the view that having those lines of accountability specifically spelt out assists in dealing with situations like this.

EXAMINATIONS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question on the subject of the SSABSA examinations timetable.

Leave granted.

The Hon. R.I. LUCAS: Last week I was contacted by a school expressing alarm at the public examinations timetable for 1993 released by the Senior Secondary Assessment Board of South Australia (SSABSA) last week. Year 12 students usually do not have written public examinations in the first week of November so that that week can be used as 'swot vac' for students to prepare for their public examinations.

However, this year SSABSA has released its timetable and brought forward all language subjects examinations into the first week of November, so that the week of 'swot vac' is lost to those students. Language teachers who are opposing this change say that SSABSA made this change without any consultation with the schools, teachers or students who are affected by the decision. Teachers are angry at the change and state that Language Other Than English students will be disadvantaged by the change. They believe this will further discourage year 12 students from studying Language Other Than English subjects at schools. They note that over the past few years the number of year 12 students studying a Language Other Than English subject at year 12 has declined from about 16 per cent of all year 12 students to

now only 10 per cent. That ought to be contrasted with the 25 per cent goal that the Federal Labor Minister has outlined in the national language policy.

At a time when year 12 students are already under great stress to do well at public examinations, there is great concern at this move by SSABSA to cut out one week of 'swot vac' in this way. Will the Minister ask SSABSA to review this decision to see whether the concerns of teachers and students can be allayed?

The Hon. ANNE LEVY: I will refer the question 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 have received a copy of the minutes of a meeting of the Happy Valley council's Community Development Committee held on

26 January which outlines the council's disillusionment with the system called Hub Link, a community bus feeder service to the STA's transit link services from Aberfoyle Huh to the city. Hub Link was initiated as a joint STA-council pilot project in March last year following release of the STA's corporate plan 1992-95. The plan highlighted that, in response to a Government decision to cut the STA's operating subsidy by $24 million by June 1994, the STA would concentrate on major high volume services, leaving local councils and others to plug the holes in services that the STA no longer wanted to operate.

The council minutes reveal that Happy Valley council's initial 1992-93 budget for Hub Link estimated a total expenditure of $37 800, with income from fares at $25 000, leaving a balance of $12 800 to be funded by ratepayers. But, as costs blew out, the council revised its budget in September 1992, estimating a total expenditure of $40 000 (up $3 000), with fares as income amounting to $5 000 (down $20 000), leaving a balance of $35 800 (up $23 000) to be funded by ratepayers.

The minutes also reveal that the average subsidy provided by the council for each passenger carried during its first five month period of operation was $3.40 over and above the 50c fare collected for each journey. This $3.40 subsidy is even higher than the $2.48 subsidy that it costs taxpayers today for every passenger journey on STA buses. My questions are as follows:

1. As the Happy Valley council has confirmed that it will reduce the pilot Hub link community bus service from 26 March, and will probably abandon the service altogether from 30 June if it does not receive an undertaking from the Government to share future costs, has the Minister agreed that the STA should provide the Happy Valley council with a 50-50 subsidy to continue the Hub link service beyond 30 June?

2. As councils generally in the metropolitan area—in fact, apart from Happy Valley no council that was involved in the community bus feeder service pilot project has endorsed it—have told me that they do not wish to participate in the operation of community bus feeder services under the current terms and conditions offered by the STA, how does the Minister propose that the STA will meet its stated objective to enhance Adelaide's integrated public transport network; and how does the Minister propose to meet the travel needs of existing STA customers when the STA progressively withdraws from all but high volume routes?

The Hon. BARBARA WIESE: It is only a week or so since the Happy Valley council wrote to me indicating that the service that it commenced some time ago was not meeting its expectations. The council, when informing me of the circumstances, indicated that, whilst it agreed with the philosophy behind the establishment of this service and was committed to assisting in providing a community transport service to people in its local community, the service, as it stands, was not working to its expectations and it would be very difficult for it to continue to provide the resources required to keep the service running beyond 30 June this year.

That is of considerable concern to me, because I share the view that it is desirable for local councils and other community organisations, and possibly private companies, to be involved in sharing the responsibility to provide an efficient public transport system throughout the metropolitan area. This being one of the pilot projects that is under way, it is receiving considerable scrutiny by other local councils and community organisations. It is certainly of concern to me that we should do whatever is possible to see that that type of service is successful.

With that in mind some discussions will shortly be initiated between officers of the State Transport Authority and of the Office of Transport Policy and Planning and members of the council staff about the service that has been in operation in the Happy Valley council area with a view to investigating whether or not there are other ways in which such a service could be delivered that would provide a standard of service that is desirable and affordable for those who are involved in it. I hope that the talks that will shortly take place, if they have not already begun, will come up with some new ideas for that service.

As some members would be aware there are other trial schemes in operation at the moment, including such schemes as the taxi transit service which is operating in the Hallett Cove area and which is providing a feeder service to the main transit link services provided by the State Transport Authority, and that certainly has been a successful project thus far. But, of course, it needs some more time before we can be sure whether or not that is the sort of thing that is likely to be successful in that area and in other parts of the metropolitan area. Once that has been in operation for some time it may also be possible for us to review that critically with a view to perhaps providing a similar type of service but at a lower cost as well. I certainly would hope that that might be one of the outcomes of the transit taxi trial taking place.

The Hon. Diana Laidlaw interjecting:

The Hon. BARBARA WIESE: That is about half of the cost of providing a bus service. So there is still a very significant saving.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: There is a very significant saving to Government with a subsidy that is

being provided in that way. As I say, even though it is half the price of providing a bus, that is still quite a considerable amount of money for the State Transport Authority to provide by way of subsidy. As I indicated, if it is at all possible, through trials like this one, which is successful and cheaper than providing a Government funded conventional service, to provide the same sort of service at even less cost, then that would certainly be my objective and that is what I hope will come from trials such as the taxi transit service, and the other cooperative arrangements: the brokerage service, for example, is operating farther south, and is providing transport services for people currently not covered by State Transport Authority services.

So that through these trials we discover new information, which will hopefully, down the track, enable us to provide the sort of services we are looking for for the public at the best possible price to Governments, councils or whoever might end up being involved with them. I believe that the work that is currently being done in this area is innovative and positive and over the next few years should deliver some effective services to the public at a much reduced cost to the public.

WEST BEACH TRUST

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister of Housing, Urban Development and Local Government Relations a question about the West Beach Trust.

Leave granted.

The Hon. G. WEATHERILL: A question was asked by the Hon. Mr Griffin of the Attorney-General on the State Bank, and during his explanation of that question he mentioned the figure $10 million lost on the West Beach Trust. Can the Minister confirm or deny that figure?

The Hon. ANNE LEVY: I am representing the Minister of Housing, Urban Development and Local Government Relations and I will certainly refer the question to him for a detailed response. However, I can certainly indicate to the Council that the Hon. Mr Griffin has made a mistake; whether intentional or otherwise I leave for him to explain.

West Beach Trust was established over 30 years ago by the Playford Government. It was given a capital injection by the Government of the day, which it repaid entirely within six years of its existence. Since that time West Beach Trust has not called on a cent of taxpayers' money. It has built the assets of the extensive camping ground, holiday villas and very extensive sports facilities. It has done so entirely from its own profits and resources and as far as I am aware has not cost the taxpayer of this State one cent. I think the Hon. Mr Griffin is confusing the West Beach Trust with the private organisations Tribond and Zhen Yun, which were private companies.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: They were not West Beach Trust.

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. ANNE LEVY: They do not like hearing the truth, Mr President.

The PRESIDENT: Order! The Council will come to order. The honourable Minister.

The Hon. ANNE LEVY: A Government guarantee was provided to a private company, which was not able to meet its financial obligations and consequently the Government guarantee had to be called on. It is wrong and quite unfair to say that it was the West Beach Trust which lost $10 million. West Beach Trust has not cost the taxpayers of this State one cent.

BETTING

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Recreation and Sport a question about telephone betting.

Leave granted.

The Hon. M.J. ELLIOTT: Last week the Government introduced amendments to the Racing Act in the House of Assembly. Among the measures in the amending Bill is the provision for allowing on-course bookmakers in South Australia to accept bets over the telephone. I have been contacted by a number of people from within the racing industry who have grave concerns about this move. Should it proceed we will be the only State in Australia to allow bookmakers to have telephones at racecourses. The fears expressed to me are that it will give illegal SP bookmakers a direct line to friendly on-course bookies as their telephone system is unlikely to have the safeguards, identity checks and prohibition on credit existing in the TAB telephone betting system.

What has concerned them most is the apparent suppression of a report to the Sport and Recreation Minister, Greg Crafter, from the TAB outlining its opposition to the move because of the loss of revenue it would cause to both the TAB and the wider racing industry. I have been informed that the Minister received this report on 1 March but made no mention of it when the Racing Act Amendment Bill was introduced on 2 March and has sought to prevent its contents being made public. People in the racing industry want the report made public so that the debate on the Bill can be fully informed on the possible losses which the TAB and the Government will suffer. In fact, in 1990 the Department of Recreation and Sport, as part of a national working party on telephone betting by on-course bookmakers, recommended against the move. Its report states:

> ...we would caution strongly against any Government legislating to extend the operations of bookmakers to provide for a telephone betting service.

It goes on to say that upsetting the existing balance between on and off course betting would be dangerous to the racing industry's future viability and there is no guarantee that it would improve the viability of the bookmaking industry. This has been borne out by comments made to me, where it has been estimated that

only five to six bookmakers in South Australia would be able to afford to extend their services to telephones.

A Treasury report of the same year on the same topic states that the department's 'principle concern with the proposal is that gambling turnover might be diverted from forms of gambling which provide a much higher return to the Government than does gambling with bookmakers'. In fact, there were several other reports at that time—that is, mid-1990—that went to the Government which I suspect also have not been made public. My questions to the Minister are:

1. In the interests of open and informed debate on the issue will he or she publicly release the TAB report on the effects of on-course telephone betting received on 1 March?

2. Will the Minister explain the reasons for the change in the department's attitude towards the move given its opposition in 1990 to telephones for bookmakers and the very strong advice from the national working party, the police and Treasury on this matter?

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

STATE BANK

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about executive payments by the State Bank group.

Leave granted.

The Hon. J.F. STEFANI: In recent times executive salary packages paid by various Government institutions have caused an enormous amount of concern and controversy in the community. I have received information identifying practices adopted by some of the senior executives within the State Bank group who engaged in the use of their hotel room charge facilities for personal use whilst on Australian and overseas bank business. An executive committee within the bank issued instructions to pay accounts for those travel and hotel expenses which were submitted to the bank from the senior executive group.

Travel arrangements were generally organised through Thomas Cook Pty Ltd and accounts were submitted for payment to a Mr Lee Hall, who worked in Mr Kevin Copley's department within the State Bank which approved the payments of all these accounts. I have been informed that over a period of approximately seven years additional expenses amounting to over $1 million were charged by various hotels and paid for by the bank, which is funded by taxpayers' money.

Members interjecting:

The Hon. J.F. STEFANI: If you are patient you will hear. I have been further informed that senior bank executives stayed at the best hotels in Australia and overseas. In London they used the accommodation of the exclusive Dorchester Hotel, which was frequently used at a cost of approximately $1 000 a day.

The Hon. L.H. Davis interjecting:

The Hon. J.F. STEFANI: That's right. Additional expenses charged for the hotel rooms included catering for private parties, items of jewellery, perfume, designer clothes and duty free items all purchased from the boutiques within the hotel establishments in Australia and overseas. When an internal investigation was initiated into these matters instructions were issued by senior management to cease the investigation immediately. My questions are:

1. Will the Treasurer confirm or deny that such payments have occurred and, if so, what were the additional amounts charged and paid for by the bank over the past seven years?

2. Will the Treasurer give an undertaking to Parliament that such practices will be investigated immediately and that all such improper payments are recovered?

3. Will the Government ensure that appropriate action is taken to pursue criminal charges where applicable?

The Hon. C.J. SUMNER: I assume these allegations relate to some time ago and not to the present management of the bank. Whether or not they are true, I cannot say. They may or may not be, I suppose. It would not be the first time that allegations have been made in this place. However, I will refer the questions to the Treasurer and bring back a reply.

STATUTORY AUTHORITIES

The Hon. L.H. DAVIS: I seek leave to make an explanation before directing a question to the Attorney-General as Leader of Government on the subject of ministerial control and direction in statutory authorities.

Leave granted.

The Hon. L.H. DAVIS: The *Advertiser* of Monday 8 March carried an article written by the Minister for Public Infrastructure, the Hon. John Klunder. Mr Klunder, in justifying his decision to overrule the recommendation for a new chief executive officer by ETSA Chairman, Mr Bob Mierisch, and Deputy Chairman, Mr Ron Barnes, relied on section 5(l)(a) of the Electricity Trust of South Australia Act, which states:

> The trust is subject to control and direction by the Minister.

The Minister's action has raised financial eyebrows in South Australia's business community, first, because the Minister chose to go against the recommendation of Mr Mierisch, one of South Australia's most successful and highly respected businessmen, and Mr Barnes, who enjoyed a well-deserved reputation as a former Under Treasurer of South Australia and, secondly, because it was alleged that the person recommended by Mr Mierisch and Mr Barnes was in fact the Acting Chief Executive Officer of the Queensland State Electricity Commission, which has enjoyed a reputation in Australia as a leader in improving efficiency and productivity in electricity generation.

Mr Klunder's hands-on approach with the Electricity Trust contrasts dramatically with his laid back, hands-off, head-in-the-sand approach to the South Australian Timber Corporation when he was Minister of Forests from July 1988 through until late 1992.

The South Australian Timber Corporation, section 5(3), has an identical provision to that of the Electricity Trust of South Australia, namely, 'The corporation shall be subject to the control and direction of the Minister.' During the Hon. Mr Klunder's time as Minister, the

South Australian Timber Corporation became an object of ridicule in the timber industry in Australia and overseas. The scrimber process, which has been described by leading timber technologists overseas as an outdated process, racked up a loss of over $60 million, shared equally between the joint partners SATCO and the SGIC. The Government ignored the warning on the losses likely to be suffered by entering into this high risk technology, which had been rejected by all major private sector timber groups in Australia.

I first issued a press release condemning the Government's investment in Scrimber as far back as September 1987. Mr Higginson became the Chairman of SATCO in 1987-88 and presided over the increasing debacle in Scrimber and the $14 million loss in the Greymouth plywood mill in New Zealand. Mr Higginson, after the collapse of the Scrimber project in July 1991, spent over $43 000 on a three week overseas trip with two other SATCO officers in January 1992, allegedly to attract interest in the Scrimber project. Mr Higginson claimed on his return that a new investor in Scrimber would be in place before July 1992, following the closure of the plant in July 1991.

He continued to claim that five parties were interested in Scrimber, after first registering an interest in 1991, but 16 months later the silence is deafening. The Hon. Mr Klunder took over seven months to provide the simple details of Mr Higginson's overseas trip, which showed that the three executives spent over $450.dollars a day each on accommodation, food and car hire, although they were travelling off season when tariffs are low. Mr Higginson also presided over the extraordinary sell-off of plant and equipment at knockdown prices at the Scrimber plant at Mount Gambier, even though he claimed the project was still a goer.

Mr Higginson also backed the extraordinary claims of Mr Steve Gilmour, General Manager of Seymour Softwoods, who suggested that Seymour could be an equity partner with the State Government in a revived Scrimber project, even though Seymour Softwoods' balance sheet and financial statements clearly showed that it had few financial resources of its own to become an equity partner.

As I understand it, Mr Higginson is still Chairman of SATCO and subject to the control and direction of the new Minister (Hon. Terry Groom). My questions to the Attorney, as Leader of the Government in the Council, are:

1. Will the Attorney explain the extraordinary and laughable inconsistency between Minister Klunder's intervention in the ETSA fiasco and his failure to intervene in SATCO during more than four years as Minister of Forests, particularly as he had identical powers of intervention in both ETSA and SATCO and in view of the fact that SATCO's performance was extraordinarily bad in that period of time?

2. Is the Government satisfied with Mr Graham Higginson's performance as Chairman of the SATCO board in view of the massive losses suffered under his chairmanship and a series of bizarre incidents and unsatisfactory performance since 1987-88?

The Hon. C.J. SUMNER: Whether the Government is satisfied with Mr Higginson is a matter that I would refer to the current Minister for a response, and for a response to the allegations made by the honourable member in his very long-winded and discursive explanation. I can only assume that, as Mr Higginson is still in the job, the Government is satisfied with him.

The Hon. Diana Laidlaw: You were satisfied with Mr Clark.

The Hon. C.J. SUMNER: Yes; well, that was a big mistake, wasn't it. I will refer that question to my colleague the new Minister in this area and bring back a reply. The point I make about ministerial responsibility is a simple one. I will not comment on the particular circumstances outlined by the honourable member, if for no other reason than that I am not aware of the details of the Minister's relationship with those boards to the extent that would enable me to answer the question without notice.

However, I can say that the principle simply is that, if the Government is going to be accountable for the actions of its statutory authorities to the fullest extent, the ministerial power of direction, I think, needs to be there as a fail-safe mechanism to ensure that accountability, and if the Minister then issues a direction which comes unstuck or which is wrong then the Minister must bear the responsibility for that, but in the knowledge that the Minister could have given a different direction, or could have moved the statutory authority into a different area with different policies.

So, if the Minister has that responsibility and makes a mistake, then the Minister can be the subject of criticism. Members opposite obviously, I take it from what the Hon. Mr Davis has done, are critical of the ETSA matter, and that has been fully canvassed in the media and people can make up their own mind about it. The fact of the matter is that the Minister did have the power of direction. He could have exercised that power had he wished to do so and, with that power, if people disagree with what the Minister has done in this or any other case the accountability can be forced home directly to the Minister, whoever he or she might be and whatever the issue might be, in the Parliament and in the community.

However, if the Minister does not have that power of direction, the ambiguities that I have mentioned before exist in the lines of accountability and the audit trail, if you like, and I think that is unfortunate. At least when the power of direction is there, specifically spelt out in the relevant Act of Parliament, the Minister can be called to account for what happens, and there is no excuse then for a Minister if he or she is subject to criticism for not acting in particular ways when in fact they have the power specifically in the legislation. That is the point that I am making. I think I have made it about four times in the past two days, and if members keep asking me questions on this topic I will make it again.

BICYCLES

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Transport Development a question about cycle access to footpaths and the ride to work day.

Leave granted.

The Hon. I. GILFILLAN: It has been announced that on Wednesday 17 March a ride to work day will be organised by a host of organisations including the Bicycle Institute of South Australia, the Australian Conservation Foundation and the South Australian Tourist Cyclists Association. Mr Bill Hickling, in a statement announcing the day, said:

We are asking everyone to give cycling a try on the 17th. Most people will be pleasantly surprised at how quick and convenient it is...In the rush hours a bicycle is usually faster than a car or bus for distances of up to about eight kilometres. With 20 per cent of trips to work in Adelaide less than five kilometres and 40 per cent under 10 kilometres, according to the Adelaide Planning Review, there is great potential for many more people to cycle. The event aims to highlight the need for more facilities for cyclists, such as continuous, safe, good quality bicycle routes and well designed bicycle parking. Such facilities represent very good value for money. According to a 1990 New South Wales report, for every dollar spent on cycling facilities, the community would benefit to the tune of $5. This saving would come from reduced congestion, accident reductions, and from the health benefits of cycling.

He concludes with a comment that I believe my colleague the Hon. Trevor Crothers would thoroughly endorse:

And, of course, the environmental benefits of cycling are yet another compelling reason to ride—

The Hon. T. Crothers: And it's St Patrick's Day as well.

The Hon. I. GILFILLAN: Indeed, and what could be more appropriate on St Patrick's Day than to choose the green form of transport? The New South Wales study, of course, is very effective in proving the economic advantage. It is quoted by Mr Paul Barter of the Bicycle Institute of South Australia in a release he put out on 6 March, as follows:

Already between 3 and 6 per cent of all trips in Adelaide are by bike, according to official estimates. Bicycle sales usually exceed car sales, with about $100 million paid in sales tax per year. Many more people would actually use their bicycles regularly if safe routes were available. This has been proved by the Netherlands where, in a six year period, cycling increased by 29 per cent after higher spending on facilities.

In a move to provide those safer and better facilities for cyclists, many councils are looking at converting footpaths to joint use. It is apparently now impossible legally to define 'joint use' for footpaths, and they feel frustrated by that. Certainly, an area near where I live, namely, Osmond Terrace at Kensington and Norwood, is a classic case, with a very wide footpath that has been unable to be converted. Many more people would use those roads if there were safe tracks on, say, Magill, Unley, Main North, Payneham or Burbridge Roads, just to name a few.

The Hon. J.C. Irwin interjecting:

The Hon. I. GILFILLAN: No, not on footpaths. That is the difference between a track on the main thoroughfare where you have the hazard of cars and a dedicated track on what are quite often unused, wide footpaths.

The Hon. Anne Levy: You're a bike rider, I'm a walker.

The Hon. I. GILFILLAN: Good; we can get on very well together. The Minister for the Arts and Cultural Heritage says that she is a walker. I am a cyclist, and I believe we can cohabit that area very safely. Will the Minister explain how a local council can move to establish joint use or separated use of footpaths by pedestrians and cyclists? If it is, as I believe, currently illegal to do so, will she move to introduce necessary legislation as a matter of urgency? Finally, as this Minister is responsible for providing the money for road facilities for cyclists, and the ride to work day rally is aimed at getting more people to ride on her roads, will the Minister be leaving her white car behind and pushing her bike to Victoria Square on Wednesday 17 March?

The Hon. BARBARA WIESE: The honourable member clearly has a short-term memory problem, because just three weeks ago in this place we debated legislation which I introduced and which makes provision in future for joint use of footpaths by cyclists and pedestrians. This has come about after considerable consultation with the various organisations representing cyclists and also consultation with local government.

In future, under the legislation we debated only three weeks ago and passed, councils will be able to exercise their power and judgment to decide which footpaths within their areas are suitable for the joint use which the honourable member advocated and which I agree is a need that needs to be catered for. So, before very long, once the legislation has been passed in another place, the mechanisms can be established by which footpaths can, where appropriate, be designated as joint use facilities. I hope that this will make it a lot safer for cyclists to get around the metropolitan area.

In addition to that, considerable work is already being undertaken in various parts of the metropolitan area and other work planned for the future to make provisions for bicycle lanes on arterial roads and cycle paths where that is appropriate. As I say, work is currently under way in some parts of the metropolitan area, and over the next two or three years there will be a program of works to increase the number of cycle paths to enable safe cycling for people who choose this method of transport. I hope that further work can be achieved as the years pass.

One of the things that I have been pleased to learn since I became Minister of Transport and Development is that the Department of Road Transport, in establishing its plans for upgrading major arterial roads in particular over the next few years, as a matter of course where appropriate or where possible, is incorporating cycle lanes as one of the improvements.

The Hon. I. GILFILLAN: As a supplementary question, when will councils be able legally to determine cycle safe riding on footpaths, and will the Minister join us on the route to Victoria Square on her bike next week?

The Hon. BARBARA WIESE: The legislation will be proclaimed and in place just as soon as that is physically possible. It depends very much on whether or not new regulations need to be drawn up, whatever time that takes, and whatever time it takes to make available the provisions that will give councils the opportunity to designate various parts of their own areas. Therefore, I am not able to put a very definite time frame on that at all, except to say that I do not believe that major changes

need to take place once the legislation passes, so that hopefully within months it should be possible for councils to start work on these plans. I have not yet determined whether it will be possible for me to ride my bicycle to work on ride to work day.

The Hon. C.J. Sumner interjecting:

The Hon. BARBARA WIESE: I am asked by my colleague whether I can ride a bike. They tell me that that is one of those skills that one never forgets. I must say it was many years after I left school before I rode a bike again; in fact, just two years ago I was given a bicycle for Christmas at my request and I found that that old adage is correct, that it is a skill that you never forget.

The Hon. Diana Laidlaw: It is good fun if there are no cars on the road!

The Hon. BARBARA WIESE: I have managed to jump on my treadly a few times since then and have enjoyed the experience. So, whether or not I will be able to ride to work on ride to work day I am not sure at this point, but I would certainly encourage all honourable members to do so.

AUSTRALIAN GOVERNMENT PRINTING SERVICE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Public Infrastructure a question on the Australian Government Printing Service.

Leave granted.

The Hon. BERNICE PFITZNER: I have recently received a Party political pamphlet which supports the ALP candidate for the Federal seat of Adelaide and it reads:

> Bob Catley, ALP candidate supports Medicare and wants to ensure that all people have access to social security. On 13 March put the Liberal National Party last...

The crux of the matter is that AGPS stands for the Australian Government Printing Service which is the Federal Government Printing Service, and the community is now justifiably outraged as taxpayers' money has been used to promote Labor Party propaganda. My questions to the Minister are:

1. Who authorised the printing of this pamphlet at the Australian Government Printing Service?

2. How much was the cost of printing and was sales tax charged to the recipient?

3. How many pamphlets were printed?

I am aware it is a Federal issue, but since it was printed in this State and is being delivered in this State will the Minister contact his Federal colleague to obtain answers? As it is an important question, will the Minister be able to bring back a reply by tomorrow?

The Hon. ANNE LEVY: Mr President, the answer to the last question is certainly 'No'.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: The Australian Government Printing Service has nothing whatsoever to do with this Government. It is a Federal Government matter. There is no way whatsoever that I can make inquiries or the Minister of Public Infrastructure can make inquiries of the Australian Government Printing Service. The honourable member is asking the question in the wrong place.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Davis will come to order.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! I warn the Hon. Mr Davis.

The Hon. ANNE LEVY: Neither I nor the Minister of Public Infrastructure have any responsibility to this Parliament for the Australian Government Printing Service. If questions are to be asked on this matter they should be asked of Federal authorities and it would seem to me that the Hon. Ms Pfitzner can make a phone call just as readily as the Hon. Mr Klunder can. If she wants that information she is just as capable of obtaining it as is anyone else in this place. It is not a matter for this Parliament or for any Ministers of this Government.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

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

That the Third Report of the Environment, Resources and Development Committee concerning the procedure for consideration of supplementary development plans be noted.

In its new role, the Environment, Resources and Development Committee has not only looked at matters under its charter and area of responsibility as defined but also has taken the opportunity to look at its role in relation to supplementary development plans. Supplementary development plans have been put in the province of the Environment, Resources and Development Committee after being transferred from the old Subordinate Legislation Committee.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: You can throw some interjections at me and I might answer some if you like.

The Hon. R.I. Lucas: I just want to know whether we should listen or not, that's all.

The Hon. T.G. ROBERTS: I think you should listen to everything I say; you will learn something. Regardless of what the subject matter is on the Notice Paper, I think whatever pronouncements I make you will learn something.

Members interjecting:

The PRESIDENT: Order! The Council will come to order.

The Hon. T.G. ROBERTS: I am not sure whether I can weave in an attack on anybody at this stage but I will endeavour to explain the role under the notice of motion as indicated. So, if there are members opposite who would like to go ahead and do some private business in their offices or meet constituents, or go and while away their time in their office, feel free to do that. But for those who would like to listen and for the *Hansard* record I would like to explain the content of the motion, so that members opposite who are not members of the Environment, Resources and Development Committee

can understand the concerns that we have in relation to supplementary development plans and the procedure for consideration. That is the subject of the motion. There is no hidden agenda being stitched in or woven into the third report. It is a quite open report and unless I am provoked from the other side I will stick to the subject matter as enunciated in the motion.

The committee has made a number of considerations in relation to environmental resources development management, and we have had quite a busy period in our first 12 months. We have now looked at 39 SDPs, as well as other considerations referred by either Parliament or individual members. That is basically the mix of references that we have had. The main bulk of our work has been the supplementary development plans, and in the first 12 months all were approved, whilst seven were sent back to the Ministers either expressing some concern or with a recommendation for amendment. The problem that the committee found was the stage at which we get the SDPs, and I will explain that later in my contribution.

We looked at the Mount Lofty Ranges SDP, which is probably the biggest contract that we had. It was a supplementary development plan that had been around for some considerable time, and the consultation processes between departments and Ministers in conjunction with concerned people in the Mount Lofty Ranges area was considerable. When we picked up the matter concerning the SDP, we found there was not a lot of agreement about how to proceed when coming to grips with many of the problems. Everyone agreed that development in the Mount Lofty Ranges had to be monitored much more tightly than had occurred in the past, and many of the problems associated with past development had to be corrected, but there was not general agreement within the community as to how to proceed to get a consensus without impacting on some of the vested interests that were presenting evidence before us.

As members would understand, there is a lot of competitive use in the Mount Lofty Ranges, and it was determined by a resolution in this Chamber, and following contributions made by individual members, that the committee look at the Mount Lofty Ranges development plan and work out whether a solution could be found to many of the emerging problems. The committee, and individual members of the committee before it was actually studied by the committee, felt that competitive use problems were certainly contributing to many of the quality of water problems that Adelaide was experiencing in its catchment areas, and that a fair and equitable way had to be found to rehabilitate the areas that had already been either denuded of vegetation or polluted by agricultural sprays or agricultural use, and to try to get a system that would minimise urban development or urban pollution, whilst maintaining the financial interests of those people who already owned freehold titles to that land.

So, it was a fairly difficult subject matter to deal with, and many reports have been written. There have been reviews *ad nauseam.* Consultation had taken place, and there had been a freeze on development. Although there was much criticism about that step taken by the Minister, it certainly precipitated a whole new discussion framework and time frame for solutions to be collected. Rather than freezing people in their positions, I think the freeze actually got them into a new mode of fourth and fifth gear to make sure that solutions were found to the problems emerging in the Mount Lofty Ranges area.

