LEGISLATIVE COUNCIL

Tuesday 30 March 1993

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Courts Administration,

Firearms (Miscellaneous) Amendment,

Land Agents, Brokers and Valuers (Mortgage Financiers) Amendment,

Police Superannuation (Superannuation Guarantee) Amendment,

Public and Environmental Health (Review) Amendment,

Road Traffic (Pedal Cycles) Amendment.

PAPERS TABLED

The following papers were laid on the table:

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

Classification of Publications Board - Report, 1991-92.

Motor Fuel Licensing Board - Report, 1992.

Regulation under the following Act -

Superannuation Act 1988 - Higher Salary Pay.

By the Minister for the Arts and Cultural Heritage, for the Minister of Transport Development (Hon. Barbara Wiese)—

Institute of Medical and Veterinary Science Report, 1991-92.

Social Development Committee - Responses to recommendations on Social Implications of Population Change in South Australia.

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

Auditor-General's Department Report, 1991-92.

Regulation under the following Act -

Crown Lands Act 1929 - Fees - Proclamations, Notices.

District Council of Cleve - By-laws -

No. 3 - Bees.

No. 4 - Caravans and Camping.

No. 6 - Council Land.

Environment, Resources and Development Committee - Response of Minister of Housing, Urban Development and Local Government Relations to recommendations in Report on Mount Lofty Ranges Management Plan and Supplementary Development Plan.

QUESTION TIME

MULTIFUNCTION POLIS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Business and Regional Development a question about the multifunction polis.

Leave granted.

The Hon. R.I. LUCAS: Members in this Chamber will be aware of the ongoing saga or delay in the appointment of a Chief Executive Officer for the MFP. Almost two years has now elapsed since the interim chief executive stood down. Originally the CEO position was to be filled by the end of 1992. In fact, a new board was appointed last November. There have since been several extensions to the scheduled appointment date of a CEO, and the most recent press report said an announcement on the position was expected early next month.

There is growing community concern that little appears to be happening down at Gillman. Indeed, the Adelaide University's Deputy Vice Chancellor of Research, Professor Gavin Brown, was last week quoted in the press as saying:

> Unless it [the MFP] shows something tangible by the end of this year, I think that people will just lose faith in anything ever coming out of it and it will be impossible to ever bring it up again.

Professor Brown's contentions that the future of the MFP hinged on the swift appointment of a CEO and successful board decisions during 1993, echo those of Port Adelaide council CEO, Keith Beamish, who earlier this month stated that multi national corporations would invest in overseas MFP-type projects, rather than Gillman, unless the MFP began to gather momentum soon.

Last week the Premier, speaking on ABC radio, stated that one of the reasons for the delay in appointing a CEO for the MFP was due to the logistics of flying overseas applicants into Adelaide for interviews. However, this seems at odds with the public statement by MFP board Chairman, Mr Alex Morokoff, in early February, who stated that all of the short listed candidates for the positions were Australians. My questions to the Minister are:

1. When will an announcement be made about the appointment of a Chief Executive Officer for the MFP, and why has the decision taken so long?

2. How many applications from overseas did the MFP board receive for the position and are any of those overseas applicants on the short list?

3. Does the Minister agree with the view put by Professor Brown that 'Unless it shows something tangible by the end of 1993', people will lose faith in the project?

The Hon. ANNE LEVY: On behalf of the Minister of Transport Development I will refer those questions to our colleague in another place and bring back a reply.

FAIR TRADING OFFICE

The Hon. K.T. GRIFFIN: My questions are directed to the Minister of Consumer Affairs:

1. Will the Minister confirm that the Department of Public and Consumer Affairs has called in the police to investigate who leaked the Tilstone report of a review of the operations of the Office of Fair Trading?

2. Did the Minister authorise that action?

3. Does she agree that, in the light of the observations in the Tilstone report as to the tension between management and staff in the office, calling in the police and the subsequent interviews of staff by police has

caused a further deterioration in morale and increased tension between staff and management?

The Hon. ANNE LEVY: In response to the first question, the Chief Executive Officer of the department informed me that she had called in the Anti Corruption Branch of the police and was thanked very much by the police for having done so. In response to the second question, the action of calling in the police was at the initiative of the Chief Executive Officer who, under the Government Management and Employment Act, has the responsibility for managing the department. It was her own initiative and she undertook this action while keeping me informed, but it was very definitely her initiative and her responsibility.

The Hon. K.T. Griffin: Do you support it?

The Hon. ANNE LEVY: By interjection the honourable member asks me whether I supported it: I was informed that it had occurred. The responsibility for doing so is a matter for the Chief Executive Officer. It was not for me to authorise or not authorise such a decision. It was her responsibility and she made the decision to undertake that course of action. I repeat: she has stressed to me that the police commended her for her action and have suggested that such action should be taken more frequently by officers in the Public Service.

I cannot remember the exact wording of the honourable member's third question but, if he is referring to morale within the department, I understand that morale is good. When he asks for the reply to the question that he asked the other day, which I have today indicated is available to him, he will find that the department is working in a very consultative manner and that consultation, meetings and discussions are occurring with regard to the implementation of the report to which he referred. I am sure that, when the report has been fully worked through by all members of the department and, in particular, by the Office of Fair Trading, a very satisfactory result will emerge to the benefit particularly of the consumers of this State.

The Hon. K.T. GRIFFIN: I ask a supplementary question. While the Minister indicates that it was not for her to authorise the action of the Chief Executive Officer, will she say, first, whether she supports the action that was taken and, secondly, whether she acknowledges that there has been increased tension between staff and management as a result of the act of calling in the police?

The Hon. ANNE LEVY: I am not aware of any increased tension as a result of this decision by the Chief Executive Officer. I imagine that some people might feel rather apprehensive, particularly in the light of what the police investigation might discover. However, as far as I am aware the staff have been kept completely informed and regular meetings are occurring with a consultative committee which has been set up; all members of the department's staff are fully involved in the implementation, and discussions regarding the implementation, of the Tilstone report. Regarding the first of the supplementary questions, which was exactly the same as the second of the original questions, I stress that the decision to take action was one for the Chief Executive Officer. The Chief Executive Officer made her decision, and she informed me of her decision for information purposes only. There was no need for me either to support or not support her decision, but I was very cognisant of the fact that she kept me informed of her decision, and I thanked her accordingly.

FESTIVAL OF ARTS

The Hon. DIANA LAIDLAW: My questions are directed to the Minister for the Arts and Cultural Heritage and they relate to the future of the Adelaide Festival. Does the Minister agree with the statement in the weekend *Advertiser,* which I understand was repeated in the *City Messenger* today, by the Artistic Director of the Adelaide Festival that there is a need to radically revise the way in which the festival is funded, administered, directed and governed; and, as the Government of South Australia provides the major source of funding for the Adelaide Festival, is the Government participating in the initiative by the Board of Governors to assess future directions for the festival, including the traditional practice of appointing a new Artistic Director for each festival, and will it say whether or not the festival should be an annual event if it is to be regarded as truly international?

The Hon. ANNE LEVY: The comments by the Artistic Director are of course his own comments and I do not think they come with the imprimatur of the board of the Festival. Certainly, I have been kept informed by the committee of future directions which the Festival board has established to consider a number of these matters. The committee is certainly considering commissioning a consultant or some outside person to assist with an evaluation of a number of the questions which the honourable member has mentioned have been raised by the Artistic Director. The Government is happy to assist the Festival in having this investigation carried out, and as I understand it at this stage only preliminary discussions have occurred. However, if formal requests for assistance are forthcoming the Government will certainly give due consideration to them.

The Hon. DIANA LAIDLAW: I have supplementary questions. In terms of the assistance that the Minister has suggested would be forthcoming if requested by the Adelaide Festival, can she indicate whether that is in terms of financial assistance or participation in any review process? Secondly, does the Government have any policy in terms of the
festival being on an annual or biannual basis?

The Hon. ANNE LEVY: In terms of the last question the Government has not adopted any policy on this matter. I certainly have views on the matter myself as I am sure many other people would also. However, I would be very willing to await the results of any such study before coming to any definite conclusion and making any recommendations accordingly. The matter is worthy of being looked at seriously, but I do not think it is something which can be discussed meaningfully without there having been a detailed study of the full implications and the pros and cons on that particular matter.

With regard to assistance, it would depend on what formal assistance was requested. However, assistance could be in the form of participating or making officers

available to assist in any such study. No formal request has yet been received.

KEAN, MR CHRISTOPHER

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General a question on the subject of SGIC and the Terrace Hotel.

Leave granted.

The Hon. L.H. DAVIS: Last Thursday I advised the Legislative Council that Parliament had been seriously misled in a written answer to a question I raised last year regarding Mr Christopher Kean, son of SGIC Chairman Mr Vin Kean, and his work in bathroom repairs on the Terrace Hotel which effectively was owned by SGIC, being operated by subsidiary Bouvet Pty Ltd. On September 11 1992 I asked the Government to justify Mr Kean's involvement, and 11 weeks later on the last day of Parliament, November 26 1992, I received an answer which claimed that after the opening of the hotel. during Grand Prix week 1989, 29 rooms were discovered to have defective plumbing and the answer was:

As the work had to be done quickly the General Manager of the hotel, Mr Robert Arnold, went to someone he knew. He asked Mr Christopher Kean who he knew to possess a builders licence to have a look at the job and recommend a suitable plumber. The plumber was called to fix the problem...Mr Christopher Kean assisted with the plumbing work. The total payment to Mr Christopher Kean, the plumber and materials was approximately $24 000.

That was the answer. I advise the House that this answer was a blatant lie. The fact was that Mr Christopher Kean—

The Hon. C.J. SUMNER: On a point of order, Mr President.

The Hon. L.H. DAVIS:—did not possess either a builder's licence through the Office of Fair Trading—

The Hon. C.J. SUMNER: The honourable member cannot make assertions like that. It is unparliamentary.

The Hon. L.H. DAVIS: It is not unparliamentary.

The Hon. C.J. SUMNER: I am sorry, it is unparliamentary. The honourable member ought to have a look at the Standing Orders on the topic. He cannot assert that an answer given by a Minister is a blatant lie. It is a reflection on the Minister. If the honourable member wants to make that accusation then he has to do it by substantive motion.

The PRESIDENT: Order! The matter is not up for debate. I am prepared to make a ruling. The ruling in the past has been that if it applies to a specific individual it is considered unparliamentary, and, because the letter has been written by an individual person and it is not a broad scope matter, I am prepared to rule that it is out of order. I ask the honourable member to withdraw.

The Hon. L.H. DAVIS: With respect, I said, 'I advise the House that this answer was a blatant lie.'

The PRESIDENT: Which was an answer from a Minister in a letter.

The Hon. L.H. DAVIS: I made the statement: 'I advise the House that this answer was a blatant lie.'

The Hon. C.J. Sumner: It was an answer to a parliamentary question.

The PRESIDENT: The letter was from the Minister. I have ruled that, as to the individual Minister, because he can be specifically named in relation to the answer to the question, parliamentary privilege applies, where we say that we do not use that particular word when it applies to an individual or a person who can be seen as an individual, whereas if it is a collective thing I am prepared to let it go. I am asking the member to withdraw that.

The Hon. L.H. DAVIS: Out of respect to the Chair (and I accept your ruling Mr President), I withdraw that, and I will say that I advise the House that this answer was blatantly untrue. The fact was that Mr Christopher Kean did not possess either a Builder's licence through the Office of Fair Trading or a plumber's licence through the E&WS. In fact, he only became a holder of a speculative builder's licence one day after I asked my question on 10 September 1992, and nearly three years after he assisted with that plumbing work. The *Advertiser* of last Saturday, 27 March, revealed that the SGIC's nose was growing even longer. An article by Nick Cater revealed that Mr Robert Arnold, the Manager of the Terrace Hotel, had not in fact contacted Mr Christopher Kean as claimed but had referred the matter to Mr Vin Kean, Chairman of Bouvet Pty Ltd who 'had called in his son to fix an urgent problem'.

The article quotes SGIC spokesman, Mr David Henderson, as saying, 'It seems we were under the misapprehension that Mr Christopher Kean was a registered builder.' The article also quoted the Treasurer, Mr Blevins, as saying, 'The information he had supplied to Parliament had been given to him by SGIC.' The new top management of SGIC has quite clearly been aware of the massive problems created within the organisation by the previous management but they seem to have deliberately and wilfully misled the Parliament. The facts were clearly available to them but unfortunately they were not presented to the Parliament. There was a course of deception chosen. They have claimed that Mr Robert Arnold had known that Mr Christopher Kean had a builder's licence and so approached him to assist with the bathroom repairs when, in fact, Mr Arnold said that he had referred the matter to Mr Vin Kean who called in his son.

It is simply beyond belief that Mr Vin Kean did not know or did not ask whether his son held the appropriate builder's licence. This is a clear case of conflict of interest and patronage. This disgraceful affair raises the question of what happened to Mr Ted Fisher and his wife Merle Fisher, who had leased the lobby shop at the Gateway Hotel. They had discussions with Mr Jensen, the General Manager of the hotel, who told them verbally and in writing that they could have the shop in the refurbished hotel when it reopened as the Terrace Hotel. The Fishers were shocked when they heard rumours from hotel staff that Mr Vin Kean's daughter was to run the shop that had been previously promised to them. That is exactly what happened. The answer which I received from the Government on this matter on 26 November last year, an answer written by SGIC, stated:

It is difficult to understand why Mr Jensen, who had managed the hotel when it was the Gateway Hotel, thought he had the authority to give undertakings on behalf of the new owner. In fact, Bouvet decided to manage all the shops in the hotel rather

than let them out. Mr Kean's daughter was one of the employees given responsibility for management of the shop previously operated by Mr and Mrs Fisher.

I have spoken to Mr and Mrs Fisher today about this case which has deeply upset them, caused them severe stress, anxiety sickness and has cost them tens of thousands of dollars. They simply could not afford to take legal action against the SGIC, although lawyers advised that they had a very good case. But today they have provided me with a letter which shows that SGIC has told yet another untruth. On SGIC letterhead, a letter dated 29 April 1988 addressed to Mr Fisher states:

> We would like to advise that the Ansett Gateway property has been purchased by the commission and settlement will take place on 1 May 1988...All matters relating to your tenancy and occupation of the building should be addressed to Bouvet Pty Ltd for the attention of Mr O. Jensen.

The letter was signed by Stanley Lien, Manager, Property Development for SGIC. Quite clearly the Fishers were entitled to rely on this letter and the express and implied authority which Mr Jensen had as General Manager to act on behalf of SGIC. The facts of this scandalous saga, firstly involving Christopher Kean, demand that the Fisher affair immediately be investigated without any untruths or cover up. My questions to the Attorney-General, who is the Leader of the Government in this Council, who is responsible for public sector reform and who has introduced codes of conduct for people in the public sector, are as follows:

1. Does the Attorney-General accept that the facts of the Christopher Kean case, which are now out in the open, are contrary to both the conflict of interest guidelines and rules for public sector behaviour which the Attorney-General has been at pains to publicise in recent months?

2. Does the Attorney-General agree that the facts as outlined may constitute an offence under the provisions of the Statutes Amendment (Public Offences) Act of last year?

3. What action does the Attorney-General intend to take about the facts as presented?

4. Will the Attorney-General initiate an immediate inquiry into the Fisher case, examining in particular the matter of patronage and the moral if not legal obligation which SGIC has towards the Fishers?

5. Will the Attorney-General now take more seriously the Fisher's very strong argument for compensation from the SGIC?

The Hon. C.J. SUMNER: These are all matters that have been dealt with, quite properly, by the Minister responsible for the SGIC, who is the Treasurer. I will refer the matters to him for consideration and reply. In so far as the matters relate to me directly, I will examine them. The honourable member has asserted certain matters as fact. I have a reluctance to accept as fact matters outlined by members in this Council. That may or may not be true; but obviously before I comment on them I would prefer to ascertain the facts for myself, before giving answers to questions based on facts as relayed to the Council by the honourable member. I am not for one moment suggesting that the honourable member would provide the Council with incorrect information.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: It is just that my natural caution means that I would prefer to have them examined before I comment on them. However, obviously this is a matter that is principally the responsibility of the Treasurer. I will refer the question to him and also examine the matters raised by the honourable member that he directed to me.

BENEFICIAL FINANCE

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about Beneficial Finance.

Leave granted.

The Hon. J.F. STEFANI: In the first report of the Royal Commission, Commissioner Jacobs QC identified that during the first half of 1989 Beneficial Finance Corporation had anticipated the withdrawal of some funding lines available to it and had sought from the bank some liquidity support in the event that it encountered funding difficulties. In response, in June 1989 the bank's board approved a $50 million liquidity standby line, noting the concerns of the Australian rating of May 1989. In fact, Beneficial Finance's growth during the year had continued to increase rapidly requiring injections of capital of $15 million (made available retrospectively to 30 June 1988), $10 million by 31 December 1988 and $30 million by 30 June 1989 to ensure the growth and diversification of Beneficial Finance to enable it to meet its capital adequacy requirements.

A paper supporting the final capital injection of $30 million for the year noted that the projected need had been for $10 million by this time. So, the capital need that arose was actually 300 per cent more than that which was projected. The paper also noted that:

> In a recent review of Beneficial, Australian Ratings has suggested that the current level of business in Beneficial and the relatively large level of non-accrual loans in existence suggest some sensitivity in capital adequacy and that, because of the rapid growth and diversification program, there is a possibility that although the current ratings of A+ unsecured, AA- debentures and Al for domestic Australian dollar promissory notes will be maintained, they will be monitored closely for the development of adverse trends.

The Australian Ratings report itself asserted that the ratings had been maintained only by reason of ownership by the Government and the guarantee provided by the Labor Government. On 11 August 1989, the directors of Beneficial Finance signed the annual report for 1988-89. On page 27 of this annual report, the public of South Australia was advised:

> During the year, Australian Ratings upgraded the company's medium and short-term debt rating to A+ and Al respectively. Secured debt was re-rated at AA-.

This information is in direct contradiction to the submission made by Beneficial Finance to the State Bank's board before the end of June 1989. Beneficial Finance had identified that, although the current ratings by Australian Ratings were to be maintained, it had expressed concern about its own financial position in

May 1989. The fact that the Australian Ratings report itself asserts that the ratings had been maintained only by reason of ownership by the Government and the Government guarantee further confirms the contradiction which was advanced by Beneficial Finance in its 1988-89 annual report. My questions are:

1. In view of this information, does the Treasurer confirm or deny that Beneficial Finance attempted to mislead the public about its ratings?

2. Will the Treasurer advise Parliament whether action has been taken by the Australian Securities Commission against Beneficial Finance for publishing such false information?

3. As a consequence of this serious misinformation, will the Treasurer advise whether any contingent liability that may arise from the publication of this misleading information may give rise to future claims against the State Bank?

The Hon. C.J. SUMNER: I will refer the question to the Treasurer and bring back a reply.

CREDIT CARDS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about credit card interest rates.

Leave granted.

The Hon. J.C. BURDETT: Questions have been asked in this Chamber before on this subject but my questions relate to the recent statements in the media, both printed and electronic, attributed to the Commonwealth Treasurer, the Hon. Mr Dawkins. As reported in yesterday's *Advertiser,* he said that he was frustrated with the States because they have been unable to decide on uniform credit card legislation.

The Hon. C.J. Sumner: That's hardly surprising; we have been trying to get uniform credit laws since 1972.

The Hon. J.C. BURDETT: I know. As reported on some of the electronic media, he said that the problem was not the fault of the banks but the fault of State Governments over a period of several years, because they had not been able to agree on uniform legislation. The report in the *Advertiser* states:

> The Federal Government expects credit card rates would fall to between 14 and 15 per cent if combined with an annual fee of between $25 and $30. Banks would also have to offer customers—

and this is important—

> the choice of a card with no fee but the higher rate, which now stands at about 20 per cent.

I understand this to mean that, if it eventuates, the Federal legislation would allow the individual consumer the choice between the lower rates and fees and the higher rate with no fees.

My questions will be interpolated with the explanation instead of coming at the end. My first questions are: is that the Minister's understanding of the Commonwealth Government's proposal, and is that what she would support in a uniform States Bill? There are two distinct classes of user of credit cards and probably a mix in between. There are those who use them as a form of extended credit and who will benefit from the lower interest rates, and there are others who pay their monthly bill immediately after receipt of it. These latter are the people who I think are unfairly being called the freeloaders—the people who have been causing the problem. I was always taught that you ought to pay your debts as they fell due, and it would seem to me to be a shame if such people were penalised. So, I am interested in the question of whether or not the proposed uniform legislation and the proposed Federal legislation as far as it is known to the Minister is to allow the individual customer to have the choice (and it would be fair enough if it did) between low interest rates and the fee or higher interest rates and no fee.

I am concerned, as are consumer groups, that up-front fees and account keeping fees which have also been referred to on some of the electronic media, may be imposed without the reduction in interest rates, and it would be a tragedy if that were to happen. What is the Minister's attitude about these matters? As reported in the *Advertiser,* the Commonwealth Treasurer went on to state:

> But if a meeting of State Ministers in Sydney on May 14 agrees to adopt the Dawkins plan there will be no need for the Federal legislation. 'The move is designed to force the States to finally make sure credit card rates fall in line with general interest rate moves,' a senior Government source said last night.

I am concerned about the threat of Federal legislation, because it has constitutional implications. My final question is: will the Minister use her best endeavours to achieve uniform legislation, because it would seem to me that it would be far preferable to keep the matter in the State field than to take away the rights of the States so that it passes to the Federal arena?

The Hon. ANNE LEVY: Well, as I hope you appreciate, Sir, that was quite a lengthy explanation and quite a lot of questions, which I cannot respond to in less than a few minutes. I can assure the honourable member that I will be using my best endeavours to achieve uniform legislation, not necessarily for any reason of State rights, but because it seems to me that is the best way of achieving uniformity across the country. There is no doubt that uniformity across the country is desirable. There is also no doubt that States cannot legislate for banks; legislation affecting banks is the priority of the Commonwealth Government. On the other hand, the Commonwealth Government cannot legislate for State Banks, and it is questionable whether it can legislate for other financial institutions such as finance companies, building societies, credit unions and so on. So, if uniformity is not achieved, there will be queries as to what is the coverage of any Federal or Commonwealth Government legislation. However, I am sure the honourable member would agree that the bulk of credit cards in this country are issued by banks, over which the State Government can have no control whatsoever. However, obviously, the neatest solution will be to achieve uniformity across all Governments in Australia.

I have been asked questions on this and have spoken on this matter before. I can quite understand the frustration of the Commonwealth Government that this matter does not seem to proceed, but I would reiterate to the Council that last November the Prices Surveillance Authority brought down a report on the operation of credit cards and banks in particular, and it made several

recommendations in its report. It was felt that an urgent meeting of SCOCAM should be called in the light of this report, and I had conversations with the current Chair of the Consumer Ministers Council, who is the Minister of Consumer Affairs in New South Wales. I suggested to her that we should call a SCOCAM meeting for last December. She was unwilling to do so, however, and suggested February this year as an alternative. I indicated to her at the time that I thought this was unwise, because February was likely to get caught up either in the Western Australian election or a Federal election, or both.

However, she insisted on designating a date in February which, as I predicted, had to be cancelled because of the calling of the Federal election. The result is that only now, with the election result known, is the Chair of SCOCAM calling for a meeting of SCOCAM, resulting from the report of the Prices Surveillance Authority, and it will now be held in the middle of May. I strongly suspect that certain SCOCAM Ministers did not wish to discuss this issue prior to knowing the results of the Federal election because, if by some disaster Fightback had got up, the whole attitude of the Federal Government may well have changed. However, Australia was spared that, so the SCOCAM meeting is now to be called in May, which will be six months after the Prices Surveillance Authority brought down its report.

One of the questions that the honourable member asked concerned my understanding of the Commonwealth proposal. I have not seen any document. I understand that the Federal Minister of Consumer Affairs or her officers have been working on proposals in conjunction with the Treasurer and, as I understand it, with the new Commonwealth Minister for Finance, who has put forward slightly different proposals from those to which the honourable member referred. Different newspapers in this country seem to be giving different accounts of just what the proposals from the Commonwealth Government are, and that suggests to me that there is a fair amount of guessing going on, not based on any degree of hard fact.

In consequence, I do not wish to comment officially on what may or may not be Commonwealth proposals; I would rather wait until I know what the Commonwealth proposals are before commenting on them. However, I reiterate, as I have said on numerous occasions, that this Government has taken the view that it is prepared to support up-front fees for credit cards provided—I stress 'provided'—that a considerable drop in interest rates occurs at the same time. It is a matter of fact that there have been 14 different reductions amounting to about 13 per cent in general interest rates in the past three years.

However, during that time credit card interest rates have fallen by only 2 per cent. There is a huge difference in the falls that have occurred between credit card interest rates and general interest rates. There is no doubt that the interest rate drops in general interest rates have been at least twice the magnitude, if not more, of those which have occurred in credit card interest rates.

It is an excuse on the part of the banks to say that it is SCOCAM's fault. There is nothing to stop banks from dropping their interest rates. They could drop them tomorrow; there is nothing whatsoever to stop them. The fact that they have not dropped in the same way as have general interest rates indicates to me a reluctance on the part of the banks to treat credit card holders with the same care as other borrowers of money from the banks. There is no need for them to wait for a SCOCAM meeting. If there was to be a drop in interest rates concurrent on the introduction of an up front fee, that would be totally independent of a fall in interest rates because a general fall in interest rates occurred in the community.

The two are totally separate issues, and I think the banks are being grossly unfair to credit card holders in this country at the moment. They could well reduce interest rates tomorrow on their credit card rates and thereby benefit the consumers of this country. The situation is such now that the difference in interest rates between a credit card and a personal loan, which is equally unsecured, is larger than it has ever been in our history. I cannot see that the banks can justify this large gap in interest rates between credit card interest rates and personal loan interest rates.

The Hon. L.H. Davis: Are you going to talk about the State Bank?

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: An interjector asks whether this is relevant to the State Bank. I can assure the Council that the remarks I am making apply to all banks in this country: they all have high interest rates on their credit cards. The actual rate depends whether or not there is an interest free period. Where there is an interest free period the rates are around 19 to 21 per cent; where there is no interest free period the rate is lower but is still well above that which applies to a personal loan. Any talk about what may or may not happen at SCOCAM is an excuse that the banks are using to the detriment of consumers in this country.

CRAIGBURN FARM

The Hon. M.J. ELLIOTT: I give notice that on Wednesday 31 March I will move:

That the supplementary development plan in relation to the Craigburn farm be disallowed in accordance with section 43(3) of the Planning Act 1982.

The PRESIDENT: I rule that out of order at this stage because it is not before Parliament. I do not consider it as a notice of motion.

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

That the President's ruling be disagreed to.

The PRESIDENT: The objection must be brought up to the table in writing. Standing Orders provide that debate on the question shall be postponed and be the first Order of the Day for the next day of sitting unless the Council orders it to be considered forthwith. If it is the desire of the Council to proceed forthwith and there is no objection, the debate may proceed, but we must have a motion to that effect.

The Hon. M.J. ELLIOTT: I will wait until tomorrow.

MARINE ENVIRONMENT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing

the Minister of Environment and Land Management a question about regulations under the Marine Environment Protection Act.

Leave granted.

The Hon. M.J. ELLIOTT: In 1990, this Parliament passed the Marine Environment Protection Act, which was loudly acclaimed from all quarters as being one of the best pieces of legislation in the environmental area to come out of Parliament in this State. It is a comprehensive piece of legislation which sought to stop all forms of marine environment pollution and to licence those persons who might pollute in any way so that such pollution could be controlled and minimised. Recently, I was contacted by some people who brought to my attention a change in the regulations of the Marine Environment Protection Act, in particular, regarding the definition of 'business'. The current regulation provides 'but does not include lawful fishing activities' but is to be changed to provide 'but does not include lawful fishing activities or activities for the cultivation of molluscs or fin fish in coastal waters'. In other words, people who keep tuna in pens and people who breed oysters will not come under the control of this Act.

I am told that in North American waters where a great deal of salmon farming is carried on there has been experience of significant environmental changes in relation to that activity; in particular, the nutrient balance is changed in the localised waters and one consequence of this has been toxic algal blooms. It has also been brought to my attention that they use a lot of chemicals for parasite control and the nutrient balance not only may cause algal blooms but other significant ecological changes. In other words, the activities are not trivial. Several communities have swimming pools that pump water from the sea and return it to the sea, and under the current Act they must be licensed to do so; yet, the regulations are being changed to exempt a significant activity in the marine environment. I understand that the Marine Environment Protection Committee has recommended against such changes. I understand further that the Minister is now considering granting further exemptions in respect of, in particular, the activities of oil exploration and other mining activities. I ask the Minister:

1. Why has he acted against the clear intent of the Act?

2. Has he acted against the advice of the Marine Environment Protection Committee?

3. Is he now giving consideration to granting exemptions to oil search and/or other mining activities?

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

PRISONER, DRUGS

In reply to **Hon. I. GILFILLAN** (28 October).

The Hon. C.J. SUMNER: The Minister of Correctional Services and the Minister of Health have provided the following information:

1. The numbers of prisoners prescribed Methadone in South Australian prisons in the financial year 1991-92 were:

Males	99
Females	33
Total	132

2. The number of prisoners individually counselled by the Prison Drug Unit of the Drug and Alcohol Services Council in the financial year 1991-92 was:

Prisoners with single drug problems: 227, of whom 84 had opiate problems.

Prisoners with poly drug problems: 154, of whom 81 had opiate problems.

In total, therefore, in 1991-92, 381 prisoners were given individual counselling, of whom 165 had opiate problems.

ASH WEDNESDAY BUSHFIRE

In reply to **Hon. K.T. GRIFFIN** (16 February).

The Hon. C.J. SUMNER: The Minister of Public Infrastructure has provided the following additional comments in relation to the second question:

It would require a significant resource commitment by ETSA to review the claim files to provide the reasons for delay in respect of each case. Of the 2204 claims received by ETSA, 1504 relate to insured losses for which the various insurers were reimbursed. The balance of 700 claims relate to uninsured losses suffered by the claimants. These are the claims that would require extensive review and research to provide a schedule of the reasons for delay in each case.

With over 95 per cent of the insured and uninsured claims settled, ETSA would prefer to focus its effort upon claims settlement rather than divert the resources to a lengthy review of a large number of files, particularly where most of those claims are now settled.

SCHOOL VIOLENCE

In reply to **Hon. R.I. LUCAS** (18 February).

The Hon. C.J. SUMNER: This matter was referred to the Director of Public Prosecutions who called for the file from Juvenile Offenders Section of Police Prosecutions. The Director reviewed the file and considered the question of whether there should be an appeal against the magistrate's decision to dismiss the charge. As a result the Director is of the opinion that there should be no appeal. He has provided the following comments in support of this opinion:

The case depended largely on the credibility of witnesses. There is no basis on which to challenge the magistrate's findings in this area which were largely unfavourable to the prosecution. In particular the magistrate made several crucial findings:

1. The alleged victim was the aggressor in the situation.

2. It was much more likely the alleged victim introduced the knife into the situation.

3. The alleged victim was anything but frank in the witness box.

4. The alleged victim stated earlier that he 'had a surprise and/or shock' for the defendant.

Given those findings there had to be at least a reasonable possibility that the defendant stabbed the alleged victim in the course of a struggle initiated by the victim. The acquittal was inevitable.

On examination of the relevant documents, the Director of Public Prosecutions advised that he believed the conduct of the prosecution could not be criticised. He reports:

The remarks of the investigating officer regarding the shoulder injury were clearly not material to the decision. The

magistrate simply did not believe the alleged victim who was clearly the aggressor and probably introduced the knife.

In conclusion, after reviewing all aspects of the case the Director of Public Prosecutions advises there are no grounds to appeal the decision nor any reason to question the competency of the prosecution.

COURTS ADMINISTRATION

In reply to **Hon. K.T. GRIFFIN** (4 March).

The Hon. C.J. SUMNER: Mr Clarke's complaints regarding the administrative procedures of the Christies Beach court have been investigated. I am advised that, while the process has been somewhat protracted and frustrating for Mr Clarke, the court staff have acted properly in their handling of this matter. The problems associated with the remoteness of Kangaroo Island are largely responsible for Mr Clarke's difficulties.

The Registrar of the court went to Kangaroo Island and met with Mr Clarke in an attempt to explain the process and give advice on the system generally. I understand that Mr Clarke has accepted the explanation and is satisfied that all that can be done is being done. I am told that Mr Clarke has received further payments in reduction of the debt from Mr. Jones.

In the circumstances an *ex gratia* payment to Mr Clarke is not justified.

GOLDEN GROVE PRIMARY SCHOOL

In reply to **Hon. R.I. LUCAS** (18 February).

The Hon. ANNE LEVY: The Minister of Education, Employment and Training has provided the following response:

1. Transportable accommodation is provided in line with the current Education Department 'Core-Plus' Policy to meet the anticipated short-term peak enrolments. At Golden Grove Primary School demographic projections indicate that additional accommodation will be required for up to 15 years to meet this demand.

2. The 'plus' component in schools is provided in disposable type accommodation. This accommodation may be in the form of relocatable, demountable or disposable, such as 'school-in-house' format. The type of accommodation used is dependent upon the site topography, demography and other constraints. At Golden Grove Primary School it was proposed that the most appropriate form of 'plus' component would be relocatable building accommodation.

3. The transportable buildings located on the Golden Grove Primary School site have been subjected to an asbestos survey in compliance with regulations under the Occupational Health, Safety and Welfare Act 1986 (No 25 of 1991).

The results of the survey are incorporated within the Asbestos Register which has been delivered to the school and discussed with the Principal. The two metal transportable buildings containing asbestos material which is non-friable and in good condition are considered to be safe.

LAKE BONNEY

In reply to **Hon. M.J. ELLIOTT** (18 February).

The Hon. ANNE LEVY: The Minister of Public Infrastructure has provided the following general comments in response to the honourable member's series of questions concerning the possibility of an authorised release of water from Lake Bonney to the sea this year. The Minister would like to agree with the honourable member that it is, indeed, pleasing that indications are emerging that the strategy to clean up Lake Bonney is working. Recent reports and the result of the Lake Bonney Management Committee's continuing monitoring indicate improving water quality, an increase in the richness of fish species in the lake, and the establishment of an ibis colony, which are all very positive indicators. These are all apparently due to the continued input of better quality water from the APCEL paper mill operated by Kimberly Clark (Aust) Pty Ltd, which has demonstrated a very responsible approach in recent years to this longstanding difficult situation.

The replies to the honourable member's specific questions are as follows:

1. The Minister of Public Infrastructure has approved a recent recommendation from the Lake Bonney Management Committee to release water from Lake Bonney through a specially constructed outlet during April-May 1993.

The success of the 1991 release was such that it was initially thought that no further releases would be necessary for several years. Of course, nobody anticipated the extraordinarily wet conditions in 1992.

The method by which the 1991 release was carried out was based on several factors:

- a height of 2.1 metres AHD, was negotiated between all stakeholders (the affected farmers, the E&WS Department, and the fishing industry, as well as environmental groups, which are represented on the Lake Bonney Management Committee). The height of 2.1 metres was agreed as a height at which flooding of pasture land to a reasonable extent would occur.
- the period of April-May was chosen on the advice of the fishing industry and the Department of Primary Industries, Fisheries Division, as the window of opportunity, during which any effects on marine life, particularly crayfish, would be minimal.
- a short, sharp release, letting out large quantities, rather than a longer 'trickle' type release, would be similarly less disruptive.

The Minister of Public Infrastructure authorised the proposed release based on precisely the same logic.

2. Along with all other options, the possibility of leaving the lake to sort out its own level was seriously considered in 1991 as well as in 1993. There are several factors impinging on the resultant decision:

- if the lake was left to find its own level it would eventually overflow to the sea of its own accord, in a place and at a time of year which could be far more dangerous and disruptive to the fishing industry.
- land which would be flooded is held on perpetual lease by farmers who by right of that lease are entitled to the use of that land.
- the release of large quantities of lake water, given the proper environmental safeguards, can only serve to further improve the state of the lake, while the quality of the input water continues to improve.
- the monitoring report following the 1991 report has been positive and has indicated no harmful effects.

Taking all those factors into account the April/May release was, and still is, the sensible way to go.