The results of the deliberations are contained in the committee's second report which was welcomed by representatives of all groups, and although some of them had to make compromises, they understood the reasons by which the committee made its deliberations and reported its findings. I think people appreciated the bipartisan nature of the committee and the fact that the decision making process had not been turned into a political football, and that we were seen as adjudicating in a fair and reasonable manner in respect of many of these competitive use problems.

The Democrats were represented on the committee, and that was a new initiative for the parliamentary standing committees. It is not new for select committees, where the Democrats have to get their viewpoint through. The Hon. Mr Elliott can speak for himself, but the status of a standing committee with its bipartisan nature receives more support and respect throughout the community than the old select committees, which in some cases tend to be seen as an easy answer to a difficult problem. In many cases, recommendations from select committees were not accepted by the community on the basis that they thought in some cases they did not have a bipartisan view to them. I will not comment as to whether or not that view is correct.

Most of the committees I have sat on have ended up with a consensus view but, in the odd case on select committees there are dissenting reports and in some cases masked political games are being played. Sometimes they are very overt political games, but in relation to standing committees, I think there is that broad-based respect. Certainly in the case of the Mount Lofty Ranges review, people were very confident about placing their information before the committee. As I said, all parties in the competitive use arena—and it is not very easy to get a consensus of views between environmentalists and those interested in agricultural use, industry and urban development—came away with a view from the committee that they respected, without our actually making compromises to a position where the report has finally meant nothing.

We did come down with a very firm report that allowed for the considerations of all competitive use parties to work within, whilst still maintaining the integrity of the ranges and not only cleaning up and rehabilitating the ranges' water catchment area but making recommendations outside the catchment area to hopefully slow down the urban development that is occurring in the ranges. If we as a Government or a Parliament do not accept the fact that development has to be slowed down, then the ranges themselves will take a form of development that none of us will be very proud of in five or 10 years.

The development Bill which will be introduced into this Chamber at a later date actually sets the timetable for us to table our third report and to signal our position in relation to the consideration of procedural changes in supplementary development plans, because the committee itself was not quite satisfied with the role that it found

itself in within the terms of the old legislation. We certainly wanted to make our point prior to the new Bill being passed in both Houses. Whether or not our recommendations are listened to, that is up to the people debating the measure in both Houses, but the committee certainly wanted to try to overcome some of the deficiencies in handling SDPs in their current form so we were seen to be a part of the streamlining process of decision making within this State. We did not want to be seen as a rubber stamp, retrospectively endorsing problems that were inbuilt into supplementary development plans that had not had broad and general agreement.

The problem we find is that under the present Planning Act we receive the SDPs after the Minister has approved them. That is fine for 90 per cent of cases, but some of the problems that were occurring within the SDPs were of a controversial nature. Although the Minister had okayed and passed the SDPs, the committee was left with mopping up some of the residual bitterness that was inherent in some of the decisions that the SDPs made. In many cases there was not a lot that the committee could do to correct the problems that were left by the implementation of the SDPs. There were not many. In 12 months we looked at 39. Seven cases we sent back to the Minister expressing concern and in many cases they were talked out and the problems could have been overcome. However, there were other cases where we found—and I suspect even now there will be—residual bitterness within communities about the impact of the passing of the SDPs.

If local government, State Government, developers and competitive users of particular areas did not come away with a general agreement on those cases, we found it difficult to change the nature of the decisions to allay some of the fears that individuals had. We had the frustration that we could take evidence, but in many cases, after we had taken the evidence, there was not a lot we could do because the SDPs had been through the Minister and in some cases interim approvals had been applied. That was another concern that we had: while we were in the process of making recommendations which would have had slightly different outcomes or in some cases extremely different outcomes, with interim approvals it meant that we could not influence the outcome because in some cases the interim approvals were already in effect. They were in the minority as well. We had one case of an aggrieved developer where there had been public consultation in June and they had to wait from June until February to put their concerns to the committee. That is far too long.

I think the development legislation will take into account that streamlining of the process to allow for greater certainty in the decision making. However, I think that the committee has a role to play if the SDP gets to the committee at the appropriate time. Either that, or we do not see the SDPs at all. My private view is that if they are not before the committee at an appropriate time, where the contribution of the committee can be worked through constructively and put to the Minister before the impact of the decisions is felt, there is no point in giving them to us. They might as well be dealt with in another manner. That is the private view of individuals, but we have recommended that the SDPs come to us at a different stage.

There is a flow chart built into the report that recommends when the SDP should reach us so that we have the ability to influence outcomes in the appropriate time frames. We have an SDP before us at the moment that has an interim effect order on it. I refer to the Craigburn Farm SDP. That is causing heartburn in the community. We are working our way through that one and are receiving evidence. As most members know, there is still a lot of debate in the community about the proposals. Many of the key players in the consultation processes on supplementary development plans are concerned that the process has not been followed completely and they would have liked greater consultation through that program. Basically, we are recommending to Parliament that the role of the Environment, Resources and Development Committee be altered so that the SDPs are placed before the committee at an appropriate time and that the development legislation be framed in such a way that the Minister will have the option of referring the SDP to our committee at an earlier stage to address some of the problems to which I have referred. I have not been too specific and I do not wish to get too tied up in detail in terms of giving live instances of the cases, but I want to give members enough information to know that that is basically the reason for our recommendations.

It would also be helpful to the committee to be given notice of the SDPs which are going to be given interim effect and the reason for the decision. We are recommending that notice be given for interim effect so we can analyse the impact of the interim effect on the evidence that is coming before us. We are also recommending further liaison between the committee and the Minister before the Governor gives final authorisation.

Basically, we are making recommendations to fit into the new development Bill. If the Parliament and the Minister pick up the recommendations, hopefully the committee will play a more constructive role in relation to supplementary development plans at the appropriate time. If not, then take us out of the process; that is the option. However, I think there is a role for Ministers and departments to use the committee in a constructive way to attract the attention of the community and to get people to present their evidence before the committee so that they have confidence that, when the recommendations are made in a bipartisan way, the Government, the Opposition and the Democrats will be committed to the outcomes that flow from their deliberations. In that way, less political manoeuvring will take place in those controversial areas where developments are the key to creating employment, caring for the environment and keeping the balance of competitive uses within communities within bounds that can be managed without too much heartburn.

The Hon. M.J. ELLIOTT: I support the motion. As a member of the committee, which has now been functioning for about 14 months, I should like to take the opportunity to note that the committee system, at least in relation to this committee, appears to be functioning very

well with members of both Houses, Labor, Liberal and Democrat, working together.

It does broadly represent the cross section of representation in the Parliament and it has functioned in a way which I think has been non-party political. The committee is proving, I think, to be a useful device for looking at matters which are proving to be particularly difficult in the community, and a number of those come to mind that this committee has already looked at: the Mount Lofty Ranges review and the proposed Waite development being two of those.

One of the big concerns I have at this stage, and it is really reflected in this report, is that we really are getting to see some things after the wheels have well and truly fallen off. First, I would like to see things handled differently in terms of consultation with the community so that many of these problems that we are now faced with simply do not arise. That is one thing that needs to occur but at the other end I think there is a need to recognise how best this committee can fit into current processes. I feel that there are times when the committee should be brought in earlier in the process. The committee does need to be aware of development plans and particularly development plans which are likely to cause difficulties or problems. We need to be made aware of those much earlier than is currently the case, and in the report we give two examples where there have been difficulties. In relation to the City of Salisbury residential SDP it went up for public consultation in June 1991. We did not get to see that SDP until 5 February 1993, not far short of two years later. I think that the committee has come up, after looking at the problems involved, with reasonable recommendations but I do believe that the committee saw that far too late.

The committee has been drafting this particular report for perhaps six weeks and an issue of particular importance to us is the application of interim effect. While we were looking at a draft of this report prior to its coming into Parliament we were making recommendations that if interim effect were about to occur the committee should be advised, and we had the Government giving interim effect to the Craigburn SDP and the application of that interim effect really underlined the very problems that were already causing us concern. If we take Craigburn Farm as the most recent example once interim effect has been granted an application for development can come in and in fact it came in the next day. That having happened the role of the Environment, Resources and Development Standing Committee has been effectively negated. There is absolutely no point in relation to individual SDPs for us to see the SDP if the decisions are made and cannot be reversed.

Nevertheless, in relation to this particular SDP we will continue to look at it, but I do not think necessarily with the goal of just overturning it because I think the decisions have largely been made, but we need to look at what has happened in this particular case to see what can be done about the process. Certainly we are already making a recommendation which was included in our draft report and which now comes before the Council, that before interim effect of an SDP the committee should be made aware of that occurring.

What I suppose gives even greater urgency to this consideration is the fact that within the next week or two we are expecting to see the new development legislation to be introduced into this Parliament. The Development Bill replaces the Planning Act and it is the Development Bill under which supplementary development plans will be handled. The committee sees a need for change in the current process. The committee would hope to see that when the Development Bill comes into Parliament our concerns have been taken into account. I privately have a number of other concerns about the Development Bill but here an all Party committee has flagged one significant concern and I do hope that that is addressed and this report is taken note of, not just simply in a formal sense but actually acted upon. Mr President, I support the motion.

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

SELECT COMMITTEE ON THE REDEVELOPMENT OF THE MARINELAND COMPLEX AND RELATED MATTERS

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

That the time for bringing up the report of the committee be extended until Wednesday 31 March 1993.

Motion carried.

SELECT COMMITTEE ON THE CIRCUMSTANCES RELATED TO THE STIRLING COUNCIL PERTAINING TO AND ARISING FROM THE ASH WEDNESDAY 1980 BUSHFIRES AND RELATED MATTERS

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

That the time for bringing up the report of the committee be extended to Wednesday 31 March 1993.

Motion carried.

SELECT COMMITTEE ON THE PENAL SYSTEM IN SOUTH AUSTRALIA

The Hon. I. GILFILLAN: I move:

That the time for bringing up the report of the committee be extended to Wednesday 31 March 1993.

Motion carried.

SELECT COMMITTEE ON COUNTRY RAIL SERVICES IN SOUTH AUSTRALIA

The Hon. G. WEATHERILL: I move:

That the time for bringing up the report of the committee be extended to Wednesday 31 March 1993.

Motion carried.

SELECT COMMITTEE ON THE CONTROL AND ILLEGAL USE OF DRUGS OF DEPENDENCE

The Hon. G. WEATHERILL: I move:

That the time for bringing up the report of the committee be extended to Wednesday 31 March 1993.

Motion carried.

SELECT COMMITTEE ON REVIEW OF CERTAIN STATUTORY AUTHORITIES

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

That the time for bringing up the report of the committee be extended to Wednesday 31 March 1993.

Motion carried.

SELECT COMMITTEE ON THE EXTENT OF GAMBLING ADDICTION AND EFFECTS OF GAMING MACHINES

The Hon. T. CROTHERS: I move:

That the time for bringing up the report of the committee be extended to Wednesday 31 March 1993.

Motion carried.

EVIDENCE (MISCELLANEOUS) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Evidence Act 1929 and to make a related amendment to the Criminal Law Consolidation Act 1935. Read a first time.

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

That this Bill be now read a second time.

This Bill makes miscellaneous amendments to the *Evidence Act 1929*. Two of the amendments deal with the evidence of children. New section 12A makes it clear that where the evidence of a child has been given on oath, or assimilated to evidence given on oath, there is no rule of law or practice obliging a judge, in a criminal trial, to warn the jury that it is unsafe to convict on the uncorroborated evidence of the child.

Section 34i(5) provides that in proceedings in which a person is charged with a sexual offence the judge is not required by any rule of law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim of the offence.

The Supreme Court in *R v Puhuja.* (No 1) (1988) 49 SASR 191 and *R v Do* (1990) 54 SASR 543 has interpreted this provision as not having any impact on the rule of law or practice that a judge must warn the jury that it would be dangerous to convict an accused on the uncorroborated evidence of a child.

This is unsatisfactory for two reasons. First, the premise that children of any age are inherently unreliable witnesses is old fashioned and unjustified. Second, the corroboration warning itself and the directions on what evidence is available to be used by the jury as corroboration is apt to confuse a jury which is properly directed on the onus of proof beyond reasonable doubt. Obviously, a jury should be given appropriate directions and warnings where the particular case calls for it. The law should be moving away from general warnings for certain categories of witnesses and towards warnings which are tailor-made for particular individuals whom the judge considers to be potentially unreliable.

The other provision touching on the evidence of children is an amendment to section 21. Section 21 provides that a close relative of a person charged with an offence is competent and compellable to give evidence for the prosecution in any proceedings in relation to the charge, but the prospective witness can apply to the court for an exemption from the obligation to give evidence. The court can exempt the prospective witness if it appears to the court that there is a substantial risk that the giving of the evidence would seriously harm the relationship between the prospective witness and there is insufficient justification for exposing the prospective witness to the risk.

The Supreme Court Judges in their 1991 annual report adumbrated that the procedure is inappropriate where the close relative is a young child or mentally impaired. The judges recommended that the section be amended to give the court a discretion to dispense with the section's requirements, wholly or in part, where by reason of the prospective witness's immaturity or impaired mental condition the court considers it proper to do so. The section is amended as recommended by the judges. Where a prospective witness is too immature or mentally impaired to understand the making of an application for exemption, the court should be able to assess itself the matter without the need for the prospective witness having to make an application.

Section 49(la) is amended to allow magistrates to grant orders to inspect and take copies of banking records. At present only judges of the Supreme and District Courts can make such orders. Giving magistrates this jurisdiction is consistent with the jurisdiction they have under the *Crimes (Confiscation of Profits) Act 1986* and their increased jurisdiction following the courts restructuring. Under the *Crimes (Confiscation of Profits) Act,* magistrates have jurisdiction to issue a warrant to a member of the Police Force to search for documents which may quantify forfeitable property. There is a parallel between tracing funds subject to forfeiture and funds subject to misappropriation. The funds are often one and the same and the same documentation is required. Further, applications can be dealt with much more quickly in the Magistrates Court and investigations are less likely to be frustrated by moneys being removed or transferred while an application is pending.

Section 59e is amended to provide that courts can take evidence from a place outside the State by video link or any other form of telecommunication that the court thinks appropriate in the circumstances. The taking of evidence in this way has the potential to save witnesses' time and the parties' expense. The amendment may not be strictly necessary, but it seems worthwhile to do it to save any arguments as to the courts' ability to take evidence in this way.

The Standing Committee of Attorneys-General has recently established a working party which is looking at the use of video equipment in courts with the aim of

ensuring that the equipment used in the various courts throughout Australia is compatible.

Clause 7 inserts a new section 67c. This provision was foreshadowed in the green paper on alternative dispute resolution which was released for public comment in July 1990. The section protects the confidentiality of private dispute resolution.

In the green paper it was pointed out that an assurance of confidentiality encourages private dispute resolution. It reassures disputants of the neutrality of the third party who is assisting in the resolution of the dispute and fosters an atmosphere of trust in which all parties are willing to explore issues openly and honestly so that potential for agreement is maximised.

As is pointed out in the green paper, the production of all relevant evidence enables litigation to be decided on the basis of a genuine attempt to find the facts and to ensure a fair trial. There is thus an important public interest in ensuring that as much relevant material as possible comes before the court.

The courts have, however, recognised that in some circumstances other interests outweigh the public interest and regard some potential evidence as privileged, i.e., a party or witness has a right to withhold from a court information which might assist it in ascertaining the facts in certain specified circumstances. Examples include the Crown being able to refuse to give evidence on the ground that it would be contrary to the public interest to do so and communications between a lawyer and a client being withheld if they were prepared for use in litigation.

Another of the categories of evidence which the courts recognise as privileged is evidence of settlement negotiations. The major justification for protecting the content of negotiations from disclosure is the public interest in encouraging settlement of disputes. The courts recognise the interests of parties in avoiding the cost and time of trial and that facilities presently available would be inadequate if there was any significant reduction in the number of cases settled.

While the content of negotiations is recognised by the courts as privileged, the precise reach of the law is uncertain. Uncertainties concerning the extent of the privilege have led to legislation both in South Australia and elsewhere. For example, section 95(7) of the *Equal Opportunity Act 1984* provides that anything said or done in the course of conciliation proceedings under the Act is not admissible in any proceedings. Section 18 of the *Family Law Act 1975* affords the same sort of protection to conferences with marriage guidance counsellors. In both NSW and Victoria, designated community mediation services have been afforded protection.

The Government believes that the law protecting the disclosure of settlement negotiations should be clear and ascertainable and that legislation is necessary. Those commentators on the green paper who touched on the point agreed with this approach. Similar conclusions had been reached by the Australian Law Reform Commission in its 1987 report on evidence. The provision included in this Bill closely follows the provision included in the draft Bill appended to the ALRC report and the provision contained in the Commonwealth and NSW Evidence Bills which have been exposed for comment.

Minor amendments are made to the suppression order provisions. Recently the *Sunday Mail* published details of an alleged sexual offence given at a bail application. Section 71a(1) prohibits the publication of such information at a preliminary examination. The rationale for not permitting the publication of such evidence at a preliminary hearing applies equally to bail applications and the section is amended accordingly. The opportunity has been taken to amend the reference to "preliminary investigation" in the section to "preliminary examination" in accordance with the usage in the *Summary Procedure Act 1921*.

The opportunity has also been taken of transferring section 351a of the *Criminal Law Consolidation Act* to the *Evidence Act*. This section prohibits the publication of the identity of an acquitted person where an application has been made for the reservation of a question of law arising at the trial. It is not particularly helpful for those advising media organisations that the section is located not in the *Evidence Act* with other like sections but is buried in the appeal sections of the *Criminal Law Consolidation Act*.

The penalty has been increased from $1 000 to $2 000 to bring it into line with penalties under the *Evidence Act*. I seek leave to have the explanation of 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 is formal.

Clause 3: Insertion of s. 12a

This clause provides that there is no rule of law or practice obliging a judge, in a criminal trial, to warn the jury that it is unsafe to convict on the uncorroborated evidence of a child if the child gave evidence on oath or the child's unsworn evidence is assimilated to evidence given on oath under section 12(2).

Clause 4: Amendment of s. 21—Competence and compellability of witnesses

Proposed subsection (3a) is inserted to provide that if the prospective witness is a young child, or is mentally impaired, the court should consider whether to grant an exemption under subsection (3) even though no application for exemption has been made and may proceed to grant the exemption accordingly.

Clause 5: Amendment of s. 49—Power to order inspection of banking records, etc.

This amendment provides that Magistrates, as well as Supreme Court and District Court Judges, may grant orders to inspect and take copies of banking records.

Clause 6: Amendment of s. 59d—Interpretation

This clause amends the definitions of "authorized South Australian court" (in consequence of previous legislative changes to the court system in the State) and "foreign court".

Clause 7: Amendment of s. 59e—Taking of evidence outside the State

Proposed subsection (4) is inserted to provide that an authorized South Australian court may take evidence from a place outside the State by video link or any other form of telecommunication that the court thinks appropriate in the circumstances.

Clause 8: Insertion of section 67c

Proposed section 67c provides that, subject to this section, evidence of a communication made in connection with an

attempt to negotiate the settlement of a civil dispute, or of a document prepared in connection with such an attempt, is not admissible in any civil or criminal proceedings. Such evidence is, however, admissible if—

- the parties to the dispute consent; or
- the substance of the evidence has been disclosed with the express or implied consent of the parties to the dispute; or
- the substance of the evidence has been partly disclosed with the express or implied consent of the parties to the dispute, and full disclosure of the evidence is reasonably necessary to enable a proper understanding of the other evidence that has already been adduced or to avoid unfairness to any of the parties to the dispute; or
- the communication or document included a statement to the effect that it was not to be treated as confidential; or
- the communication or document relates to an issue in dispute and the dispute, so far as it relates to that issue, has been settled or determined; or
- the evidence tends to contradict or to qualify evidence that has already been admitted about the course of an attempt to settle the dispute; or
- the making of the communication, or the preparation of the document, affects the rights of a party to the dispute; or
- the communication was made, or the document was prepared, in furtherance of the commission of a fraud or an offence, the doing of an act that renders a person liable to a civil penalty or the abuse of a statutory power.

Proposed subsection (1) does not apply to parts of a document that do not concern attempts to negotiate a settlement of a dispute, if it would not be misleading to adduce evidence of only those parts of the document.

Clause 9: Amendment of s. 71a—Restriction on reporting proceedings relating to sexual offences

The amendment adds to the categories that previously created an offence to publish certain evidence relating to sexual offences by making it an offence to publish any evidence given in, or report of, related proceedings in which the accused person is involved after the accused person is charged but before the conclusion of the preliminary examination, without the consent of the accused person.

Clause 10: Insertion of section 71c

Proposed section 71c provides that where an application has been made for the reservation of a question of law arising at the trial of a person who was tried on information and acquitted, a person must not publish, by newspaper, radio or television, any report, statement or representation in relation to the application or any consequent proceedings—

- by which the identity of the acquitted person is revealed; or
- from which the identity of the acquitted person might reasonably be inferred,

without the consent of the acquitted person. (Penalty: two thousand dollars.)

In this proposed section, the definition of a newspaper excludes a publication consisting solely or primarily of the reported judgments or decisions of a court or courts or a publication of a technical nature designed primarily for use by legal practitioners.

Schedule

Section 351a of the *Criminal Law Consolidation Act 1935* is repealed in consequence of the amendments to the *Evidence Act 1929* proposed in this Bill.

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

CLASSIFICATION OF PUBLICATIONS (FILM CLASSIFICATION) AMENDMENT BILL

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

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

That this Bill be now read a second time.

This Bill makes amendments to the *Classification of Publications Act* which implement decisions made at the Council of Australian Governments meeting on 7 December 1992, when Premiers and Chief Ministers agreed to amend State and Territory classification legislation to implement a new "MA" classification by 1 May 1993.

The "MA" classification has been created in response to community concern that children under the age of 15 years have access to films in the "higher" end of the "M" classification. Research commissioned by the Office of Film and Literature Classification confirms that community concern about this issue is substantial.

Australian Governments have addressed this problem by agreeing to create the new "MA" classification to replace part of the existing "M" classification. Films (including videos) at the "lower" end of the existing classification will continue to be classified "M" and be recommended for viewing by persons 15 years and over. Films considered to be unsuitable for viewing by persons under 15 years will fall into the new "MA" classification and may not be:

(a) sold, hired or delivered to persons under 15 years of age other than by a parent or guardian;

(b) exhibited to persons under 15 years of age unless they are accompanied by their parent or guardian.

This Bill conforms to model legislation agreed between the States and Territories.

Members should note that it is not necessary to make amendments to the *Classification of Films for Public Exhibition Act 1971* as section 4(1)*(e)* of that Act allows for the new classification to be prescribed in the regulations. Regulations to effect the necessary changes have been prepared and will be gazetted shortly so as to meet the 1st May 1993 national agreed commencement date. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title

Clause 1 is formal.

Clause 2: Commencement

Clause 2 provides for 1 May 1993 as the commencement date of the Bill.

Clause 3: Amendment of s. 4—Interpretation

Clause 3 inserts the definition of "MA" film and provides that an "MA" film is a film classified as such by the Board.

Clause 4: Amendment of s. 13—Classification of publications

Clause 4 amends section 13 of the principal Act to provide that where the Board decides that a film depicts, expresses or otherwise deals with sex, violence or coarse language in a

manner that makes it unsuitable for persons under the age of 15 years the Board must classify the film as an "MA" film.

Clause 5: Amendment of s. 14a—Conditions applying to restricted publications

Clause 5 amends section 14a of the principal Act to provide that an "MA" film must not be sold or delivered to a person under the age of 15 otherwise than by a parent or guardian or a person acting with the authority of the parent or guardian.

Clause 6: Amendment of s. 18—Offences

Clause 6 is a consequential amendment as a result of the new "MA" classification.

Clause 7: Amendment of s. 20—Certain actions not to constitute offences

Clause 7 amends section 20 of the principal Act by removing an obsolete reference and substituting the correct reference.

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

STATE BANK

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

That the second report of the Royal Commission into the State Bank of South Australia be noted.

This is a formal motion to enable members to comment on the second report of the Royal Commission into the State Bank. I did this last year when the first report was tabled. What I have to say on the topic is contained in the Premier's ministerial statement. Obviously, I may wish to respond to comments by members, but for the moment I content myself with moving the motion without further comment.

The Hon. K.T. GRIFFIN: Regardless of one's view of the report of the Royal Commissioner and whether one seeks to interpret it one way or another, I do not think anyone can dispute the fact that the Royal Commissioner has undertaken a mammoth task in the interests of South Australia and has undertaken that task with a great deal of energy and objectiveness, and has earned the respect, if that was ever necessary to be earned, of all those who have appeared before him as well as the wider community.

I should like to put on record appreciation to Commissioner Jacobs, his staff, the counsel assisting the royal commission and the solicitors assisting the royal commission for the way in which they have undertaken their responsibilities.

When Commissioner Jacobs was appointed, it was expected that the royal commission would end in about 12 months. I recollect saying at the time that I thought that was optimistic, but no doubt others believed that it could be completed within that period. Of course, when one scratched below the surface it became obvious that there was a huge amount of work to be undertaken in sorting out seven years of the State Bank saga. When one considers that the Auditor-General's inquiry has had to be extended on a number of occasions and the volume of work that has to be undertaken there, one can see the whole of the State Bank saga has presented a mammoth task to investigators to unravel a huge worldwide network involving what are, in effect, two major financial institutions; the State Bank and its subsidiary, Beneficial Finance Corporation.

It is not surprising that the time taken by the Royal Commissioner was extended significantly or that the Auditor-General's inquiry has had to be extended on so many occasions, but I think, whilst addressing the Royal Commissioner's second report, it is important to recognise the contribution which he and his staff and counsel and his solicitors have made in getting to the bottom of what happened in that period of seven years and also to record appreciation to the Auditor-General for the work which he and his assistants have undertaken.

The first and second reports demonstrate that Labor cannot be trusted with taxpayers' money or with the management of the State. It is quite obvious that the Government appointed many of its mates to the board, that it adopted a hands off approach to the operation of the bank and that it was concerned to milk the cow for as much as it could give in order to prop up the flagging finances of the State, and to do so in several instances by artificially adjusting the profit. It was not so much an arm's length activity but the Government wanting to establish something which was going to be the pot of gold at the end of the rainbow and provide for South Australia's future. In fact, that was the key to Premier Bannon's election policy speech in 1985; that the State Bank would provide a focus for South Australia's development. In subsequent years it was obvious from the way in which the Government treated the bank that it was to be the star in the crown for the State Government and was to provide extraordinary cash flows, which ultimately did not arrive.

The first and second reports mirror the experience of other States and the Federal Government. In South Australia taxpayers are now required to fund $3 150 million of loss by the State Bank—an extraordinary amount and the biggest corporate banking disaster in Australia's history. It was, of course, mirrored to some extent in Victoria. The State Bank of Victoria with its subsidiary, Tricontinental, got out of control and in that State something like $1 620 million or thereabouts was paid by the Commonwealth Bank for a quick fix to buy the State Bank of Victoria all of which went to paying accumulated debts. In both South Australia and Victoria, the heritage of South Australia was mortgaged to the hilt and dissipated by profligate governments.

In this State, an institution which had its origins over 100 years ago and in which South Australians were particularly proud has come to virtually nought. Even though there are now, in effect, two banks, at least for accounting purposes, the good bank and the bad bank, the fact of the matter is that we will never recover that $3 150 million which the State Bank has lost. We may recover a portion. There are varying views as to the amount, whether it is $400 million, $600 million or $1 000 million, but it will still leave well over $2 000 million which the taxpayers of South Australia will have to carry—and this from the rather stable, perhaps not high flying, banks, the State Bank of South Australia and the Savings Bank of South Australia which merged in 1984.

In Western Australia there is the debacle of the former Labor Government in that State which played around with taxpayers' money. It granted favours, it played with the big spenders, many of whom turned out to be con men of the first order, and they dissipated taxpayers' money in that State. In both Victoria and in Western Australia the electors finally made their judgment that enough was enough and that the Labor Administrations in those States having presided over a period of unprecedented profligacy had to go. I would expect that as Saturday approaches the same sort of judgment will be made about the Federal Labor Government which has demonstrated its total incapacity to come to grips with the problems that Australia faces, with the extraordinary level of unemployment and the extraordinarily high level of overseas debt.

The prospects for ordinary Australians, let alone South Australians, are quite miserable if the Keating Government was to be continued in office after Saturday. I suspect that from the way South Australians are talking that on Saturday yet another Labor Government will fall. I do not make it as a bold prediction because it will be close, but I say that the record of that Government over 10 years has not brought any measurable benefits to Australians and has in fact brought significant disadvantages to Australians, particularly those who have swollen the unemployment queues. So, in Victoria and Western Australia at the Federal level where there has been gross public mismanagement the electors ultimately have had their say.

The indication from the opinion polls which periodically surface during this current election campaign demonstrate that in South Australia there is a similar anger towards the Labor Administration, as there was in Victoria and Western Australia. Whilst there is a plaintive plea by the Prime Minister not to make the Federal Government bear the responsibility for the State Bank losses in South Australia but rather to judge it on its merits, the fact of the matter is that both State and Federal Labor Governments are tarred with the same brush, and the judgment which is made in South Australia will not only be a judgment in relation to the State Bank but in relation to the general malaise brought upon the State by State and Federal Labor administrations.