3. Yes. When, however, you put together all the above factors, and in particular the improvement in water quality and the last monitoring report, there is no reason to disrupt the farmers programs by flooding their land. The cost of the release

is expected to be well below the 1991 figure, given the operational lessons learned from that exercise, and is regarded as worthwhile in the context that it is also going toward the long-term restoration of Lake Bonney.

4. The view of that industry expressed at the Lake Bonney Management Committee meeting held to consider this matter was that an April/May release would be preferable, and that is what the Minister of Public Infrastructure has authorised.

LITERACY

In reply to **Hon. R.I. LUCAS** (11 February).

The Hon. ANNE LEVY: The Minister of Education, Employment and Training has provided the following response:

1. English

In 1991 in English Studies the following percentage of students received A, B, C achievement levels.

	SA	ALL (includes Northern Territory and Malaysia)
A	12.3%	12.6%
B	45.2%	45.8%
C	32.9%	33.1%

In 1992 in English Studies the following percentage of students received A, B, C achievement levels.

A	14.5%	14.2%
B	43.3%	43.0%
C	29.3%	29.6%

Mathematics 1 In 1991 in Mathematics I the following percentage of students received A, B, C achievement levels.

A	19.5%	20.2%
B	28.5%	30.3%
C	29.2%	28.8%

In 1992 in Mathematics 1 the following percentage of students received A, B , C achievement levels.

A	21.6%	22.0%
B	31.8%	33.1%
C	24.2%	23.7%

Mathematics 2 In 1991 in Mathematics 2 the following percentage of students received A, B, C achievement levels.

A	20.7%	21.9%
B	28.4%	30.6%
C	27.6%	26.5%

In 1992 in Mathematics 2 the following percentage of students received A, B, C achievement levels.

A	22.3%	23.4%
B	31.9%	33.5%
C	24.3%	23.3%

Physics In 1991 in Physics the following percentage of students received A, B, C achievement levels.

A	15.1%	14.2%
B	29.9%	30.1%
C	29.1%	30.3%

In 1992 in Physics the following percentage of students received A, B, C achievement levels.

A	15.9%	15.5%
B	30.5%	30.9%
C	29.9%	27.6%

Chemistry In 1991 in Chemistry the following percentage of students received A, B, C achievement levels.

A	17.6%	17.5%
B	31.4%	32.0%
C	28.5%	29.0%

In 1992 in Chemistry the following percentage of students received A, B, C achievement levels.

A	18.6%	18.0%
B	30.7%	31.1%
C	23.5%	24.3%

Australian History

In 1991 in Australian History the following percentage of students received A, B, C achievement levels.

A	12.9%	12.8%
B	38.0%	38.6%
C	33.5%	33.1%

In 1992 in Australian History the following percentage of students received, A, B, C achievement levels.

A	9.4%	9.15%
B	33.7%	32.9%
C	34.5%	34.9%

2. SSABSA has not received any submissions expressing concern about assessment procedures for Year 12 English. However, questions have been raised about the operation of the Independent Reading Folio as a component of English Studies. This is currently being investigated by SSABSA's Research Staff.

In terms of Mr Moss's reported preamble to the questions from the Hon R. Lucas the following information relating to English is provided:

English is not a compulsory subject at Year 12 in South Australia. English Studies, incorrectly identified as 'matriculation English' in the material cited, takes in only a little over one quarter of all students enrolled in Year 12. It is perceived to be the more advanced of the two English subjects offered at Year 12.

The other syllabus, English, takes in a very similar proportion of students. Together, the two syllabuses account for around 55 per cent of all students in Year 12. Although retention rates in South Australia are very high, the total enrolments in Year 12 subjects would by no means cover 'all South Australian 17 year olds'.

OFFICE OF FAIR TRADING

In reply to **Hon. K.T. GRIFFIN** (23 March).

The Hon. ANNE LEVY: Dr Bill Tilstone and Ms Rosemary Ince were commissioned by the then Chief Executive Officer of the Department of Public and Consumer Affairs (Ms Vardon) to undertake a review of the Office of Fair Trading. The terms of reference were to examine the role, operation and structure of the office with a report due by 11 December 1992.

The review team's report was delivered to the new Chief Executive Officer (Ms Mary Beasley) who, on 11 December 1992, wrote to all Office of Fair Trading staff outlining the process she intended to follow. She said she intended to:

1. Receive the report and distribute it to relevant groups;

2. The report will be discussed with the Managers and staff of the Office of Fair Trading in the first instance;

3. Discuss the contents of it with the Departmental Senior Executive Group;

4. Discuss the report with the Public Service Association;

5. Consider any issues raised by any of the above groups;

6. Decide on what changes to the structure, policies, procedures, etc., if any, should be made.

Ms Beasley continued: 'I am eager to ensure that any change is implemented in the smoothest manner possible and in a way that recognises and where possible satisfies staff's needs. As you

can see the process I am adopting is one of full consultation with the relevant groups. This will take some time and I can assure you that should I approve any changes they will not be implemented at least until the new year.

Ms Beasley again wrote to staff on 9 February 1993 advising that she proposed to establish a steering committee to seek information from staff and to consider the report in the wider departmental context.

She said that she did not propose to hold up making all of the decisions until the end of that process.

The committee is chaired by a well-respected member of staff and consists of the Acting Director, Office of Fair Trading; the Director, Corporate Services; another staff member; a Public Service Association representative; and an officer external to the department with great experience in organisational matters.

Ms Beasley has also held a meeting with all staff so they could raise any issue of concern directly with her and the Senior Executive.

This process is therefore a continuing one, and I have every confidence that it will be properly and efficiently managed by the Chief Executive Officer, as indeed it should be.

I wish to comment on the remarks made about the lack of women managers in the Office of Fair Trading.

Up until relatively recent times, to be recruited in the Consumer Affairs area, at promotional level at least, required some sort of trade skill in areas such as building, motor vehicles, electrical repairs, etc. These are not occupations which have had high numbers of female participation although the policies and opportunities that the Government have put in place are encouraging women in these areas.

Therefore, males generally dominated in these areas. Recently there has been a trend towards recruiting people with general negotiation and conciliation skills and this has seen an increase in the number of females involved in the area. In addition, the Department has conducted specific courses which target women including Career Development.

Many of the senior positions within the Department are held by women including the Chief Executive Officer, the Public Trustee, the Senior Policy Officer and the Senior Legal Officer.

Specifically, within the Office of Fair Trading, women have held the senior positions of Manager of Residential Tenancies, Senior Legal Officer, Commercial Registrar, and Manager Legal and Policy Unit.

To suggest that the Chief Executive Officer, who was the first Commissioner for Equal Opportunity in this State, would not be ensuring compliance with the principles of Equal Opportunity and commitment to developing women in the organisation, is absurd to say the least.

TRADE MEASUREMENT BILL

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage) obtained leave and introduced a Bill for an Act relating to trade measurement in South Australia as part of the scheme for uniform trade measurement legislation throughout Australia. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

The Trade Measurement Bill is the principal Bill in a package of two Bills. This Bill has two key purposes. First, it simplifies and modernises current State laws relating to trade measurement and packaging contained in the Trade Measurements Act 1971 and the Packages Act 1967. The new legislation is a response to changes in technology and the marketplace and will establish an appropriate legal framework for trade measurement administration as we approach the twenty-first century. Secondly, it brings a step closer the objective of nationally uniform laws relating to trade measurement and packaging by enacting the model uniform trade legislation in this State. So, Ministers can agree on something.

Nationally uniform laws relating to trade measurement have become a priority because the advances in technology and transport since federation have transformed Australia into one market. The existence of differing laws concerning trade measurement and packaging in each State and territory creates unnecessary impediments to national and international trade and adds significantly and unnecessarily to the costs of business. Industries affected by trade measurement legislation have been unanimous in their support for unifying the law.

The history of the model uniform trade measurement legislation can be traced back to 1982 when a conference organised by the National Standards Commission called for a review of trade measurement administration in Australia. The model legislation, which is now incorporated in this Bill is the product of a national working party and has been the subject of extensive consultation with industry. The proposal to enact the model legislation in this State was also the subject of a Government green paper released in September 1992.

In July 1990, Commonwealth, State and Territory Ministers with responsibility for trade measurement administration signed an agreement on behalf of their respective Governments to cooperate to achieve uniform legislation and to administer the legislation on a uniform basis. Each party committed itself to take the necessary steps for a model uniform trade measurement Bill and regulations to become the law governing trade measurement within its jurisdiction.

The agreement provides for each jurisdiction to enact a separate but supplementary administration Bill to provide for the particular administrative structures and arrangements appropriate to that jurisdiction. The Trade Measurement Administration Bill is not required to be uniform with the equivalent legislation in other States but must not modify the effect of the model Bill and regulations.

The Trade Measurement Bill regulates the use of measuring instruments for trade, transactions by measurement, requirements for pre-packed articles, the licensing of private sector firms to service instruments and certify their accuracy, the licensing of public weighbridge operators and the powers of inspectors.

I now deal briefly with the main provisions in the Bill. Part I contains definitions and explains what is meant by using a measuring instrument for trade. The existing Trade Measurement Act 1971 is not explicitly binding on the Crown. The Trade Measurement Bill is binding on the Crown. However, some instruments regulated by other Crown authorities are exempt from the Bill's

provisions but control over these instruments will be introduced progressively following consultation with the relevant authorities. These include electricity, gas, water, telephone and taxi meters.

Part II deals with the use of measuring instruments for trade. All measuring instruments used for trade must bear an inspector's or a licensee's mark. The Bill makes it an offence to use a measuring instrument for trade that is incorrect or unjust, or in a manner that is incorrect or unjust, or to cause an instrument to give an incorrect reading.

Part III concerns the verification, reverification and certification of measuring instruments. This part of the Bill reflects the scheme for trade measurement administration that has operated in this State since 1967, and has now been taken up as the model for all jurisdictions. Instruments must operate within prescribed tolerances, be of an approved design and meet the requirements of the National Measurement Act 1960 for metric graduations. The administering authority is required to make arrangements for the reverification of instruments. Inspectors will continue to monitor compliance with the legislation, having regard to the record of performance of individual instruments and traders.

Part IV of the Bill relates to transactions conducted by reference to measurement. When selling articles by reference to measurement the trader must ensure that the measuring process is readily visible to the customer or give the customer a written statement of the measurement of the article. Pre-packed articles are not affected. Special provisions apply to the sale of meat. Where a quantity of meat is offered or exposed for sale at a marked price, the mass and unit price must also be marked with equal prominence to the price marking.

Part V of the Bill is concerned with pre-packed articles. Pre-packed articles must comply with the requirements of the regulations as to the quantities in which articles may be packed. With limited exceptions, packages must be marked with the name and business address of the packer, the measurement of the article and its price. The Bill makes it an offence to use restricted and prohibited expressions, prescribed by regulation. The Bill also defines the offences of packing or selling short measure but allows the administering authority to authorise the sale of pre-packed articles by permit when minor marking errors occur and the sale would otherwise constitute an offence.

Part VI introduced new licensing arrangements. The Bill replaces the current system of registration for principals in the business of repairing and adjusting measuring instruments with a servicing licence which is subject to annual renewal. The Bill abolishes registration for employees engaged in repairing and adjusting instruments in favour of negative licensing. The licensing authority will have the power to issue orders barring the employment of incompetent or unfit persons from certification work. The Bill requires a person who makes a weighbridge available for use by the public to be the holder of a public weighbridge licence. Individual weighpersons will no longer have to hold separate registration, as is the case under the present legislation. However, principals will be responsible for ensuring that employees are competent. Individuals who prove to be incompetent or unfit will be able to be barred from operating weighbridges by the licensing authority. Conditions may be imposed on licences to ensure that required standards are maintained, and disciplinary action may be taken against licensees who breach these conditions. A right of appeal is provided against decisions of the licensing authority.

Part VII of the Bill will give inspectors powers in relation to search, entry, inspection and seizure of goods, similar to those under existing legislation. Part VIII is concerned with miscellaneous matters. I seek leave to have the explanation of individual clauses inserted in *Hansard* without my reading it.

Leave granted.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 contains definitions used in the proposed Act.

Clause 4 explains what is meant by use of a measuring instrument for trade". It includes use in determining the consideration for a transaction or the amount payable as a tax, rate or other charge.

Clause 5 provides that the proposed Act is to bind the Crown.

Clause 6 lists exemptions from the operation of the proposed Act, including electricity, gas and water meters, telephone call metering and taxi meters. The regulations can provide further exemptions. The proposed Act will not apply to bread.

PART II—USE OF MEASURING INSTRUMENTS FOR TRADE

Clause 7 prohibits the use of a measuring instrument for trade unless it bears an inspector's mark or a licensee's mark. In addition, if the measuring instrument is a weighbridge, it must not be used for trade unless it complies with the requirements of the regulations.

Clause 8 creates the following offences:

- using for trade a measuring instrument that is incorrect or unjust;
- using a measuring instrument for trade in a manner that is unjust;
- causing a measuring instrument in use for trade to give an incorrect reading.

Clause 9 creates the offence of supplying a measuring instrument that is incorrect, unjust or not of an approved pattern (approved under the *National Measurement Act 1960* of the Commonwealth).

PART III—VERIFICATION, RE-VERIFICATION AND CERTIFICATION OF MEASURING INSTRUMENTS

Clause 10 makes it the responsibility of the administering authority to arrange for the standards of measurement necessary for the purposes of the proposed Act. Each licensee is made responsible for providing the standards of measurement necessary for the exercise of the licensee's functions under the proposed Act.

Clause 11 explains "verification" and "re-verification" of measuring instruments. Each is carried out by an inspector who

has to be satisfied that the instrument complies with certain requirements and who marks the instrument with the inspector's mark. Verification is carried out when the instrument does not already bear a mark. The requirements at verification are stricter than at re-verification which is carried out if the instrument already bears a mark (as a result of a prior verification, re-verification or certification). When re-verification takes place, any existing mark is removed.

Clause 12 explains "certification" of measuring instruments. It is carried out by the holder of a servicing licence issued under the proposed Act. The licensee must be satisfied that the instrument complies with the same requirements as for verification by an inspector. The licensee marks the instrument with the licensee's mark and removes any existing mark.

Clause 13 sets out the various requirements that have to be satisfied for verification or certification and for re-verification. These relate to permissible limits of error, pattern approval under the *National Measurement Act* and requirements for metric graduations.

Clause 14 imposes requirements as to the types of standards of measurement that must be used in assessing compliance with the requirements of clause 13.

Clause 15 makes the administering authority responsible for providing the means for verifying measuring instruments used for trade and making arrangements for their periodic re-verification.

Clause 16 allows an inspector to prohibit the use for trade of a measuring instrument if directions intended to permit its re-verification are not complied with.

Clause 17 requires an inspector who rejects a measuring instrument to obliterate any inspector's mark or licensee's mark on it.

Clause 18 requires a person who repairs or modifies a measuring instrument to obliterate any inspector's mark or licensee's mark on it.

Clause 19 makes provision for marks to be put on measuring instruments by means of a label affixed to the instrument.

Clause 20 creates the offence of making an inspector's mark or licensee's mark without proper authority.

Clause 21 creates related offences of unlawful possession of marks and marking implements and of making counterfeit marks.

PART IV—TRANSACTIONS BY MEASUREMENT

Clause 22 requires that when an article is sold at a price determined by reference to measurement the measurement must be done in the consumer's presence or the consumer must be given a written statement of the measurement. The consumer can demand measurement in his or her presence if delivery takes place at the time and place of measurement. Pre-packed articles are not affected.

Clause 23 creates the offence of misleading the consumer as to measurement or price calculation based on measurement and of incorrect payment that is to the detriment of the consumer.

Clause 24 makes the seller of an article guilty of an offence if the quantity sold is less than the quantity ordered unless the seller tells the buyer before completion of the sale.

Clause 25 makes special provisions for the sale of meat. The written statement required for the purposes of clause 22 must specify the mass of each cut. When exposing meat for sale at a marked price for a given quantity, its mass and price per kilogram must also be marked.

Clause 26 requires articles that are prescribed by the regulations for the purposes of the clause to be sold at a price determined by reference to a measurement of quantity in the unit of measurement required by the regulations.

Clause 27 creates a presumption that measurement determined by direct measurement of certain vehicles is more accurate than the same measurement determined by the method known as "end-and-end measurement".

PART V—PRE-PACKED ARTICLES
DIVISION 1—REQUIREMENTS FOR PACKAGING AND SALE OF PRE-PACKED ARTICLES

Clause 28 requires the packaging of pre-packed articles to comply with the requirements of the regulations as to the quantities in which articles may be packed and the marking on the package of the name and address of the packer, the measurement of the article and its price.

Clause 29 creates exceptions to the requirements of clause 28. The exceptions relate to packages for retail sale that are sold where they are packed, packages for export and sale of imported packages.

Clause 30 restricts the use on packages of "net mass when packed", "net mass at standard condition" and other expressions that are prohibited or restricted by the regulations.

Clause 31 makes it an offence to sell a pre-packed article at a specified price per unit of measurement where the price charged exceeds the correct price.

Clause 32 creates the offence of packing or selling a short measure (where the quantity in the package is less than the quantity indicated).

Clause 33 requires that where sufficient packages are available for testing, an average deficiency of the extent required by the regulations is necessary before a short measure offence is committed under clause 32.

Clause 34 creates defences to the offence in clause 32 of packing or selling a short measure. The defences relate to deficiencies which arise after packaging and for which reasonable allowance could not be made and deficiencies in packages obtained from a supplier and sold unaltered.

Clause 35 creates a general defence for sellers to the offences under clauses 28, 30 and 31 where the seller did not pack or alter the packaging of the package and the offence resulted from something the defendant could not reasonably have foreseen.

Clause 36 gives a general defence to persons who pack articles solely as employees.

Clause 37 enables the regulations to prescribe procedures for determining the measurement of pre-packed articles.

DIVISION 2—PERMIT TO SELL CERTAIN PRE-PACKED ARTICLES

Clause 38 authorises the administering authority to issue permits enabling persons to sell pre-packed articles where the sale would otherwise be an offence under clause 28 or 30.

Clause 39 imposes restrictions on the circumstances in which such a permit can be issued.

Clause 40 authorises the cancellation of a permit at any time.

Clause 41 recognises permits issued under a law of another jurisdiction that corresponds to the proposed Act.

PART VI—LICENSING
DIVISION 1—REQUIREMENTS FOR LICENCES

Clause 42 requires a person who certifies a measuring instrument to hold a servicing licence or to be an employee of a licensee.

Clause 43 requires a person who makes a weighbridge available for public use to be the holder of a public weighbridge licence or to be an employee of a licensee.

DIVISION 2—GRANTING OF LICENCES

Clause 44 provides for the making of applications to the licensing authority for servicing licences and public weighbridge licences.

Clause 45 provides the grounds on which an application for a licence may, and in some cases must, be refused.

Clause 46 requires the licensing authority to approve a particular mark for use by each licensee.

Clause 47 requires the licensing authority to keep a register of licences.

Clause 48 gives the licensing authority power to impose and vary conditions on licences.

Clause 49 sets out the conditions that apply to all servicing licences.

Clause 50 sets out the conditions that apply to all public weighbridge licences.

Clause 51 states that conditions of a licence need not be endorsed on the licence.

Clause 52 requires payment by a licensee of a periodic licence fee.

Clause 53 authorises cancellation of a licence if the periodic licence fee is not paid.

Clause 54 authorises surrender of a licence and provides that a licence is not transferable.

Clause 55 empowers the licensing authority to order that specified persons not be employed to certify measuring instruments, or not be employed to operate a public weighbridge, on the grounds of the person's lack of competency or fitness.

DIVISION 3—DISCIPLINARY ACTION AGAINST LICENSEES

Clause 56 lists the grounds for disciplinary action against a licensee.

Clause 57 provides for the licensing authority to give notice to a licensee of suspected grounds for disciplinary action against the licensee and calling on the licensee to show cause why disciplinary action should not be taken.

Clause *58* provides for the disciplinary action that the licensing authority can take against a licensee.

DIVISION 4—APPEALS

Clause 59 provides for an appeal against various decisions of the licensing authority.

PART VII—INSPECTORS

Clause 60 provides for the general powers of entry and inspection by inspectors under the proposed Act.

Clause 61 provides for the powers of inspectors in relation to the examination and testing of measuring instruments.

Clause 62 provides for the powers of inspectors in relation to pre-packed articles and articles that are for sale by measurement.

Clause 63 gives an inspector special powers to demand information from a person whose name appears on a pre-packed article.

Clause 64 entitles a person from whom anything is seized under the proposed Act to return of the thing if proceedings for an offence are not instituted within 6 months or if no conviction is obtained.

Clause 65 creates offences of hindering, assaulting, impersonating, or failing to comply with a lawful requirement made by, an inspector.

Clause 66 relates to self-incrimination.

Clause 67 requires an inspector to produce his or her certificate of authority on request.

PART VII—MISCELLANEOUS

Clause 68 provides that a penalty appearing at the end of a provision of the proposed Act indicates the creation of an offence for which the maximum penalty is the penalty specified.

Clause 69 increases by 5 times the maximum penalty for any offence committed by a body corporate.

Clause 70 empowers the court which convicts a person of an offence under the proposed Act to award compensation to a person who has suffered pecuniary loss.

Clause 71 makes the employer guilty of the same offence committed by an employee unless the employer had no knowledge of the contravention and could not have prevented the contravention.

Clause 72 makes the director of a body corporate guilty of the same offence committed by the body corporate if the director knowingly authorised or permitted the offence.

Clause 73 creates the offence of making a false or misleading statement.

Clause 74 requires certain official signatures to be presumed to be authentic.

Clause 75 provides for the giving of certificates and for those certificates to be evidence of certain things.

Clause 76 creates certain presumptions as to the authenticity of names, addresses and dates marked on pre-packed articles.

Clause 77 creates the presumption that certain articles are packed for sale (and hence are pre-packed articles).

Clause 78 creates the presumption that a measuring instrument present on premises used for trade is itself used for trade.

Clause 79 requires records to be kept or produced in the English language.

Clause 80 lists the matters for which regulations can be made.

Clause 81 provides that the measure does not affect the operation of the *Fair Trading Act 1987*.

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

TRADE MEASUREMENT ADMINISTRATION BILL

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage) obtained leave and introduced a Bill for an Act relating to the administration of the Trade Measurement Act 1993; to repeal the Trade Measurements Act 1971 and the Packages Act 1967; and for other purposes. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

The Trade Measurement Administration Bill provides for the administration of the Trade Measurement Bill in South Australia. The Administration Bill is not required to be uniform with other States.

The Administration Bill specifies that the Commissioner for Consumer Affairs shall be the administering authority and the licensing authority for the purposes of the principal Act, and that the Commercial Tribunal shall be the appeals tribunal in relation to decisions of the licensing authority.

The Administration Bill contains clauses which provide for the introduction of fees for the verification and reverification of instruments as apply in other jurisdictions. Fees for the verification and reverification of instruments were abolished in South Australia in 1976. It is the Government's intention that the administration of trade measurement legislation should operate on a full cost recovery basis, as is now the objective in most jurisdictions.

Fees for the verification and re-verification of instruments and for application and licence fees, will be fixed by regulation at levels comparable to those applying in other States operating on a full cost recovery.

The Government takes the view, as have other jurisdictions, that the cost of administering the legislation should be, in the first instance, borne by those who carry on business of which the measurement of goods for trade is an integral part. It is to be anticipated that like most business expenses the proportion of this cost will ultimately be passed on to the consumers. In this sense, the cost of administering the legislation will be shared between traders and consumers. This is appropriate since both stand to benefit from the legislation—consumers by being more assured of receiving correct measure and traders from consumer confidence and an assurance that they are not selling above measure to consumers.

The Administration Bill also repeals existing legislation, namely, the Trade Measurements Act 1971 and the Packages Act 1967. The proposed Acts will fulfil this State's commitment to the establishment of nationally uniform legislation relating to trade measurement and packages and will contribute to economic development by reducing impediments to South Australian business competing in the national market for goods. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 contains definitions used in the proposed Act. It is noted that the term 'the principal Act' will mean the Trade Measurement Act 1993. The two Acts are to be read together.

Clause 4 provides that the Commissioner for Consumer Affairs is the administering authority and the licensing authority for the purposes of the principal Act.

Clause 5 provides that the Commissioner has the administration of the two Acts (subject to direction by the Minister).

Clause 6 provides for the appointment of inspectors. A certificate of authority will be issued to each inspector. Inspectors will be under the control and direction of the Commissioner.

Clause 7 will allow the Commissioner to make use of the staff or facilities of any government department, office or public or local authority.

Clause 8 authorises the Commissioner to hold an appointment and exercise functions under the Commonwealth Act.

Clause 9 empowers the making of regulations to prescribe fees and charges.

Clause 10 provides for the recovery of unpaid fees and charges as a debt due to the Crown.

Clause 11 provides that proceedings for an offence against either Act may be commenced within two years after the date of the alleged offence, or within such later period, not exceeding five years, authorised by the Attorney-General.

Clause 12 prevents double jeopardy where a person commits the same offence under both the principal Act and a law of another State or a Territory or of the Commonwealth.

Clause 13 provides that the Commercial Tribunal is to be the appeals tribunal for appeals under the Principal Act.

Clause 14 sets out the powers of the appeals tribunal or an appeal.

Clause 15 provides for the issue of search warrants.

Clause 16 provides for the manner in which documents may be served.

Clause 17 is a general regulation-making power.

Clause 18 provides for the repeal of the Trade Measurements Act 1971.

Clause 19 provides for the repeal of the Packages Act 1967.

Clause 20 provides for the continued validity of a mark on a measuring instrument after the repeal of the repealed Act.

Clause 21 will allow certain exemptions under the repealed Act to continue under the new legislation.

Clause 22 provides for cross-references in other Acts.

Clause 23 is a general transitional and savings provision.

Clause 24 will empower the making of regulations of a savings or transitional nature consequent on the enactment of the new legislation.

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

PUBLIC CORPORATIONS BILL

In Committee.

(Continued from 25 March. Page 1735.)

The Hon. T. CROTHERS: Mr President, I draw your attention to the state of the Committee.

A quorum having been formed:

Clause 17—'Conflict of interest.'

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

Page 16, after line 9—Insert subclause as follows:

(3a) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of

the contract in good faith for valuable consideration and without notice of the contravention.

This is consequential on an earlier amendment.

Amendment carried; clause passed.

Clause 18 passed.

Clause 19—'Civil liability if director or former director contravenes this part.'

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

Page 17, line 7—After 'Part' insert '(other than an offence consisting of culpable negligence)'.

The Government policy which normally applies in respect of members of statutory boards is that the Government will indemnify directors against the consequences of any breach of civil law, but not criminal law. The exception to this is where the director commits a breach of a duty of honesty. This amendment brings this provision in line with that policy, plus under operation of these provisions directors will be subject to a criminal penalty if culpable negligence is committed, or civil recovery procedures if a director benefits from a conflict of interest, but not otherwise. In the private sector this indemnity does not apply but rather directors must take out their own personal liability insurance. Whilst the Government could adopt this policy it would lead to demands to very significantly increase remuneration of directors to reflect their additional risk.

The Hon. K.T. GRIFFIN: In relation to clause 19, I take it that the amendment is designed to focus upon everything other than culpable negligence, so that the disgorging of profit and the liability for compensation, which is the subject of a later amendment, are to be the liabilities faced by directors or former directors convicted of an offence. That is how I understand it is going to operate.

The Hon. C.J. SUMNER: Yes, that is correct.

Amendment carried.

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

Page 17, line 13—Leave out 'an amount equal to' and insert 'compensation for'.

This is a matter raised by the Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: I appreciate that. What I did propose at the second reading stage was that it should be either one or the other, whichever was the greater. It has been pointed out to me that the amendment brings the provision in line with the Corporations Law so that not only is there a disgorging of profit but also compensation, and that in the assessment of compensation the amount of profit that has been disgorged to the corporation would be taken into consideration. It ultimately achieves the objective that I sought during the course of the second reading and therefore I am pleased to support it.

Amendment carried.

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

Page 17, line 15—After 'fixed' insert '(other than a contravention consisting of culpable negligence)'.

This amendment is consequential.

Amendment carried.

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

Page 17, line 17—Leave out 'as a debt'.

This is a drafting matter.

The Hon. K.T. GRIFFIN: I support it.

Amendment carried.

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

Page 17, line 22—Leave out 'an amount equal to' and insert compensation for'.

It is a similar issue to the one already dealt with.

Amendment carried; clause as amended passed.

Clauses 20 and 21 passed.

Clause 22—'Formation of subsidiary by regulation.'

The Hon. K.T. GRIFFIN: As I recollect it, on the last occasion I accepted responsibility to withdraw the first amendment, which dealt with this issue, because, after the debate on the issue, I could see that there was some value in controlling the establishment of subsidiaries and the formation of a subsidiary by regulation was therefore not inappropriate in the context to which the Attorney-General referred at that stage (it was a debate on clause 3). So, on the basis of that earlier debate, I do not intend any longer to oppose clause 22.

The Hon. I. GILFILLAN: It had been my intention to support the opposition to this clause. Although it is some days back, the debate in *Hansard* will easily be referable and will contain the argument which dissuaded me from supporting the deletion of clauses 22 and 23. Originally my position stemmed from some suspicion about establishing by regulation subsidiaries to a body corporate, and I think that that is a healthy suspicion generally for one to hold as a starting position. However, the argument put forward by the Attorney-General indicated to my satisfaction that this was in fact a safeguard which otherwise would not apply. Therefore, I think it is reasonable and consistent to withdraw my opposition to clauses 22 and 23 and indicate support for them.

Clause passed.

Clause 23—'Dissolution of subsidiary established by regulation.'

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

Page 19, after line 17—Insert subclause as follows:

(3) Notwithstanding subsection (2), on the dissolution of a subsidiary under this section, the liabilities of the subsidiary become liabilities of its parent corporation subject to any provision made by regulation transferring the liabilities to the Crown or some other instrumentality of the Crown.

There are really two issues. The first is in relation to the dissolution of a subsidiary. My amendment seeks to provide a fall-back position so that on the dissolution of a subsidiary the liabilities become the liabilities of the parent corporation but subject to any provision made by regulation transferring the liabilities to the Crown or some other instrumentality of the Crown. What I was concerned about is that in subclause (2) the regulations may provide for the disposition of the assets and liabilities of the subsidiary.

One would expect that the regulations would make provision for disposition, but it might be that the regulations did not. My amendment addresses the issue of liabilities because third parties are involved where there are liabilities, and I think that ought to be put beyond doubt. The issue of assets is left open, but I do not see that as being a major problem so far as third parties are concerned. My amendment deals with the issue of liabilities. The second issue I will address, which I will deal with after we have dealt with the amendment, is the question of the disallowance of regulations.

The Hon. C.J. SUMNER: This amendment is acceptable.

Amendment carried.

The Hon. K.T. GRIFFIN: It follows from what I said earlier that I will not oppose the clause, but there is another issue—that is, the question of disallowance of the regulation. When we were talking on clause 3 about the establishment of subsidiaries by regulation, I raised the issue of disallowance of the regulation.

I suggested that quite a long period of time could elapse between the establishment of the subsidiary by regulation and the point at which it is allowed—and something like 12 months might elapse, theoretically. The Attorney-General said that—and I do not disagree with what he responded at the time—good sense would dictate that that is an issue that should be addressed earlier rather than later. On the basis that it is still possible for disallowance, even after that long period of time, can the Attorney-General indicate what the position would be with assets and liabilities that might have been acquired or incurred in the light of the disallowance? It may be that, if there is no immediate answer, that is something that might have to be addressed by way of amendment to put that issue beyond doubt.

The Hon. C.J. SUMNER: As I understand the point being raised by the honourable member we will examine it and let him have a response.

Clause as amended passed.

Clause 24—'Guarantee or indemnity for subsidiary subject to Treasurer's approval.'

The Hon. K.T. GRIFFIN: I understand the import of clause 24. Presumably, those who deal with a public corporation will be put on notice by the statute so that, if there is a guarantee by a public corporation of the liabilities of a subsidiary, then it will not be enforceable unless there has been approval. I just raise the more important issue, that is, if a subsidiary is to be established by a corporation—and that is established with the approval of the Minister (quite obviously, if it is established by regulation, it will be supported by the Minister and by the Government)—what then is the point of clause 24, and what does the Government hope to achieve in respect of that provision? Does it mean that, even though a subsidiary may be established by regulation, the Government will not stand behind it? What does that do for persons who may deal with the subsidiary?

The Hon. C.J. SUMNER: The situation is that a guarantee is not necessarily applicable to every Crown corporation that is established. In fact, the State Bank had a guarantee, but that sort of guarantee is not contained in every public trading enterprise. As a matter of practice, what the honourable member said may be correct, that it would be difficult for the Government to walk away from the liabilities of what in effect would be a Crown corporation. This is put in here to say that, before a formal guarantee is given similar to one which exists in the State Bank, then it must be the subject of the Treasurer's approval.

The Hon. K.T. GRIFFIN: Does that then mean that those who may wish to deal with a subsidiary will decline to do so unless they can see that there is some substance in the subsidiary with respect to its capacity to meet its liabilities? One can see that, where a company is established as a subsidiary, the law is clear: it is a company where the shareholder's liability is limited. Everybody who deals with such a subsidiary is on notice that the liabilities may not be met. Although, one would expect that, where the approval of the Treasurer has been given to the establishment of a subsidiary, that is an issue that will be addressed. With the Beneficial subsidiaries and even the State Bank holding Beneficial Finance's subsidiary, ultimately the public perception is that the bank stands behind the subsidiary.

But where you have a subsidiary established by regulation, I would suggest that there are likely to be some difficulties in practice where third parties want to deal with a subsidiary established by regulation where there is no clarity in the law as to who will meet the liabilities of that subsidiary. I just raise it as an issue—I do not know whether it has been fully examined—both as to its practical and legal applications and what it is likely to do in the context of third parties wanting to deal with such corporations.

The Hon. C.J. SUMNER: The third party dealing with a Crown corporation would probably feel in a more comfortable position in practice than a third party dealing with a company established under the Corporations Law. Whether something needs to be more specifically spelt out on that, I do not know. I point out that a subsidiary can be a company established within the meaning of the Corporations Law, and I suppose it is in those circumstances where we are seeking that, before any guarantee or indemnity is given with respect to that company established under the Corporations Law, the approval of the Treasurer is necessary. If it happened to be a subsidiary established by regulation, I dare say that it would be an odd situation if the Government did not stand behind it in those circumstances, although theoretically, I suppose, that could occur. Whether it is a subsidiary established under Corporations Law or a subsidiary by regulation, the Government is concerned to ensure that those subsidiaries operate commercially in the ordinary commercial environment, subject to the ordinary restraints on that body and subject to the usual commercial risks of a company.

I suppose that theoretically this may mean that they could go into liquidation and leave money owing to third parties, but the realistic chance of that happening with respect to a subsidiary established under this Act is not high. Even so, the Government was concerned to ensure that in this case, where a specific indemnity or guarantee was to be given either to a subsidiary which was a corporation under Corporations Law or a subsidiary established by regulation, that should be given specifically by the Government. In practical terms, I am not sure there would be a lot of difference, but there is a difference between a formal guarantee such as exists for the State Bank and some other public trading enterprises which do not have formal Government guarantees.

So, I think it is just not true to say that every public trading enterprise has a Government guarantee; it does not, in law. It may be difficult for the Government to get out of fulfilling obligations incurred by a public trading enterprise, but there is not actually a guarantee with respect to many of them. In fact, I think it exists only in relation to the State Bank and possibly SGIC.

The Hon. K.T. GRIFFIN: I think there is a statutory guarantee in respect of other corporations, too, specifically named; I think even in relation to the State Courts Administration Council there is a specific provision of guarantee in respect of the liabilities which it incurs.

The Hon. C.J. Sumner: An indemnity, rather than a guarantee.

The Hon. K.T. GRIFFIN: Right. They are different in law, but ultimately the effect will be the same. I am not arguing about the subsidiaries established under the Corporations Law, because the Corporations Law is clear. There is a limited liability in shareholders, and everybody deals with that subsidiary established under the Corporations Law with full knowledge of what the implications might be. It might end up with nothing, although, again, politically it would be very difficult for a Government to back away from that.

However, where a subsidiary is established by regulation, we do not have that framework of the Corporations Law which identifies to persons dealing with it that there is limited liability, that there is a capacity to wind it up by petition for winding up, there is a capacity to sue directors and a whole range of other consequences which flow from it.