That is not to say that when we get to the State election, whenever that might be, that the electors of South Australia will have vented their spleen on Saturday and have decided that they will restore the Labor administration in this State to Government. I suspect that the anger in relation to the State Bank and other examples of maladministration and taxpayer loss will continue through the rest of this year. Everyone you talk to knows about the State Bank, the losses and the problems which we are experiencing as a community and which individually have contributed to the desperation of many South Australians and their families. People are angry that, although most of the old board have gone, including the former Chief Executive Officer and senior managers, some of those who have gone have not paid a price but have exacted yet another price from the community of South Australia, either in their retirement allowances, or their superannuation benefits or other benefits, which are ultimately funded by the taxpayer through the indemnity given by the State Government as a result of the subsequent bail out negotiations.

There is no doubt in my mind that the Arnold Government, nine members of which were party to the Bannon Government, do have to stand up to be counted at an election at the earliest opportunity. Again, I suspect that they will continue to hang on for dear life. They cannot of course afford to go much beyond the end of this year because then they will be regarded as a Government that is afraid of the electors' decision. So, it will be some time this year. The Liberal Party's view is that the sooner the better, and that the proper and moral course to follow is for the Government to submit itself to the judgment of the people and face the ultimate responsibility for the disaster of the State Bank.

The State Bank is only one of a long list of failures in South Australia. My colleague the Hon. Mr Davis, during the course of Question Time, drew attention to the South Australian Timber Corporation. There is SGIC, propped up to extraordinary lengths by the taxpayers of South Australia. The Hon. Anne Levy has mentioned West Beach Trust and I—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: If you just let me finish you will hear what I have to say. I said that I acknowledge what the Hon. Anne Levy said.

The Hon. Anne Levy: You made a mistake. You said West Beach Trust cost $10 million. West Beach Trust has not cost the taxpayer one penny.

The Hon. K.T. GRIFFIN: Mr Acting President, that is wrong. The West Beach Trust in conjunction with industry, the State development body and the Government guarantee all contributed to the Marineland loss.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: They did. The West Beach Trust was involved intimately in the failed negotiations over Marineland.

The Hon. Anne Levy: That's nonsense.

The Hon. K.T. GRIFFIN: They were involved and the Minister knows, Mr Acting President, that—

The Hon. Anne Levy: I know more than you do.

The Hon. K.T. GRIFFIN: The Minister is trying to defend herself, but the fact is that as a result of the Marineland saga West Beach Trust was involved, and the West Beach Trust, which was subject to ministerial direction, was involved in the whole saga of—

The Hon. Anne Levy: West Beach Trust did nothing wrong.

The ACTING PRESIDENT (Hon. M.S. Feleppa): Order! I appreciate the interjections of the honourable Minister but I am sure she would be better off responding properly. If the remarks made by the Hon. Mr Griffin are not justified, she will have a fair opportunity to respond.

The Hon. Anne Levy: I am just correcting him. He is confusing West Beach Trust with a private company, and I want it on the record that he cannot tell the difference between a statutory authority and a private company.

Members interjecting:

The ACTING PRESIDENT: Order! The Council will come to order.

The Hon. K.T. GRIFFIN: Mr Acting President, I appreciate your protection. As you say, the honourable

Minister does have the opportunity to participate in this debate if she wants to. I know the difference between a statutory authority—

The Hon. Anne Levy: It is not a debate about the West Beach Trust.

The Hon. K.T. GRIFFIN: It is a debate about the competence of the Labor Government, and the Hon. Anne Levy—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: Yes, to note the Royal Commissioner's report, and that talks about the involvement and responsibility of the Government. What I am talking about is the competence of this Government and this Administration.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: The Minister for the Arts and Cultural Heritage was a member of the Bannon Government. She sat in the Cabinet when the members of the board of the State Bank were appointed at some stage—

The Hon. Anne Levy: Wrong!

The Hon. K.T. GRIFFIN: When did you come into Cabinet?

The Hon. Anne Levy: 1989.

The Hon. K.T. GRIFFIN: I am sorry, you were not there for the early part, and I take the correction from the honourable Minister on that. However, the Government has a responsibility, and it is clear from both reports that the Government has had responsibility for a lack of oversight of the bank. It is all very well for the Attorney-General—

The Hon. R.R. Roberts: You and the Democrats changed the legislation to stop us from having control.

The Hon. K.T. GRIFFIN: Well, Mr Acting President, what a falsehood. We did not.

The Hon. R.R. Roberts: And you appointed half the board in 1982.

The Hon. K.T. GRIFFIN: No, Mr Acting President, we did not appoint the board. Nothing is further from the truth than that.

The Hon. Anne Levy: You appointed the boards of the old banks.

The Hon. K.T. GRIFFIN: The old bank is one thing.

The Hon. Anne Levy: They were the same people.

The Hon. K.T. GRIFFIN: We did not appoint anyone to the State Bank of South Australia board. It was incorporated—

The Hon. L.H. Davis: It was a totally new creature.

The Hon. Anne Levy: They took your appointments to the old bank.

The ACTING PRESIDENT: Order! The Hon. Mr Griffin will resume his seat. I cannot allow these interjections to continue to interrupt the business of the Council. I ask members to keep reasonable order.

The Hon. K.T. GRIFFIN: Mr Acting President, I think the two members opposite are boldly interjecting because the heat is on the Government.

The Hon. Anne Levy: You are so boring, we have to do something to make it interesting.

The Hon. K.T. GRIFFIN: The honourable the Minister talks about it being boring.

The Hon. Anne Levy: It's the way you present it.

The Hon. K.T. GRIFFIN: It is not boring to the people of South Australia.

The Hon. L.H. Davis: They are not bored, they are angry.

The Hon. K.T. GRIFFIN: They are angry about this, and they want blood on the floor.

The Hon. Anne Levy: They are bored by you.

The Hon. K.T. GRIFFIN: Mr Acting President, the people of South Australia are angry—

The Hon. R.R. Roberts: Get on with it!

The Hon. K.T. GRIFFIN: I will get on with it if I can be given the opportunity, but with such vociferous interjections it has been impossible to get a word in edgeways. What I am saying is that there is a real concern in the community about the Government's responsibility. I know that the Royal Commissioner has made statements about the responsibility of the Chief Executive Officer and of the board, and no-one resiles from that, but ultimately the buck has to stop with someone, and the Royal Commissioner says that the buck stops with the Government. It stopped with the former Treasurer and the Government, and I will deal with that again shortly.

I was talking about the South Australian Timber Corporation, the State Clothing Corporation and the State Government Insurance Commission. I did make a reference to the West Beach Trust, and I hope we have now resolved that. The honourable the Minister can deal with that later if she wants to. Putting that to one side, there are a number of statutory bodies which are subject to ministerial control and direction, and they have all fouled up. The South Australian Timber Corporation fouled up because there was no ministerial intervention. Every year the State Clothing Corporation makes a loss, and that is subject to ministerial control and direction. Under its original Act, the SGIC was subject to ministerial control and direction, and it got into a mess. Even then it was subject to political influence. Heaven help us if there were no ministerial control; one can only presume that there would have been an even greater mess than there was under the existing arrangement.

I asked the Attorney-General a question in Question Time today about ministerial authority. Sure, it was a hypothetical question, but it was on the basis of the information in the first and second reports of the Royal Commissioner. The Royal Commissioner says that you cannot blame the Act for the problem. It did not have any bearing on the problem. The fact was that the Minister and the Government did not exercise their responsibility, and the board failed to appreciate its responsibility and relationship with the Government under the Act. So, the fact is that you could not blame the law. There was nothing wrong with the law; it was the capacity and willingness of those who had a responsibility for administering the law to exercise that responsibility. There was no enthusiasm by the former Premier and Treasurer (Mr Bannon); nor was there any enthusiasm on the part of the Government for knowledge or to exercise control.

The Attorney-General promotes the view that ministerial control would have been a significant part of the answer, but if you look back, that just does not carry any weight at all. The fact is the Government adopted a hands off approach. It adopted a hands off approach in respect of other statutory bodies where there was the power of ministerial control. The Attorney-General said

it was all part of the culture, but who do you blame for the creation of the culture? Ultimately, it is the Government that sets standards. Ultimately it is the Government that has to accept responsibility, and if the Government says there was a culture that developed, the Government has to carry its share of the responsibility for the development of that culture. All the Premier and Treasurer had to do in relation to the bank when there were warnings from Mr Hartley to the present Premier (Mr Arnold) in 1988 was to ask for information or even to go so far as to appoint an investigator, which they could have done, or even in respect of the acquisitions to diligently exercise the responsibility.

According to the royal commission report, the former Treasurer, in relation to acquisitions by the bank, said that he regarded the power to approve acquisitions as a reserve power. I do not know what 'reserve power' means. If you have a reserve power, it means you must be exercising a power of diligence and watchfulness, because if it is a reserve power, at some stage you have to trigger the exercise of that power and you have to exercise it. If it is a reserve power which therefore requires diligence and watchfulness, it also requires a knowledge of what is going on, because how do you trigger a reserve power if you do not know what is going on? I suggest that that argument is really a facade. It is an excuse, promoted by the former Treasurer, for doing nothing. When these acquisitions were presented to the former Treasurer, and I refer to New Zealand, Ayres Finniss, which was established, and Beneficial Finance, all of them were submitted, even those that technically did not have to be submitted to the Treasurer.

The second report of the royal commission refers to trying to ensure a measure of good will by the former board and Chief Executive Officer with the Government of the day and the Treasurer. They made information available and they sought approval. Of course, once the approval had been given, that carried the imprimatur of the Treasurer and Government of the day. It must be remembered that the bank was backed by the Treasurer's guarantee, which ultimately was guaranteed by the Government and the people of South Australia. However, no diligence was exercised in relation to any of the acquisitions—not even a request for a look at the due diligence reports which might have been undertaken. We now know that, in relation to one acquisition in New Zealand, the due diligence reports had not even been done when the approval was sought. The due diligence inquiry, which any prudent business person would have undertaken, had not been done. There was no question about the validity or competence of the due diligence report; it just had not been done at the time. The Treasurer, who had spent all his life in politics or in the trade union movement, did not have the experience to understand that one had to have access to information about due diligence inquiries and other information before one exercised this power.

The Attorney-General, when he answered the question today, referred to the fact that he has been in public administration for a long time and that one does not have to be in it for a long time to understand some of the problems. I know that. Everyone who has had any involvement with the Parliament or with the public sector knows that one has always to be on the lookout. It does not matter whether it is public administration or in the private sector—

The Hon. R.R. Roberts: Or the Liberal Party.

The Hon. K.T. GRIFFIN: Wherever; one has to be conscientious. One cannot take things for granted. If someone is given a responsibility, whether by law or in some other way, they have to exercise that responsibility. One cannot wash one's hands of it; one cannot hide behind someone else. One of the criticisms that was made of me when I was Attorney-General was that I did not delegate enough. I said to the people who made that criticism, 'That is all very well, but if you delegate that responsibility ultimately you still cop the flak.'

The Hon. Anne Levy: Did you delegate the selling of Liberal Party headquarters?

The Hon. K.T. GRIFFIN: What about selling Liberal Party headquarters? What has that got to do with this? I am talking about governmental responsibilities.

The Hon. Anne Levy: You had the responsibility then. You were a member of the Liberal Party. Why did you allow all that tax evasion to go on?

The Hon. K.T. GRIFFIN: That is an absolute lie and I ask you to withdraw it.

The Hon. Anne Levy: When you withdraw the question of mistrust.

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

The Hon. K.T. GRIFFIN: I ask the Minister to withdraw and apologise.

The Hon. L.H. DAVIS: On a point of order, I would ask the Minister to withdraw that scandalous allegation and to apologise to the Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: Come on.

The Hon. ANNE LEVY: Mr Acting President, I did not call the Hon. Trevor Griffin a liar. That is unparliamentary language and I would not say that. I did not call the Hon. Trevor Griffin a liar.

The Hon. L.H. DAVIS: On a point of order, Mr Acting President.

The Hon. ANNE LEVY: I certainly did not intend to call him a liar. If I did so inadvertently, I apologise and withdraw, but I have no recollection of having done so.

The Hon. K.T. GRIFFIN: That wasn't it. You said I was involved in tax evasion.

The ACTING PRESIDENT: Order! I did not hear the Minister use the word 'liar'. Therefore, I cannot rule on that point of order.

The Hon. L.H. DAVIS: On a point of order, I asked the Minister to withdraw the allegation that the Hon. Trevor Griffin had been involved in tax evasion. That was the point I was making. That is an allegation that cannot be sustained.

Members interjecting:

The ACTING PRESIDENT: Order! I cannot force the Minister to withdraw what the Hon. Mr. Davis perceived to be an allegation.

The Hon. ANNE LEVY: I am happy to withdraw the phrase 'tax evasion'. I inadvertently used those words. I meant 'tax avoidance', and I will stand by that very firmly indeed.

The Hon. L.H. Davis: Are you going to apologise?

The ACTING PRESIDENT: Order! I cannot force the Minister to apologise if she does not want to apologise.

The Hon. K.T. GRIFFIN: I am surprised at the Hon. Anne Levy. If she is not prepared to apologise that is for her; I am not going to spend a lot of time debating whether—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: I was not involved in tax avoidance.

The Hon. Anne Levy interjecting:

The ACTING PRESIDENT: Order! The Hon. Mr Griffin has the floor. I can no longer tolerate interjections at such a level. The Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: I have been trying to address my remarks to you, Mr Acting President, but obviously members opposite feel very strongly under pressure because of the reports of the Royal Commissioner. That is why they are casting around for all sorts of allegations to make in the course of the debate. I was talking about public administration and the question of responsibility. I was saying that if a person is given or is required to exercise responsibility, that person cannot delegate the responsibility. If they do delegate the responsibility they cannot avoid the responsibility for the way in which the delegation is exercised.

The Hon. C.J. Sumner: You have to delegate something or you will never get anything done.

The Hon. K.T. GRIFFIN: Maybe; you have to choose what you want to delegate, but you do not delegate responsibilities like checking the affairs of the State Bank. In this instance they did not even delegate that. In relation to the power to approve acquisitions, it is clear that the former Treasurer did not exercise a responsibility; he allowed the acquisitions to occur, even though there was no diligence on his part to assure himself that it was in the interests of the statutory authority (the bank), in the interests of the Government or in the interests of the people of South Australia.

The Hon. R.J. Ritson: Do you think he would have signed the dockets without knowing what they were?

The Hon. K.T. GRIFFIN: We do not know how he approached the dockets that might have had the requests on them to undertake acquisitions. All we know is that he adopted a hands off approach and there was no diligent exercise of the responsibility which had been conferred upon him by the State Bank of South Australia Act. The State Bank of South Australia Act required responsibility. That is to be contrasted with the occasion, to which I have referred previously, when the Liberal Government was asked to approve an acquisition of shares by the SGIC and we refused it. We did not believe it was appropriate for a State instrumentality to embark upon that sort of acquisition program. We were not afraid to exercise the responsibility that was given to us under the State Government Insurance Commission Act to determine whether or not the acquisition should be approved.

We have to remember that since 1988 warnings were given to the former Premier and Treasurer by Mr Rod Hartley, subsequently by Mr Bakewell about the composition of the board, and subsequently to the present Premier, Mr Arnold, but they took no notice. They continued to appoint and reappoint directors. They did not give any particular attention to the breadth of experience necessary to be represented on the board. The Chief Executive Officer had a three-year contract initially, and the Attorney-General again mentioned this in answer to a question today. He was charged with the responsibility of grooming a successor, but after the first three years the contract was renewed.

The Attorney-General said that Mr Marcus Clark insisted that he would also be Managing Director and not just Chief Executive Officer so he had to go on the board. The Government made that decision. It was not the head-hunting group or the selection panel that made that decision: that was a governmental decision and, if that was a condition of Mr Marcus Clark's appointment, it could only be the Government which would confer it.

So the Government made that decision and accepted that he should be not only Chief Executive Officer but also Managing Director on the board. And they accepted again, as a Government, that when the contract came up for renewal he had to go back onto the board as Managing Director if he was to continue in office, and the Government reappointed him. You cannot blame anybody for that. You cannot blame the board; you cannot blame head hunters; and you cannot blame selection panels. The decision as to whether or not to appoint to the board or reappoint to the board was the Government's decision and the Government's decision alone.

So, the Government was very much involved in the way in which this bank got out of control and in not properly supervising the activities of the bank. The royal commission report makes it very clear that the Government cannot escape responsibility. The underlying thrust of both reports is that the Government had the power to do much more to prevent the losses of the bank but it failed to use the powers at its disposal and it failed to take notice of warnings which it was given.

The first report has to be read in conjunction with the second report and vice versa, but in chapter 12 of the first report, for example, it stated that both the Government and the bank lost sight of the bank's statutory charter and of their respective statutory obligations. And again, from an early stage in its history, the bank had put stability at risk in pursuit of growth in the hope and expectation that in due course growth itself would ensure stability. The bank was encouraged in the course that it took by a Government that according to circumstances was either supportive or indifferent.

I have already made reference to the fact of the appointments. The bank was encouraged by the Government to grow. At page 93 in the second report it states:

> There was also demonstrated an emphasis on achieving a level of profit that reflected predictions and Government expectations by ready acceptance of management recommendations, which was quite inappropriate.

And again, page 70:

> The fact that the growth, albeit at levels of profitability much less than desired, was able to secure the fulfilment of the Government's expectations, and that the board was prepared to accommodate them—no doubt prompted by the facility with which further capital to ensure continued growth was made available by the Government—must have played some part in what was a failure on the part of the board to consider whether a firmer hand should have been taken—as it clearly should have been—to the growth culture of the bank.

Then on page12 of the second report the Royal Commissioner says:

In a fair evaluation of the performance of the board and its relationship with Mr Clark (who was at all material times himself a member of the board) it is necessary to remember that the examination of the relationship between the Government and the bank which was the subject of the first report disclosed that:

The Treasurer appointed the board.

In fact, that was a Government appointment on the recommendation of the Treasurer. It continues:

The Treasurer made no effective response to suggestions that the board should be strengthened or its structure reviewed.

Mr Clark was strongly in favour of maintaining the 'status quo' in composition and membership of the board. It is worthy of note that no 'new blood' was introduced to the board between July 1987 and July 1990, and that at least two of the members appointed in 1987 could not reasonably have been expected to make any significant contribution to the commercial and business skills of the board.

The Treasurer was known publicly to have complete confidence in and high regard of Mr Clark.

Mr Clark had a very strong if not dominating influence in shaping the policies of the board.

The advice of the board on some important issues was preferred to the advice of Treasury.

Treasury made a very low key response to evidence touching the performance of the bank and was seldom willing, even if able, to question the commercial judgment of the bank.

The policies of the bank were influenced by the desire of the Treasurer for ever increasing contributions to State revenues.

He then goes on to say:

Such findings, and the findings in the first report will serve to confirm the conclusion in chapter 12 of that report that none of the players who are there referred to can escape a measure of accountability for the ultimate fate of the bank.

Those players included not only the former Treasurer but also the then Government. The honourable the Premier has made some observations in today's *Advertiser*, highlighted by a headline which focuses upon the vow of the Government to prosecute those who might be found guilty of wrongdoing, and that, of course, refers particularly to prosecutions of a criminal nature. One can expect that if there is evidence which is discovered by the Auditor-General or the royal commission arising from the inquiries that there has been criminal conduct it will be pursued. I do not think anyone expected anything else, whoever should be in office.

Similarly with the civil action or civil liability: if there is any civil liability at common law in the directors or managers or any other persons, then that ought to be pursued. But, in promoting that prosecution policy I suggest that the Premier was actually ignoring that ultimately his Government has to accept its share of responsibility.

Whilst some do express the view that even Ministers ought to be liable civilly for negligence, incompetence and failure to exercise powers granted by statute, the more likely scenario is that there will not be any action taken in respect of Ministers, but that the judgment of the people of South Australia at the ballot box will have to be the only means by which Government accountability can finally be driven home. For anyone in politics that is, of course, the ultimate sanction: being thrown out of office, and it is the only recourse which the electors of South Australia are likely to have in relation to this Government, even though there may well be action against directors or managers, either civilly or criminally—courses of action which still have a long way to go before determinations are made.

There is no doubt that, whilst the focus of the second report is upon the board and the Chief Executive Officer, the Government is inextricably entwined in the State Bank saga, and its involvement is reiterated by the Royal Commissioner in this second report.

In dealing with the second term of reference, the Royal Commissioner addresses issues about amendments to legislation. Those amendments are not major amendments in the scheme of things. That, as I have said earlier, has not been regarded by the royal commission as playing any significant role in the debacle of the State Bank.

The Royal Commissioner does make some recommendations for change. He proposes there not be ministerial control. I think just for a moment it would be worth referring to several of the observations which the Royal Commissioner makes in relation to that matter. At page 216 of his report he states:

No doubt in a desire to remedy what were thought, with the experience of hindsight, to be defects in the present statutory framework and Treasury powers, counsel for the Government has now submitted for consideration a wide range of statutory amendments which go almost to the opposite extreme. Far from conceding anything in the nature of an 'independent commercial role' to the bank, they would, if implemented, have the effect of creating a bank owned by the Government and run by the Government for the benefit of the Government.

It is quite obvious why the Government seeks to promote the view that the Act is deficient: it is the only defence it can promote which gets it largely off the hook. The Royal Commissioner goes on to say:

The role of the bank in the future is a political issue that must be decided by Government and ultimately by Parliament, but it is difficult to envisage the bank being able to maintain and enhance a long-term role that combines retail banking with financial services to commerce and primary, secondary and service industries if it is seen to be only a Government bank managed and controlled by the Government for the Government.

However that may be, the commission is unable to conclude that past experience and losses alone call for such wide-ranging powers of control as are now suggested, and the existing arrangements between the bank and the Government, as referred to above, suggest that such far-reaching controls are not necessary.

He goes on later to state:

The ultimate control and sanction in the hands of the Government is its power to determine the composition and membership of the board.

It is obvious the Government does not agree with that conclusion. I suspect it does not see the dangers of a Government being so inextricably involved in the operation of the bank that it will not be able to carry on business effectively as a bank in a commercial environment. That is largely because there will be businesses and ordinary citizens who will be afraid that the Government will gain access to their private and confidential information—their banking information and their financial affairs—through such intimate involvement

by Government in the operations of a bank which is meant to be competing commercially.

As the Royal Commissioner has found, and as I have said on several occasions already, there were adequate powers there for the Government to know what was happening in the broad sweep of banking activity. One did not have to know about individual customer's affairs to find out that the bank was starting up an office in New York or Hong Kong, had some off-shore companies in the Cayman Islands or was buying up businesses in New Zealand. That is the broad sweep of things and that is the level of activity which should have been known to the Government and in which it should have been taking an immediate interest because of the consequences for the taxpayers of South Australia through the guarantee.

The only other matter that does need to be addressed is the issue of economic factors. It is quite clear from what the Royal Commissioner had to say that economic factors did not play a significant role in the downfall of the bank. He draws particular attention to a banking report in 1988 which was prepared in the United States and which made the very telling point that some banks fail and some banks succeed.

During difficult economic circumstances it is those banks that have competent management and competent and experienced boards which survive and that they were in fact those that survived during the 1980s. External economic factors played very little part in the downfall of the bank.

So, in summary, we note the report in conjunction with the first report with a great deal of interest and concern for the matters which it raises in the public arena and for the lack of diligence demonstrated by the Government, the board, the Chief Executive Officer and by management. We express the view that as those at board and management level have paid a price so should the Government. It is not just the former Treasurer who has paid a price but it ought to be paid by the Government as a whole, which did have wide-ranging responsibilities in relation to this and other statutory authorities.

No amount of excuses which are raised by the Government will detract from the ultimate view, I suspect of a majority of South Australians individually and in business, that the Government has not yet paid a price and that it will be held accountable through the Federal election on Saturday but, more particularly, at the State election whenever it comes later this year.

The Hon. L.H. DAVIS: There is nothing new and there is a sense of *deja vu* about the second report of the Royal Commission into the State Bank of South Australia. It certainly expands and elaborates on the damning indictment of the Bannon and Arnold Labor Governments contained in the first report of the Royal Commissioner. Somehow it seems appropriate that we are debating this matter today, exactly two years and one month since the full extent of the State Bank of South Australia's losses became evident to the public and the Parliament of South Australia. It was on 10 February 1991 that Premier Bannon announced that the State Bank was going to incur a loss of at least $1 billion.

So, 750 days later there are 750 000 families in South Australia who have all been made the poorer because of the enormous debacle from the State Bank, resulting from a hands-off approach of State Government, resulting from the actions or inaction of a Government that was financially naive, financially ignorant and financially unaware, and resulting from a Government which, as the A.D. Little report so accurately observed, lacked a business culture.

The second report, whilst dealing principally with the relationship between the board and management, nevertheless reinforces the very strong criticism of the Bannon Labor Government which was contained in the first report. It quite properly uses the word 'government' in the broadest sense to include Ministers of the Government. That includes the Hon. Anne Levy as someone who was involved in the State Bank debacle, because the buck stops with all those Ministers, certainly, principally the Premier and Treasurer—and he has paid the ultimate price.

As my colleague the Hon. Trevor Griffin so accurately observed, the Government of the day should pay the ultimate price by resigning. If it has not got the guts and decency to resign then it will certainly pay the ultimate price on judgement day—election day—whenever that may be.

The commission's second term of reference required it to inquire into and report on the appropriate relationship and appropriate reporting arrangements as between the Government and the bank, and the bank and the State Bank Group on the other hand, in the light of the guarantee contained in section 21(1) of the State Bank Act and in the light of the nature and extent of the rights and powers given to the Treasurer by the Act. It is very important to reflect on the fact that, as page 221 of the report states:

> The commission's view is that the ultimate responsibility of the Treasurer, as guarantor of the liabilities of the bank, and the source of its capital needs via the South Australian Financing Authority (SAFA), requires Treasury to be kept fully informed of what the board and management are doing. As pointed out with some emphasis in the First Report, it is only against a background of such information that the procedures for consultation in section 15(3) and (4) of the Act become sensible and workable.

It is important to recognise that that guarantee was provided by the State Government to the bank which, of course, immediately gave it an advantage in the marketplace in terms of raising funds, because a financial institution with a State Bank guarantee will be able to raise funds at a lower margin in the capital markets compared with banks which do not have a State Government guarantee. It is also interesting to note that the Commissioner restated on page 207 what his first report had said, as follows:

> The first report, however, also sought to make clear that the former Treasurer's concept of the commercial independence of the bank and what that concept entailed in terms of a 'hands off attitude by the Government is not enshrined in the Act. It was a concept driven by political and policy perceptions, and not by legislative prescription.

That is in direct contradiction to what the Attorney-General (Hon. C.J. Sumner) has been mouthing in this Chamber over the past couple of days in a desperate effort to erect some sort of political smokescreen: mealy-mouthed words of protestation that

seem to suggest that the legislative impediments contained in the State Bank Act really gave the Government an excuse for not knowing what was going on in the State Bank. As I said, and as the Royal Commissioner observes very succinctly on page 17:

> The liabilities of the bank are guaranteed by the Treasurer (section 21), a factor of critical importance which imposes a special responsibility upon the board—in promoting the balanced development of the State's economy and the maximum advantage to the people of the State—not to expose 'the economy of the State' and 'the people of the State' to the burden of the guarantee.

Of course, it can be properly added to that observation of the Royal Commissioner that the State Government cannot adopt a hands on approach when it has given a State guarantee of such magnitude to the State Bank. As the Hon. Anne Levy interjected so wildly, so hysterically about the Hon. Trevor Griffin, and shamefully accused him of tax evasion, which she was quite properly forced to withdraw under strong united protest from the Opposition, I just thought to myself how extraordinary it was that this Government that was charged with the responsibility of overseeing the State Bank operations, if for no other reason than that it had given a guarantee to the State Bank which gave it an enormous advantage in the marketplace had had in place for 50 years a very good example of a State Government guarantee arrangement that operated in a bipartisan fashion.

The Hon. Anne Levy and I have been in a unique position to observe that arrangement as members of the Industries Development Committee, which was established by the Playford Government in the 1940s to provide for a bipartisan approach to State development, and which comprised one member from each side of each Chamber (a total of four members) supplemented by a representative of the Treasury (and in some cases it was the Under Treasurer or Deputy Under Treasurer; a very senior Treasury official always). That committee had the power to recommend Government guarantees after hearing evidence, which was held *in camera,* and also to recommend financial assistance. And it was in my time, I think I can say now (because the Industries Development Committee in that form has passed into history, sadly and inappropriately, in my view, and is now a subcommittee of the powerful Economic and Finance Committee, which means that only members of the Lower House can be members of that committee) that we developed a system—and I think it was at my suggestion and certainly with the acquiescence of the Hon. Anne Levy—of six monthly reporting, perhaps even quarterly reporting, so that we could check on the progress of the companies or the operations to which we had provided financial assistance and, indeed, to which we had loaned moneys.

Because that committee was charged with the responsibility of encouraging economic development within South Australia, whether it be a large international or national company seeking to locate or relocate into South Australia or a small business expanding (because there were companies in both categories that applied for assistance before the committee), their affairs were monitored very closely and the committee, at least once a year, visited some of these companies to see at first hand what was happening. Here was very much a hands on approach by the committee, relying of course on the skill and information provided by the Department of Industry, Trade and Technology, as it is now called.

Certainly, it was interesting sometimes to get the early warning signs that management was not doing well and perhaps we suggested 'Why do we not provide more financial assistance?' or 'Why do we not insist that they have a consultant with them?' and, on many occasions where a guarantee or financial assistance was provided, we in fact set down some very stringent criteria to minimise the risk to the State Government and the taxpayers and to maximise the opportunity of success in that operation. It is certainly a small analogy but a very appropriate analogy to raise in discussing this serious matter of the State Bank.