I do not want to prolong the Committee stage by debating this at length; I want to flag what I see as an issue which does need to be addressed if corporations are established by regulation as subsidiaries, and they will have a capacity to do the sort of work as subsidiaries to which the Attorney-General referred last week when we were considering this issue of the establishment of subsidiaries by regulation.

So, there is there an important issue which may not have been worked through, and I want to flag it as something which I think does need to be addressed and which may need to be addressed before the Bill finally passes both Houses.

The Hon. C.J. SUMNER: I am happy to do that and advise the honourable member of the results of those deliberations.

Clause passed.

Clause 25—'Immunity of directors'.

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

Page 19, line 23—Leave out 'cooperation'.

The intent of this provision was that as guarantor the Treasurer must be aware of and approve any scheme for sharing of profits which may potentially extend the liability of the Government. Following consultation it was concluded that the term 'cooperation' in this provision may be too restrictive in requiring any agreement to cooperate with another organisation to be approved by the Treasurer. My amendment leaves out the word 'cooperation'.

Amendment carried; clause as amended passed.

Clauses 26 and 27.

The CHAIRMAN: I point out to the Committee that clauses 26 and 27, being money clauses, are in erased type. Standing Order 298 provides that no question shall be put in Committee upon any such clause. A message transmitting the Bill to the House of Assembly is required to indicate that these clauses are deemed necessary to the Bill.

Clause 28—'Dividends'.

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

Page 21, line 5—After 'may' insert 'after consultation with the corporation's Minister,'.

These provisions put in place a system which provides checks and balances in the process for determining the amount of any dividend whilst preserving the Treasurer's power to determine the matter finally having regard to the broader interests of the public sector. However, there was seen to be virtue in requiring the Treasurer to consult with the relevant Minister as well as the board prior to making a determination, to ensure that the needs of the corporation for capital are taken into account, having regard to the Minister's understanding of the Government's understanding of the Government's future priorities for the corporation.

Amendment carried.

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

Page 21, lines 10 to 20—Leave out subclauses (3) and (4).

Subclauses (3) and (4) deal with dividends that may become payable by the corporation, and they provide for an amount or amounts to be paid by the corporation on account of the dividend that may become payable. So, it is very much a prospective situation which is addressed by these subclauses. One of the problems with the State Bank was that dividends were paid in advance.

That opened up the capacity to manipulate the dividends. Such manipulation did not come to public notice until the evidence was disclosed during the course of the royal commission, and it was quite obvious that in relation to the State Bank there were some major concerns about the payment in advance of what might be the dividend that might be payable. We saw in relation to the State Bank that there was actually some borrowing in advance to pay a dividend in advance, so that money was actually going round in a round robin of cheques. Although the corporation is an instrument of the Government, dividends ought not to be calculated on the basis of what might be but rather on the basis of what has occurred. For that reason, I am seeking to remove that reference to payments now for dividends which might be payable later.

The Hon. C.J. SUMNER: I ask the honourable member to reconsider this matter, because I do not think the situation that he has pointed to concerning the State Bank would apply in these circumstances. The clause in the Government's Bill allows public corporations to pay an interim dividend, and this is normal commercial practice in the private sector. I understand that the royal commission criticism dealt with the question of paying dividends in advance of earning a profit. I draw the honourable member's attention to the definition in clause 3,as follows:

'dividend' means payment out of profit (whether earned in the current or a previous financial year) or payment in the nature of a return of capital;

I am suggesting that the payment of interim dividends is practised in the private sector, but the Treasurer cannot insist on the payment of a dividend that has not been earned because of the definition of 'dividend'. I suggest to the Committee that that should be adequate to overcome the difficulties that the honourable member saw and the criticisms that were directed at this issue in the State Bank royal commission.

The Hon. K.T. GRIFFIN: I appreciate my attention being drawn to the definition of 'dividend'. It is correct that there is a requirement that it be paid out of profit, but even that was one of the problems at the royal commission, as to what was profit, because capital was being advanced and it was going into the State Bank, and the liability for interest on that was not being brought to account before the profit was being calculated. The liability for interest was brought to account in the subsequent financial year.

The Hon. C.J. Sumner: Is it an accounting problem?

The Hon. K.T. GRIFFIN: It may be an accounting problem, and I must confess that I do not know how one overcomes that immediately. I have no difficulty with repayment in the nature of a return of capital. There is no problem with that. It may be that, rather than including that in the definition of 'dividend', it should be dealt with separately because, with companies, one has a distinction between dividends which are payable out of profits and repayment of capital. With companies we have a different system by which capital is repaid—reduction of capital, and we have to get approvals for that.

I am not suggesting that anything like that ought to happen here, but it may be that there is good reason for dealing with repayment of capital separately from payment of dividends. Also, I recognise that in the private sector there is provision for interim dividends, and it may be that some formula could be developed to allow payment of interim dividends, That might be acceptable, but it seems to me that the way subclauses (3) and (4) are drafted does not take into account that these interim dividends are payable in respect of past profits by way of an interim distribution.

If there is some way of overcoming the difficulty that I see on the basis that this relates to a dividend that may become payable by the corporation rather than a dividend that is payable, I am prepared to be accommodating. At the moment it seems that this does not overcome the problems that were highlighted in the State Bank area in relation to both profit and the calculation of what might be, rather than what actually is.

The Hon. I. GILFILLAN: Before addressing the actual amendment, I must say that I found the definition of 'dividend' slightly confusing because, it provides:

> ...payment in the nature of a return of capital;

I assume that that is the return of capital which is by way of a debt or a loan. It may be my inexperience with the terminology, but it seems an odd way to put it. The other meaning that occurred to me was that it would be a return on capital that would be by way of interest or dividend on the capital advanced. I was somewhat confused by that.

The Hon. Mr Griffin outlined his understanding of it as actually returning lumps of capital, as if there were an agreed debt to be repaid. I assume that that is the correct interpretation. I still think it is a confusing definition.

As to the amendment, I do not feel so concerned about the amendment of subclause (3) as I do about subclause (4)(b). Boards are now so compassed by fear about limitation and liability that they are unlikely to be too foolhardy in relation to what they would okay regarding advanced dividends. However, it is a bit rich that the Treasurer, having had considered advice from the board of the corporation, for example, that no such amount be paid, then determines, as I understand he has the power in subclause (4)(b) to determine, that a certain amount, say, $10 million, to take an arbitrary figure, shall be paid.

If that understanding is accurate, I would feel more uneasy about that measure remaining in the clause. Without that, I do not have a particular concern. A corporation might have accumulated a certain amount of income that could be properly described as profit. It is arbitrary whether it sits in its books earning interest for the benefit of the corporation or whether it should be transferred to either minimise debt or earn something for the State. That does not upset me particularly, but if we were to delete subclause (4)(b) the position would be relatively more secure.

The Hon. C.J. SUMNER: The Government opposes the deletion of subclause (4)(b). In the final analysis, the Treasurer is responsible for the operations of public trading enterprises. If the Treasurer after considering all the circumstances believes that a dividend ought to be paid, the Treasurer ought to be able to instruct that that dividend be paid, whether at the end of the year or as an interim dividend. If they have made a mistake, obviously that would then be reported to the Parliament where there is full accountability for it. I am happy to examine the issue raised by the Hon. Mr Griffin to see whether we can modify the clause to some extent to accommodate his concerns. I request that the Bill be passed in this form but on the specific understanding that we will recommit this clause once we have looked at the issues raised by the honourable member.

The Hon. K.T. GRIFFIN: On the basis that the clause will be recommitted, I have no difficulty with that, because it means that the Council retains control. 'Dividend' means 'payment out of profit (whether earned in the current or a previous financial year)'. We put aside the question of return of capital. That definition suggests that the amount has already been quantified. Subclause (3) addresses the issue of an amount or amounts on account of the dividend that may become payable; so, there is immediate conflict. I am happy if that matter can be addressed.

I have considered the point made by the Hon. Mr Gilfillan. Even in relation to the final dividend under subclause (2)(b) I think perhaps the Treasurer ought not to have the final authority; however, on the basis that there is a power of any corporation subject to this Bill to be directed by the Minister, it seems to me that the deletion of paragraph (b) of subclause (2) would not achieve very much. Even if it did achieve something, it seems to me that ultimately it is an instrument of Government and that, provided the decision is made by the board and that is reported, and if there is disagreement by the Treasurer that also is reported and a direction given, that probably is as much as we can reasonably expect in the management of the affairs of that corporation. On the basis of the indication that we will recommit the clause, I seek leave to withdraw my amendment to leave out subclauses (3) and (4).

Leave granted.

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

Page 21, line 15—After 'may,' insert 'after consultation with the corporation's Minister,'.

Amendment carried.

The Hon. K.T. GRIFFIN: My next two amendments are consequential upon the earlier amendment that I have withdrawn on the basis that the clause will be recommitted; so I do not intend to proceed with them at this stage. I move:

Page 21, after line 25—Insert subclause as follows:

(5a) A recommendation under this section must be made by the board of the corporation and may not be made by any person or committee pursuant to a delegation.

This amendment is to ensure that any recommendation of the corporation is actually made by the board of the corporation and is not delegated to any person or committee pursuant to the power granted to a corporation to delegate. There are some activities of corporations which in my view ought not to be the subject of delegation, and this is certainly one of them. Whilst one would expect the board of a corporation always to make the decision, I think it is important to put it beyond doubt.

The Hon. C.J. SUMNER: The amendment is not opposed.

Amendment carried; clause as amended passed.

Clause 29 passed.

Clause 30—'Accounts and external audit.'

The Hon. I. GILFILLAN: Subclause (2) provides:

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

Will the Attorney explain under what circumstances it is anticipated that the Treasurer would exempt a corporation from including financial statements of its subsidiaries on a consolidated basis?

The Hon. C.J. SUMNER: The normal thing would be to include them on a consolidated basis. This exemption is included to cover the situation where for some reason or another it is not possible at that time to do the financial statements on a consolidated basis. Offhand, I cannot envisage circumstances where that might occur, but I am sure that people with more imaginative minds than mine could. But that is why it has been drafted in that form.

The Hon. I. Gilfillan: There may be the circumstance where it is precluded for one financial year but there ought to be an obligation that it be done in the ensuing year.

The Hon. C.J. SUMNER: The honourable member says that you could think of some reasons in one financial year but it should not continue to operate, and that is a fair enough point. But surely that is a policy matter. The Treasurer would have to justify the exemption, if he gave it, in one financial year and if he kept giving it year after year presumably questions would be asked and he would have to justify it on each occasion. I do not think every point can be covered in legislation. It is obviously there as a let out in case there are circumstances which mean that the financial statements cannot be produced in a consolidated form. One would assume, though, that it would be an exception rather than the rule. One would normally expect them to be prepared in accordance with accepted accounting standards.

The Hon. I. GILFILLAN: I am not satisfied with that. I believe that the phrase, 'unless exempted by the Treasurer' should be deleted. I do not see any reason why a corporation should not be obliged by this legislation to include financial statements of subsidiaries on a consolidated basis. I think that if there was to be an exception it would have to be presented with its full justification at the time that the financial statements were being presented, and I do not think it satisfies what should be a reasonable responsibility of this Parliament to leave it to the Treasurer of the day. The Attorney said there may be circumstances that should arise. Let us confront those at the time.

The Hon. C.J. Sumner: What happens if we cannot produce them in a consolidated form? Do we just ignore the Act?

The Hon. I. GILFILLAN: There has to be some obligation for the corporation and its subsidiaries to try to toe the line of this Act, or what the hell is the point of introducing the measure. In leaving a soft option out, it should be very plain and clear to the corporations, as they set up their subsidiaries, that they are obliged to have a consolidated financial statement for all of those subsidiaries. Surely the traps of neglect of this sort of revelation and compliance with reasonable accounting standards should lead us to put in this Bill a clear instruction that certain basic standards will be maintained. I am certainly not prepared to accept that it should remain in that form. I am not satisfied by the explanation. I would be seeking leave to move an amendment to delete those words. I do not have a written amendment but, with the permission of the Chair and the Committee, I move:

Page 22, line 23—Leave out 'unless exempted by the Treasurer'.

The Hon. C.J. SUMNER: We oppose the amendment.

The Hon. K.T. GRIFFIN: I was actually going to raise a question not so much about consolidation but about the accounts of subsidiaries. At page 40, clause 13 of the schedule provides:

(1) A subsidiary must cause proper accounts to be kept of its financial affairs and financial statements to be prepared in respect of each financial year.

(2) The accounts and financial statements must comply with—

(a) the requirements of the Treasurer contained in its parent corporation's charter: and

(b) any applicable instructions of the Treasurer issued under the Public Finance and Audit Act 1987.

Following that is a provision that the Auditor-General may audit the accounts and financial statements, and must in respect of each financial year audit the accounts.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: No, but if you look at clause 13(3) you will see that it states:

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

My comment in relation to that is that there is no obligation to publish the accounts of the subsidiary. That may or may not be appropriate, I am not sure. However, if one comes back to clause 30 of the Bill, the obligation to publish the accounts is to publish the consolidated accounts unless exempted by the Treasurer. It may be

that some subsidiaries if they are companies incorporated under the Corporations Law might be 50 per cent owned by the public corporation and 50 per cent owned by a private sector operator.

It is quite proper, as I understand it, although accounting is not my strong point, that it is possible in those circumstances to consolidate the accounts with those of the parent corporation. Where you have a corporation established by regulation as a subsidiary then one would normally expect consolidation to occur. However, I would have thought that there is value because they are all part of the structure of the parent corporation that the individual accounts be available along with the consolidated accounts. So that if you have got a particular subsidiary corporation with certain assets and liabilities carrying on a particular form of business, it is possible then for the public to determine the viability of that subsidiary's operations.

If they are all consolidated in the accounts of the parent corporation, it is less likely that that can be achieved. I am not worried about the Treasurer exempting a corporation from providing the accounts of subsidiaries on a consolidated basis, provided there is an obligation in any event for the accounts of subsidiaries to be available with the accounts of the parent corporation, and that is the proper course to follow rather than following the amendment of the Hon. Mr Gilfillan.

The Hon. C.J. SUMNER: Yes, we will have a look at this point, too, and recommit if it is necessary. In the meantime, I oppose the amendment.

The Hon. K.T. GRIFFIN: On the' basis of what I have said about the disclosure of accounts of subsidiaries, I am not prepared to support that amendment.

The Hon. I. GILFILLAN: I recognise that my amendment is unlikely to be successful and I am looking forward to clause 31, 'Annual reports'. The question I would ask the Hon. Trevor Griffin to consider is that, as he is asking that there is publication of the subsidiary's financial statements, will that not automatically take place in subclause (3), which provides that the Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after his or her receipt of the report. The report appears to embrace the financial statements, including other matters, so that there will be a publication of the material that he is seeking.

The Hon. K.T. GRIFFIN: I had intended to raise an issue under clause 31, anyway, but it is related to the point I have just made. Clause 31 (2) provides:

> The report must—
>
> (a) incorporate the audited accounts and financial statements for the financial year.

They are the financial statements of the public corporation and I have taken that to refer back to clause 30 dealing with the consolidated accounts of the corporation. The Attorney-General has indicated that he is prepared to look at the issue I have raised and recommit if necessary. It seems to me that it is not only necessary to look at clause 30 but, in respect of publication, to look at clause 31.

The Hon. I. GILFILLAN: We will do that.

Amendment negatived.

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

Page 23, lines 7 to 18—Leave out subclause (5).

Following consultation with the Auditor-General it was determined that matters dealt with in clause 30 (5) are sufficiently well covered by Public Finance and Audit Act requirements as not to require a separate provision in this Bill. This amendment therefore removes the provision.

The Hon. K.T. GRIFFIN: I have no objection.

Amendment carried; clause as amended passed.

Clause 31—'Annual reports.'

The Hon. K.T. GRIFFIN: I ask the Attorney-General whether he can indicate what 'prescribed information' is likely to be in relation to paragraph (e) of subclause (2). That is:

> (e) contain the prescribed information relating to the remuneration of executives of the corporation and executives of its subsidiaries.

The Hon. C.J. SUMNER: I am advised that it is intended in putting in this wording we would prescribe the same information as is required under the Corporations Law, which is actually a fairly general statement about who are in particular categories of remuneration. It may well be that Parliament, from time to time, will require more information and obviously it should get it if it did require it.

Clause passed.

Clause 32—'Remuneration of corporations' directors.'

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

Page 24, lines 18 and 19—Leave out all words in these lines and insert—

'for in connection with—

(a) membership of the board of the corporation;

(b) membership of the board of any subsidiary of the corporation;

or

(c) any appointment made by or at the direction of the board of the corporation or any subsidiary of the corporation.'

Clause 32 relates to remuneration and what I want to do is to put beyond doubt that the approval of the corporations Minister relating to directors' remuneration extends beyond the membership of the board to the membership of a subsidiary and any appointment made by or at the direction of the board of the corporation or any subsidiary of the corporation. That encompasses the full range of remuneration to which the Royal Commissioner made reference in the second State Bank report.

The Hon. C.J. SUMNER: I will not oppose the amendment.

The Hon. I. GILFILLAN: Would the original and/or the amendment cover consultancy fees? Would remuneration in these terms cover the services as a consultant to the corporation by a board member?

The Hon. C.J. SUMNER: If a director also had a consultancy with the corporation I think that that would require disclosure and be a conflict of interest.

The Hon. K. T. Griffin interjecting:

The Hon. C.J. SUMNER: I suppose a consultancy may be a consultancy that is not made by the board of the corporation; it may well be a consultancy that is entered into by the administration of the corporation with a member of the board. I think if that did occur the provisions of clause 15 would come into operation which provide that neither a director of a public corporation nor

an associate of a director of a public corporation may, without the approval of the corporation's Minister, be directly or indirectly involved in a transaction with the corporation or a subsidiary of the corporation.

If a member of the board of the corporation entered into a consultancy arrangement to do work for the corporation it would have to be declared and there would be a conflict of interest, so if it was a matter for the board's decision the director could not participate in that decision. Furthermore, if the corporation decided to grant that consultancy involving that director the specific approval of the Minister would have to be sought. I think those safeguards are fairly elaborate.

Amendment carried; clause as amended passed.

Clause 33 passed.

Clause 34—'Delegation.'

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

Page 25, after line 8—Insert subclause as follows:

(5a) A contract may not be avoided under subsection (5) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

This amendment is in respect to the provisions for transactions by delegates and parallels the amendments previously dealt with for transactions with directors by ensuring that the interests of innocent third parties are protected.