On pages 12 and 13 of the Royal Commission into the State Bank of South Australia Second Report, the Royal Commissioner says that the finding of the first report involved the following propositions:

> that the Treasurer misconceived his role in the face of mounting evidence that all was not well with the bank.

That is a very direct observation. Secondly:

> that neither the Treasurer nor Treasury nor the bank ever satisfactorily addressed the question of what the Government needed to know in order to protect its own massive investment in the bank and its potential obligation as guarantor of the liabilities of the bank.

On page 13 the Commissioner also restated findings of the first report, when it said:

> The Treasurer appointed the board.
>
> The Treasurer made no effective response to suggestions that the board should be strengthened or its structure reviewed.
>
> The Treasurer was known publicly to have complete confidence in and a high regard for Mr Clark.
>
> The advice of the board on some important issues was preferred to the advice of Treasury.
>
> Treasury made a very low-key response to evidence touching the performance of the bank and was seldom willing, even if able, to question the commercial judgment of the bank.

Finally and most importantly it said:

> The policies of the bank were influenced by the desire of the Treasurer for ever-increasing contributions to State revenues.

On page 21 the Royal Commissioner notes that one of the features of the submission received by the commission on the term of reference was that:

> The Government seeks to attribute the prime responsibility for the fate of the bank to the board.

The Government in the royal commission, as the Commissioner observed, was trying to duck and weave, trying to escape its responsibility, still trying to kid itself and the people of South Australia that it came to the commission with clean hands, that it had no involvement in the debacle which cost South Australia $3.1 billion. It has cost South Australia a debt which stretches well beyond this decade and which will ultimately cost families in South Australia, taxpayers in South Australia, hundreds and ultimately thousands of dollars over a period of time.

The Hon. G. Weatherill: You haven't got a lazy $100 on you?

The Hon. L.H. DAVIS: Well, $100 would not begin to touch the sides of the debacle called the State Bank, and for the Hon. George Weatherill to treat this in such a jocular fashion just shows that this Labor Government

still has not learnt and still does not understand the magnitude of the debacle. As I said before, I cannot think of any one example in the whole of the world where a State or a country with a population of less than one and a half million people has racked up a loss of $3.1 billion.

I turn to page 57 of the second report and I seek leave to have inserted in *Hansard* without my reading it a table purely of a statistical nature which sets out a summary of the growth in assets of the State Bank between the years 1985 and 1990.

Leave granted.

State Bank of South Australia Strategic Plan 1985-90—Summary

	6/85		6/86		6/87	
	Strategic Plan $M	Actual $M	Strategic Plan $M	Actual $M	Strategic Plan $M	Plan $M
Bank	3604	3429	4535	5470	5143	6848
Group	4278	4130	5357	6451	6094	7993

	6/88		6/89		6/90	
	Strategic Plan $M	Actual $M	Strategic Plan $M	Actual $M	Strategic Plan $M	Plan $M
Bank	5775	9532	6451	12688	7325	17299
Group	6844	11003	7643	15028	8640	21142

The Hon. L.H. DAVIS: This table shows an extraordinary variance between what the strategic plan for 1985 to 1990 set out in terms of growth of assets for the State Bank Group and what actually happened, and this strategic plan which was the cornerstone for the five years, 1985 to 1990, suggested that the bank should have, at the end of June 1985 assets of $3 046 million and the group should have assets of $4 278 million and the actual assets which did exist for the bank and the group at the end of June 1985 were, in fact, in line with the strategic plan. But by 1986 the strategic plan group assets budgeted for were $5 357 million, but the actual assets at the end of June 1986 were $6 451 million. Each year that rolled on, from 1986 through to 1990, shows an increasing gap between what the strategic plan said the bank should have in place in assets and, in fact, what occurred.

By 1988 we saw that group assets were $6 800 million. Group assets should have been, according to the strategic plan, $6 844 million but in actual terms they were $11 003 million. Then, finally at 30 June 1990, just seven months before the balloon went up in a most terrible way, the actual assets in the bank were $21 142 million, when the strategic plan for 1985-90 had said that at the end of June 1990 there should have been assets of about $8 640 million. In other words, the bank's assets were two and a half times the value which had been estimated in the strategic plan of 1985-90. That was information certainly not available to the public at large. One would have presumed it was available to the Treasurer and to the Treasury. It showed a bank which was growing at more than double the rate that it had set out in 1985 and in other evidence—

The Hon. C.J. Sumner: Isn't it in the annual report?

The Hon. L.H. DAVIS: Certainly the total value of the assets was in the annual report but the strategic plan was not in the annual report and that is the point, Attorney. Subsequent evidence showed that the State Bank assets were growing at probably double the rate of its major banking competitors in Australia. Of course, one of the reasons which the royal commission found, and it is noted on page 69 of this report, is that in July 1986 the board was asked to adopt a dividend policy which, and I quote:

> ...on the basis of group profits increasing annually, would provide the State Government with a steadily escalating return in respect of tax and dividend in aggregate...

This of course, was a Government driven to milk the cow as fast as possible. There was no consideration of whether profits were actually being made. As we now know the Government ripped over $100 million out of the State Bank, and some of those moneys, with the benefit of hindsight, were clearly from fictitious profits. The profits were book profits which simply could not be justified. The board was quite mesmerised by Mr Clark. That is quite clearly set out in the Royal Commission report. The board, according to the Royal Commissioner, was skilled enough and had ample opportunity to raise various matters relating to the strategy and the planning in the bank, but failed to do so.

Of course, standing one notch above the board was Treasury, and the Premier and Treasurer of the day consistently refused to allow Treasury to have any involvement. The then Premier seemed magnetised by Mr Clark and took his advice at all times, as far as one can see, in preference to some of the lukewarm advice expressing concern that came out of Treasury from time to time. So, we had the extraordinary explosion in bank assets, and on page 130 of the second report it states that in the plan's five-year targets the proposed profit for the bank for the next two years, 1990 and 1991, was $64.8 million and $76.2 million, and for the group $85.5 million and $100.5 million. The payment to the Government was $19.4 million which represented the dividend/interest payable on the tranches of $157 million and $150 million converted to capital from concessional housing loans. So, there was extraordinary emphasis on passing on profits to the Government, but they were profits that were not sustainable. In fact, they were arguably not profits at all.

When we talk about the Remm development, the resolution of the board in 1987 leads to the conclusion, on page 143, that the board, whatever unease it may have had, was still not prepared to assert firm control over the management, because in November 1987 a resolution approving the Remm proposal commented:

> The proposal was discussed at length and it was agreed that this project was of major significance to South Australia, but

some concern was expressed that to make the transaction commercially viable the State Government would be obliged to defer statutory costs amounting to approximately $7.9 million.

What an extraordinary statement. A project that ultimately has cost $700 million turned, according to the board report, on whether the State Government would defer statutory costs amounting to $7.9 million, which is just about 1 per cent of the final cost. That is an extraordinary proposition when one looks at it, again with the benefit of hindsight. The board and the Treasury had the benefit of foresight; they had the figures and the facts, and of course, we now know that the Remm project is one of the largest bad debts on the books of the State Bank. So, it really is extraordinary, when alarm bells were ringing around Australia, with Tricontinental, the State Bank of Victoria and with other corporate collapses, that Treasury did not look around Australia, see what was occurring elsewhere and say, 'State Bank has grown quickly. Why are they reporting such low levels of doubtful and bad debts? Are they immune from the general deterioration in economic conditions in Australia?'

It was obvious, certainly to the Liberal Party, because as the Attorney now well knows some 200 questions were asked from 1989 onwards by the Liberal Party primarily in another place. The Attorney in one of his more extraordinary outbursts a few months ago suggested that if we had talked quietly to Ministers of Government in the sanctity of the passages or behind the pillars of Parliament that the Government may have taken more notice of Opposition concern about the State Bank. What a fanciful notion; that a public protestation on very sensitive matters, which obviously the Opposition were not raising lightly, were ignored by a State Government in the face of mounting evidence.

The Hon. C.J. Sumner: You should have asked the questions here.

The Hon. L.H. DAVIS: I did work behind the scenes as I did tell the Attorney-General, and in fact as I think I did advise the Council on one previous occasion, a deep throat—a whistleblower within the State Bank organisation—sent me the complex network which turned out to be the host of off balance sheet companies headed by Kabani Pty Limited. As the Attorney well knows when those questions were first asked well over two years ago involving Kabani—I think it was July 1990 from memory—it came as a shock to the Premier. He did not even know there was such a creature as Kabani Pty Limited and on initial inquiry he came back to the Parliament saying that there were some 50 off balance sheet companies. Subsequently, that had to be amended to over 100. That was the extent of the ignorance of Treasury: they did not know what was happening.

The Hon. C.J. Sumner: Neither did the bank.

The Hon. L.H. DAVIS: The Attorney-General says, 'Neither did the bank.' That is certainly true and I do not think the Hon. Samuel Jacobs puts it quite as cogently as the Attorney-General, but I think the Attorney-General should go on record with that observation that obviously the bank did not know what was going on in 1990 and, if I can add my two pennies' worth, neither did the Government. It is extraordinary that on page 154 of the second report we read:

By April 1989, the board at its special meeting, convened by Mr Simmons as Deputy Chairman, expressed grave concern at the growth of the bank and its capacity to manage such growth, only to be assured by senior managers (in the absence of Mr Clark) that management was addressing the issue of its own capacity.

As the Royal Commissioner observes:

That is a classic example of the board's passivity, its bland acceptance of a management response which simply failed to address the disparity between the policy of slow growth and consolidation which it had endorsed and what had actually happened, which should have been at the heart of the board's concern.

If the critical question 'when are we going to slow down and consolidate?' was asked then, it certainly was not answered; and even more certainly it was not answered when the board, a few weeks later, was invited to approve the Strategic Plan 1989-94.

One has to say that the same board that expressed concern at growth in April 1989, 15 months later, when the balloon was fast running out of gas, approved bonuses and salary package increases ranging from—

The Hon. C.J. Sumner: Why does the balloon go up if it is running out of gas?

The Hon. L.H. DAVIS: The balloon is going down. It is an expression of speech, Attorney.

The Hon. C.J. Sumner: You said the balloon went up and then it was running out of gas.

The Hon. L.H. DAVIS: Let me explain for the benefit of the Attorney. The balloon going up is an expression to say that there was mounting trouble. The balloon goes up: we are getting into trouble.

Members interjecting:

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

The Hon. L.H. DAVIS: For the Attorney-General to enter the debate for the first time and interject on a balloon just shows how pricked the Government's balloon has become over the matter of the State Bank.

The Hon. C.J. Sumner: It was not a bad interjection, though.

The Hon. L.H. DAVIS: I am at least pleased to know that the Attorney-General is aware in which direction balloons go, because he certainly had no idea in which direction the State Bank was going. So, the same board as expressed concern about the out of control growth of the bank in April 1989 was giving handsome bonuses and salary package increases ranging between $40 000 and $140 000, aggregating about $600 000, to the seven senior executives of the bank, who presumably were driving this extraordinary growth.

Because the second report is obviously focusing on the relationship between the board and the management, it does not go on to make the next observation: where was Treasury, where was Treasurer? Did they know of these bonuses? Did they see anything unusual about them? More importantly, did they have in place a reporting mechanism by which the Treasurer, who was meeting on a regular basis with Mr Clark and other senior people, and the Treasury, who were meeting on a regular basis with State Bank, ever got to know? Was there a set of requirements in place which meant that basic information, such as salary packages, was on the agenda for communication to the Treasurer and to the Treasury?

So, we saw this extraordinary increase in remuneration of about 34 per cent for the 12 months 1990-91.

The Hon. C.J. Sumner: Outrageous.

The Hon. L.H. DAVIS: Absolutely outrageous. The Attorney-General says it was outrageous, and I agree. It is outrageous. As the Commissioner concludes on page 200:

It appears to be a reckless, if not irresponsible, decision presumably made by the bank's Compensation Committee—

What a wonderful phrase, 'the bank's Compensation Committee'. What about the taxpayers' compensation committee? Where do they get into the act?

The Hon. C.J. Sumner: Compensation for whom?

The Hon. L.H. DAVIS: Compensation for the executives. The Commissioner continues:

...comprising the Chairman, the Deputy Chairman and Mr Clark. It does not sit comfortably with the advice from the Personnel Manager to the board meeting on 27 September 1990 of the need to reduce staff and staffing costs.

If I may be forgiven just once to mention SGIC, we saw a similar experience in the face of the $81 million loss in 1990-91. Dennis Gerschwitz had a lazy $60 000 increase in his salary, a 34 per cent increase, the same as we have just noted in the State Bank, from $170 000 to $230 000, at the same time as the SGIC reported a loss of only $81 million. Again, where was the Treasurer? As my colleague the Hon. Mr Griffin accurately observed, as with the South Australian Timber Corporation, where Mr Higginson has presided over such a debacle for the past four years, with the SGIC, the Clothing Corporation and West Beach Trust, the Minister had the power of direction, and even in those cases the Government failed. In fact, it is hard to find a truly commercial operation of Government where they were competing with the private sector in an operation where they did well.

The Hon. C.J. Sumner: The Crown Solicitor's office.

The Hon. L.H. DAVIS: The Crown Solicitor's office is not a commercial operation, unless the Attorney-General is telling us for the first time that they do work on the side for the private sector, and making a quid on the side. Is that what he is saying?

Members interjecting:

The Hon. L.H. DAVIS: I hope that is not true.

The PRESIDENT: Order! The Council will come to order.

The Hon. L.H. DAVIS: I will give the Attorney-General a chance to withdraw that comment.

Members interjecting:

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

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order! The honourable Attorney will come to order.

The Hon. L.H. DAVIS: There is not one commercial arm of Government that I would argue has succeeded over the past several years, whether or not it has had ministerial control and direction over its operations. Another damning piece of information as I come to the end of this debate on the State Bank is to be found at page 161 where the Royal Commissioner notes:

On 27 July 1989, the external auditors at a board meeting sounded stern warnings about the level of provisioning, and the board in adopting the 1989 accounts, was certainly aware that substantially increased provisioning would be required in the current year.

That was in 1989-90. He continues:

As a consequence the board resolved on 28 September 1989 to meet on a half yearly basis with the external auditors.

He goes on to say:

It is rather surprising that the board had not previously conferred on a half-yearly basis with its external auditors, if only informally. What is more surprising is that it did not do what it had resolved to do in September 1989 in that it failed to consult with its external auditors on the half-yearly accounts for December 1989. Had it done so, the under-provisioning in those accounts, discussed in the First Report, may have been avoided, with consequent earlier warning of the true financial position of the bank.

Again, the question had to be asked: did the Treasurer ever know about that? One would have thought if the Treasurer was half hands on, he should have known that this was a recommendation of the board. It is fairly basic information.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: It is quite clear that we come to a situation where the State Bank saga, slowly unwinding, is a damning indictment of the Bannon Government and also the current Government. As the Royal Commissioner says quite properly, Government in its widest sense includes the Ministers of the Government. It includes the Attorney-General; it includes the Hon. Anne Levy and it includes the Hon. Barbara Wiese. They were all there: they are all accountable. What are the options for us in this rust bucket called South Australia? It is sad that that is what the Eastern States are now calling us—a rust bucket—because of this—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: The Attorney-General admitted only yesterday that the State Bank debacle has meant that South Australia's debt has ballooned.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: That is right. We now have a situation where both major Parties at Federal level have offered some form of compensation if the State Bank is sold. The Premier (Lynn Arnold) has gone on record as saying that in time he will recommend the sale of the State Bank. One of the problems that will emerge for this Government is whether the left wing will allow it without a battle. It may be that the State Labor Government is not here to make that decision, because it may pussy foot around on the issue so much that no decision will be made before the next State election, which will surely see its demise.

I want to put on record my plea to this Government, if it has the courage to make a decision before it goes to the people at the next election, that, if it is going to sell the State Bank, it should take into account that there is no other mainland State in Australia which has less than two retail banks headquartered in its capital city. Even Tasmania has one bank headquartered in its capital city. If the State Bank of South Australia is sold to the highest bidder for what the Government has suggested could be as much as $1 billion, it will mean that that highest bidder is buying the franchise with no guarantees and no

commitments in place to safeguard the branch structure and employment of the State Bank staff.

This Government has to accept that what may be in the best interests of the State is not necessarily to accept the highest price, if there is such a bidder—and I would query that—but rather to look beyond the possibility of getting a high price for an unconditional sale and to look at the best interests of South Australia and seek a formula which will allow for a bank to remain headquartered in South Australia.

As the Attorney-General will remember, I put on record my observations on this matter recently when I suggested that one option would be to float off at least part of the bank to the people of South Australia (that is, the good bank, which is making a modest profit) and privatise the rest over time to allow for the necessary build-up of capital in order for the capital adequacy ratios required by the Reserve Bank to be met and to allow the exit of the Government from that bank in an orderly and acceptable fashion to the Reserve Bank. That is one option. Of course, if the bank were privatised in the fashion that I have outlined, that would see the State Bank of South Australia with that name, or perhaps a different name, floated on the Australian Stock Exchange.

The other option is to seek some form of merger with the Cooperative Building Society. Although it is a smaller financial institution, it is unarguably one of the best performing regional financial institutions in South Australia. There has been a suggestion that the Cooperative Building Society will one day become a bank. I would plead with the Attorney-General, who has been much chastened from these two reports to date from the royal commission, to take those representations to the Cabinet when it is considering this matter.

I think that the Government's estimate of $1 billion is excessive. Obviously it is in its interests to talk the price up. I am not being malicious when I say that the general view in the financial community amongst people to whom I have spoken would suggest that $500 million to $600 million is a more likely price in the present climate. However, that is a debate for another day.

I support the Hon. Mr Griffin in expressing my distress about the events that have led to the royal commission into the State Bank of South Australia.

The Hon. DIANA LAIDLAW: I also wish to make a contribution to this debate.

The Hon. C.J. Sumner: Are you going to make a good speech like you did last time?

The Hon. DIANA LAIDLAW: My speech will be short, because most of what I feel about this matter would be ruled out of order by the President as being unparliamentary. Therefore, I will not speak at great length, but the very fact that I need to speak causes me some distress.

When reading this report, particularly in conjunction with the first report, I find that what has transpired in this State is distressing. This State has prided itself, in terms of business practice and ethics, on offering a high quality contribution from the business community to board level. As I said, I find it distressing to note what has transpired in this State. I also find it very distressing that the Government should run a mile in terms of accepting accountability and responsibility as we know it in the Westminster system for setting standards for the community at large to follow.

Reading this report in isolation, it is true that the majority of the criticism is directed at various State Bank board members and at Mr Marcus Clark. I recall that when the Liberal Party was asking questions about the bank some time ago the former Chairman and several board members spoke to members of my family and to me and my colleagues and urged us not to ask further questions on the matter. What distressed me so much at the time and since is that they were not asking the same questions as we were asking, and certainly the Government was not asking those same questions. Perhaps if they had been more diligent in their responsibilities at that time, we would not be in this terrible situation.

It is important to recognise that in taking note of this report Commissioner Jacobs makes clear from the outset that the second report must be read in conjunction with the first report. When one reads the two together, the verdict leads one to have considerable contempt for all the major players in this whole fiasco. It is a tragedy that so many people, who have held public positions of responsibility in our community, whether in Government, in the Public Service or on the statutory authority, have not diligently exercised their responsibilities to the community.

I want to note one reference from the *Advertiser* editorial this morning. It reads:

> Consequently, in the picture that emerges so far, everyone, from the former Premier and Treasurer and his Cabinet colleagues and advisers and his Treasury experts to the State Bank directors, the Chief Executive and senior management, is guilty of various degrees of self-interest, moral cowardice and incompetence.

I would say 'Hear, hear' to that statement. All those people to whom the editorial refers have left this State with a debt nightmare. As the Attorney-General knows, I have considerable respect for his capacity and integrity, and I believe that he shares my distress about the state in which his Party and Government have left and will leave this State at the next election, because South Australians will not put up with these standards that have been set, nor with the nightmare of debt that has been left.

I suppose what distresses me most in this whole thing is not just this nightmare of debt and the impact it will have on business confidence and competitiveness in this State for many years but also the lack of remorse and responsibility accepted by Government members opposite. When listening to debates earlier, it was almost a matter of a joke for some, almost a matter of glee to see this report tabled yesterday and for them to be able to shaft the blame to somebody else—anybody else but themselves.

It is also of concern to me that the Government has latched onto the fact that the current Act does not have a specific direction for the Treasurer in terms of day-to-day transactions and negotiations with the State Bank. It does not take a specific direction power for any Treasurer, for any Premier or for any member of Cabinet to ask questions and insist on answers.

I find this obsession with the lack of directional power to be a political defence and a sidestepping exercise

which the Government is using to seek to justify its lack of responsibility and accountability. It is one that I am sad they are using because they may believe that they will get some political gain from it. However, in terms of ethics and responsibility I believe that they are not only missing the point but also are derelict in their duty.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: I am arguing, Attorney, that your most recent defence in the last few days that there is no direction power in the Act for the Treasurer in his negotiations with the State Bank is a convenient political excuse to justify so much that has been derelict in terms of the day-to-day negotiations with the bank over the past few years. There is no board member on any company in the private sector that would be allowed to get away with what has happened here when they must ultimately accept responsibility. And ultimately it is the Government that is responsible for this because they have—

Members interjecting:

The Hon. DIANA LAIDLAW: It is because they have this Government guarantee. You were responsible and you are responsible because you are, on behalf of taxpayers, guaranteeing the operations of this bank. For the Hon. Ron Roberts to throw up his hands and deny this is absolutely shameful.

The Hon. R.R. Roberts interjecting:

The Hon. DIANA LAIDLAW: Now he wags his finger at me. He is not only shameful, he is also threatening. It is very sad how you do not exercise your responsibilities as a member of Parliament or as a member of this Government. Yet, when it comes to crime in our community it was interesting to see how ready this Government was to insist that parents be responsible for kids. However, when it comes to this absolute shambles of the State Bank it is interesting to see how they seek to duck such responsibility and blame everybody else. One almost feels sorry for the former Premier, Mr Bannon, and how his colleagues and former friends have deserted him when they should be equally sharing the blame.

I merely make the point that it was quite obvious to many in the Liberal Party and the community at large that things stank with the State Bank well before the announcement of huge losses was made by the Premier in early 1992. That was also clear to shadow Cabinet when we met with Mr Marcus Clark and representatives of senior executive some nine months earlier. It was clear to us that things at that time did not add up, and I cannot, and will never be able to, believe that this Government could not have asked the same questions and been as suspicious, inquiring and demanding of accountability.

As I say, I think this State Bank lesson is one that is a very low point in South Australia's history and one that is so low because this Government continues to refuse to accept responsibility for its lack of diligence.

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

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

WHISTLEBLOWERS PROTECTION BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 1483.)

The Hon. C.J. SUMNER (Attorney-General): I sought leave to conclude my remarks yesterday so that I could give a considered response to the contribution of the Hon. Mr Elliott. There is not much point in continuing unless the honourable member is here. Mr President, I draw your attention to the State of the Council.

A quorum having been formed:

The Hon. C.J. SUMNER: The honourable member first asked what response the Government had received from the private sector. Officers of my department consulted as widely as they could and the issues received some newspaper coverage. Despite that, only one private sector organisation responded and, since it responded to my office, I am loath to break any sense of confidentiality it might have felt warranted, although I can certainly check that with it to see whether it is happy for the submission to be made public if it becomes important.

I can say that it said that it did not see the need for legislation but, if there was thought to be a need, it commended the approach taken in the Bill in that it did not seek to create another bureaucracy. It took the view, however, that protection against victimisation should be conferred by the Whistleblowers Act and not by the Equal Opportunity Act. The Hon. Mr Elliott made five points to which I should like to respond. The first was that members of Parliament should be listed as appropriate authorities. I cannot agree with this and will oppose any amendment to that effect. I might as well point out, not in any sense of being difficult about the matter, but if an amendment of this kind is passed in relation to this Bill and no deadlock can be resolved in relation to it, as far as the Government is concerned the Bill will have to fail. There are two reasons for that. The first is that the Bill is a very powerful weapon indeed, once a disclosure falls within its scope. It provides very complete protection against all legal action. It follows that it potentially protects the leakage of confidential information from all levels of the Public Service.

If a member of Parliament was, as such, an appropriate authority in terms of the Bill, then disclosure to that person would be deemed to be reasonable and appropriate in all cases and any member of the Public Service could, with complete impunity, leak information to any member of any political Party about any matter. This goes far too far and would seriously compromise the integrity of any Government. So far as I am aware, it is not part of any proposed or existing whistleblowers scheme in Australia, or overseas for that matter, and there is good reason for that.

The second point is that disclosure to a member may be protected even though a member of Parliament is not an appropriate authority. That needs to be borne in mind. The scheme of the Bill is that the disclosure to a person who is not an appropriate authority will be protected only if 'the disclosure is made to a person to whom it is in the circumstances of the case reasonable and appropriate to make the disclosure'. It follows that protection can be

given to a disclosure made to a member of Parliament if it was reasonable and appropriate to make the disclosure to that member. That seems to me to be quite a defensible proposition. Saying that it is always appropriate and reasonable is not. Regrettably, what I think the Hon. Mr Elliott's amendment does is mean that for virtually anything, allegations or not, but anything that someone feels they can bring to a member of Parliament, receives absolute protection and of course would no doubt immediately end up in Parliament. I just think that—

The Hon. K.T. Griffin: It will virtually, anyway. You cannot compel a member who raises it in the House to disclose the source of the matter outside.

The Hon. C.J. SUMNER: No, that may be right, but—

The Hon. M.J. Elliott: Happens all the time.

The Hon. C.J. SUMNER: Sure, and that is fine; no-one is complaining about that, but there is now some restraint on the public servant or the person who wants to leak the information to the member of Parliament, because they know that if they do in those circumstances they may be in breach of the Government Management and Employment Act, their contract of employment, etc. However, what the Whistleblowers Act says quite specifically is that they are not in breach of any of their employment contracts; they have *carte blanche* to get to an appropriate authority with their complaint. If they do, whether or not it is a reasonable complaint, they cannot be victimised and cannot have any action taken against them for breaches of confidentiality provisions in their employment contract, for breaches of the GME Act or regulations under the GME Act.

What the Hon. Mr Elliott is basically saying is that, by the establishment of a member of Parliament as an appropriate authority there is automatically a conduit to any member of Parliament on virtually any issue without any comeback against the public servant who decides to behave in that way, whether or not what the public servant is raising is reasonable. I think that takes the concept too far. What is quite clear is that if a whistleblower comes to a member of Parliament or to other people who are not designated appropriate authorities, and what they do is reasonable and appropriate, then they have the protection under the Act in any event. And I think that is really about as far as it can go. As I said, the officers in the department and I do not know of any whistleblower legislation that goes to the extent that the Hon. Mr Elliott proposes.

The Hon. M.J. Elliott: What is the danger of it?

The Hon. C.J. SUMNER: The honourable member I know does not necessarily believe in this, but the danger is that there are certain things in Government that, by the very nature of Government, should remain confidential. There ought not to be a situation where any public servant can automatically go to a member of Parliament and get complete protection for what they tell that member of Parliament in terms of their employment, etc, with the consequence that the member of Parliament can raise the matter in the Parliament and there is just a conduit from a Government member of Parliament into the public arena, no matter how reasonable the complaint is. It might be total nonsense.

The Hon. Diana Laidlaw: It was originally non-politicised, the Public Service.

The Hon. C.J. SUMNER: That is right.

The Hon. Diana Laidlaw: I do not say it is today, but that is originally how it was set up.

The Hon. C.J. SUMNER: So what is the point you are making?

The Hon. Diana Laidlaw: Well, then you did not have your political plants all over the place and they were not encouraged to leak or get involved in this sort of activity.

The Hon. C.J. SUMNER: Are you saying there are a lot of Liberal political plants in the Public Service who leak?

The Hon. Diana Laidlaw: No, I am just saying that that is what you have done and that is what will happen with a change of Government.

The Hon. C.J. SUMNER: I would not have thought it would. I do not know whether there is a bit of paranoia on the part of the Hon. Ms Laidlaw.

The Hon. Diana Laidlaw: I think it is quite realistic.

The Hon. C.J. SUMNER: That is a bit of an insult to public servants and I am not quite sure what the accusation is about, politicisation of the Public Service. As far as I am concerned it is certainly not a politicised Public Service. I expect people to act professionally in their jobs and I would expect them to continue to act professionally in their jobs if there was a change of Government, and I have no doubt that they would. I think it is insulting to the Public Service and to the people who have jobs in the Public Service at present for the Hon. Ms Laidlaw to make that statement and I think it indicates a degree of paranoia.

The Hon. Diana Laidlaw: A degree of realism.

The Hon. C.J. SUMNER: It is not realism; I think it is paranoia. Quite frankly to suggest that there are political plants all around the Public Service that are all of a sudden going to start leaking information on a change of Government I think is just plain paranoia. If she goes into Government, assuming she gets there, with that attitude, I suspect she will have a fairly difficult time of it.

The Hon. Diana Laidlaw: I don't think so.

The Hon. C.J. SUMNER: If you go in with that attitude to your public servants I can tell you you will. In a great majority of cases public servants are professional officers and they can cope with changes of Government, and I suspect that would occur no matter what their political persuasions were. As you know, there are public servants of all political persuasions who have to carry out professional tasks for the Government of the day, and I just think that the honourable member's remarks are insulting.

The Hon. Mr Elliott also raised the question of protecting the recipients of public interest information from civil or criminal liability for publishing that information. Again, the question is one of balance rather than complete protection. I do not believe it to be right to distinguish between publication by recipients of information and publication by originators of information. In the first place, even the whistleblower is a recipient of information. In the second place the scheme of the Bill follows, as it must, the logic of current laws relating to the publication of information. A

recipient of information who passes it on discloses that information. Therefore, under the Bill, each disclosure must be tested against the criteria set out. So, if a whistleblower discloses to the media it must be reasonable and appropriate to do so. If the media discloses to others it must be reasonable and appropriate to do so. To say that a recipient of public interest information should be absolutely protected in relation to whom it is disclosed turns the scheme of the Bill to nought, incidentally repeals most of the laws about confidentiality of information and turns the protection of the rights, reputation and privacy of people who may be unjustly accused on its head.

The honourable member raised a concern that the provision requiring the cooperation of the whistleblower in any investigation may force cooperation with the very people about whom the disclosure is made. I think this is a good point, although I must say in my view in most cases there ought to be an obligation on whistleblowers to cooperate. I note that the honourable member has an amendment on file to deal with this point. I am not sure that there should be complete freedom for whistleblowers to fail to cooperate. I am not sure whether there is any compromise to be looked at. My own view is that if people are prepared to blow the whistle they really should go the extra step in most cases and cooperate with the authorities to investigate the matter. That is particularly the case in circumstances where the whistleblower is actually protected, which this Bill does. It just seems to me to be a bit unfair that someone can blow the whistle, claim all the protections under the Act and then not cooperate with the investigating authorities. Whether there is some compromise that can be sorted out on that issue I do not know. We need to examine it.

The honourable member also raised concerns about the extent to which the confidentiality of the identity of the whistleblower is preserved. The intent of the Bill is, I think, clear on the face of it. It says that there is to be confidentiality overriding any other rule to the contrary except in so far as it may be necessary to ensure that the disclosure is properly investigated.

Lastly, the honourable member raised concerns about whether or not the remedy under the Equal Opportunity Act had sufficient teeth. I think it does. If we accept that it has sufficient teeth to deal with cases in which employees badly treat an employee on the ground of race, sex, or like matters I think it can deal with bad treatment on the grounds of disclosure. Certainly, the response that we had on consultation was, with exceptions it is true, to the effect that this procedure and its consequences has a sufficiently high profile to achieve the desired effect.

I should say that when we were considering this Bill I was strongly of the view that we ought to make it as simple as possible and ought not to get involved in the great elaborate 70 pages which was being proposed in Queensland and which they have been mucking around with for some three years or so. I took the very simple view that the key to whistleblower legislation is to ensure that the person who blows the whistle on wrongful activity in Government or the private sector is not discriminated against or victimised in any of their subsequent employment activities or in any other way. If we look at it in that very simple light it seems to me that it is quite appropriate for disputes about the matter to be dealt with by the Commissioner for Equal Opportunity, because it does not require a separate bureaucracy.

So, what we have here I think is conceptually a very good Bill. It is simple, has simple rules and does not establish an elaborate bureaucracy to deal with it. It relies on the basic equal opportunity, anti-discrimination and anti-victimisation principles which are looked at now through the Commissioner for Equal Opportunity to give the whistleblowers the protection that they need. So, it now becomes a Committee Bill and I thank members for their support and look forward to considering the amendments as they come up.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: When does the Attorney-General expect to have the legislation in operation?

The Hon. C.J. SUMNER: As soon as possible but it depends a little bit on what amendments are passed. If the Hon. Mr Griffin's amendments relating to procedures in the Public Service are passed then it will take longer. Otherwise, it will be a matter of carrying out some education campaigns, making sure people are advised, preparing pamphlets and the like, and then the Bill would be proclaimed. So, I anticipate a reasonable time but hopefully not too long.

The Hon. K.T. Griffin: Later this year?

The Hon. C.J. SUMNER: I would expect that to be the case, yes.

The Hon. K.T. GRIFFIN: The Attorney-General has mentioned an education campaign. I was going to raise some questions about it, so in response to that comment can he indicate what consideration has been given to an education campaign? Who is likely to be responsible for that education campaign and has any funding been made available? If funding has been made available can he indicate how much? If no funding has been made available can he give some indication as to what sort of resources are likely to be involved?

The Hon. C.J. SUMNER: I do not think it is a very expensive exercise. Obviously we would prepare a pamphlet and there would be a seminar program. The Royal Institute of Public Administration has a seminar on the topic shortly. Officers would consult with the PSA and use their avenues to distribute information. Maybe we would have a public meeting or something of that kind at which Mr Goode, who has been responsible for the preparation of the legislation, would speak. Perhaps I would speak, and the honourable member could come along and speak as well, and encourage people to blow the whistle against the Government if he wanted to. That is what is in mind. I do not envisage that it would be an expensive exercise, but it would be an activity in education and information.

The Hon. K.T. GRIFFIN: I take it that the educational campaign will be coordinated through the Attorney-General's office?

The Hon. C.J. SUMNER: I think we will cooperate with the Commissioner for Public Employment and it will be done as a joint exercise. Who will take principal responsibility for it, I do not know.

The Hon. K.T. GRIFFIN: The focus of the Attorney-General's response seems to be on the public sector. Of course, private sector individuals will have an opportunity to blow the whistle, particularly where they or their employer are dealing with the Government. Has any consideration been given also to some means by which this can be communicated to employees or businesses in the private sector?

The Hon. C.J. SUMNER: I am advised that the proposition is to prepare the pamphlet and use the PSA as a bit of a guinea pig to get the education program going, and then move on from there to the private sector and local government. I do not how long this would take but obviously we would not want to delay the proclamation unduly, but with new legislation like this, if it is passed in the next month or so, it will be the first in Australia, despite the fact that we started a fair bit after Queensland and New South Wales in getting things going. If the Parliament accepts this basic concept which we are putting to it, which is a relatively simple one compared with what has been discussed *ad infinitum* in Queensland, I think we will have done something useful for the community generally. However, because it is new legislation, it is important that there be an adequate information and publicity education campaign, and we will ensure that that is carried out. I do not anticipate that it will be a very expensive exercise.

Clause passed.

Clause 3 passed.

Clause 4—'Interpretation.'

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

Page 1, after line 21—Insert definition as follows:

'government agency' means—

(a) a department or administrative unit of the Public Service; or

(b) a body corporate that is an instrumentality or agency of the Crown;.

I gave some consideration to the definition of 'public interest information'. This first amendment is related to that. 'Public interest information' means information that tends to show that an adult person, whether or not a public officer or a body corporate, is or has been involved in certain activity. A body corporate is not only a company but also a statutory corporation. It seemed to me that there needed to be an extension of that because it might not be possible to put the finger on any one person who might be the subject of the complaint or the information which is provided by the whistleblower. It may actually be a department or an administrative unit. It seemed to me appropriate that we extend that reference in 'public interest information' to include Government departments or statutory corporations, and, if that is to be accepted, the definition of 'Government agency' is an appropriate means by which we describe that in the definition of 'public interest information'. There may be some debate as to whether or not that is a reasonable approach, but it seemed to me for the sake of completeness that it was appropriate.

The Hon. C.J. SUMNER: I think I understand the honourable member's point, but I am not sure that by moving this amendment he actually achieves anything in strengthening the Bill. The second part of the definition of 'Government agency', which he seeks to insert in the Bill, refers to a body corporate, but that is already covered by the use of the term 'body corporate' in the Bill. The real addition is the first part of the definition 'a department or administrative unit of the Public Service'. My problem with that is that I do not see how a department or unit in the Public Service can act illegally as opposed to individual members of it. A body corporate can act as a collectivity through its board of directors or high managerial agents who are in a position to act as the company. Common law has recognised that fact since 1914. That is not the case with departments and administrative units of Government. They do not act collectively as opposed to individuals within them. On that basis, I do not think it adds anything to the Bill. In fact, it may confuse the current law which I outlined. There might be some implication in what the honourable member is saying, that a Government agency collectively can act illegally.

The Hon. M.J. ELLIOTT: I am tempted to support the amendment. At this stage I will simply put the reasons why I feel that way. First, there would be occasions when a person working in a Government agency knows that something is happening but does not know exactly who is doing it. That person does not know whether it is a person, a committee or whatever within the agency that is actually responsible for whatever is causing concern. As things stand now, where you do not know who the adult person or officer is in particular, or whether it is a collection of people, I am unsure as to whether the situation as it is in the Bill before amendment covers that adequately. That is the first question I would pose.

Secondly, Government agencies themselves sometimes have responsibilities under legislation. What if they are not carrying out the roles which they are designated under various pieces of legislation? For instance, if the Department of Health is required to run particular testing programs and it simply does not do them, the fact is that the public would not be aware that that is or is not happening. In this case, it is an agency that is not doing as required, and I would have thought that, by including the term 'Government agency', it would then be picked up where otherwise it may not be.

The Hon. K.T. GRIFFIN: I acknowledge the first point that the Attorney-General made that 'body corporate' includes 'statutory corporation', so it may be superfluous to refer to that in the definition of 'Government agency'. I think it was more to ensure that in defining 'Government agency' as a department or administrative unit that therefore limited 'body corporate' if it were not specifically indicated that a statutory corporation was also a Government agency. It is arguable.

Again, I acknowledge the point made by the Attorney-General about an administrative unit being unlikely to be involved in an illegal activity. I suppose it is more related to the irregular and unauthorised use of public money, but even more particularly to conduct that causes substantial risk to public health or safety or to the environment. If paragraph (iii) is left in, we have Government agencies which, for example, could be pumping effluent into the River Torrens, the Patawalonga, or if there is a breach of the—

The Hon. M.J. Elliott: Or even dumping something in the gulf.

The Hon. K.T. GRIFFIN: That may be illegal. It may be conduct that causes substantial risk to public health or safety or to the environment. I was a little uneasy about paragraph (iii) in any event, because of its breadth, but, having read the Electoral and Administrative Review Commission Report on the protection of whistleblowers in Queensland, it seemed to me that the environmental and public health and safety aspect was probably appropriate to be included in that area of public interest information.

If it is good enough to report a private sector body corporate for behaviour that causes substantial risk to public health or safety, it seems to me, to be even handed about it, that it is equally reasonable to allow such a report to be made in relation to a department or administrative unit of the Public Service where something is done which creates that problem under paragraph (iii). That is the area of concern, not so much the illegal conduct.

I take the point made by the Hon. Mr Elliott that it may be that there is some illegal activity and we cannot put our finger on who is undertaking that activity, and it may be that action is taken to report it in relation to the unit. I see it more in relation to paragraphs (ii) and (iii) of paragraph (a) with regard to the definition of 'public interest information'.

Amendment carried.

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

Page 1, after line 21—Insert definition as follows:

'maladministration' includes impropriety or negligence;

These three amendments all fall to be considered together. The effect is to delete the words 'impropriety, negligence or incompetence' in clause 4, page 2, line 1, and to replace it with the concept of 'maladministration', which is then defined to include impropriety or negligence.

A number of the organisations and people consulted felt uncomfortable with the possible width of the term 'incompetence'. It was there originally because the term appears in the Queensland Bill. On the other hand, both New South Wales Bills cover 'maladministration', which is quite extensively defined but which amounts to impropriety and negligence. The Western Australian Royal Commission referred to the necessity of coverage of allegations about 'the protection of public funds from waste, mismanagement and improper use'. The interim report of the (Finn) Integrity in Government Project also recommended the coverage of 'maladministration'.

In the final analysis, it was the Local Government Association which came up with a very persuasive argument for changing it. It argued, in effect, that the public interest was with the effects of incompetence rather than the mere fact that it existed. Maladministration is the effect. I find that argument persuasive, and that is why I am moving the amendments.

The Hon. K.T. GRIFFIN: I am attracted to the proposition. The only question I have for the Attorney-General is whether it becomes necessary to define 'maladministration'. 'Maladministration' conjures up the idea of even moderate mismanagement, not just substantial mismanagement. Can the Attorney-General give us some idea as to what he believes this will now cover?

The Hon. C.J. SUMNER: The idea is to define 'maladministration' so that we are talking about something that is relatively serious, not trivial. Talking about incompetence, I guess that lends itself to a more subjective judgment than perhaps 'impropriety' or 'negligence' which are terms better known to the general law.

I have people telling me every day in one forum or another that someone else is incompetent. I even get told from time to time that some members of Parliament are incompetent. As I said, it is a subjective judgment. I am sure that honourable members opposite would probably have a view as to whether Ministers are incompetent. All that indicates is that it is fairly subjective. We are trying to give it some sense of seriousness in terms of the actions that can be complained about. That is reasonable in legislation of this kind.

We do not want to encourage everyone in the Public Service who is disgruntled about anything to complain about it or to blow the whistle, because whistleblowing is about dealing with serious matters: illegality, irregularity, unauthorised use of money, and so on. I think that the removal of the word 'incompetence' assists us to give the flavour that we are talking about something that has some seriousness attached to it.

The Hon. M.J. ELLIOTT: There are two issues I wish to raise in relation to this. The word 'incompetence' now has been left out and the Attorney-General has argued that what is more important is the effect and that is maladministration. However, if that is the case I still do not see why 'incompetence' has not been left in there. For instance, we could have some argument as to whether the loss of $3.15 billion is due to impropriety, negligence or incompetence; I suppose the effect is that $3.15 billion has been lost. But the fact is that we have actually included impropriety and negligence, and I wonder why 'incompetence' still was not left there, because neither impropriety nor negligence are effects; they are causes, in the same way as is incompetence.

If the effect of the incompetence is significant I fail to see why a decision has been made to leave it out. I think the useful thing about using 'maladministration' of course is that it may be wider than just impropriety and negligence as currently proposed. So that is one question. I do not really see a good reason for leaving 'incompetence' out.

The question that has also been raised by the Hon. Mr Griffin, at least as I understood his question, is how extensive the effect has to be in order to be considered maladministration. I suppose there is no doubt that $3.15 billion dollars is certainly going to fit into that terminology but, if you are talking at the State Bank level, if you lost a million dollars, which is just 3 000th of what they did lose, that surely is, or could be, maladministration.

I have some difficulty with this Bill as a whole that a court, somewhere along the line, may have to make a determination on whether or not something is maladministration, and they may have to do it on the basis of extent. I am not sure that that is really important, but that question may end up being argued. I had exactly the same problem a little earlier in this clause in relation to public interest information, where we talk about something causing a substantial risk. What

precisely does 'substantial risk' mean? How substantial does something have to be to be considered such?

When a person decides to blow the whistle he or she has to make a decision first as to which side of this line he or she is going to fall. They are really not going to know in many cases. There they are willing to blow the whistle, because they think something is happening which is wrong—whether it is maladministration or whether it is something which they see to be a risk—and they have to make a determination in their own mind how substantial are the risk and the maladministration and, if they make a mistake that it is not quite serious enough, this Act would offer them no protection whatsoever.

I really do not like the rather arbitrary nature of that. It seems to me that, if it is a matter which is relatively minor, Governments or companies have nothing to fear. If it is something serious then it is certainly something that should have come into the public domain. Where it falls somewhere between, I do not think that the whistleblower should be put at risk. That seems to be what is happening where we have this term 'maladministration' without the extent being clear and where we also use the term 'substantial' when we talk about risk. I would certainly seek the Attorney's response on those matters.

The Hon. C.J. SUMNER: I gave the answer to the first question when I explained the amendment. In consultation on the Bill many people thought that 'incompetence' went too far, and the Government was inclined to agree with that for the reasons that I earlier outlined: that we do not want whistleblower legislation to cover trivia.

The Hon. M.J. Elliott: Incompetence may not be trivial.

The Hon. C.J. SUMNER: It may not be, but if the incompetence is so bad it would almost certainly be covered by 'negligence'. There has to be a cut-off point at some stage in this area. In any event, the decision was taken that 'incompetence' went too far. It was in the original Bill that was introduced into the House, but the consultation process has led us to narrow it to some extent. We define the effect of 'maladministration' by serious misconduct which is negligence and impropriety. The basic argument is that which I put, namely that, the term 'incompetence' was probably too wide and that we wanted to narrow it to some extent and therefore introduced the concept of maladministration for the reasons I have outlined and defined that as impropriety and negligence.

The second point is, of course, that determinations have to be made in this area, and inevitably one cannot be precise unless one wants to have an Act of Parliament or regulations under the Act which list pages and pages of things that would be permitted and perhaps things that would not be permitted. What we have done in this Bill is to employ the kind and extent of language which has been recommended for whistleblower legislation in Australia, in the Queensland Electoral Administrative Review Commission and the Western Australian Royal Commission. It just happens to be a fact that you cannot be precise in this area.

Then again there are large parts of the administration of the law where it is not always easy to have absolute precision. You have to rely on concepts or standards which are known in the community in a general sense and which then have to be applied to particular circumstances. The law uses all the time words that cannot always be defined absolutely precisely, and I do not think there is very much you can do about that. The extent of legislation has to be determined by judicial interpretation. The only way you can overcome it is by having legislation which is much more elaborate and which deals much more specifically with the sorts of things that you want to put in your definition. Otherwise, you just have to rely on the common English usage of words, and that is what we are attempting to do here.

The Hon. M.J. ELLIOTT: I want to pursue this because what is happening here is at the very heart of the concerns that I have about this Bill. I will perhaps take a few hypothetical situations to start off with. If a person working for the E & W S Department is aware that the sewage outfall from one of our metropolitan sewerage works is responsible for killing half a hectare of seagrass and that is not publicly known, will that be deemed to be a substantial risk or not? I do not really know whether it will be; nor would the person who had that information. However, I would ask what damage in any case it does for the public to be aware that half a hectare of seagrass was being affected. Certainly the E & W S Department might not be too keen for people to know about it, but you could have a real argument about whether it was a substantial risk to public health safety or the environment.

As I said, no real harm done. In fact, the public really should have a right to know. I refer, for example, to one's being aware that nitrate levels of water in the South-East happen to be elevated. They may be below the World Health Organisation standard and as such there is no immediate public health risk. However, the person working on this matter may be aware, but not certain, that things are happening that could cause it to rise further. If they allow that information to become public there may be an argument about whether or not there was or was not a substantial risk at that time. Once again I would put it to the Attorney-General that whether the risk is a real one or not an important point is why that information should not be made available to the public, anyway. The heart of my concern is that I am a person who believes in open Government.

I would rather pose the question: what information should not be made available to the public? To my mind information that should not be made available is that which is commercially sensitive because a project is being considered and one goes through sensitive stages, because there is some criminal or other form of legal investigation taking place or because it relates to personal, private information. I would have thought that other information should be available; in fact, that is what the FOI Act is all about.

In many cases one can make an FOI request only if one knows something is going wrong. Why should not a public servant who knows something is going wrong—whether it is very substantial or something less serious—make the public aware of it? What harm does it do in an open society? My real fear is that this whistleblowers legislation, rather than freeing up public servants, will have a tendency to gag them. Public

servants are already faced with the GME Act (section 67h), which puts constraints on what they can and cannot say. There are probably some grey areas around that, but my feeling is that the whistleblowers legislation, if it came in in its present form, is saying when one can speak publicly and if one is not covered by the whistleblowers Act then—

The Hon. C.J. Sumner interjecting:

The Hon. M.J. ELLIOTT: Well, you can in some circumstances.

The Hon. C.J. Sumner: You are basically blowing the whistle through an appropriate authority and that gives protection.

The Hon. M.J. ELLIOTT: The authority may or may not be a member of Parliament on some occasions. I get back to the basic question. If we really believe in open government we should be making it easier for information that does not come into those three categories I mentioned earlier to become available. This is very clearly spelling out when information can be spilled; in any other circumstances it can not be. My feeling is that what we will actually find happening is that the GME Act will be used more rigorously with the excuse that there is an appropriate way to blow the whistle. It is described in this Act and if you do not do it exactly as it says and, in particular, if you cannot demonstrate that there is a substantial risk or maladministration—whatever that precisely ends up meaning—you are gone for money under the GME Act. If anything, I think that the majority of whistleblowers who exist now will be more constrained rather than less. That is the grave concern I have about this legislation.

I like the idea of whistleblowers legislation, but I am not sure that this, at the end of the day, is protecting very many people at all. It seems to be protecting only those people who are blowing the whistle on something which is big, not just something moderately big or important just to some people. That causes me grave concern. I am really worried that this whistleblowers legislation is not a great step forward but in some ways there is a risk that it is a step back and a constraint upon whistleblowers.

I can demonstrate by using a couple of examples in recent times. The development plan process that we have been going through recently in relation to Craigburn farm is one such example. Certain reports have been prepared internally which have been withheld from public gaze. In fact, not only have they been withheld but people have made FOI requests and the law has been broken. I know that the law has been broken, because the FOI Act has been breached.

The Hon. C.J. Sumner: You do not know that.

The Hon. M.J. ELLIOTT: I am afraid I do know that because I have now seen the document. Having seen the document, and knowing what it contains, I know that the failure to disclose this document being sought was a breach of the FOI Act, because the exemption simply did not apply. If we are finding the FOI Act being breached—

The Hon. C.J. Sumner: There is not widespread breach of the FOI Act and it is incorrect to describe it in that way.

The Hon. M.J. ELLIOTT: I can give other personal examples, too; it is not the first case. I do think that at the end of day if people really do have information which is significant, while it might be arguable whether or not there is a substantial risk as defined here, we should not be doing something which in fact constrains them. That is the fear I have.

The Hon. C.J. SUMNER: I think the issue the honourable member raises is a much more broad philosophical issue than what we are trying the address here in the whistleblowers legislation. My information is that the Bill we have come up with is more liberal for whistleblowers than that prepared in New South Wales and proposed in Queensland. So, if the honourable member does not want whistleblowers legislation—

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: I know, but if you have concerns about what whistleblowers legislation does then they are concerns that will operate with all the Bills being proposed around Australia at the present time, I suspect, because I am advised that ours is more liberal than those in at least some of the other states. The question the honourable member asks is: why should not the public know that half a hectare of seagrass is being destroyed every year by the discharge of effluent into the sea? I have no problem with that; there is no real reason why the public should not know that.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: What we are really dealing with—

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: I understand the point, but you are making a more general point. You are saying there should be better procedures available for making information available to the public. I thought we had tried to cope with that with freedom of information legislation. So, if there are reports about half a hectare of seagrass written by the scientist who has examined it then the honourable member and the others in the public should be able to get hold of that document under freedom of information legislation. We should be able to do that and there are ways to do it. If that is the honourable member's concern he can ask the department, presumably, what documents it holds on a list of things and get a response and then make FOI requests.

I think we have to decide whether whistleblower legislation is there just to enable more information to be made available by public servants to the public in a general way or whether it is legislation which is aimed at facilitating the exposure of wrong doing in Government and the private sector. I would characterise whistleblower legislation in that later category not the former category. The former category we have to deal with by reference to freedom of information legislation, etc.

The debate the honourable member wants to have I think is really to free up the whole concept of public service confidentiality beyond what has occurred to date. That might be all right from his point of view, but there is an obligation on public servants to work for the Government. The Government is supposed to the serve the public interest. There are mechanisms of accountability—more and more of them over the years—to ensure that Governments do act in the public interest. However, if we have complete freedom for public servants to say what they like, do what they like,

put out whatever information they like then I think we will make government more difficult than it is already.

Government may seem simple to the honourable member, but in fact it is not. The debate he is trying to have is a legitimate debate: I am not trying to decry it. Maybe—who knows—when I leave politics and the honourable member joins a coalition of the Liberal Party as a Minister, or something, he might be able to make this issue one of the matters that he would like to take up and deal with, but at this moment we are not actually debating that issue. I am not saying it is not a legitimate matter for the honourable member to raise; I am not saying that perhaps in the future we might not take a more liberal approach to that sort of disclosure issue within the Public Service, but that is not actually what we are debating here in the whistleblowers legislation. I think that at the moment the general view in the community and in Parliament, and probably in Government, is a more conventional view about public servants acting impartially for the Government of the day in carrying out their tasks and, therefore, acting in the service of the public.

That requires some notion of loyalty to the department they work for and to the Government of the day. I still think that is probably the prevailing view in the community. Given that that is the prevailing view, we say 'Okay, that is the prevailing view, but we cannot have public servants being engaged in torts; we cannot have the Government being engaged in improper, wrongful behaviour; we should therefore facilitate the making of complaints about those matters.' That is whistleblower legislation. We should enable complaints about administrative acts being carried out by public servants and failures in administration, not necessarily illegal, to be investigated. We have the Ombudsman to do that.

We should ensure that as much information as possible that Government holds is made available to the public so that public debate can be enhanced. We cope with that by freedom of information legislation. It seems to me that we are doing all those things. The honourable member, I can see, is not satisfied with that and wants to take it a step further, but that, at least at this stage, is not the Government's position. I would emphasise, coming back to where I started, that I am advised that our Bill is more liberal than some of the others being suggested in Australia; that the final clause of the Bill before us specifically provides that the Act does not derogate from any other privilege, protection or immunity that currently exists, so it specifically says that this is an additional protection to the people who want to utilise the Act.

So, it does not—and specifically says so—restrict current rights. I hope that the honourable member's fears in this respect are exaggerated. This does provide an additional protective means for people to complain about maladministration and, I think, taken with the other things that I have mentioned, provides South Australians with a reasonable regime to ensure that their Public Service is honest and well informed and that the public has adequate redress if there is maladministration, complaints about administrative acts and that, furthermore, the public has access to all the information that is reasonable for it to have under FOI.

The Hon. M.J. ELLIOTT: I will not take it much further at this stage. Clearly, my preferred position is one where information is more freely available rather than less. But my real concern is that a person who is going to make a decision as to whether or not to disclose, whether or not to blow the whistle, has in his own mind to decide whether or not there is a substantial risk. That is a decision he makes but what, in his mind, is a substantial risk may not be deemed to be a substantial risk elsewhere. If that person falls on the wrong side of whatever this arbitrary line will be, he then exposes himself to the GME Act, and probably more certainly than they do at present.

If you are not protected by this Act, you certainly will be exposed in a more real way to the effects of the GME Act. If later on we are going to talk about believing things on reasonable grounds, should we not at the very least perhaps consider that persons in their own mind reasonably believe the risk to be substantial? That is a question I would pose, because otherwise they are taking a risk as to what the court might decide is a substantial risk, whereas we could have an argument whether or not they reasonably believe something to be a substantial risk. It might be just a minor change, but I do feel for some people who obviously will be caught in something of a grey area in relation to substantial risk and in relation to precisely what maladministration is going to be interpreted to mean.

The Hon. K.T. GRIFFIN: I have listened with interest to the debate. I can appreciate the point of view of the Hon. Mr Elliott, but I have come at this Bill from a different perspective. I have seen it as providing an additional right for public servants and others who have information of a serious nature which they can report to an appropriate authority in circumstances where previously they may not have been able to do that. They would have been protected if they had information—

The Hon. C.J. Sumner: They could have done it before but they ran the risk of being victimised, discriminated against in their employment. What this does is remove that possibility.

The Hon. K.T. GRIFFIN: It does that, but it also provides a framework, particularly if my later amendment is to be adopted, within which reporting by a whistleblower can be applied and, as the Attorney-General says, provides some protections. But before he interjected I was going on to say that there would have been no reason to prevent a person who was aware of illegal activity reporting that to the police. Whilst some reprisals may have followed in some instances, I doubt whether they would have been of such significance, particularly if the activity was established to be illegal. Nevertheless, there could have been that victimisation. I have looked at the framework of the Bill as being focused upon serious misconduct or illegal activity. I did read the Western Australian royal commission report in relation to commercial activities of Government and other matters, and its recommendations were that the matter should be further considered. It identified parameters that it thought should be pursued. They say:

> One of the more contentious questions to be answered in settling upon a scheme suited to this State [Western Australia] is the identification of the types of actions, activities and concerns

which may be made the subject of a whistleblowing disclosure. This is not a matter on which a uniform approach has been adopted elsewhere, although there is a common core of matters which are now widely accepted including illegality and dangers to public health and safety. In the light of the commission's inquiries one matter in particular will require careful consideration and that relates to the management and waste of public funds. While officers should not be able to complain of every use of public funds with which they disagree, it is abundantly clear that there is a vital public interest involved in the protection of public funds from waste, mismanagement and improper use. Whistleblowing provides one means for the protection of that public interest.

They refer also to maladministration, which the Attorney-General is now picking up, and misconduct in Government. Picking up the issue that the Hon. Mr Elliott has specifically referred to (the environment), I notice in the draft Bill in Queensland, that draft provides that, if a person has information that the person honestly believes on reasonable grounds tends to show a substantial and specific danger to the health or safety of the public or to the environment, the person may disclose the information to a proper authority. So, that is qualified by a 'substantial and specific danger to the health or safety of the public or to the environment'. It cannot be just a general sort of complaint and cannot be something that is not regarded as substantial.

I acknowledge the difficulty of interpretation, but I think in the day to day administration it will not be such a difficult matter to determine what is substantial or significant danger, and in some jurisdictions the environment is not even in contemplation. It is in those jurisdictions a focus on health or safety of the public.

So, I tend to the view that the reference to maladministration ought to be accepted and I will support that. I note the observations about incompetence, but I think that on balance incompetence, if serious, is likely to show up as negligence. It may also be maladministration and not necessarily impropriety or negligence, and maladministration would adequately cover that. In relation to the later reference to 'substantial risk' it would seem to me that that is adequately covered.