Amendment carried.

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

Page 25, line 15—Leave out 'an amount equal to' and insert 'compensation for'.

This amendment is consequential.

Amendment carried.

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

Page 25, line 18—Leave out 'as a debt'.

This amendment is consequential.

Amendment carried.

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

Page 25, lines 21 and 22—Leave out 'an amount equal to' and insert 'compensation for'.

This amendment is consequential.

Amendment carried; clause as amended passed.

Clause 35—'Transactions with executives or associates of executives.'

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

Page 27—

After line 8—Insert subclause as follows:

(4a) A transaction may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.

Line 20—Leave out 'an amount equal to' and insert 'compensation for'.

Line 23—Leave out 'as a debt'.

Line 27—Leave out 'an amount equal to' and insert 'compensation for'.

All these amendments are consequential.

The Hon. K.T. GRIFFIN: I support them.

Amendments carried; clause as amended passed.

Clause 36—'Executives' and associates' interests in corporation or subsidiary.'

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

Page 28, after line 12—Insert subclause as follows:

(1a) Subsection (1) does not apply to a transaction made with the corporation or a subsidiary of the corporation in the ordinary course of its ordinary business and on ordinary commercial terms.

This clause deals with an executive or an associate of an executive acquiring a beneficial interest in shares, holding particular interests or being a party to or being entitled to a benefit under a contract relating to the delivery of shares or debentures. What I am proposing is that subsection (1) does not apply to a transaction made with the corporation or a subsidiary of the corporation in the ordinary course of its ordinary business and on ordinary commercial terms.

I recollect that we debated that in relation to a public corporation, and I think the Attorney-General had some difficulties with that. I move this on the basis that it will not, in my view, create any problems in administration: it might actually relieve some of the technical difficulties that might arise.

The Hon. C.J. SUMNER: The Government opposed a similar amendment earlier, and we oppose this amendment.

The Hon. I. GILFILLAN: The amendment is opposed.

Amendment negatived.

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

Page 28—

Line 24—Leave out 'an amount equal to' and insert 'compensation for'.

Line 27—Leave out 'as a debt'.

Page 29, line 2—Leave out 'an amount equal to' and insert 'compensation for'.

All these amendments are consequential.

Amendments carried; clause as amended passed.

Clause 37 passed.

Clause 38—'Power to investigate corporation's or subsidiary's operations.'

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

Page 30, line 9—Leave out 'proper' and insert 'reasonable'.

This amendment relates to power to investigate a corporation's or subsidiary corporation's activities and provides that the investigator must investigate certain matters, and one of those includes any possible failure to exercise proper care and diligence.

The Hon. C.J. Sumner: It is consequential.

The Hon. K.T. GRIFFIN: I think it is. It changes proper care and diligence to reasonable care and diligence.

The Hon. C.J. SUMNER: We support it.

Amendment carried; clause as amended passed.

Clause 39—'Formation of public corporation by regulation.'

The Hon. K.T. GRIFFIN: We had a debate earlier about subsidiaries being established by regulation. The Attorney-General was able to persuade me that there was a significant measure of accountability built into that system of a corporation being established by regulation, but I raised at the same time a concern about the formation of a public corporation by regulation; that is, a corporation not a subsidiary of a corporation. I have always taken the view that where a Government wishes to conduct its affairs through a statutory corporation that matter ought to be the subject of full scrutiny by both Houses in a Bill which then becomes an enactment of the

Parliament. So, consistently with that theme, I am indicating that I have concern about the proposition in clause 39 and at the moment indicate that I oppose the clause. I will be interested to listen to what the Attorney has to say: he will have to be more persuasive, though, than he was in relation to subsidiaries.

The Hon. C.J. SUMNER: The arguments are substantially the same, because, as I said previously in relation to the establishment of subsidiaries by regulation, that was an attempt to improve accountability to the Parliament. The fact is that at the present time there is occasion for new commercial entities that reported to the Minister to be created. At the present time, the only mechanism available—apart from legislating—is to incorporate a company with one or more Ministers as shareholders, and that has happened in a number of cases; Sagric International, for instance, is such a company. So, the Government wants to establish a company; it wants to maintain substantial control over that company; and the company is incorporated with one or more Ministers as shareholders. When that happens, it involves a mechanism that has no Parliament accountability at all.

So, that mechanism which is currently adopted suffers from all the shortcomings previously referred to in relation to subsidiaries of public corporations. The intention is to provide an alternative to incorporation of a company, not an alternative to incorporating a statutory authority. Clearly, major entities should continue to be created by statute. The argument is essentially the same: it is to increase accountability and not have Ministers operating in the Government sector having to rely on the establishment of companies under the corporations legislation but enabling corporations to be established under this legislation by regulation and, therefore, being notified to the Parliament with the accountability provisions and, if the Parliament is not happy with it, it can disallow it.

I might add again that this was put in as part of that same package of accountability measures and was done so at the suggestion of the Crown Solicitor and Treasury, who feel that, by this mechanism, you avoid the problems of the establishment of corporations under the Corporations Law where Ministers are shareholders. Ministers have to come out and up-front decide to establish a separate corporation and do it by regulation, and Parliament is informed and has a chance to look at it.

The Hon. I. GILFILLAN: A body corporate may not, I assume, be defined as a public corporation, because 'public corporation' means 'a body corporate other than a council (I know we amended that) that is established by or under another Act'. I am a little curious about the conflict of terms. The heading is 'Formation of public corporation by regulation', yet the definition of 'public corporation' seems to me to say quite specifically 'established by or under another Act'.

The Hon. C.J. SUMNER: It is a plain drafting point.

The Hon. K.T. Griffin: You might not have to worry about it yet.

The Hon. C.J. SUMNER: No, that's right. I understand what you are saying about the definition of 'public corporation', which is:

> A body corporate established by or under another Act, and comprising or has a governing body that comprises or includes a Minister or a person or a body appointed by the Governor or the Minister.

But here we are establishing public corporation by regulation, so I guess the heading is not 'public corporation', which is the same as the earlier definition. In any event, subclause 39(4) makes the Act apply to a body corporate established by the regulation in the same way as the Act applies to a public corporation. I understand the point the honourable member is making: he thinks the heading is misleading.

The Hon. I. GILFILLAN: Yes, I do.

The Hon. C.J. SUMNER: All I can do with that matter is take it up with Parliamentary Counsel. The scheme under clause 39 is to apply the same constraint.

The Hon. I. GILFILLAN: I think that matter could very easily be solved; if this clause remains, perhaps the definition could include 'and formation by regulation' so that it does embrace all three. However, in the matter of whether or not clause 39 remains, I am certainly prepared to listen intently to the argument. The Attorney makes the point that there has been the opportunity for a Minister or Ministers to be the only two shareholders for a body corporate which is established without any reference to Parliament at all by regulation or an Act of Parliament. I refer to subclause (1), which provides:

> The Governor may, by regulation, establish a body with a board of directors as its governing body comprised of persons to be appointed by the Governor or a Minister.

This still leaves it quite open as an option for two Ministers to set up a body corporate without its being set up by regulation. This is not actually excluding that opportunity; it is only adding another way for a decent Government to go about this in an open way. So, although I take the point, I am not totally convinced that we are really achieving something with this.

The Hon. C.J. SUMNER: What the Hon. Mr Gilfillan says on this point is correct: it adds another avenue to establish a body corporate for the Government. That is what happened in our debate previously about the establishment of subsidiaries: we could still establish a subsidiary which was a company under Corporations Law or a subsidiary which was in effect a Crown corporation established by regulation. We went through that argument on that topic last week, and I think I put to the Council (and I put it again) that the Government would prefer to establish corporations by the use of this power, rather than have to resort to the use of company structures under the Corporations Act, and that is why we have introduced it.

However, we do recognise for reasons that were outlined last week that there may be circumstances where the company structure is the only one that is appropriate to the particular circumstances. So, the honourable member is quite right, but the answer is the same answer that was given with respect to the same question that was raised last week.

The Hon. K.T. GRIFFIN: I am uneasy about this provision. I appreciate the point that the Attorney-General is making about another option for Government. He referred particularly to Sagric International which has been around for many years and which is involved in consulting work interstate and overseas, although I do

not think it is doing very much of that at the moment. A few others have been established in Government, but not many of them.

As I understand it, in New South Wales, Government trading enterprises legislation addresses this issue of accountability of Government trading enterprises, particularly in the area of the formation of companies, where Ministers actually are required if they want to undertake some trading activity to do it through, as I understand it, a company limited by shares, and all the accountability obligations upon Ministers who have become shareholders are set out in the New South Wales legislation. That does not mean that they have statutory corporations, but particularly they address this issue of Government trading enterprises where companies are established.

It may be that one ought even to go down the track of looking at those companies that are established where Ministers are shareholders to undertake some particular activity. However, there is not a large number of those. What would trouble me about this clause is that, whilst there is a control through the disallowance of a regulation which seeks to establish a statutory corporation, there is no mechanism by which the Parliament can determine, other than through disallowance, that 'This is a significant issue. This is a minor issue; the major one ought to be established by statute. We will let this one be established by regulation.'

I must say that I would have concern about bodies like the Economic Development Board being established by regulation, but that is a potential under this Bill if it had not already been established by statute. I would express concern about the MFP Development Corporation being established other than by statute, where the whole of the policy issue can be explored and whatever controls may be felt necessary can be applied by the Parliament through both Houses. I would be concerned about the State Bank, SGIC or some other commercial activity or governmental activity being established by regulation. We do have some Ministers who are corporations sole, so they are statutory corporations for that purpose.

However, a Minister becoming corporation sole is again established by statute. How do we distinguish between the big public policy issues and the minor, peripheral governmental functions to be undertaken by a corporation established by regulation? I do not think there is an answer for that. Ministers can give undertakings but Ministers change and Governments change, and what one Minister undertakes even though an Opposition—whoever is in power and whoever is in Opposition—might seek to reinforce by public debate, one can never ultimately require undertakings to be honoured by Government, and generally they are respected as a matter of convention.

So, undertakings will not effectively achieve the objective which I seek, that is, to ensure that there is full public examination and parliamentary examination of both policy and broader functions sought to be undertaken by a statutory corporation.

Whilst I appreciate the position of Attorney-General and the reasons why the Government is doing this as part of the package recommended by the Crown Solicitor, I think there is a major distinction between the two; subsidiaries are one thing; new corporations to undertake new functions, although they may be of a significant governmental or public significance, ought not in my view to be established by this mechanism.

I am not therefore persuaded by the Attorney-General that this ought to be permitted to pass. I believe that if there are some good and persuasive arguments which are overwhelming in the future, let us take it then as a step; let us deal with the issue of subsidiary corporations and see how that operates and see the way in which Government puts the flesh on the bones of this piece of legislation. We can address the issue of the formation of public corporations by regulation in the future, if necessary, but I come back to the point that those major policy areas ought to be the subject of legislation if a statutory corporation is to be established.

The Hon. I. GILFILLAN: I am staying with the position to delete the clause, at least for the time being. I can understand and support 100 per cent that a major statutory authority or public corporation of some significance should require legislation and not be set up by regulation, and certainly not be set up by a Minister or Ministers outside of Parliamentary scrutiny or approval. That is my basic position. The contribution that the Attorney made which I have pondered is that even if we delete the clause, a body corporate of minor nature could continue to be established by a Minister or Ministers and it would not cause any particular concern. If we do delete the clause, I am not sure what we will achieve, except a protest: that the Parliament is sending a clear message to the Government that it believes that the establishment of public corporations must come before this place and must be presented in the form of a Bill.

If a body corporate includes some relatively minor entities which need, for efficiency, to be established, then I would certainly prefer that they come before this place, to be consistent with the position that I have already put, and possibly, under the circumstances of a minor nature, a regulation may be adequate. I am concerned that if we do leave this clause in the Bill it allows the opportunity for major public corporations to be established by regulation. That puts the Parliament in a bind. It has to either accept or reject it and the establishment does not have the advantage of being assessed by the Parliament and the committee work that the Parliament can apply to such issues. I support deletion of the clause.

The Hon. K.T. GRIFFIN: I wish to make a further observation. I am not seeking to oppose this by way of protest but by way of a substantive issue. It is my view that to delete the clause is a safer course to follow than to open up the whole range of opportunities for Governments to establish statutory corporations for larger policy purposes than the small commercial Sagric International type enterprises.

The Hon. I. GILFILLAN: It is important to express what I believe is the issue. Although the Hon. Trevor Griffin makes the claim that this is not a protest deletion, I believe it is. If we do delete this clause, my

understanding of the current position and as it would be with the passage of this Bill, amended without clause 39, the Minister or Ministers could establish a body corporate without any reference to this Parliament at all. In fact, they can do it with the clause in or out of the

Bill because they have that power. If we as a Parliament were determined to insist that any body corporate that the Minister of the Government establishes has to be subject of an Act of Parliament, which has some logic—I have accepted the argument that the Attorney has put up in the case of subsidiaries in which it seemed appropriate to accept that they could be introduced by regulation—it strikes me that we are, in taking this clause out, not substantially changing the obligation on the Government to be responsible to Parliament by having an Act to establish the body or bodies corporate. Without being too pedantic, the Hon. Mr Griffin and myself in leading the opposition to this clause are in a way making a protest to the Government and saying, 'We would much rather everything came before this place in a formal and regularised way.' We recognise that it would need much more substantial amendment than just deleting the clause to achieve it. However, I do not want to be pedantic about this.

Clause negatived.

Clause 40 passed.

Clause 41—'Proceedings for offences.'

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

Page 33, line 3—Leave out 'Minister' and insert 'Attorney-General'.

Page 34—

Line 3—Leave out 'Minister' and insert 'Attorney-General'.

Line 4—Leave out 'Minister' and insert 'Attorney-General'.

'Minister' is defined as the Minister 'to whom the administration of the corporation's incorporating Act is for the time being committed'. There are a number of those. The offences under the Bill are significant and there ought to be a consistent approach to prosecution. Therefore, it is appropriate for the Attorney-General to have the responsibility for that consistency of approach so that, if there is a complaint for an offence against the Act, the consent of the Attorney-General should be sought and not the Minister responsible for a particular corporation. When we come to the subsequent amendments—extension of time—I think it ought to be administered with some consistency. The Attorney-General ought to have the responsibility for achieving that consistency.

The Hon. I. GILFILLAN: What about the Director of Public Prosecutions?

The Hon. K.T. GRIFFIN: It may be that that is something that the Attorney-General ought to look at. This Bill says 'the Minister' and I think that the Attorney-General ought to be the Minister referred to. I would have to think about the DPP, but I think it ought to be to the Attorney-General, to maintain consistency.

The Hon. C.J. SUMNER: This matter needs to be re-examined and I will not object to the amendments now. The reference to 'the Minister' in this clause means the Minister to whom this Act is committed rather than the Minister responsible for the particular statutory authority. It is envisaged that this Act will probably be committed to the Minister of Public Sector Reform, who happens at the present time to be the Attorney-General. The question which I raise and which I have just discussed with Parliamentary Counsel is why this consent provision is needed in any event. I suppose that because some of the offences that are created are summary offences it is needed to exclude the possibility of private prosecutions. Having said that, I am not sure that the Attorney-General is the appropriate person. It may be that the Hon. Mr Gilfillan is right, and that it should be the Director of Public Prosecutions. We went through the exercise of removing, in most instances, the direct consent of the Attorney-General to prosecutions. A couple were retained, I must confess, but in most cases we have removed them. So, I will agree to the amendment for the moment, but I give notice that I might want to revisit it before the Bill passes both Houses.

The Hon. K.T. GRIFFIN: Did the Attorney-General say that in this case 'the Minister' refers to the Minister to whom this Bill is committed?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: This matter ought to be looked at, because the definition of 'Minister' is:

'Minister' in relation to a public corporation, means the Minister to whom the administration of the corporation's incorporating Act is for the time being committed.

It may be that what the Attorney-General has put is correct or certainly what was intended, but it is open to question and it ought to be looked at.

The Hon. C.J. SUMNER: We will do that.

Amendments carried; clause as amended passed.

Clause 42 passed.

Schedule.

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

Page 35—Leave out paragraph (b) of clause 3(1) and insert—

(b) protecting the long-term viability of the subsidiary and the Crown's financial interests in the subsidiary.

This is consequential.

Suggested amendment carried.

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

Page 35—After 'ensure' in clause 3(2) insert 'as far as practicable'.

This is consequential.

Suggested amendment carried.

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

Page 35—Leave out from paragraphs (a), (b) and (c) of clause 3(2) 'it' wherever occurring and insert in each case 'the subsidiary'.

This is a drafting amendment.

Suggested amendment carried.

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

Page 36—Leave out subclause (1) of clause 4.

This amendment is consequential on the deletion of clause 13(1).

Suggested amendment carried.

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

Page 36—Leave out subclause (2) of clause 4.

This is consequential.

Suggested amendment carried.

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

Page 36—Before 'properly' in clause 4(3)(a) insert 'must take reasonable steps to'.

This is consequential.

Suggested amendment carried.

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

Page 36—Leave out from clause 4(3)(a) 'properly'.

This is consistent with the amendment that was carried in relation to clause 13.

Suggested amendment carried.

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

Page 36—Leave out 'actively seek' from clause 4(3)(b) and insert 'must take reasonable steps through the processes of the board'.

Suggested amendment carried.

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

Page 36—Before 'exercise' in clause 4(3)(c) insert 'must'.

This is a drafting amendment.

Suggested amendment carried.

The Hon. C.J. SUMNER: I would like to move the rest of the amendments to the schedule *en bloc* because they are all consequential on amendments that were made to the principal Act as we went through, and consistent with it.

The Hon. K.T. GRIFFIN: I do not intend to move my amendments to insert a subclause (la) in clause 7 and a subclause (la) in clause 16, because I have already been defeated on those two issues in the Bill and there is not much point in persisting with this in relation to subsidiaries.

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

Page 36—

After subclause (3) of clause 4 insert subclause as follows:

(3a) A director is not bound to give continuous attention to the affairs of the subsidiary but is required to exercise reasonable diligence in attendance at and preparation for board meetings.

Leave out from clause 4(4) 'any special' and insert 'the'.

After subclause (6) of clause 4 insert subclause as follows:

(7) A director of a subsidiary does not commit any breach of duty under this section by acting in accordance with a direction of the board of its parent corporation.