So, I look at this as a measure of protection which, if passed, will provide protection. If we do not pass it it will leave certain citizens still liable to reprisals and other recriminations, and it is on that basis that we, on this side, are generally supportive of the legislation. We wish not to go to extremes but to provide an initial mechanism for dealing with matters which previously could be addressed, but do not provide the protections of the Bill.

Amendment carried.

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

Page 1, line 23—Leave out 'or body corporate' and insert 'body corporate or Government agency'.

This is consequential on my first amendment.

Amendment carried.

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

Page 1, line 26—Leave out 'and' and insert 'or'.

This is one of those amendments which although it is only over the word 'and' or the word 'or' has caused me some concern. I have wrestled with the options. Public interest information is information that tends to show that an adult person, body corporate or Government agency has been involved in an irregular and unauthorised use of public money or, as I propose, irregular or unauthorised use of public money. I have tried to determine whether an irregular use of public money would also be unauthorised or whether it is possible to have an irregular use of public money as distinct from an unauthorised use of public money, and what the consequences might be in each case. I have come down on the side of preference for the word 'or' rather than 'and' because it may be that there is irregularity in the use of public money. It may not have been authorised or generally it may have been authorised—that is in the broad scheme of expenditure—but nevertheless might be irregular. One could argue that unauthorised use of public money does not necessarily mean that it is irregular. So I am tending to that view and, to enable the matter to be explored by all members, I will move the amendment.

The Hon. C.J. SUMNER: The Government opposes this amendment for two reasons. The first is that the words 'irregular' and 'unauthorised' taken on their own as a standard are too broad. That relates to the debate we have just had about whether with this legislation we are looking to protect disclosures about something that has some seriousness to it. I do not believe it is possible to say that the public interest is engaged by information which tends to show that public money has been spent in a way which can be described (and this is the shorter Oxford dictionary definition of 'irregular') as 'disorderly, not conforming to moral principle or unequally or unevenly'. That seems to me to be too vague and broad a concept to engage the whistleblowers legislation.

However, if it is both 'irregular' and 'unauthorised' then we are talking about something that is more serious. The fact that it is unauthorised makes it more serious. The fact that it is irregular may not make it wrong but it may simply mean that Government departments concerned are disorganised. It might be perhaps even getting back to the incompetence issue that we have just discussed before. So, the Government argues that it should be both 'irregular' and 'unauthorised'. If you put those two together you have some notion of seriousness. If it is just 'irregular' then I think that it might invoke a situation which is not serious or culpable.

The second reason is that it is quite clear from the recommendations made by the WA Royal Commission, for instance, that this sort of legislation must not be used as a vehicle for the disclosure of information which is prompted by policy disagreements about the worth of Government programs. This is probably also where the Government and the Hon. Mr Elliott would part company because I understand from his arguments on this Bill and other arguments that he has put forward previously that he is pretty relaxed about public servants having policy disagreements about the worth of Government programs.

In fact, that does occur to some extent within Government, because often at seminars you see public servants putting up different points of view about policy options and the like, so the system is not as closed and draconian as perhaps the Hon. Mr Elliott thinks it is sometimes. The point I am making is that the Western

Australian royal commission and other deliberations on whistleblower legislation state that it should not be used to enable the disclosure of information which is really about policy disputes as to whether the Government is going in the right direction. Those matters really have to be resolved at the political level, in the Parliament, and in the public arena. I am not talking about illegality, etc., but the public servant should really have some obligation to do the bidding of the Government of the day which, after all, has been elected, and sometimes the people who elect Governments expect them to do what they have been elected to do.

If you have a Public Service which is not committed to the same course of action as the democratically elected Government, then you do have the capacity for the Government's program not to be implemented and, in a sense, you could have an undermining of that very important principle of the democratic system that the Party or group of people in the Parliament that gets a majority of the votes is entitled to govern, and people expect once they are in Government that they will put into effect their policies and programs.

So, I accept that there are two conflicting interests, but the bias should come down in favour of the Government's being able to implement its programs, the Public Service backing that, and this sort of legislation should not be used to enable public servants to create bushfires around the place by policy disagreements with the Government of the day or about the worth of Government programs. The Western Australian royal commission said:

> Officers should not be able to complain of every use of public funds with which they disagree.

I think that is a reasonable point. It emphasises the point I have made. I urge members again to recall the power of this legislation. It exempts from any responsibility at all—a complete exemption of responsibility for—the person who decides to utilise the legislation through an appropriate authority. I reassert that it should be used for serious matters. This amendment of the Hon. Mr Griffin goes too far, and the Government opposes it.

Amendment negatived.

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

Page 1, after line 26—Insert subparagraph as follows:

(iia) in substantial mismanagement of public resources; or.

The Attorney-General may argue that this amendment has been overtaken by the inclusion of the description 'maladministration', but consistently with what has been proposed in other States there ought to be the inclusion in the description of 'public interest information' of information relating to substantial mismanagement of public resources. We have the same difficulty that the Hon. Mr Elliott raised earlier about what is 'substantial'. We cannot really define that. A certain element of commonsense has to come into it. In the context of this legislation and what was said in the WA Inc royal commission second report, mismanagement of public resources is an issue that ought to be the subject of the whistleblowing legislation, if it is not already covered by something like maladministration.

The Hon. C.J. SUMNER: In the spirit of sweetness and light which is pervading this debate this evening, and to establish that the Government is quite reasonable in relation to all matters that come before the Council, I indicate that we have no objection to this amendment. It probably would be covered by the Bill as it stands, but I have no objection to its being spelt out in the way the honourable member has indicated.

Amendment carried.

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

Page 2, line 1—Leave out 'impropriety, negligence or incompetence' and substitute 'maladministration'.

This is consequential.

Amendment carried.

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

Page 2, lines 19 and 20—Leave out 'impropriety, negligence or incompetence' and substitute 'maladministration'.

This is consequential.

Amendment carried.

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

Page 2, line 22—Leave out all words in this line.

This is identical to an amendment placed on file by the Hon. Mr Griffin. It picks up a matter raised by the Hon. Mr Griffin in his second reading contribution. He made the point that the concept of employment in clause 4(2) at line 22 was inapt to describe people who may not be technically employed; for example, judges. By deleting those words, the idea is kept and made applicable to a wider range of people.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried; clause as amended passed.

Clause 5—'Immunity for appropriate disclosures of public interest information.'

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

Page 3, line 6—After 'Minister of the Crown' insert ', a member of Parliament,'.

I noted the comments made by the Attorney-General at the end of the second reading debate. I must say I was rather surprised by the strength of his comments. When you realise that the person is only granted immunity in relation to matters which are illegal, irregular or of substantial risk to the public or environment, or where there has been significant maladministration—in other words, we are talking about something which is very serious, and, in any event, the Attorney-General has suggested under clause 5(3) that you can speak to a member of Parliament—I do not understand the vigour with which he is opposing the insertion of the words 'member of Parliament' after 'Minister of the Crown'.

We are talking about very serious matters happening, and why a member of Parliament cannot be mentioned specifically as an appropriate authority is beyond my comprehension. When a serious matter is occurring, members of Parliament should be among the first people to be contacted.

The Hon. C.J. SUMNER: I outlined in detail in my second reading reply the reasons for opposition to this amendment. I do not regard an absolute immunity to be appropriate in all cases.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: I understand that. The point is that we do not consider an absolute immunity to be appropriate in all cases. There is the potential to undermine the integrity of Government if absolute immunity is provided in all cases of reports. While the honourable member is correct in saying that we are referring only to the communication of public interest information that the communicator reasonably believes to

be true, it is worth pointing out that what we are trying to do with this legislation is to give protection to people who blow the whistle through an appropriate authority, and we are trying to direct them through an appropriate authority to get that protection. We are not trying to encourage people to blow the whistle for political advantage. That is the distinction that we are drawing in this Bill.

I understand the points made by the Hon. Mr Elliott, but if the Bill becomes a means of politicising this complaints mechanism we run the risk of devaluing the process. If people can be directed to the appropriate authorities where matters can be investigated properly, that ought to be what we are about, because it may be there is nothing in the complaints. The person who is blowing the whistle may be in error. You can almost bet your bottom dollar that if the whistleblower goes to a member of Parliament it will be in the public arena the next day, irrespective of whether or not there is anything in it. I think that is unfair.

The Bill does not stop people from going to their member of Parliament. However, if they go to their member of Parliament with the information, it must be reasonable and appropriate for them to do that in order to get the protection. In other words, it is not an absolute immunity if the whistleblower goes to his member of Parliament.

We are trying to attack maladministration and wrongdoing in Government and ensure that complaints are investigated properly by the authorities, whether it be the police or other agencies within Government such as the Auditor-General, the Commissioner for Public Employment, the Ombudsman and so on. We are trying to set up a procedure whereby things are properly investigated. We are not trying to facilitate the politicisation of these issues.

The people who report to members of Parliament are not totally excluded from protection under the Act. We are trying to encourage a proper and orderly way of dealing with wrongdoing in Government which involves investigation through the appropriate authorities and not have the matter seen in the first instance as one that can be raised and taken up with an MP for narrow political purposes.

The Hon. K.T. GRIFFIN: I have given some consideration to information being disclosed to members of Parliament. I read the two reports from Western Australia and its royal commission and the Electoral and Administrative Review Commission report in Queensland. Both seem to focus more upon internal resolution of complaints, if at all possible. The Queensland recommendations were even stronger. There, of course, they have a number of other agencies—the Criminal Justice Commission for one, which undertakes outside investigations. They also had a proposition for a whistleblowers' counselling unit, which I raised in the second reading debate, to which I was attracted.

However, on the basis of no agency to which that could be attached at present, I decided not to pursue an amendment to deal with the whistleblowers' counselling unit. If we should get into Government, whenever the next election is, I point out that it is something to which I would be very much attracted.

In the Queensland report the focus was on trying to set up internally procedures which provided support and a means of resolution of the issue at an early stage without having to go outside the department. That had two effects. It had the effect of making the hierarchy in the department more conscious of the need to address whistleblower initiatives properly and, even before that, to give proper attention to procedures which gave a greater assurance of propriety and developed a culture within the agency of action against reprisals and victimisation. I have a very strong view, in the light of my reading, that we ought to be trying to focus on internal resolution of these issues, if at all possible.

I would be concerned if we politicised the process. That is why I came down on the side of not moving an amendment to include members of Parliament in the authorities to which disclosure could be made. It may be that, after this legislation has been in operation for a while, we conclude that that might be appropriate, but I think that is something that we should do later rather than earlier.

In looking at what is proposed in Western Australia and in Queensland, it seemed to me that all the complaints were dealt with within or by agencies away from the political process. It is for that reason that my present view is that it would not be wise at this stage to include members of Parliament among the officers.

The Hon. M.J. ELLIOTT: I can count, and I can see that once again the spirit of cooperation is not flowing my way at this stage. Nevertheless, I want to respond briefly. Quite clearly I am coming from a different philosophical position from the other two Parties at this point, but I must disagree with the fear that free flow of information politicises the process. It is my belief that in the end—certainly, we would have to go through a transition phase—free flowing information will actually liberate Governments in many ways. When I have people coming to me, which seems to be a fairly regular thing, they have usually come to me as they have been highly frustrated because they have tried to go through the right channels and they are hitting all sorts of blocks. It appears to me that the way things work at present, the way—

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: No. We had this argument before about how serious the problem must be. In some cases they have been serious problems. Let us take the State Bank. We had people coming to us for some time about the State Bank; they had tried to work the right channels and were not finding that a terribly useful way to go. I really put to you that the problem is that, when you try to work through the right channels internally, working back up towards the Executive—all the people to whom you are required to report within that executive chain—what ends up happening in our current political system is that problems become something that need to be covered up rather than fixed. That is the way things end up working. They tend to be denied rather than addressed. What you end up with is the Government having a problem rather than the community having a problem.

It seems to me, if I took the example that I was giving before, if half an acre of seagrass is dying is that a problem for the Government or for the community?

Under our current system of Government, or the way we are discussing things at the moment, people should be working through the right channels; they should be working up towards the Executive to try to have the problem solved. The Government says, 'Look, we don't want this to come out because it is a problem.' My feeling is that it is not so much a Government problem; it is a community problem. We end up having arguments about how we allocate resources. My feeling at the end of the day is that free flow of information depoliticises the process in some ways.

I know that at present information tends to get used in a Party political fashion but I rather feel that, if all information was free flowing, Governments no longer are even in the position to start playing the old denial game where you try to keep information inside and try to stop things from coming out. If you know that they are certainly going to come out then you take a very different approach to the way problems are handled.

As I said, I am obviously coming from a distinctly different philosophical position, but at the end of the day I feel that anything which encourages a free flow of information is useful, and I still fail to understand why members of Parliament should not be included within subclause (4). As I said, I can count, and the numbers are not there.

Amendment negatived.

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

Page 3, after line 14—Insert paragraph as follows:

(ea) where the information relates to a member of Parliament—to the presiding officer of the House of Parliament to which the member belongs;.

Although there are a number of persons to whom disclosure may be made and there is a catch-all provision at the end, it seems to me that we ought to have a couple of other specific provisions. Members of Parliament are within the description of 'public officer', and I am proposing that where the information relates to a member of Parliament the disclosure may be made to the presiding officer of the House of Parliament to which the member belongs. That then puts members of Parliament into a similar category as the judiciary because where information relates to a member of the judiciary the complaint may be made to the Chief Justice. That then is a specific authority to whom that might be made.

There may be some question about the holder of the particular office, but I am focusing upon the office and not on the individual. I think most Speakers and Presidents would have no difficulty with the responsibilities which this would place upon them in relation to the way in which it was dealt with. I have therefore moved that the first amendment relating to disclosure to the presiding officers.

The Hon. C.J. SUMNER: No objection.

Amendment carried.

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

Page 3, after line 19—Insert the following paragraph:

(h) where the information relates to a person or a matter of a prescribed class—to an authority declared by the regulations to be an appropriate authority in relation to such information.

This amendment allows other appropriate authorities to be declared by regulation. The point was made during consultation that by referring to the Police Complaints Authority, for example, the legislation would be unable to cope with a change of name or function. The point was also made that if there was a significant change in governmental review strategy in a particular area this Bill would have to be amended each time. For example, if Parliament were to pass legislation creating an investigatory environmental protection authority it would clearly be right that such an authority be an appropriate authority in relation to environmental matters. The amendment would allow that to happen without the necessity for a minor consequential amendment to this Bill.

The CHAIRMAN: The Hon. Mr Griffin has an amendment along much the same lines.

The Hon. K.T. GRIFFIN: Yes, I do. I wonder if it might be more appropriate to deal with mine first, only because if mine passes it becomes difficult if it is dealt with after the Attorney-General's. If it does not pass then there is no difficulty. Local Government is specifically referred to in the description of 'public officer'. It seems to me that there ought be to some specific provision designating the appropriate authority. My amendment, which I now move, identifies a responsible officer of the local government body as the appropriate authority for the purposes of subclause (4). I move:

Page 3, after line 19—Insert paragraph as follows:

(h) where the information relates to a matter falling within the sphere of responsibility of a local government body—to a responsible officer of that body.

The Hon. C.J. SUMNER: No objection.

The Hon. K.T. Griffin's amendment carried; the Hon. C.J. Sumner's amendment carried.

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

Page 2, lines 20 to 22—Leave out subclause (5) and insert:

(5) If a disclosure of information relating to fraud or corruption is made, the person to whom the disclosure is made must pass the information on as soon as practicable to —

(a) in the case of information implicating a member of the police force in fraud or corruption—the Police Complaints Authority.

(b) in any other case—the Anti-Corruption Branch of the police force.

The original draft of the Bill was amended before introduction to take into account the very sensible comment of the Commissioner of Police: the Anti-Corruption Branch should be regarded as a clearing house of investigations and information about fraud and corruption. This was done by inserting what is clause 5(5) of the Bill. After public exposure it was pointed out that such a straightforward statement was inconsistent with the scheme of the Police Complaints and Disciplinary Proceedings Act 1985. That legislation contemplates the authority as the clearing house of complaints about police including police, corruption and illegality. This amendment is designed to maintain that status quo.

In addition, it was also pointed out that the previous clause did not require the prompt passage of the information and that while it was probably implicit caution dictated that it should be made explicit. Therefore, the clause as amended will require the transmission of the information as soon as practicable.

The Hon. K.T. GRIFFIN: I have no difficulty about it. There is certainly good sense in it. The only question that has been passing through my mind is whether it is

appropriate to contemplate including the National Crime Authority somewhere in this. Has the Attorney-General given any consideration to that?

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I just wonder whether there is any merit in that. The Attorney-General from his interjection seems to think there is not. He might like to give me a reasoned and considered response.

The Hon. C.J. SUMNER: In case members did not realise it, I was being flippant. The reason the NCA has not been included is because we are dealing with local authorities. The NCA has indicated, certainly in recent times, that is it is more concerned with the macro issues of crime in Australia rather than looking at what is going on in local police forces and the like, which it believes should be left up to State Governments. It could be done, but we have taken the view that we are dealing with State legislation, that the list of authorities that we have in the legislation is very extensive and there is really no need to bring the NCA into the scheme.

Amendment carried.

The Hon. M.J. ELLIOTT: Before I proceed with moving this amendment I want to ask a question of the Attorney-General. I think he did in part cover it during the second reading, but I want it clarified. What protection does a person have working in an agency listed in section 5.4 from facing legal action over letters or memos they may write or telephone conversations they may make in undertaking their responsibilities to receive and pass on public interest disclosures?

The Hon. C.J. SUMNER: Every disclosure on is a disclosure under the Act and therefore has to pass the same test under the Act. So, the person to whom the original disclosure was made would have to be convinced, if he were to pass that on, that the criteria set out in the Bill were met.

The Hon. M.J. ELLIOTT: Another question has been raised with me and I think it also relates to this point. Under what circumstances would the media be seen to be an appropriate authority, or would it not be seen as an appropriate authority under section 5.3?

The Hon. C.J. SUMNER: If it is reasonable or appropriate to have made the complaint to the media, just as if it were reasonable and appropriate to make a complaint to a member of Parliament, then the whistleblowers protection would be invoked. However, it is not the absolute protection given in the case of the designated appropriate authorities. The media is certainly not excluded, but in order to get the protections under the Act it needs to be reasonable and appropriate to have made the disclosure to the media.

The Hon. M.J. ELLIOTT: The effect of what you are saying is that if in all the circumstances the whistleblower is protected then the media would also have the same protection; the same tests are being applied.

The Hon. C.J. SUMNER: In the case of the media then they would be protected in their disclosure of it if it were reasonable and appropriate that they should do so. So, I guess it is getting back to the same argument about words which have to be interpreted in the context in which the action occurs. However, if it is reasonable and appropriate to make the disclosure to a member of Parliament or to the media then for the member of Parliament or the media to make the disclosure further it must also be reasonable and appropriate for them to make that subsequent disclosure.

The Hon. K.T. GRIFFIN: I think it was the Queensland commission that made some observations about disclosure to the media. As I recollect that was only in relation to the substantial risk to public health and safety and if it was an immediate risk where there was no other reasonable means by which the information could be communicated and the public warned. I gave some consideration to allowing for that disclosure to be made in those circumstances, but I moved away from it because I thought that that might open up all sorts of areas of potential abuse and may not be as clear as it may need to be in the limited circumstances in which disclosure will be made. However, of course, the experience is that if there is a big story then it will be used and the media will generally not disclose its sources anyway, even under threat of imprisonment. On reflection, I did not think there was a major or even a minor difficulty with not picking up the recommendation which I recollect was made in Queensland.

The Hon. M.J. ELLIOTT: I must explore this a little further with the Hon. Mr Griffin. I suppose the question that is now running through my mind is that the media at this stage is operating in the absence of whistleblowers legislation. However, once it exists will it be more or less difficult for them to take the line of publish and be damned, which I guess is the line they take from time to time? We would have a specific Act of Parliament which is saying that under these circumstances you can blow the whistle. Previously there was no law explicitly covering that area. Is there, in fact, the possibility that the media might in some ways be finding themselves a little more constrained in the presence of this law without any obvious protection being offered to them?

The Hon. K.T. GRIFFIN: Personally, I would be surprised if it makes any difference to them. There is no offence where the media discloses it. They still run the gauntlet of defamation proceedings, I suppose, but I would not have thought that this Bill will make any difference to the media. They will publish and be damned whether or not the legislation is there. That is my assessment: the Attorney may have some other view.

The Hon. C.J. SUMNER: I do not think it restricts the media. In fact, I think it gives them an added option, because if someone blows the whistle to the media and it is reasonable and appropriate that that disclosure be made to them, and then the media decide to publish it and it is reasonable and appropriate in the circumstances to publish it, and if there were proceedings taken and the media could establish that it was reasonable and appropriate, they would have protection from defamation. So, it gives them, in fact, another avenue for protection from defamation proceedings beyond that which they have now.

They have another potential defence to say, 'We published this and it was reasonable and appropriate for us to do it because this person had come to us with this information about this activity. This person said that he had been to the Minister, to the Ombudsman, to here and there, he was not getting sense out of anyone and this was his last resort. We carried out some checks into the matter, it appeared to us to be a reasonable point that the

whistleblower was making and, therefore, we published it.' If they are subsequently sued for defamation, they would have their regular defences but they would also have a further defence if they could show that it was reasonable and appropriate to make the disclosure. So, we are not limiting the media's right. They would probably still have to make that judgment about defamation, whether they were going to publish and be damned and run the risk, but if they did publish and the conditions set down in this Bill were established for them, then they would gain the added protection from defamation suits.

Clause as amended passed.

Clause 6—'Informant to assist with official investigation.'

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

Page 3, after line 26—Insert subclause as follows:

(1A) Such a person is not, however, obliged to assist with an investigation by an authority or body to which, or a person to whom, the public interest information relates.

There may be occasions, albeit rare, on which as clause 6 now stands people may be obliged to assist in investigations yet the very people they may be being asked to report to may be part of the problem, at least they feel they are part of the problem or they do not have confidence in them. While we in South Australia do not seem to have endemic corruption problems, I wonder how a person in Queensland, perhaps involved in the police, was trying to make a complaint there when there was a great deal of uncertainty about exactly where the corruption began and ended. I cannot think of a situation in South Australia where we have anything like that in any of our departments at the moment, but there must be times when one would like to pass on information but the obligation as it now exists in this clause is that you may be obliged to pass on information to people in whom you have absolutely no confidence whatsoever, and you may see them as being a major part of the problem about which you are concerned. It is for that reason that I am moving the amendment.

The Hon. C.J. SUMNER: I had some concerns on my feet about this during the second reading response, but I will not raise any objection to it at this stage and will give some further thought to it when the Bill is in another place.

Amendment carried; clause as amended passed.

Clause 7—'Identity of informant to be kept confidential.'

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

Page 3, line 35—After 'statutory provision' insert ', or a common law rule,'.

I am not convinced that the protection as provided under clause 7 is wide enough to protect the identity of a whistleblower, for example where he has given information to a journalist who later finds himself or herself in court being compelled by common law rule to divulge his or her sources. It is that problem that I seek to address by the amendment.

The Hon. C.J. SUMNER: I gather that the intent of this amendment is to ensure that no common law rule compels the disclosure of the identity of the whistleblower except in the circumstances detailed in the Bill. My advice is that the provision in the Bill already achieves that. The statutory expression of confidentiality in clause 1 actually overrides the common law to the contrary. The point of the second subsection is to make clear that this rule overrides obligations under legislation such as freedom of information, for instance. I do not oppose the amendment. Although I think it unnecessary, I will not raise any strenuous opposition to it.

Amendment carried; clause as amended passed.

New clause 7A—'Informant to be informed of outcome of complaint.'

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

Insert new clause as follows—

7a. If an appropriate disclosure of public interest information is made to a public official that official must, wherever practicable, notify the informant of the outcome of any investigation into the matters to which the disclosure relates.

I referred to this during the second reading debate and referred to the Queensland Electoral and Administrative Review Commission report which did recommend that a person who makes a public interest disclosure should be entitled on request to receive written notice of the action taken by the proper authority in respect of the public interest disclosure, and that recommendation was based upon the view that if a person was to make a public interest disclosure and was not to be thoroughly disenchanted, at least that person ought to have information about the outcome of the investigation, and that would in some measure be reward or some compensation to the person for having taken the risk in disclosing the information. It also would provide some incentive to others to make disclosures if they knew that there was a diligent attempt to follow up the investigation.

The Attorney-General made some observations about the concept in his second reading reply but I think I have overcome most of those. He was saying that it would be quite improper to disclose confidential information during the course of an investigation. I acknowledge that. I am certainly not asking for disclosure of confidential information. I am certainly not asking for the disclosure of information during the course of an investigation, but I have said that the official must, wherever practicable, notify the informant of the outcome. So, it is the end of the track and it is wherever practicable. It may not be practicable.

The Queensland recommendation was to make that information known upon request. It is a better position for it to be an obligation upon the official to whom the report has been made rather than leaving it to the whistleblower to seek the information. So, what I am proposing overcomes the difficulties that the Attorney-General referred to at the second reading stage. It would be an encouragement to the application of the legislation that those who make the information available get some idea as to what happened to it.

The Hon. C.J. SUMNER: I have no objection in principle to this amendment. The only problem is whether the words 'wherever practicable' are adequate to cover situations where the law may prohibit the disclosure of the information back to the informant. Arguably the words 'wherever practicable' are broad enough, but it has been suggested that perhaps after the word 'practicable' the words 'and in accordance with the law' could be added. If the honourable member is

comfortable with that then I am prepared to support the amendment.

The Hon. K.T. GRIFFIN: I am not opposed to that, but could the Attorney-General indicate what sorts of situations he has in mind? Where the whistleblower has made information available and it has been investigated, should the whistleblower not know what the outcome of the investigation is? I am not suggesting the identification of names, but surely the outcome of the investigation, if it is that there is insufficient evidence, would be identified. If proceedings were issued I suppose the whistleblower would know about that because the whistleblower is likely to be a witness. However, it is important to have the outcome of any investigation transmitted back to the person who has actually blown the whistle.

The Hon. C.J. SUMNER: I am advised that, for instance, in the Police Complaints Authority there is a provision which permits the Police Complaints Authority and the Commissioner of Police to keep information completely confidential, and it is arguable that that might also involve keeping a report of the inquiry confidential from the complainant. I think the circumstances in which that is likely to occur are fairly narrow. The honourable member mentioned the NCA which has some fairly strict secrecy provisions built in and, while it is not an appropriate authority under this Act for reasons we have outlined, if for some reason in the future there was a body that had those sort of strict secrecy provisions it might be that there would be some circumstances in which disclosure of information back to the complainant is contrary to the legislation under which the investigative authority was operating.

It is a pretty narrow problem which might well be covered by the words 'wherever practicable' because it might not be practicable to provide the information if it is against the law, but in an excess of caution it has been suggested to me that we can put in the words I have mentioned. I do not think any harm will come from it. If it is in accordance with the law and practicable then the investigation authority advises the complainants of the results of the investigation. I support the amendment.

The Hon. K.T. GRIFFIN: I am persuaded. I therefore seek leave to move it in that amended form as follows:

After the words 'wherever practicable' insert 'and in accordance with the law'.

Leave granted; new clause as amended inserted.

Clause 8—'Victimisation.'

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

Page 4, lines 1 and 2—Leave out subclause (2) and substitute the following subclause:

(2) An act of victimisation under this Act may be dealt with—

(a) as a tort; or

(b) as if it were an act of victimisation under the Equal Opportunity Act 1984,

but if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently bring proceedings under the Equal Opportunity Act 1984 and, conversely, if the victim brings proceedings under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

I expressed some concern during the second reading debate about the Equal Opportunity Act provisions relating to victimisation being used as the basis for remedies against reprisals and victimisation. I did that on two grounds. I did not think that there was a role for the Equal Opportunity Commissioner in this and I still take that view. On the other hand, I accept what the Attorney-General said in his reply at the second reading stage that there needs to be a mechanism readily available at minimal cost that is likely to cause the least amount of hardship for the person who is the subject of reprisals or victimisation, however one describes it. So, reluctantly, because we did not want to establish any new bureaucracy I accepted the argument which the Attorney-General put, that those provisions at least for the moment ought to be retained.

I then looked at whether we could put into this Bill, on the basis that it ought to be a coherent whole without people having to race off and look at other legislation, provisions which were similar to section 86 of the Equal Opportunity Act. When that was explored, it was considered not possible to do it in reasonably simple form because it would involve not only section 86 of the Equal Opportunity Act but a number of other provisions of that Act that related to it. So, I reluctantly acceded to the position that it should be referred to broadly as victimisation being dealt with under the Equal Opportunity Act.

Also, I did express the view at the second reading stage that I thought there ought to be some remedy to go to the District Court, and that is still a preference. I would suggest that the compromise is my amendment which gives an option to a person who is the victim of a reprisal either to go for the tougher remedy, a tort, and it can be the Magistrates Court, the District Court or the Supreme Court, or to take the more moderate position of action under the Equal Opportunity Act. If action is taken in the court, that means action can no longer be taken under the Equal Opportunity Act. So, it gives the victim an alternative which is an appropriate way now to address that issue.

The Hon. C.J. SUMNER: I certainly opposed the honourable member's initial proposition which was to substitute the remedy under the Equal Opportunity Act for the tort, and I am still a bit ambivalent about the proposal which gives the whistleblower the option to take action for tort in the regular courts or to have recourse to the Equal Opportunity Act. I must confess that, when we were developing the concepts of this Bill, I saw an essential element of it being protection of the whistleblower from victimisation in employment, and having the employment situation adversely affected because of the whistleblowing. I thought that, given that the Equal Opportunity Commissioner is well versed in dealing with discrimination on other grounds relating to sex, race and the like in the area of employment, and is conversant with issues relating to victimisation, conceptually the best place to put the remedies for discrimination against the whistleblower was with the Commissioner for Equal Opportunity. I am really not quite sure what the honourable member achieves with the added remedy.

Other acts of victimisation or discrimination under the equal opportunities legislation are not constituted as a

tort in the alternative, unless I suppose the sexual harassment goes to assault, for instance, which might be one example where there are two remedies available. However, in general terms, there are not two remedies available under the Equal Opportunity Act. I am not sure what distinguishes this situation of whistleblowing and discrimination in employment because of whistleblowing from the other forms of discrimination under the Equal Opportunity Act. So, I think the way the Bill was originally conceived is correct but, if the honourable member can provide an answer to that question, I might be prepared to re-examine it.

The Hon. K.T. GRIFFIN: I should have explained it in more detail. Certainly the Equal Opportunity Act is very largely directed towards discrimination in the provision of goods and services to individuals and employment. That may well be the focus where you have a public servant making a complaint as a whistleblower under this Act. The Bill also allows other citizens to make complaints. It may be that there is a company that has been dealing with the Government. It may have missed a tender or experienced some corrupt or other illegal activity. In those circumstances, if it goes to a Minister or official and it becomes known that that private citizen or company made the complaint, it may be that that business is cut off from further contracts. I would put that into the category of reprisal or victimisation, and that is what I would see as also victimisation.

If you are shut out of a tendering process or shut out of an opportunity to do business with the Government because you have been able to stand up and be counted, and to focus upon the wrongdoings of an agency or an individual in Government, then there ought to be some opportunities available to take action. It may be that a business might feel that it is likely to get a broader range of remedies in the court than it gets from the Equal Opportunity Commissioner. I had in mind that broader range rather than the limited focus to which the Attorney-General has referred.

The Hon. C.J. SUMNER: I understand the point a bit more clearly now, although I am still a bit concerned about giving an at large alternative in these circumstances. What I am prepared to do is not oppose the amendment at this stage, which will make the Hon. Mr Elliott very happy, I am sure, and we will look at the issue and the rationale for the amendment before the matter is dealt with in another place. If we see that there are major difficulties with what the honourable member has proposed, we might have to revisit it in another place. In the light of the honourable member's further explanation, which basically is that there is a hiatus in what we are proposing, and that the Equal Opportunity Act remedies may not cover the field, then I am prepared to accept the amendment with that reservation.

The Hon. M.J. ELLIOTT: I was already going to support this amendment. What I find attractive is that it does not close off the option of the Equal Opportunity Act. That option remains. All it does is really open up another way of addressing the victimisation. In fact, in some ways it more adequately deals with certain forms of victimisation, as the Hon. Mr Griffin has illustrated already by way of example.

Amendment carried.

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

Page 4, after line 2—Insert the following subsection:

(2a) Where a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

This legislation exhibits a desire to mark out a boundary between the whistleblower and the perpetual complainant. During consultation, it was pointed out with some vigour that the victimisation remedy should not be available where a person alleged to fall within the protection of the legislation has had the issues fully aired in some other forum, such as a court or a grievance procedure. This remedy is not intended to allow a person to have two or three bites at the cherry. This amendment is designed to ensure that this is so.

Amendment carried; clause as amended passed.

New clause 8A—'Obligations of Government agencies.'

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

After clause 8, insert new clause as follows:

8A. (1) A Government agency must make appropriate administrative arrangements for receiving, and dealing with, disclosures of public interest information.

(2) A Government agency must make adequate provision for the counselling of employees who make, or propose to make, disclosures of public interest information and for the protection of such employees from acts of victimisation.

(3) A Government agency must, in each annual report, state the number and nature of disclosures made under this Act relating to the agency in the period to which the report relates and the action taken by the agency in consequence of those disclosures.

During the second reading debate I made the point that there ought to be a focus on trying to get whistleblower disclosures resolved at the administrative unit or Government agency level rather than being resolved outside. That was the focus in Western Australia and in Queensland. I must confess that I did not look at New South Wales.

The Attorney-General, in his second reading reply, said that he thought that most of those whistleblower disclosures would be made outside the agency. Yet, if one looks at the appropriate authorities, one sees that they are, initially at least, likely to be dealt with internally in some instances.

I want to provide a clause which focuses upon Government agencies making administrative arrangements for receiving and dealing with disclosures of public interest information. That, as I said earlier, has a number of consequences. First, it builds up some sort of culture in relation to public interest disclosures. It also focuses upon management to recognise that it cannot sweep it under the carpet; it has to address it. It facilitates disclosure and would make it much easier for a whistleblower in the sense that there would be less prospect of recriminations and victimisation if the agency had been required to address the issue of public interest disclosures and the way in which they should be handled.

My amendment will have a beneficial effect by focusing upon the issue. Hopefully it would have the

educational consequences about which we were talking earlier in relation to other aspects of education and be beneficial rather than detrimental, because agencies would be required to focus positively on making some plans to deal with the issue.

The Hon. C.J. SUMNER: The Government opposes this amendment. I am sorry at this late stage of the Bill that all the sweetness and light that has been generated in the last hour or so will be dissipated. The first point I emphasise is that we were trying to keep to a minimum the bureaucracy necessary for the administration of this legislation. This obviously adds some greater obligation onto the system in relation to whistleblowing.

The proposals of the honourable member are three and they are really different in kind. The first one about making appropriate administrative arrangements is not necessary. It probably is a bit hard to impose such an obligation, for instance, on the Chief Justice, the Ombudsman, the Auditor-General and the like. The question is: what are the legal consequences if the obligation is not performed? Frankly, I do not think it is necessary. It is coped with adequately by the education and information process which I have already indicated will be put in place by the Government before the Bill is proclaimed.

I would prefer to see this matter dealt with as part of administration. There will be pamphlets, and one would expect the PSA to be fully aware of it. I would expect by administrative direction that Government agencies would at least be aware of their obligations under this legislation. I think it is taking it too far and it is unnecessary, by means of this legislation, to impose a legal obligation to do what the Honourable member requires. I do not think it is necessary and, in the interests of minimising the bureaucracy, I oppose it.

Subclause (2) on counselling is also unnecessary. I think that to place a broad obligation of this kind on all Government agencies is overkill. In general terms, arrangements of this kind are a matter for the proper general administration of the Public Service, not just each agency. What would be the consequence if an agency did not make adequate provision and why is this obligation imposed only on Government agencies and not, for example, on local government and the private sector? I make the point again that in good administration I would expect this issue to be dealt with in the information stage that the Government has in mind with pamphlets and the like.

Subclause (2) also deals with institutional arrangements for protection against victimisation. I do not see how any agency can make adequate provision to protect employees from acts of victimisation. I cannot see how an institution can be expected to make adequate provision for the protection of employees against actions taken against them by the organisation itself. Protection, to be effective and credible, must be external. That is the virtue of having the equal opportunity method of dealing with the problem. Therefore, I oppose that proposal as well.

There are real difficulties with subclause (3) dealing with annual reports. An agency may not know that any disclosure has been made that relates to it. What then in the nature of things? As I have said earlier, the expectation is that whistleblowers will largely go outside the agency. In that case it is inappropriate that the agency should do anything about it, because it will be the subject of action taken by another investigative body, so it will report no action even if it does know.

Further, the agency may be required to disclose the existence and nature of information prematurely, which could have the possible effect of prejudicing the investigation. How is an agency to know whether or not a disclosure has been made under this legislation? That may be a matter of dispute. Again, why is this sort of obligation not to be imposed upon others such as local government and the private sector?

I do not have any problem with the notion that there should be reports on whistleblowing complaints, but I do not think that the honourable member's proposal achieves that objective. There may be some alternatives that could be looked at. In any event, I would expect that if there was a serious whistleblowing case which revealed serious matters of corruption or maladministration they would be reported on in any event. If they were really serious they would end up in the courts, so they would become public knowledge. If, however, there is not anything in it then what is the point of including the disclosures under the Act?

The Hon. M.J. ELLIOTT: I am fairly equivocal about this clause, particularly subsections (1) and (2). Subsection (3) does create some real problems, and another problem that I see over and above those which I think the Attorney covered was where perhaps a serious complaint had been made but it had not been resolved. If you have an investigation under way you certainly do not want to have the nature of the disclosure being made public while the investigation is proceeding. That may be tied up by further amendment, but certainly as it stands now subsection (3) creates a real difficulty. I have some sympathy with the notions that are being sought there but I do not think the amendment as currently worded works.

The Hon. K.T. GRIFFIN: I acknowledge the difficulty in relation to proposed subsection (3), and that can be a difficulty. At this hour of the night I am not sure how I resolve that, but in relation to the proposed subsections (1) and (2) I think that they do provide some expression of principle for agencies, and I think that that is important to give some sense of direction. The Attorney-General acknowledges that administratively it is expected that something like this will be in place, anyway.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Anyway, there is a differing point of view about it. It might be appropriate to put them subsection by subsection and then we can resolve them more readily.

New clause negatived.

Clause 9—'Offence to make false disclosure.'

The Hon. C.J. SUMNER: Perhaps I could indicate in the light of the argument on the new clause that, while I was not happy with the proposal that the Hon. Mr Griffin put, there may be some case for looking at the Commissioner for Public Employment reporting on the legislation in a more general way. I will have that looked at and considered in another place.

The Hon. K.T. GRIFFIN: I think it is important to have some conscious review of the operation of the legislation and public reporting of it. For that reason, I

welcome the indication by the Attorney-General that he will have the matter examined before the Bill is resolved in the other place.

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

Page 4, after line 13—Insert the following subsection:

(2) A person who makes a disclosure of public interest information in contravention of this section is not protected by this Act.

The consultation process revealed quite clearly that the tests for the genuineness of the whistleblower were crucial and the Bill had to be clear that there was a consistency between the various provisions on this point. For example, it was said that it was not clear that a person who had suffered loss or damage to reputation as a result of the dissemination of false information had a right of redress. Again, it is probable that a person who commits the offence of knowingly or recklessly making a false disclosure will not be protected by the immunity provision. As it was not clear that this was widely understood, this amendment seeks to make that apparent on the face of the Bill.

Amendment carried.

The Hon. M.J. ELLIOTT: I want to check the significance of the penalty under this clause. The only option here appears to be for imprisonment. There is no other option. Is there any particular reason for that? Certainly, it is a serious offence where a person does something knowing it to be false. It is somewhat of a lesser offence, at least in my mind, where perhaps they have been reckless. There must be various scales of recklessness, but the only option at this stage for courts is imprisonment where a person has perhaps been a little reckless, and that seems to me to be relatively harsh. I do not understand why in some circumstances a fine might not be more appropriate.

The Hon. C.J. SUMNER: I agree that a fine option should be included. If that is not accommodated by this general expression of imprisonment for two years, we will insert a fine option in another place.

Clause as amended passed.

Clause 10 passed.

New clause 11—'Regulations.'

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

Page 4, line 17—Insert new clause as follows:

11. The Governor may make regulations for purposes contemplated by this Act.

This is a consequential amendment.

New clause inserted.

Title passed.

Bill read a third time and passed.

POLICE SUPERANNUATION (SUPERANNUATION GUARANTEE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 4 March. Page 1439.)

The Hon. L.H. DAVIS: The Liberal Party supports the second reading and raises no objection to this Bill. The amendment to the police superannuation legislation is required to ensure that the scheme complies with the requirements of the Commonwealth Superannuation Guarantee Administration Act. As members would remember, other public sector superannuation schemes have already been amended to take this into account. As from 1 July 1992, a minimum level of contribution from employers, commencing at 4 per cent and moving up to 5 per cent as from 1 January 1993 and ultimately to 9 per cent by the year 2002, has meant that the superannuation guarantee provisions should be recognised in this existing police superannuation scheme.

As it is, the second reading indicates that there are certain circumstances as a result of the recently introduced Commonwealth legislation where the Bill needs to be remedied by providing a compulsory preserved employer finance benefit at the level required under the legislation. Also, the second reading indicates that the scheme may not comply with the requirements of the legislation if there were the death of a contributor and where no spouse is entitled to benefit under the scheme. The legislation is to be amended to ensure that a benefit equal to the accrued benefit will be payable to the estate of the deceased police officer. There are also technical deficiencies in the Police Superannuation Act, which are remedied by amendments in the legislation.

The Liberal Party accepts the Commonwealth legislation, which was passed through the Federal Parliament last year. The current Federal election campaign has revealed a difference in approach to superannuation levels under the Commonwealth Superannuation Guarantee Act. Of course, Saturday's election will determine the future level at which employers will be required to pay, at least over the next four years. So, there is a lot riding on the Federal election, which will be of great interest not only to employers forced to contribute to the schemes—schemes which in my view are particularly onerous and impractical for small businesses where the administrative costs in some cases outweigh the contribution levels. It is a quite bizarre situation. It is a situation which is not only inappropriate for many employers but is an unnecessary administrative burden.

The Federal election outcome will also be of interest to superannuants, pensioners and intending retirees. It is perhaps rather late in the day for me to make a call on voters to support the Federal Coalition—the Liberal and National Parties—in this election on 13 March, but it is my considered view that the proposals that they will set in place for intending retirees and superannuants, and indeed pensioners, will be much more attractive than those of the outgoing Federal Labor Government. I support the second reading.

Bill read a second time and taken through its remaining stages.

FIREARMS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 1490.)

The Hon. J.C. IRWIN: I thank the Attorney-General for his explanation of why we have this Bill before us now, bearing in mind that we discussed something similar to this only a week or so ago, and I accept the explanation given by the Attorney. I wonder how can we

arrange to have the second reading and Committee stages realigned. I indicate straight away that I do not intend to say any more in this second reading debate or to explain the one amendment that I have circulated, which was passed last time but which I will put before the Committee again. I have said about all I need to say; it would be interesting, though, to see if we can align with this new Bill the debates we have already had. I support the second reading.

The PRESIDENT: By way of explanation, although the previous Bill was null and void, *Hansard* will still have a record of what was said and how it was said in relation to that Bill.

The Hon. J.C. IRWIN: Someone, perhaps the Hon. Mr Gilfillan, can put a notation into his second reading contribution that anyone interested in looking up the debate should start looking it up from the appropriate page (whatever it is) in *Hansard*. I have not had time to find out.

The Hon. I. GILFILLAN: I cannot cite the page number, but the explanation given by the Attorney as to why we are doubling up on the debate on this firearms legislation is on the record.

The Hon. C.J. Sumner: Did you understand it?

The Hon. I. GILFILLAN: I always take the Attorney's word at face value. It was clearly put by the Attorney, and it did not reflect well on the efficiency of the handling of legislation in the other place, but we will not dwell on that. But for those diligent readers of *Hansard* who might by now be totally perplexed at what is going on, I point out that we are redebating the Bill because it came to us in a faulty text, originally, but members, having consideration for readers and listeners, will not repeat their comments; all of us refer to the earlier contents of *Hansard* as applying to this Bill. I am one of those.

The Hon. R.J. Ritson: Both the *Hansard* readers will be grateful.

The Hon. I. GILFILLAN: I thank the Hon. Dr Ritson for giving me the statistics on that: I do not have his ability with numbers. He estimated the readers of *Hansard* to be in the plural rather than in the singular: he may be being optimistic. However, to our reader, we do apologise and hope that he, she or it finds the rest of the debate fascinating. I support the second reading.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 2, lines 5 to 7—Leave out the definition of "pistol" and insert the following definition:

"pistol" means a firearm the barrel of which is less than 400 millimetres in length and that is designed or adapted for aiming and firing from the hand and is reasonably capable of being carried concealed about the person:;

The wording of the amendment was a joint effort with help from the Attorney-General. I acknowledge that and hope that the Committee will support this amendment.

Amendment carried; clause as amended passed.

Remaining clauses (4 to 27), schedule and title passed.

Bill read a third time and passed.

CONSTRUCTION INDUSTRY TRAINING FUND BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 1456.)

The Hon. J.F. STEFANI: I make this contribution, having some experience in, and thus a good working knowledge of, the building and construction industry. I support any move that will enhance the training of young persons who will eventually find a future in this industry. This proposal has been supported substantially by most of the industry operators and employer groups, as well as the unions. It seeks to establish a method of training young people and has an enormous amount of merit because, since building contractors and companies have abandoned their responsibility, apprenticeship schemes have not been very successful; few apprentices have been able to receive formal training through a structured apprenticeship course. This has occurred because the traditional role of builders has changed from that of a building company to the role of project manager, and in that process the project manager is usually identified as the company which has the administration and control of the project but which restricts its activity purely to organising subcontractors to perform the subcontract work in the total building of a construction.

It is with this thought in mind that a lot of the larger companies, project managers and former builders have this notion of providing training to young people to produce our future tradespersons in the industry; hence the proposal before us. I have some reservations about certain industries, particularly the plumbing and electrical trades, where tradespersons are trained through the process of apprenticeships: that is the only way a plumber or an electrician can practise as a qualified tradesperson. Apprenticeships are currently being offered through TAFE colleges, and the companies employ young people to complete their training and formally complete an apprenticeship, which covers four years.

In this I see the disadvantage for companies which are compelled to employ young people through that system and which are required to pay a levy in addition to the training they already provide to apprentices. There are a number of other issues which my colleague the Hon. Rob Lucas has flagged and which will be addressed by the Liberal Opposition in Committee.

These issues and concerns, some of which have been expressed to us, will need clarification. Part of the role of this new structure will be to collect money and levies and put those to use to train people. I believe that in view of the recent thrust of the Government in ensuring that there is ministerial control over funds collected for purposes such as the Long Service Leave Board, there may be some requirement for the Government through the Minister responsible for this measure to require ministerial control, and we will pursue those questions in Committee. I believe that, whilst the scheme does offer appropriate structured training and the basis for that training, it will work only if the industry as a whole and the union movement work together to achieve suitable courses which will result in the training of future tradespersons in the industry.

I would also draw the attention of the Council to the proposal of enterprise bargaining which encompasses the method of training, and which will also provide for wages that are at a lower level in the first year of training, and as part of that restructuring process we see that the proposals which the unions are seeking to achieve are appropriate methods of training young people. So, with that in mind I wish to draw the attention of the Council to these matters and we will pursue some appropriate questions in Committee with a particular effort to ensure that the legislation that we introduce will be effective and will produce the best possible results for the industry. I support the second reading.

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

EVIDENCE (VULNERABLE WITNESSES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 9 March. Page 1459.)

The Hon. BERNICE PFITZNER: This Bill essentially provides for witnesses, who are especially at risk of being embarrassed, distressed or intimidated by the atmosphere of the courtroom, to be classified as vulnerable witnesses, and therefore deserving special consideration. Such witnesses are people under 16 years of age or over 75 years of age, intellectually disabled, alleged victims of sexual offences or those who fall into some other special disadvantaged category.

My particular interest is in the child, a person under 16 years of age who has been subjected to abuse, usually physical or sexual. We are all aware from the latest newspaper articles and from statistics from child protection units that child abuse is on the increase by at least 30 to 40 per cent. This table of statistics from the Women's and Children's Hospital over a 10-month period from January 1992 to October 1992 shows that there are 206 physically abused children and 885 alleged sexually abused children. That is over 1 000 children possibly abused over a 10-month period. We also note that the peak in the numbers of child abuse cases was in the age group of two to four years relating to both physical and sexual abuse. I seek leave to have this table, which is of a statistical nature, incorporated into *Hansard* without my reading it.

Leave granted.

WOMEN'S AND CHILDREN'S HOSPITAL
(January 1992 to October 1992)

Type	Physical Abuse	Sexual Abuse
1. Total Nos.	206	885
	(Confirmed)	(seen 30% confirmed)
2. Gender	104 males	240 males
	(50% of total	(27% of total)
3. Age Range	Total 203	Total 828
	(3 age unknown)	(57 age unknown)
0-1 year	53-17% of total	18-2% of total
2-4 years	66-42% of total	264-32% of total
5-7 years	28-14% of total	217-26% of total
8-12 years	32-16% of total	235-29% of total
13-17 years	24-11 % of total	94-11 % of total
4. Hospitalised	49	Not available
	(24% of total)	

The Hon. BERNICE PFITZNER: Therefore, we need to be very sensitive of the procedure that these very young child witnesses must undergo so as to minimise any extra trauma that the child will be subjected to. In 1990, the Select Committee of the Legislative Council on Child Protection Policies, Practices and Procedures in South Australia reported in recommendation 13:

> ...that the abused child victim does not have to face the accused in court and that this is circumvented by the use of screens and video and audio equipment.

The other relevant recommendation was No. 15:

> ...that the subject of child abuse and protection be incorporated into the core syllabuses in law in South Australian universities. Further, the committee recommends that in-service training seminars, presented by experts, are provided for all solicitors, barristers and judges working in the field of child abuse.

This last recommendation is particularly pertinent when we note from the white paper report on the courtroom environment and vulnerable witnesses of November 1992 that the Chief Justice is totally against the proposal for an audio-visual link, a screen or a one way mirror. The reasons are that:

> It is a fundamental principle of justice that a person accused of a crime is entitled to be faced with his accuser—and it is easier to tell lies about a person in his absence.

Knowing child development, I would say that it is easier not to tell the truth when confronted with the accused. The other reason that the Chief Justice gives for his opposition to an audio-visual link is that:

It would convey to the jury and to the accused that he was already considered to be at least presumptively guilty.

This could be overcome by a clear warning to the jury and an explanation of the reason for the use of the visual link or screen. This is catered for in the Bill. It makes me wonder about our senior legal officers. Perhaps we can draw a parallel with our senior medical officers: just as in our select committee report medical officers feel that it is not necessary to legislate for certain procedures in death and dying, as they will make the necessary decisions quietly, so too do our legal officers not see the need for legislation for vulnerable witnesses as 'judges generally take whatever measures are necessary'.

The white paper lists the advantages of an audio-visual link as follows:

(a) It allows the child to be saved from unnecessary trauma associated with a courtroom appearance.

(b) The accused is able to see and hear the evidence of the child and communicate with his or her counsel.

(c) The use of the audio visual link can be explained to the jury as a measure to safeguard the child from the drama, emotions and trappings of an adult court, rather than from the accused.

(d) The system would allow the child to see and hear the judge and counsel, and the accused, if identification was necessary.

The disadvantages of the audio visual link are listed as follows:

(a) The video screen can have the effect of removing the reality of the complainant's evidence and distress.

(b) The video can distort the physical appearance and maturity of the child.

(c) The removal of the court confrontation may make it easier for a child to lie.

(d) The removal of the child may remove the trauma to the extent that the 'corroborating' trauma may be absent.

(e) The focus of the trial can be altered from the child to disputes regarding the manner of recording, possible prompting, and the people present, etc.

This new method of providing vulnerable witnesses with a live link was evaluated by Professor Graham Davies and Elizabeth Noon in the UK in a report entitled 'An Evaluation of the Live Link for Child Witnesses'. Some results were: 36 per cent of all live link trials resulted in guilty pleas; 28 per cent resulted in the conviction of the accused; 26 per cent resulted in an acquittal; 14 cases were discharged by the judge; four cases were sent for retrial; and 32 cases used screens. Of the barristers' comments, 83 per cent indicated a favourable reaction and 38 per cent had some reservations. The perceived disadvantages were:

1. loss of impact on the jury (31 per cent);
2. loss of immediacy and artificiality (26 per cent);
3. loss of rapport (18 per cent); and
4. loss of eye contact (80 per cent).

Some barristers registered more than one concern. The advantages were:

1. reduction of stress for the child (38 per cent);
2. protection of the child from confrontation with the accused (24 per cent);
3. ease of eliciting information from the child (24 per cent); and
4. protection of the child from the courtroom atmosphere (22 per cent).

Professor Davies concluded that live link has a positive and facilitating effect on the courtroom testimony of children.

The Australian Law Reform Commission has done a pilot study entitled 'An Evaluation of the Use of the Closed Circuit Television for Child Witnesses in the ACT', one of whose concluding points was:

There was evidence that closed circuit television may reduce the stress on child witnesses and improve the quality of their performance. However, the results were not as clear as would have been hoped.

Other States have recently initiated legislation for the taking of evidence from special witnesses. These States are Queensland (1989), New South Wales and Victoria (1991), and more recently Western Australia. Also, New Zealand has recently initiated similar legislation. Although it is said that these measures are in their embryonic stages, if one is familiar with child psychology and child development, experts could have told the judiciary long ago that this type of live link is essential. One cannot fail but assert that this new measure of audiovisual link is for the betterment of the child and the outcome of the case. In fact, as one gets used to this live link, it will be an essential feature of evidence-taking for these abused children.

In the proceedings from the second European Conference on Law and Psychology, the following paragraph in the introduction is relevant:

Psychologists have strengthened not only their research on legal topics but also their knowledge and understanding of the law. Legal science seems to be showing more of an open attitude towards psychological contributions. However, natural conflicts remain. It is becoming increasingly clear that a surface acceptance is not the ultimate goal. Difficulties should be dealt with in the most constructive way on both sides to improve our understanding of the law.

I would add: to improve the law's understanding of psychology, in particular, child psychology. It is also recognised that stress does not only emanate from the courtroom but also from the fragmented method of numerous interviews from FACS social workers, police officers, medical officers, expert witness, for example, psychologists and finally judges.

The procedure of obtaining evidence must be improved because it is a well known fact that the first interview is the most important and, therefore, the personnel at this first interview must be experienced and skilled. The volume *Psychology and Law—International Perspective* contains the selected contributions to the second European Conference on Law and Psychology as previously mentioned. Part VI is dedicated to children as witnesses and victims in the justice system, mainly in respect of the problem of child abuse. In recent years this field has become very topical in many countries. It is a field demanding practical assistance by psychologists.

Psychology can and should contribute to dealing with this problem while at the same time finding a way to increase the sensitivity to these problems without overdramatising them. This section should be read by legal officers who deal frequently with children, particularly those suffering from child abuse. As regulations and psychological experience differ greatly in different countries, international exchange is of great importance, for example, the many years of experience

in Germany with witness testimony of children could make a significant contribution to the whole subject.

Bekerian and Dennett discuss a general class of psychological assessment procedures that are used to determine the validity of evidence given by child witnesses. Baartman describes how society's and science's attitudes towards the credibility of children as witnesses and toward the sexual abuse of children have changed.

Howitt points out the kinds of errors that can occur in decisions of professional helpers in the well intended protection of children. Stellar stresses that, although there is no one and only solution, all jurisdictions could benefit by reflecting on their weak points and adopting the positive aspects of other countries' procedures. Flin sets out major sources of stress in the pretrial, trial and post trial phase in the accusatorial system of the United Kingdom and proposes a model for reducing stress in British courts.

Havill of Norway describes and laments the discrepancy between official ideals and current practices. O'Neill of Australia reports on the most recent change in legislation on sexual offences in Canada: Canada seems to be leading the way with these changes with its recent personal directive check list with respect to the Bill on medical consent. O'Neil suggests that to ensure success of the new legal procedures in Canada—and this could apply just as well in Australia—psycho-social professions in this field should be encouraged to learn more about the mechanisms of law and the legal profession should try to understand the needs of children.

Moray talks about youth interrogators to substitute for the child witness in court and McPherson of the USA talks about the *guardian ad litem* in every juvenile court and discusses cooperation with the different professions involved in these cases before the court. Time and again we are reminded of the cooperation we must have to make this system of protection for the vulnerable witnesses satisfactory without detracting from the rights of the accused.

This Bill attends to the protection of the vulnerable witnesses, for my part, the abused children. It is hoped that with the cooperation of the legal officers and officers of social sciences we might have a common ground of reducing error. As Saks and Kidd (1980) have said, 'Whatever justice may be, surely it is not error.' I commend the Bill to the Council and support the second reading.

The Hon. T.G. ROBERTS: I support the Bill.

The Hon. R.I. Lucas interjecting:

The Hon. T.G. ROBERTS: It is far too important for me to be goaded by members of the Opposition to speak on anything else. This subject matter deserves very serious consideration. The select committee referred to previously by two honourable members in their contributions was a select committee upon which I served when it was reconstituted the second time around. I think the Hon. Di Laidlaw was on it in its original form and then for half of the second one. Did she continue on the second one?

The Hon. Diana Laidlaw: No. I moved that the select committee be established and then I changed shadow portfolios. I thought we could educate you, and we did.

The Hon. T.G. ROBERTS: Yes, and you did a very good job. I was very grateful to go on that committee. The Hon. John Burdett was on it and it was chaired by the Hon. Carolyn Pickles.

The committee took loads of evidence from expert witnesses and lay people and made 28 recommendations. Reference has been made by the Hon. Bernice Pfitzner and the Hon. Trevor Griffin to the work that the committee did. I think that puts us in good stead for supporting the recommendations which the Attorney-General has brought into this place and which complement some of the progressive legislation that was introduced earlier in relation to mandatory reporting. This State played a leading role nationally in setting some standards and in coming to terms with what was a very serious but to some extent hidden problem.

The legislation before us now complements the mandatory reporting program, plus many other measures that this State has taken either administratively or legislatively to put into place a very progressive and supportive program for detection, investigation, treatment and rehabilitation.

Basically, the committee had to separate the two main arms of child abuse—child physical abuse and child sexual abuse. Child physical abuse was far easier to deal with, although equally as traumatic. Child physical abuse was recognised in the community as a problem because one is confronted with the visual sight of a battered child. Child sexual assault was not so easy to come to terms with or to get witnesses to speak about as openly and honestly or with the same approach as they had to child physical abuse.