Page 38, after subclause (4) of clause 6 insert subclause as follows:

(4a) A transaction may not be avoided under subclause (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.

Page 39—

After subclause (3) of clause 8 insert subclause as follows:

(3a) A contract may not be avoided under subclause (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

After 'this schedule' in clause 10(1) insert '(other than an offence consisting of culpable negligence)'.

Leave out from clause 10(1)(b) 'an amount equal to' and insert 'compensation for'.

Page 40—After 'fixed' in clause 10(2) insert '(other than a contravention consisting of culpable negligence)'.

Leave out from clause 10(2) 'as a debt'.

Leave out from clause l0(2)(b) 'an amount equal to' and insert 'compensation for'.

Page 41—Leave out subclause (4) of clause 13.

After subclause (5) of clause 14 insert subclause as follows:

(5a) A contract may not be avoided under subclause (5) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

Leave out from clause 14(6)(b) 'an amount equal to' and insert 'compensation for'.

Leave out from clause 14(7) 'as a debt'.

Page 42—Leave out from clause 14(7)(b) 'an amount equal to' and insert 'compensation for'.

Page 43—After subclause (4) of clause 15 insert subclause as follows:

(4a) A transaction may not be avoided under subclause (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.

Leave out from clause 15(6)(b) 'an amount equal to' and insert 'compensation for'.

Leave out from clause 15(7) 'as a debt'.

Leave out from clause 15(7)(b) 'an amount equal to' and insert 'compensation for'.

Page 44—

Leave out from clause 16(3)(b) 'an amount equal to' and insert 'compensation for'.

Leave out from clause 16(4) 'as a debt'.

Leave out from clause 16(4)(b) 'an amount equal to' and insert 'compensation for'.

Suggested amendments carried.

The Hon. C.J. SUMNER: With the indulgence of the Committee, I wish to answer a question that the Hon. Mr Griffin raised earlier in the debate concerning the sort of public trading enterprises that might be brought under this legislation. There is not a final list, and on a previous occasion I gave an indication of some of the bodies. I will just give an indicative list at this stage which will give the honourable member and the Council some idea of what the Government has in mind. The Adelaide Convention Centre would be a candidate, as would the Australian Formula One Grand Prix Board, the Electricity Trust of South Australia, the Lotteries Commission, the Pipelines Authority, the South Australian Housing Trust (possibly), the South Australian Timber Corporation, the SA Totalisator Agency Board, the SA Urban Land Trust, the South Australian Meat Corporation and the State Clothing Corporation. The State Transport Authority is a possibility.

I also mentioned SGIC previously, which would be a candidate, although whether it is appropriate to bring it under this Act immediately would have to be looked at. The State Bank is a candidate, but whether it would be brought under this Act is something that would have to be considered, and obviously if the sale of the bank is decided on and it is corporatised through the Corporations Law first for the purposes of that sale then obviously that would not be brought under this Act—but that is a matter that is still being looked at. The Local Government Financing Authority has been suggested, and possibly SAFA, although that matter has not yet been determined. That gives some idea of the sorts of statutory authorities that are involved.

Progress reported; Committee to sit again.

WHISTLEBLOWERS PROTECTION BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1. Clause 4, page 2, lines 22 to 25—Leave out subclause (2) and insert the following subclause:

(2) The question whether a public officer—

(a) is or has been involved in—

(i) an irregular and unauthorised use of public money; or

(ii) substantial mismanagement of public resources; or

(b) is guilty of maladministration in or in relation to the performance of official functions is to be determined with due regard to relevant statutory provisions and administrative instructions and directions.

No. 2. Clause 9, page 4, line 28—Leave out 'Bring proceedings' and substitute 'lodge a complaint'.

No. 3. Clause 9, page 4, line 29—Leave out 'brings proceedings' and substitute 'lodges a complaint'.

No. 4 Clause 10, page 5, line 7—Leave out 'imprisonment for two years' and substitute 'division 5 fine or division 5 imprisonment'.

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

That the House of Assembly's amendments be agreed to.

Three amendments to the Bill were made in another place. The first is an amendment to subclause (2) of clause 4. It is consequential to an amendment moved in debate in this Council to add 'substantial mismanagement of public resources' to the list of 'public interest information'. This amendment simply incorporates that into this subclause.

The second and third amendments can be considered together. When an amendment was moved in the Council to add the option of a tort of victimisation, the intention of all members was that a person should have to elect which remedy he or she desired to pursue. However, in examining the wording it was thought the phrase 'bring proceedings' in reference to the Equal Opportunity Act was ambiguous. It was thought that the phrase 'lodges a complaint' was more clear cut. That is what attracts the jurisdiction of the Act.

The fourth amendment adds a fine to the offence and refers to the appropriate divisional penalty. The Government also undertook to look at the question of requiring a report on the operations of the act by the Commissioner for Public Employment. This was a matter I agreed to look at when the Bill was before us previously. The Commissioner was consulted and it was decided that such an amendment was not justified because:

1. The Commissioner could report only on the basis of reports supplied to him by GME Act agencies;

2. The Commissioner could not, therefore, provide a general report on the operation of the Act and the wider public sector, let alone local government and the private sector;

3. The Commissioner could not report on the experience of almost all of the 'appropriate authorities' specified in the Bill, let alone those not specified; and

4. The requirement to disclose may be premature and prejudice any resulting investigation, or one in progress.

It was therefore decided that the disadvantages of this requirement substantially outweighed any advantages. I point out that complaints of victimisation would end up with the Commissioner for Equal Opportunity in any event unless the tort option was taken, and one would expect the Commissioner for Equal Opportunity to include in her report details of claims under this Act. I commend the amendments to members.

The Hon. K.T. GRIFFIN: I support the proposition of the Attorney-General and appreciate the response he has given to other matters that were raised when the Bill was first being considered in the Committee stages. I appreciate the difficulty which the Commissioner for Public Employment has identified in making information available. I am disappointed that the Government did not pick up the amendment which I proposed in this House but which was defeated, and pursue it in the House of Assembly, relating to whistleblowers' counselling and the establishment of appropriate procedures to deal with whistleblowing.

I make that observation because the report of the study made interstate that was published in the press in the last day or so, suggests that victimisation has been quite substantial in relation to some 35 whistleblowers, and the record of the consequences of their action is quite appalling in terms of the pressures that were brought to bear upon them and what has occurred to them since they took the decision to become whistleblowers.

I guess what that has done is to reinforce the view which I expressed, and which the Liberal Party expressed, that there needs to be a mechanism within Government agencies established positively to address the issue of whistleblowing so that there is an ethos appropriate to whistleblowing and the resolution of issues raised by whistleblowers within Government agencies. If there is not that focus within Government agencies then the consequences we have seen reported may well ensue. I still strongly believe that there does need to be, within the public sector, the development of appropriate procedures to deal with whistleblowing as well as the provision of support before victimisation occurs and I would encourage the Government to give more careful and diligent consideration to that, particularly in the light of the interstate report. I support the Attorney-General's motion.

Motion carried.

LEGAL PRACTITIONERS (REFORM) AMENDMENT BILL

Consideration in Committee of the House of Assembly's amendments:

No. 1. Clause 5, page 2, lines 29-33 and page 3, lines 1-4— leave out sub-section (3) and insert—

(3) If a person to whom a practising certificate was issued subject to conditions under sub-section (1) fails to satisfy the Board of Examiners, in accordance with the rules, of compliance with the conditions, the Board may determine—

(a) that further conditions are to be imposed; or

(b) that the practising certificate is to be cancelled, or is not to be renewed, and no new practising certificate is to be issued to the previous holder of the certificate until stipulated conditions have been complied with,

(and, subject to any order of the Supreme Court to the contrary, a determination under this sub-section takes effect on a date fixed by the Board).

No. 2. Clause 5, page 3, line 6—leave out 'under the rules' and insert 'under this section, or the rules'.

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

That the House of Assembly's amendments be agreed to.

The amendment is made at the request of the Supreme Court Judges. Members will recall that one of the amendments in this Bill dealt with providing for new arrangements for the admission of practitioners and subsequent practical training because of the difficulties currently being experienced with the legal practice course and the likely continuation of those difficulties. The change in this procedure was agreed to by the Council.

The Supreme Court judges have now approached the Government to have the amendment (which we are considering) made to clause 5 of the Bill which deals with the conditions as to training to be imposed on the issue of new practising certificates. The Bill as originally introduced was to have that training imposed on the issue of new practising certificates to be set down by the Supreme Court. The judges have requested, for the sake of convenience and ease of administration, that where a person fails to comply with the conditions imposed a board of examiners and not the Supreme Court (as in the Bill) will exercise the powers in the Bill.

The Hon. K.T. GRIFFIN: I do not have any difficulty with the amendments.

Motion carried.

GUARDIANSHIP AND ADMINISTRATION BILL

Second reading.

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

That this Bill be now read a second time.

The Bill having dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill has several important purposes—

- it introduces new, more flexible provisions to facilitate the operations of the Guardianship Board and to assist the people it serves;
- it creates the key position of Public Advocate, with an important watchdog role on behalf of mentally incapacitated persons; a role which will advocate for the rights and interests of mentally incapacitated persons; a role which will seek to negotiate and resolve problems on behalf of mentally incapacitated people, people who are among the most vulnerable groups in our society;
- it removes the guardianship and administration from the legislative base of the Mental Health Act and establishes it under its own legislation, which more accurately reflects the broad range of the people the board can assist.

The Bill is the first major revision of guardianship and mental health legislation since the 1977 Mental Health Act. South Australia was a national leader with the development of the system of guardianship and review which was embodied in the Mental Health Act 1977. At that time, the role of multidisciplinary tribunals and the notion of guardianship were new to the mental health arena. The legislation was pioneering and far sighted.

The need was recognised at that time for an independent guardian who could protect the rights of persons with a mental illness or handicap. Guardianship was seen as providing an alternative decision maker, in areas such as financial management and accommodation, for people incapable of making those decisions themselves. Concurrently, it was recognised that some mental health treatment decisions which involve coercion, such as detention in hospital and compulsory treatment, should be determined or reviewed by an independent body. The mechanism for making these mental health treatment decisions, as well as the guardianship decisions, was placed within a new legislative framework of the Guardianship Board and the Mental Health Review Tribunal. The board and the Tribunal were established as multidisciplinary quasi-judicial bodies to conduct hearings into the circumstances of individuals.

The legislation provided for the Board to receive a person into its guardianship. As guardian it could then exercise a series of powers and make decisions in regard to that individual. Receipt into guardianship was also a prerequisite for the Board to make compulsory treatment decisions for people with long-term mental illness.

An appeal system was established by which the Mental Health Review Tribunal would hear appeals against orders of the board and against orders of detention to hospital made by psychiatrists. The Tribunal was also required to review certain orders made by the board or by psychiatrists.

In 1985, amendments to the Mental Health Act vested in the board authority for it to consent to medical and dental procedures on behalf of a person with a mental illness or mental handicap. It also provided for the appointment of other persons in the community, such as a family member or professional care giver, to act as delegates in the exercise of those powers.

Having regard to the passage of time since the commencement of the arrangements, a Review of the Guardianship Board and Mental Health Review Tribunal was established in 1988 and reported in 1989. The Review identified a number of issues of concern in the current arrangements.

These included:

- the potential for the role of families and carers to be inappropriately restricted and undervalued;
- the resolution of problems on a case by case basis with no apparent forum or mechanism for resolving underlying common problems;
- a conflict that existed for the board in its roles of investigator, formal decision maker and guardian;
- the confusion that arose from mental health treatment decisions being made within the guardianship framework;
- the limited availability of information about the operation of the board and its decisions, and alternative courses of action;
- the potential for duplication and confusion in the appeal and review systems.

The review recommended a significant restructuring of the system. In 1990 a review was undertaken of the 1985 Consent to Medical and Dental Procedures provisions inserted as Part IVA of the Mental Health Act. That review reflected some of the concerns of the earlier review and supported its philosophical directions. In particular, it acknowledged the legitimacy of the family as a decision maker in the area and sought to simplify arrangements for most routine treatments, whilst focussing the board's involvement on matters which are complex and/or contentious. I table the report for the information of members.

Following release of each of the reports, extensive consultation has occurred with a wide group of consumers,

carers, Government departments, non-government organisations and professional groups.

The Bill before members today seeks to give effect to the major recommendations of the reviews, as refined by the consultation process. The thrust of the Bill is consistent with the emerging national model of guardianship. Since South Australia's lead in this area, guardianship legislation has been enacted or passed in most States and Territories in Australia. Learning from South Australia and overseas experience, a model has been developed which is now common to New South Wales, Victoria, Australian Capital Territory, Western Australia and the Northern Territory and is under consideration in Tasmania and Queensland.

The Bill proposes that the guardianship and administration system be removed from the legislative base of the Mental Health Act and established under its own, specific legislation, in recognition of the range of circumstances of the people it can assist.

This Bill focuses on maintaining family and local support for individuals with a mental incapacity. It seeks to reduce and minimise the level of bureaucratic intrusion into the lives of such people, yet ensure that checks and balances exist for protecting these vulnerable members of our community. It will provide a sound balance between an individual's rights to autonomy and freedom and the need for care and protection from neglect, harm and abuse.

The Bill establishes a clear philosophy for the way in which all matters will be dealt with, by establishing a set of principles to guide decision makers. These principles emphasise the primacy of the decision which the person would have made (to the extent that this can be determined) had they not been mentally incapacitated.

To take a simple example, it may have been a person's practice to make a regular donation to their local church. The system should enable that to continue, despite another person taking over the management of their financial affairs.

The principles also require due consideration to be given to maintaining existing informal arrangements which are working well, for the care of persons or the management of their finances.

Changes in the board's operation are proposed to ensure the board's efforts are most effectively employed. For example, currently most matters regardless of complexity, are dealt with by a five person division of the board. The new arrangements propose that the board's expertise is redirected so that routine matters can be handled by one member and more complex situations are dealt with by three members. Some less complex matters are already dealt with by the Chairman alone but these changes will allow greater flexibility through the use of any single member of the board.

Clear direction is provided on a number of procedural matters. In addition a position of Registrar of the board is proposed. As in other jurisdictions, such a position, with the approval of the presiding officer of the board, will exercise certain routine functions of the board, thereby assisting the board in the efficient execution of its duties.

The Bill establishes as a major initiative, a statutory position of Public Advocate. The Public Advocate will seek to resolve problems so that, unless appropriate, the legal processes of the board need not be invoked. When they are invoked, the Public Advocate will provide significant assistance.

A range of supports to clients and carers will be available through the Office of the Public Advocate. These may include assisting clients to obtain services, raising concerns regarding service provision, giving information about the operation of the board and promoting alternatives such as powers of attorney.

The Public Advocate will play a major watchdog role investigating issues and concerns raised by any member of the community about the well being and treatment of a person with a mental incapacity. Investigations may also be made in regard to a person with mental incapacity who is the subject of a board order or application.

Where the board is unable to locate a suitable guardian in the community, the Public Advocate will also have the key role of the public guardian or guardian of last resort.

The Public Advocate will operate on the fundamental principle of promoting agency and community responsibility rather than seeking to develop an extensive service provision role for its staff. Thus it will remain a small, but vital, advocacy agency.

The Public Advocate will be required to report annually to the Minister and the report will be required to be tabled in Parliament.

Another significant initiative of the Bill is the power for a person to make provision for his or her future incapacity by appointing an enduring guardian. Just as, under the Consent to Medical Treatment and Palliative Care Bill, a person may make specific provision for a medical agent to consent to his or her medical treatment during any period of mental incapacity or, under the Powers of Attorney and Agents Act, may make specific provision for an enduring power of attorney that will cater for all financial or property matters during such a period of incapacity, so under this measure he or she could cover the area of his or her personal care and welfare. To avoid confusion, such a guardian will be able to consent to medical treatment only if there is no medical agent reasonably available and willing to act. An enduring guardian will have to abide by the principles stated in the Act and may, in certain circumstances, have his or her appointment terminated by the Board.

It is proposed that the board maintain its role in making guardianship orders. The board can appoint only natural persons to be guardians and, subject to any terms of the board's order, a person so appointed will be able to exercise all the powers of a guardian instead of the Board taking over such decisions.

This moves the decision making from a panel to a person who is closer and better placed to make those decisions. Guardianship orders in these new arrangements only relate to traditional guardianship responsibilities. (Coercive mental health treatment decisions, for example, will be made as orders in their own right not as decisions by a guardian.)

Criteria are included in the Bill to assist the Board in establishing the need for guardianship and the person best able to provide that role. Guardianship orders may be limited to only those areas of a person's life where intervention is essential, rather than the current single option of all-encompassing orders. Special power is included to enable the board, on application of a guardian, to direct that a person reside in a particular place, in the interests of the person's health or safety, or where the safety of others would be at risk were such an order not to be made.

In the area of administration orders, a major change is the removal of the Public Trustee's "preferred provider" status. This allows the Board to appoint administrators according to the needs of each particular person. The Public Advocate will also be able to assist families to undertake this role. The Bill transfers the powers of administrators from the Administration and Probate Act 1919 to this Act and establishes the Board as the single authority for the execution of powers under this Act.

The Bill also provides for the remuneration, where appropriate, of private professional administrators.

The Bill provides updated powers in relation to consent to medical and dental treatment where there is no medical agent available and willing to act. It enables certain defined family members to give their consent to most routine treatments for a person with a mental incapacity without any formal process of appointment by the board. The board only becomes involved where there is no suitable family member, or in contentious or complex matters (for example, termination of pregnancy and sterilisation). It may also become involved where there is some concern about the manner in which a family member may exercise this power, or where the clinician considers independent scrutiny of the decision is appropriate.

The Bill also reflects an overhaul of the current review and appeal processes, streamlining what has been criticised as a complex and repetitive system. It is expected that with the greater attention and assistance to be provided to persons under the mechanisms and directions established by the legislation, there will be a reduction in the current numbers of reviews and appeals. That has been the experience elsewhere. Nonetheless, it is important to ensure that the legislation enshrines clear mechanisms for review and appeal.

The Bill obliges the board to review the circumstances of a protected person at regular intervals, to determine the continuing appropriateness of the order to which the person is subject. Decisions or orders of the Registrar are subject to review by the board, on application to the Board by a party to the proceedings. The board may confirm, vary or set aside the decision or order.