To some extent it was a hidden problem and it made it harder to draw out the information and to get the facts in order to put together recommendations that were able to deal with the problem constructively. We had to draw on a lot of overseas experience. Many expert witnesses put evidence before us that had updated information from overseas. In that respect, I must congratulate the Hon. Bernice Pfitzner on her contribution tonight.

It further updates the work of the committee from 1990 until now. Most of the information basically dealt with the problem in different countries in different ways, but almost came to the same solutions as the recommendations that we ultimately made. I think there was a unanimous position in relation to using the inquisitorial system of problem solving so that an adversarial role was not played by either the investigators, the perpetrators or the witnesses. Rather, there was a common goal of finding an inquisitorial outcome to get all the facts so that solutions could be applied to the burgeoning problems that were being experienced by a larger number of children in society today.

The question that was posed, basically, through a lot of the witnesses' submissions was: what is our attitude to children in society? In a lot of cases we had to draw the conclusion that children were seen as chattels of ownership rather than having rights themselves, and that the children who were abused in a lot of cases became the abusers themselves in later life if the problem was not dealt with in the appropriate manner.

The associated problem of convictions was one with which the committee had to wrestle in relation to how it

dealt with not just the victim but also the perpetrator, to prevent the perpetrator from continual abuse and to get the perpetrator to admit that he or she actually had a problem. That was a difficult job because we found that we had many categories of perpetrators. We had physical child abuse perpetrators who were obviously one-off cases, involving loss of temper or something that they would not do again. In a lot of cases these went unreported.

There were those who were continual abusers; there were those who were abusers under the influence of either alcohol or drugs; and there were many parents who were subjected to extreme internal and external pressures within their relationships and who resorted to violence as a method of discipline when they had no other advice or support structures to turn to. There were a multitude of reasons why parents and/or friends and relatives resorted to physical abuse of defenceless children. It was a very wide, varied and difficult subject to come to terms with.

There were those cases for which members on the committee had no sympathy. In this respect, I refer to the continual abusers, who repeated the offences after either family intervention or that from neighbours, friends or police. It was felt by most of the members on the committee that their counselling in some cases would have been the appropriate way to proceed, but in a lot of other cases conviction and isolation from the community was the only other avenue offered.

In physical abuse cases involving children, it was generally felt that if the perpetrator could be counselled that was the appropriate way to go without conviction, without separation from the family. However, if the cases were continual then obviously stronger methods were required.

In the cases of child sexual abuse there was not a lot of sympathy from members on the committee for continued presence within the family unit and/or in association with either the extended family or friends, but isolation was a procedure that had to be looked at in the first instance. The child's rights were paramount in the determination of how one handled both physical child abuse and sexual child abuse. Those agencies that come in contact with those cases of abuse had to operate on the basis that the child's interests were paramount, and that is what should have guided them in the way in which they handled those problems to bring about solutions.

When the evidence was put before us in relation to detection and investigation, it was felt that the South Australian system was probably evolving into something that was worthy of support. I must say that, when the Hon. Di Laidlaw raised the issue, probably in late 1989 early 1990, cases were being put before the public eye that if they did not exaggerate the position they certainly drew it to our attention that a solution had to be found to the burgeoning problem. All members on the committee felt that the problems that were being experienced by both FACS and the police in relation to investigation, isolation, conviction and rehabilitation were evolving from in many cases the personal experience of those people in those departmental positions rather than from any textbook or academic studies that you could say indicated a perfect solution.

I had a lot of sympathy for people in Family and Community Services who had to deal with all aspects of child abuse, both physical and sexual, because in many cases the support systems were in their early days and many people were drawing on their own personal experiences and resilience in dealing with the problems with much sympathy but not many support structures. It did take much support from those departments and from members of Parliament themselves to draw those problems to the attention of people to make sure that the support structures were adequate to deal with the burgeoning problem that we were finding.

It was not just the mandatory reporting that was turning up an increase in the number of cases in South Australia; it was a combination of changing social circumstances and the fact that we had mandatory reporting putting a lot of pressure on the departments that were handling the problems associated with child physical and sexual abuse. It was quite clear that all those people who were working at departmental level in FACS, the police and even the medicos were finding it difficult to deal with, because they were not familiar with many guidelines that showed them any way that they could handle those problems. Some of the recommendations by the committee were that people who were to be the front line mandatory reporters had to have training in, first, recognising child physical or sexual abuse and, secondly, to work out ways to deal with that using the support system and structures that were there. It was then recommended that more adequate resources be put in place to support those people already in the front line. We did find that those people in the front line were being stretched to the limit.

The units that were operating successfully, particularly the investigatory unit at Holden Hill, were doing a lot of good work. The Adelaide Children's Hospital unit was doing a lot of good work and the QEH was doing a lot of good work. We did find that there was a lack of resources for identification, investigation and rehabilitation, particularly in the rural and regional areas and we made a recommendation that more facilities be provided to come to terms with those problems. Dealing with child sexual abuse, particularly in country areas, is very difficult and there is a recommendation to handle cases that are proven and those cases that are investigated and dismissed. The problem that we found in relation to rehabilitation, which I hope the legislation addresses in respect of the protection of witnesses, was to get abusers to admit that they did have a problem, which was very difficult if they thought that they could use their guile to avoid conviction. It was the committee's general view that for rehabilitation to be successful an admission had to be made by the abuser that they wanted to voluntarily partake in a program of rehabilitation. If they were going to set out to avoid conviction, it was an obvious sign that they were going to go into denial phase and not participate in any rehabilitation program.

To get a conviction you need an investigation program set in place early; you need a collection of evidence that is clear and precise so that by the time the investigation or the evidence is turned over to the prosecuting officer in the courts the evidence is adequate to gain a conviction so that you can then go about the process of

rehabilitation. It was the general view of the committee that, if there was denial, further breaches would occur either within that same family grouping or there would be a move by the perpetrator into another area to continue with the abuse in other social circumstances or other family circumstances.

So, it was quite clear that convictions had to be guaranteed, if you like, or they had to be given a greater chance of reaching a court and finality than they were under the current system that was operating. I think from memory something like 7 per cent of the cases that reached the courts resulted in convictions. There was a very small level of conviction in the case of child sexual abuse because of all the trauma that the witnesses had to be put through, first, to protect the interests of the child, which were paramount and, secondly, to protect the interests of the accused to make sure that the conviction was the right conviction and to protect the innocent.

They are the dilemmas that the committee had to wrestle with. It is quite clear that, of the 28 recommendations that the committee made, it was not necessary for them all to go into legislation, as some of them could be dealt with as administrative matters, and I think the Summary of Recommendations indicates that. The Bill before us tonight, which is for the protection of witnesses, does go into one of the areas that the committee did look at, that is, the protection of child witnesses or children in courtroom settings that were obviously intimidating to them. Technology has made advances in some areas that we as legislators thought the courts administrators could use to both protect the interests of the child and to gain clear evidence that could be used in prosecuting a case. We also felt that the inquisitorial system of getting the facts straight would have been assisted by the use of screens and closed circuit television, tape recording, etc.

The Bill addresses one facet of child protection. The committee felt that the intimidation of victims in courtrooms would be prevented by separating the alleged perpetrator from the victim, and that the evidence provided by the child in those circumstances would be more accurate than if the accused had to face the accuser. In normal circumstances in criminal cases involving adults that sort of intimidation does not occur, but it was felt that children had to be protected.

A vulnerable witness means a witness who is under 16 or over 75 years of age. I accept some of the points made by the Hon. Trevor Griffin regarding the age limit of 75, as there could be vulnerable witnesses aged less than 75 years. A vulnerable witness also includes the intellectually handicapped and the alleged victim of a sexual offence to which the proceedings relate, and that does not necessarily have to involve a child, or a witness who in the opinion of the court is at a special disadvantage because of circumstances of the case, and that can be worked out during the proceedings.

The Bill goes part of the way towards firming up the program for gaining convictions through an inquisitorial and slightly adversarial system. I do not accept the proposition put forward in the white paper into court proceedings that it be opposed on the ground that the accuser has to face or look the accused in the eye. I suspect that is a carry-over of the old English court laws—almost a beer man's approach to justice. There are vulnerable witnesses in society, certainly in cases of rape and child abuse where dominant males tend to intimidate the accused. There have to be not over-compensatory levels of investigatory powers but powers that even out the balance and ensure that the accused gets a fair trial.

I think that the system of justice that we have in this State allows that. Our police have a very good record as far as the collection of evidence is concerned. Forensic support and assistance enables clearer delineation and use of evidence, and people are becoming a little more open in their approach to the protection of women and children in society. I hope that attitudinal changes start to be formed from an increased rate of convictions and rehabilitation to the point where perpetrators who think they will not be caught because they are part of a family structure are made to think twice about continuing the perpetration of acts of either physical or sexual abuse, particularly against children. With those words, I support the amendments to the Evidence Act.

The Hon. DIANA LAIDLAW: I, too, welcome the opportunity to participate in this debate. I also welcome the earnest, thoughtful and caring contributions by all who have debated this Bill to date, and I specifically cite the Hon. Terry Roberts, the Hon. Mr Griffin and the Hon. Bernice Pfitzner. Of course, in that context, I commend the Government for introducing this Bill, which addresses the courtroom environment and vulnerable witnesses. There has been a series of Bills introduced by the Government over the past six or eight years, all of which essentially have been supported by the Liberal Party. These measures have sought to ensure that victims of crime receive justice before the law. I recall that possibly the only one of such a series of Bills on which we did not agree was that in respect of unsworn statements, but that matter was debated sometime ago and those arguments have since been resolved.

The major focus of this series of reforms has been the need to redress the law, policy and practice in this State in relation to sexual abuse in general, and to violence within families and among persons known to each other. The 1986 South Australian Task Force on Child Sexual Abuse identified problems associated with the existing law on child abuse. Recommendation 77 of report of that task force states:

> (a) urgent consideration be given to the arrangement of the courtroom for adequate protection of the child victim. In particular, visual contact between victim and the accused should be minimised and physical distance between them should be maximised.

I note that that recommendation plus the next two that I will read were referred to in the white paper on the courtroom environment and vulnerable witnesses. However, to my disappointment this white paper did not make full reference to the task force's recommendations and general comments as outlined in recommendation 77. So, I will read the rest of recommendation 77(a):

> A minority of task force members favoured removal of the accused from the courtroom while the victim is giving evidence. As a less ideal alternative, a minority of task force members recommended introduction of screens.

That is important because the introduction of screens is certainly a possibility under the Bill that we have before us today. Recommendation 77(b) states:

...courts be adjourned when a child victim is called so that the child has a chance to adapt to the courtroom.

Recommendation 79 states:

The task force recommends that the Attorney-General develop policies and procedures aimed at lessening the impact of the courtroom environment on victims of child sexual abuse and ensuring that proceedings for child sexual abuse are conducted in a manner which reflects the special needs of the child victim.

At the commencement of those three recommendations it should be recognised by all members that the task force in 1986 considered those matters to be urgent and we are here tonight, in March 1993, some seven years later. So, it is a little disappointing that it has taken so long from the release of those very important recommendations by the child sexual abuse task force—recommendations considered by that task force to be urgent. Nevertheless, as I said earlier, I welcome the introduction of this Bill, although it is somewhat overdue.

Those matters were raised in 1986. The select committee of this Council made similar recommendations in 1991. I, on behalf of the Liberal Party, moved for the establishment of that select committee. I was pleased to note the contribution of the Hon. Terry Roberts tonight; he acknowledged that he had benefited by from his membership of that committee on behalf of this Council, and I would echo those views. It was an important select committee on a very sensitive subject for the individuals involved and their families, but also it was a particularly sensitive subject from a Government perspective, that is, from the point of view of both the community welfare people—social workers and administrators—and the legal system. I believe that that select committee achieved a great deal in improving understanding of this very complex and vexed area.

The select committee agreed (page 20) that the courts system as it presently operates is, in many cases, inimical to the interests of children. The long delays, the complexities of the legal system, the negative effects of the adversarial approach combine with the extremely low number of convictions to suggest that justice is not always being done for the victims of child abuse in South Australia. The committee went on to recommend that resources be made available so that people could be attached to the courts with the specific role of providing support for child witnesses. That has been addressed in part by the Government, but a great deal more could be done in this regard.

I also note that the committee recommended that the abused child victim does not have to face the accused in court and that this is circumvented by the use of screens and video and audio equipment. It is important to note that, in evidence to the committee, the police argued for audio taping because of logistical and resource problems and for the use of screens and companions in court. Many witnesses also argued for the video taping of interviews with children, and I note that the Law Society told the committee that it would like to see the taping of the first interview and the introduction of screens in court. I stress that reference to the Law Society and hark back to my earlier comments relating to the importance of the select committee in developing in the community a broad understanding of these complex issues, for it appears now that, in respect of this Bill, the Law Society is opposed to the measures. That is in complete contradiction to the evidence the society gave to the select committee of this Council in late 1989 or early 1990.

The Hon. Anne Levy: The Law Society has changed its views?

The Hon. DIANA LAIDLAW: The Law Society appears to have changed its views. That may be a surprise, but it is certainly disappointing to me that this has been the case, and that is why I stress again and again the importance of these select committees in this place in developing an understanding in the community about these complex issues and even in having representatives of the law understand the difficulties that can be encountered by some members of the community from time to time. In dealing with these difficulties, past precedents in the law and past practice should not be the only consideration.

It appears that the select committee back in 1991 was able to reach such an understanding with the Law Society and others. It is a pity to note today that the Law Society's submission does not reflect its evidence to the select committee back in 1991. Nevertheless, it is heartening to see that the Government is proceeding, notwithstanding the Law Society's opposition to this measure at this time. It is also a pity that the Law Society appears to have moved backwards in this area when further and further evidence taken in England and the ACT, in particular, appears to identify that many children suffer less stress and provide better evidence if they are able to utilise some of these measures proposed in the Bill, including closed circuit TV systems in court.

I also note from a draft report by the Australian Law Reform Commission entitled 'The use of closed circuit television for child witnesses in the ACT' that closed circuit television enabled some cases of child abuse to proceed that might not have proceeded without the use of closed circuit TV. That is a point that the Hon. Terry Roberts was making earlier, and it is one that is critical in this whole debate in seeking justice, because too often a child victim or victim in any of these violent and sexual crimes, as we are debating tonight, is penalised and appears to be a victim twice if we cannot help the victim get to court and have his or her case heard, achieving a conviction as a consequence.

I have some misgivings about this Bill, I suppose. The major one is the fact that there is judicial discretion. Here I differ from my colleague the Hon. Trevor Griffin. I hold the view, which is also held by the Children's Interests Bureau and, I think, People Against Child Sexual Abuse (PACSA), that there should not be judicial discretion in this matter. A paper I have received from the Children's Interests Bureau to the Attorney-General in response to the white paper states:

As the recommendations stand they adopt a model that leaves too much to judicial discretion including the direction not to opt for any procedural modification, that is, retain the *status quo*. The bureau recommends a legislative model that structures judicial discretion more positively and clearly. It is the bureau's view that legislation should express a preference for CCTV for the reasons explained in the Australian Law Reform Commission's draft report... We emphasise in particular the commission's view that protracted legal argument, delays and additional assessments of children must be avoided. The Law Reform Commission has made sensible recommendations which

aim to secure the best evidence from children, in the least stressful circumstances, thus enabling the court to discharge its criminal justice function most effectively.

I wish to refer in more detail to the Law Reform Commission's draft report on this matter. Earlier I referred to the fact that the commission found that with CCTV more cases were able to proceed than would have been the case without this means. Under the heading 'Perceptions of Fairness' it states:

CCTV was generally seen by respondents to be fair, both to the defendant and to the child. They considered that it allowed the evidence to be tested even though the child was in another place. The overwhelming majority of legal professionals did not believe that the use of CCTV prejudiced the conduct of the defence case. The minority of respondents who were concerned about its fairness were concerned that CCTV made lying easier and detecting it more difficult.

As I say, that involved a minority of the respondents, and certainly a minority of the legal professionals in the ACT who experimented in this exercise. It is a pity that a representative of the Law Society in this State either did not care or did not heed the evidence from this Law Reform Commission report. In respect of the court's decision, the commission notes:

The evaluation found that the procedure by which the court makes a decision to order CCTV was neither straightforward nor consistent. There was considerable variation in the source and type of evidence required by magistrates to meet the criteria for ordering the use of CCTV. In some cases submissions from the bar table were enough. In others formal assessments of the child's psychological state were needed. Parents, social workers, psychologists, doctors or police had to give oral evidence in some cases. Sometimes they were cross-examined at length. Defence counsel disputed the meaning of 'mental and emotional harm' in some cases.

Lawyers and magistrates had a range of views on whether a 'commonsense' assessment of the 'likely' effects of a child's testifying in court were enough, or whether expert evidence was needed. Magistrates took different approaches to the question whether less or any evidence was needed if the defence consented to the use of CCTV. Finally, the evaluation showed that magistrates and lawyers had a range of views about, and approaches to, the question whether or not the court can take into account the wishes of the child in deciding whether to order CCTV.

So the evaluation by the Law Reform Commission found that when there is judicial discretion there is considerable variation between what is determined by magistrates as the criteria for ordering protection for a vulnerable witness, and that that then generally confuses and can easily protract a case and unwittingly perhaps cause more stress to a vulnerable witness. The commission goes on to say:

The evaluation provides support for the view that there are a number of ways in which children in the court may benefit from using CCTV for the evidence of child witnesses. Most professionals with experience of using CCTV in the ACT consider that it is a fair procedure. Some of the potential benefits to children of using CCTV are lost because of the uncertainty and complexity of the current procedure by which courts make an order to use it. A procedure which gives rise to protracted legal argument, delay and the exposure of children to additional assessment defeats its purpose of facilitating the giving of evidence by children.

I think that is particularly important and essentially sums up my whole concern that, by providing discretion for judges whether or not to use this means to protect witnesses, we are essentially defeating the very purpose that we are seeking to achieve, that is, some protection.

Therefore, the commission provisionally proposes that the general rule should be that child witnesses give their evidence out of court using CCTV. The legislation should provide that the court must make an order for the use of CCTV except in special circumstances. The consequences of this would be that in most cases the court would simply make the order without any need to consider evidence or argument. The opportunity for legal argument would arise only if a party applied for the order not to be made. So, essentially what they are arguing in this Law Reform Commission report—and I would emphasise that their arguments were also recommended by the Western Australian Law Reform Commission in 1991—is that in special cases, and in particular for child witnesses, there should be the presumption of protection for witnesses, and that there be no protection only when that issue is argued and the exception is made for no protection.

Because the Hon. Trevor Griffin and I have a difference of opinion on this matter I certainly support an amendment which he proposes to move to this Bill, that there should be some monitoring of this legislation and its impact on child witnesses and others who will be before the courts and may be deemed to be a vulnerable witness. The Hon. Mr Griffin is recommending that there be monitoring in a very similar form to that which applies today under the Evidence Act for suppression orders and that there ought to be a requirement for an annual report by the Attorney-General. I think those are important initiatives because this is a new practice and also because I have some concern about the success of the measures we are dealing with tonight while there is this judicial discretion.

Briefly I would raise the issue of the definition of 'vulnerable witness'. As one who has campaigned over many years against age discrimination—

The Hon. T. Crothers: Thank you very much!

The Hon. DIANA LAIDLAW: It is more relevant for some than others, but I think the Hon. Mr Crothers would agree with me that it should be on the basis of merit and experience and not on age, and I believe it is inappropriate for the vulnerable witness to be defined as a person over 75 years of age. I also would stress that while most people who have contributed to this debate have focused on the needs of child witnesses, and in particular children with respect to sexual offences, this Bill equally applies to a person of any age if they have an intellectual handicap or if they are an alleged victim of a sexual offence, and any person under 16 years of age where they are an alleged victim of a sexual or physical offence. I also welcome the amendment the Hon. Mr Griffin will be moving to paragraph (d) in subsection (6) where he will be confining the discretion to a person who is a victim of domestic violence or violence by some person who is known to them.

I think that that amendment being moved by the Liberal Party is compatible with so many of the strategies outlined in the report recently released by the National Committee on Violence Against Women, and

one strategy which I hope will gain further and further support throughout the Australian community.

The last point I make in respect of this Bill is that it will be a question not only of educating the judiciary and the magistrates generally but also of resources. I would be very interested to know what resources the Government intends to provide for our court system to ensure that the courtrooms are equipped with screens and audio and video taping equipment. It is critical if this Bill is to succeed and achieve any of the initiatives proposed that resources be provided to fulfil the aims and objectives of this legislation.

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

DISABILITY SERVICES BILL

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

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

That this Bill be now read a second time.

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

Leave granted.

Since the United Nations International Year of the Disabled Person in 1981 there has been increasing community recognition and acceptance of people with disabilities. Prior to this, these people with disabilities led lives out of the mainstream of our community and were often treated as second class citizens.

In SA, in the 1970's and 80's pioneering studies were undertaken into the circumstances and needs of people with disabilities. These studies provided strategies to improve the lives of people with a disability.

The Commonwealth Disability Services Act 1986 was a landmark piece of legislation which emphasised greater protection of the rights of people with disabilities. It provides a legislative base for the provision of financial assistance to a range of disability and rehabilitation services. A statement of principles and objectives enshrined in the Act ensures that funding and administration remain focussed on the achievement of desirable outcomes for people with disabilities.

The 1986 Commonwealth Act also accorded proper recognition of individuals' rights and dignity, and provided opportunities for the fullest possible participation in the community.

In SA we have also contributed to the process of reform in the area of people's rights and opportunities, particularly those who may in some way be disadvantaged. The introduction of Equal Opportunity Legislation in 1984, bears testimony to this Government's commitment to the principles of social justice. More recently, the South Australian Government has created a Disability Services Office to give the disability community a new focus. A Disability Services Implementation Steering Committee has also been established, to advise on the framework of disability services and structures in this State.

In the years since enactment of the 1986 Commonwealth Legislation, it has become evident that the lack of clear delineation of responsibilities between the different levels of Government has resulted in overlap and duplication of services.

Following the Special Premiers' Conference of October 1990, a Commonwealth/State Disability Agreement was developed in the context of an overall framework for improving the workings of the Australian Federation.

After nine months of Commonwealth/State negotiations and consultations, the Commonwealth/State Disability Agreement which will operate until 1995/96 was signed by each Head of Government at the July 1991 Special Premiers' Conference. This set in train a new stage in the evolution of disability services nationwide.

Under the Terms of this Agreement:

- The Commonwealth Government will administer employment and vocational training services for people with disabilities, recognising the Commonwealth's National responsibilities for employment services for the general community and the direct links with the income security system;
- Accommodation and support services for people with disabilities will be administered by the States/Territories, recognising their traditional responsibility in this area and the existing infrastructure to continue that responsibility;
- Research, development and advocacy will be carried out by both levels of Government;
- Both the Commonwealth and States/Territories will be involved in co-operative planning.
- The framework for the provision of services for people with disabilities will be in accordance with the principles and objectives set out in the Commonwealth Disability Services Act 1986. The States and Territories are to introduce their own legislation to complement this Act.

The Bill does indeed mirror the principles and objectives of the Commonwealth Legislation. It thereby serves to endorse and protect the rights of people with disabilities to dignity, autonomy and self-determination. The Bill is further enhanced by The South Australian Equal Opportunities Act, 1984 and the Commonwealth Disability Discrimination Act 1992 which underpin the general rights of all people in our society.

The principles and requirements of this Bill are set out in Schedules 1 and 2. Schedule 1 is a statement about the principles which apply to people with disabilities. Schedule 2 provides a framework for a service provider to assist or act on behalf of a person with a disability.

The Bill will enable the State Government to comply with the requirements of the Commonwealth/State Disability Agreement. As a result the $1.7m transition funds can be made available in this financial year. The Bill also sets out essential funding provisions, principles and objectives which are to apply with respect to people with disabilities and to service providers.

Under the legislation, disability in respect of a person means:

disability deriving from an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of these;

- disability is permanent or is likely to be permanent;
- may or may not be of an episodic nature;
- disability results in a reduced capacity for social interaction, communication, learning mobility, decision making or self care;
- a need for continuing support services.

In our community people who care for a person with a disability are highly valued. Their work is necessary for many people with a disability to achieve a quality lifestyle. The Bill recognises the involvement of carers in the life of people with a disability and ensures that their needs and capacity are considered when decisions are made.

The types of organisations which will be eligible for financial assistance under the Act will be broadly similar to those eligible under the Commonwealth Disability Services Act 1986. The principles and requirements provide parameters for determining the eligibility of potential service providers.

The legislation allows for direct funding to people with disabilities as well as funding to community based providers of service including private care givers. It also provides for the introduction of agreements between the Government and recipients of funding, both to allow for proper accountability in the expenditure of public funding, and to ensure that appropriate standards of service delivery are met.

The Act will set the basic parameters, leaving administrative detail to be dealt with by means of guidelines, covering for example terms and conditions of grants and transitional funding provisions.

The Commonwealth/State Disability Agreement requires State, Territory and Commonwealth Governments to maintain, as a minimum, levels of effort as at 30 June 1989. Growth funds can be contributed by either level of Government.

Under the Agreement the Commonwealth will also be providing payments to the States and Territories under three categories:

- Transfer of Existing Services
  This covers grant monies and an additional amount to be determined regarding administrative overhead costs. In South Australia this transfer is approximately $25 m, recurrent at 1991/92 levels from the Commonwealth to the State.
- Funding of Growth
  The Commonwealth is committed to additional funding over each year of the Agreement. In 1992/93 the South Australian growth money is $499,000 increasing to $987,000 in 1995/96; and
- Transition Payments
  Payments will be made available to the State to increase the overall quality of existing services. This will be $1.7 m. in 1992/93, increasing to $4.25 m, in 1995/96.

Hon. Members will be aware that there are many demands on services in this area. Regrettably, there are waiting lists for services. It is intended that the additional funds injected into the State as a result of this Agreement will not only improve those services which are under pressure but will enhance those services which have operated on minimal funds. There will be opportunities under the Agreement to examine service structures and to identify efficiencies. Priority will be given to expanding the range of community support services for a range of disability groups.

Bilateral negotiations between the State and Commonwealth Governments regarding financial and administrative arrangements are continuing. The Agreement only comes into effect when all aspects of the Commonwealth /State Disability Agreement have been met, that is, legislation is in place and bilateral negotiations are complete. The Bill therefore is an essential element in the successful conclusion of the Commonwealth/State arrangements.

The Bill was developed in consultation with a group of consumers and service providers. It has been examined by the Disability Services Implementation Steering Committee. It is being circulated widely in the disability community.

It is essentially enabling legislation. It provides for a comprehensive review after twelve months of operation. This review will provide the opportunity for people to participate in fine tuning and further development of the legislation.

The Bill demonstrates the Government's commitment to people with disabilities living in South Australia, their families, carers, and service providers in these difficult economic times. We are witnessing a constructive time of social reform, where Governments at all levels, together with non government service providers, are working closely to provide a better quality of life for all people. This legislation provides a flexible and responsible process for meeting the needs and aspirations of people with disabilities. I commend the Bill to the House.

Clause 1: Short title

Clause 1 is formal.

Clause 2: Objects of this Act

Clause 2 states the objects of the Act which are to set out certain principles and objectives (based on principles and objectives originally formulated by the Commonwealth) that are to be applied by the providers of disability services funded under this Act and by persons or bodies that carry out research or development activities funded under the Act.

Clause 3: Interpretation

Clause 3 provides some necessary definitions. The definition of "**disability**" involves a level of permanent impairment resulting in a reduced capacity for communication, learning, mobility, etc., and a need for continuing support services. The definition of "**disability services**" includes services to carers.

Clause 4: Funding provisions

Clause 4 empowers the Minister to fund disability services and research or development activities, whether in the public sector or the private sector. It is made clear that an individual person with a disability or the carer of such a person can be funded under this Act so as to enable that person or carer to personally obtain the care, support or assistance needed. The Minister is required to further the objects of the Act in carrying out this funding role.

Clause 5: Obligations on service providers and researchers funded under this Act

Clause 5 requires disability service providers and researchers funded under this Act to apply the principles and meet the objectives set out in the schedules to the Act. In order to ensure compliance with this requirement, the Minister may require a funded person, body or authority to enter into a performance agreement.

Clause 6: Consultation with persons with disabilities and carers

Clause 6 directs the Minister to consult with persons with disabilities and carers, to the extent that is practicable, before making any major decisions in relation to disability services or research or development activities funded, or to be funded, under this Act. The Minister is also directed to ensure the informed participation of persons with disabilities and carers in the design, development, management and evaluation of disability services.

Clause 7: Review of services or activities funded under this Act

Clause 7 requires the Minister to review funded services and activities at least every three years to assess whether the principles and objectives set out in the Act are being applied and met.

Clause 8: Power of delegation

Clause 8 gives the Minister a power of delegation.

Clause 9: Act does not give rise to civil liability

Clause 9 provides that nothing in the Act gives rise to a civil liability.

Clause 10: Regulations
Clause 10 is a general regulation-making power.
Clause 11: Review of this Act
Clause 11 requires the Minister to cause the Act and its administration and operation to be reviewed after one year from its commencement. The results of this review will be laid before Parliament.

Schedule 1: Principles
Schedule 1 sets out the principles that are to be applied by disability service providers and researchers funded under the Act.

Schedule 2: Objectives
Schedule 2 sets out the objectives that are to be met by those service providers and researchers.

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

COURTS ADMINISTRATION BILL

Returned from the House of Assembly without amendment.

ROAD TRAFFIC (PEDAL CYCLES) AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 12.24 a.m. the Council adjourned until Thursday 11 March at 11 a.m.