Appeals against board decisions will be available through the Administrative Appeals Court. The court will sit with assessors, who will be persons appointed to panels by the Governor. The panels consist of persons whose expertise is appropriate to the Act and persons concerned with promoting the rights of mentally incapacitated persons or who have expertise in other appropriate fields. If the appeal relates to an order or decision of the board under the Mental Health Act 1993, a psychiatrist must be an assessor. These arrangements provide an efficient and effective administrative and legal framework for the hearing of appeals. Appeals will be conducted as a review of the decision, with the option of further evidence being heard, rather than as complete re-hearings of matters. An automatic right to appeal will only be available in matters of detention, sterilisation or termination of pregnancy. In all other situations, an aggrieved person requires the leave of the board or the court for the appeal to proceed. Legal representation for the person with a mental incapacity will continue to be available, without charge to the person. In certain circumstances, a party dissatisfied with a decision or order of the Administrative Appeals Court may, with the leave of that court or the Supreme Court, appeal to the Supreme Court.

With the proposed restructuring of the review and appeal processes, the Mental Health Review Tribunal, which is established under the current legislation, will no longer exist. Its functions are transferred to the board or the Administrative Appeals Court.

As members will be aware, this Bill was introduced into this Council last year. Since then consultation has taken place on this measure and on the companion Mental Health Bill. The only significant changes made to the Bill as a result of this process have been the removal of certain investigative powers that were accorded to the Public Advocate under the previous version, and the addition of the power to appoint an enduring guardian.

I commend the Bill to the House. It proposes a sound balance between an individual's rights to autonomy and freedom and the need for care and protection from neglect, harm and abuse.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for commencement of the Act by proclamation.

Clause 3 sets out the definitions of expressions used in the Act. The definition of "mental incapacity" includes a person who cannot look after his or her own health, safety or welfare or manage his or her own affairs as a result of a physical illness or condition that renders the person totally unable to communicate.

Clause 4 makes it clear that this Act does not, in the absence of clear expression to the contrary, detract from the operation of other Acts.

Clause 5 sets out the basic principles that govern the administration of this Act by all persons involved, including persons appointed as guardians or administrators. The principle widely known as "substituted judgment" is embodied in paragraph *(a)*. This principle requires the relevant decision maker to give pre-eminent consideration to what, in his or her opinion, the person with the mental incapacity would have wished in the circumstances had he or she not been incapacitated, so far as there is reasonably ascertainable evidence on which to base such an opinion.

The current wishes of the incapacitated person must also be ascertained where possible and given consideration. Consideration must be given to the existing arrangements for the care of the incapacitated person and to the desirability of not disturbing them. Finally, all decisions must be the least restrictive of the person's rights and autonomy as is possible in the circumstances, given that he or she does need care and protection.

Clause 6 establishes the Guardianship Board. For any particular proceedings before the board, it will he comprised of the President of the board or one of the Deputy Presidents, plus two panel members, one being from the panel of professionals (doctors, psychologists, etc.) and one from the panel of "consumer advocates". The members who constitute the Board for the purposes of hearing appeals against decisions or orders under the Mental Health Act will not deal with any other class of matters. A psychiatrist must be on the board for all matters under the *Mental Health Act.* The regulations may provide for the board to be constituted of one member sitting alone to deal with such matters as the regulations may prescribe. Board members who have a personal or financial interest in a matter before the board are disqualified from hearing the matter.

Clause 7 provides for the appointment by the Governor of the President and such number of Deputy Presidents as may be appropriate. For a person to be appointed to such an office, he or she must be a magistrate, a retired magistrate or judge or a legal practitioner of at least five year's standing. Interstate experience is counted.

Clause 8 requires the Governor to set up the two panels from which Board members will be drawn. One panel will be appropriate professionals, the other will be persons interested in promoting the rights of mentally incapacitated persons, or with other relevant expertise.

Clause 9 deals with vacancies in and removal from office of board members.

Clause 10 provides for board members' allowances and expenses.

Clause 11 provides that vacancies on the board or panels do not affect the validity of board decisions.

Clause 12 provides that the President or a Deputy President will preside at board meetings and will determine all questions of law. Other matters will be determined on a majority basis. The board is not bound by the rules of evidence.

Clause 13 empowers the board to appoint assistants for the purposes of conducting proceedings.

Clause 14 provides the board with the usual powers to summon witnesses, etc. Subclause (4) requires the board to give notice of any particular proceedings to the applicant, the person to whom the proceedings relate, the Public Advocate and such other persons as the board believes have a proper interest in the matter. The applicant and the person to whom the proceedings relate may call and cross-examine witnesses and make submissions. Interim 7-day orders may be made in urgent cases. The board has a wide power to hold closed hearings or to exclude specific persons from a hearing. The Board has no power to award costs against a party.

Clause 15 empowers the board to require certain medical and psychiatric reports. If the person fails to produce such reports the President (or a Deputy President) can issue a warrant authorising the Public Advocate or a member of the police force to apprehend the person and take him or her to a medical practitioner, etc., nominated by the board for examination. The board will bear the costs of such an examination.

Clause 16 requires the board to furnish the Minister with an annual report. The report must include details of warrants issued by the board during the year.

Clause 17 provides for the position of Registrar of the board. The Registrar may be given certain board matters to deal with if the President so directs.

Clause 18 provides for the position of Public Advocate.

Clause 19 provides for the appointment of the Public Advocate by the Governor on terms and conditions fixed by the Governor.

Clause 20 provides that the Public Advocate's term of office will be five years, and makes the usual provision for vacancies in and removal from office.

Clause 21 sets out the general functions of the Public Advocate, which include speaking for mentally incapacitated persons generally or for a particular person. The Public Advocate will also have a general duty to monitor the operation of the Act and to keep under review all Government and private sector programs for mentally incapacitated persons.

Clause 22 empowers the Public Advocate to delegate powers to any Public Service or Health Commission employee on the staff of the Public Advocate's office.

Clause 23 requires the Public Advocate to furnish the Minister with an annual report. Again, this report must contain particulars of applications made by the Public Advocate for the issue of warrants.

Clause 24 provides that a person of or over 18 years of age may appoint an enduring guardian. It is made clear that the powers extend to consenting to medical treatment, except where the person already has a medical agent under the Consent to Medical Treatment and Palliative Care Act who is available and willing to act. A person must be of or over 18 to be appointed as a guardian and cannot be appointed if he or she is involved in the medical care or treatment of the appointee.

Clause 25 empowers the board, on application, to revoke the appointment of an enduring guardian, if the guardian seeks the revocation or if the board is satisfied that the guardian is unable or unwilling to act, is incompetent or has acted negligently or contrary to the principles stated in the Act.

Clause 26 extends the operation of clause 31 of the Bill to include enduring guardians. The effect of this is to enable a guardian to apply to the board for an order empowering the guardian to have the person of whom he or she is the guardian placed and, if need be, detained in some place (e.g. a nursing home). Such an order gives protection to nursing home administrators and staff in cases where a resident with a mental incapacity requires to be physically restrained from wandering, etc.

Clause 27 empowers the Public Advocate to carry out investigations into the affairs of any persons alleged to be in need of the protection of an order under this Act at the direction of the board.

Clause 28 provides for the making of guardianship orders. The board may make a limited order (i.e., specifying particular areas of the protected person's welfare that will be handled by the guardian). If a limited order is not appropriate, the board may make a full guardianship order. Orders may be subject to limitations and may be made for a specified period of time. A guardian must be a natural person, and joint guardians may be appointed where appropriate. The Public Advocate may be a guardian if no other suitable person can be found.

Clause 29 provides for revocation or variation of a guardianship order.

Clause 30 provides that a guardian has the powers that a guardian has under common law or in equity. These of course can be modified by the terms of the board's order.

Clause 31 gives the board the power to direct that the protected person reside in a particular place or such place as the guardian may decide and, if necessary, that he or she be detained there. The board may also authorise the use of force in the day-to-day care of a protected person or in ensuring he or she receives proper medical treatment. These powers can only be exercised if the board so authorises on the ground that, if it were not to do so, the health or safety of the person, or the safety of others, would be seriously at risk. This section does not authorise detention in a mental institution. An order under this section protects a person who seeks to enforce the order in the event that the protected person leaves, or attempts to leave the premises without lawful authority or excuse.

Clause 32 sets out the persons who can make any application under this Division. The mentally incapacitated person (or a person alleged to have such an incapacity) may make any application, as may the Public Advocate, a relative of the person, a guardian or medical agent (if one has already been appointed), an administrator or any other person with a proper interest in the matter.

Clause 33 provides for reciprocal administration of guardianship orders between States that have similar laws.

Clause 34 provides for the making of administration orders in relation to a mentally incapacitated person's estate. As with guardianship orders, a limited order may be made in respect of only portion of the estate, but if this is not appropriate, a full administration order may be made. Trustee companies, the Public Trustee or a natural person may be appointed. An administration order may confer extra powers on the administrator beyond those spelled out in clause 38.

Clause 35 provides for variation or revocation of administration orders.

Clause 36 sets out who may apply for orders under this Division.

Clause 37 requires the board, on making, varying or revoking an administration order, to forward a copy of the board's order to the Public Trustee.

Clause 38 sets out the powers that an administrator may exercise, subject, of course, to the terms of the administration order itself. The administrator is in the position of a trustee. Subclause (3) provides that monetary limits on the powers of administrators may be prescribed by the regulations. Sale or long term lease of the protected person's real property, or purchase, etc., of new real property can only be effected with the board's prior approval.

Clause 39 entitles an administrator to get access to wills and records relating to the protected person's property. Failure to give such access is an offence. An administrator cannot disclose the contents of a will except with the approval of the Board.

Clause 40 empowers an administrator to continue to act after the death of the protected person or the revocation of his or her appointment, but only up until he or she becomes aware of the fact of the death or revocation. Even after becoming aware of the protected person's death, an administrator may pay the person's funeral expenses. Subclause (3) empowers the board to extend the period during which the administrator may act, but not so as to exceed two months after the date of death.

Clause 41 gives an administrator the power to avoid a disposition of property or a contract entered into by a protected person, except where the other party did not know and could not reasonably be expected to have known that the person had a mental incapacity at the time.

Clause 42 empowers the Supreme Court to adjust entitlements between beneficiaries of a protected person's estate, if it appears that the actions of an administrator have lead to some disproportionate advantage or disadvantage in those entitlements. An application for adjustment must be made within six months of the grant of probate, unless the court allows otherwise.

As this clause is a direct repetition of section 118s of the Administration and Probate Act, which provided that the section did not apply in relation to the will of a person who died before the commencement of that section (1 January 1985), subclause (8) of this new provision preserves that cut-off point.

Clause 43 requires an administrator (other than the Public Trustee) to give a statement of the accounts of the estate at regular intervals to both the Board and Public Trustee. The statement is to be examined by the Public Trustee who may recommend disallowance of items of expenditure in certain circumstances. The administrator is personally liable to reimburse the protected person's estate for a disallowed item of expenditure, and must pay the Public Trustee's costs in the matter. (A right of appeal exists should an administrator wish to object to an order of the board disallowing an item of expenditure.) Subclause (6) requires the board to allow the protected person (or some other appropriate person) access to the statement of accounts prepared under this section.

Clause 44 places a similar obligation on the Public Trustee to provide statements of account for estates administered by the Public Trustee. If the board disallows an item of expenditure the Crown is liable to the protected person for that amount.

Clause *45* gives the board power to determine whether or not an administrator who carries on the business of administering estates is to be remunerated for acting as an administrator, whether the administrator commenced before or after the commencement of the Act. A rate will be prescribed by the regulations, but the board may fix a higher or lower rate in any particular circumstances. This section does not affect the Public Trustee's or a trustee company's right to recover charges and expenses.

Clause 46 enables an administration order to be registered under the Registration of Deeds Act or the Real Property Act in relation to any interest in land that forms part of the protected person's estate.

Clause 47 deals with administering property held in different States or countries by a mentally incapacitated person. The Public Trustee may administer property within this State belonging to a mentally incapacitated person subject to an administration order in some place outside this State.

Clause 48 makes it clear that a person may withdraw any application under this Part at any time.

Clause 49 sets out the criteria for determining whether a person is eligible for appointment as a guardian or administrator. In looking at the question of conflict of interest, the board cannot give any weight to the fact that the proposed guardian or administrator is related to the protected person by blood or marriage.

Clause 50 provides that a person cannot be appointed as a guardian or an administrator unless he or she consents to the appointment.

Clause 51 provides that if two or more persons are appointed as joint guardians or joint administrators, all must concur in any decision made or action taken, unless the order appointing them provides otherwise.

Clause 52 provides that an order of the board commences on the day on which it is made, or some future date specified in the order.

Clause 53 provides for termination of appointment of a guardian or an administrator on death, on revocation of the order or on revocation of the appointment. The board may revoke an appointment on various grounds set out in subclause (2)*(b)*.

Clause 54 obliges the board to give the person to whom proceedings relate a statement of his or her appeal rights against any order or decision the board may make in those proceedings.

Clause 55 empowers the board to direct that a protected person can only make a will in accordance with precautionary procedures set out by the board. A will made in contravention of such a direction is invalid.

Clause 56 obliges the board to review the circumstances of a protected person at least every three years. If the person is being detained in any place pursuant to an order of the board, the first review must be within six months and then at least every year. The board must, on completing a review, revoke the orders to which the person is subject unless satisfied that it should remain in force.

Clause 57 provides that the provisions of the Act that deal with consent to medical or dental treatment apply to any mentally incapacitated person, whether he or she is subject to a guardianship or administration order or not, but will not apply if he or she has a medical agent who is reasonably available and willing to act.

Clause 58 sets out the persons who may give consent to the medical or dental treatment of a mentally incapacitated person. If a person has been appointed as a guardian under any Act or law, the guardian is the person who may give consent. In cases where there is no such appointed guardian, a relative may give the consent or the board, if application for it to do so has been made by a relative, a doctor (or dentist, where relevant) or any other person with a proper interest in the matter. Effective consent will be deemed to have been given if the mentally incapacitated person consents to the treatment and the doctor or

dentist did not know, and could be expected to have known, of the mental incapacity. If a person falsely represents to the practitioner that he or she is able to give effective consent (e.g. that he or she is an appointed guardian) the practitioner may go ahead with the treatment with impunity.

Clause 59 makes it an offence to give consent without being authorised by or under this Act to do so, or for a person to falsely represent that he or she is so authorised.

Clause 60 makes special provision for consent to prescribed treatment (i.e., sterilisation, abortion and any other treatment prescribed by the regulations). This kind of treatment cannot be given (except in emergency situations) unless the board has given its consent. A medical practitioner who does so will be guilty of an offence punishable by imprisonment. The same criteria on which the Board must make its decision as are set out in the current Mental Health Act are set out in subclauses (2) and (3).

Clause 61 provides that any consent given by the board must be in writing.

Clause 62 provides that if the Registrar makes a decision or order while exercising the jurisdiction of the board pursuant to this Act, the decision or order is subject to review by the board.

Clause 63 empowers the board or the Administrative Appeals Court to state a case to the Supreme Court on any question of law.

Clause 64 provides for the appointment of assessors to sit with a District Court Judge for the purposes of hearing appeals to the Administrative Appeals Court. Assessors will be drawn from two panels established by the Governor for the purpose. One panel will be of persons with appropriate expertise, the other will be of persons who have expertise in promoting the rights of mentally incapacitated people or expertise in other forms of relevant expertise. Subclause (8) provides that a psychiatrist must be one of the assessors for any appeal against orders of the board made under the Mental Health Act.

Clause 65 gives a right of appeal against decisions or orders of the board (whether made under this Act or any other Act) to the Administrative Appeals Court. The applicant in the board proceedings, the mentally incapacitated person, the Public Advocate, any person who made submissions to the board in the original proceedings and any other person who has a proper interest in the matter may exercise the right of appeal. The appeal is as of right in the case of an order for detention or a decision relating to sterilisation or termination of pregnancy. In all other cases, the appellant must seek leave to appeal either from the board or the Administrative Appeals Court. Appeals relating to termination of pregnancy must be instituted within two days of the decision or order being made. The court has an absolute discretion to close the court during a hearing or to exclude specific persons from the courtroom.

Clause 66 sets out the powers of the court to set aside, confirm or make substitute orders on an appeal. Costs can only be awarded against a party who has deliberately delayed the proceedings or whose conduct in relation to the appeal proceedings has been frivolous or vexatious.

Clause 67 provides that the court is to conduct an appeal as a review of the original decision or order on the evidence that was presented to the board. The court can accept fresh evidence if it sees fit to do so.

Clause 68 provides for appeals to the Supreme Court of the decisions or orders of the Administrative Appeals Court. Certain matters are not so appealable, e.g., orders relating to terminations of pregnancy and orders made in relation to orders of the board in exercising its appellate jurisdiction under the Mental Health Act. An appellant must seek leave to appeal under this section from the Administrative Appeals Court or the Supreme Court. Costs cannot be awarded against the mentally incapacitated person.

Clause 69 provides that the Supreme Court must conduct an appeal as a review of the Administrative Appeals Court's order on the evidence that was before that court. The Supreme Court may admit fresh evidence.

Clause 70 allows for orders that are appealable to be suspended pending the outcome of an appeal.

Clause 71 entitles an appellant who is the mentally incapacitated person to be represented free of charge by a legal practitioner provided by a scheme to be established by the Minister. The Health Commission will pay legal fees, in accordance with a prescribed scale, where a private practitioner represents a mentally incapacitated person under the scheme.

Clause 72 enables a guardian or administrator (including an enduring guardian) to seek advice and directions from the board as to the exercise of his or her powers.

Clause 73 requires administrators and guardians of the one person to keep each other informed over all substantial decisions.

Clause 74 makes it an offence for a person who has the oversight or care of a mentally incapacitated person to illtreat or wilfully neglect the person.

Clause 75 provides a number of offences relating to falsely certifying that a person has a mental incapacity, making such a certification without examining the person, or otherwise fraudulently attempting to have a guardianship or administration order made.

Clause 76 makes it an offence for a medical practitioner, psychologist or other health professional to sign any certificate or report in respect of a person to whom he or she is related by blood or marriage (including a putative spouse relationship).

Clause 77 deals with improper inducement of a person to sign an instrument supporting an enduring guardian. This is identical to the offence in the Consent to Treatment and Palliative Care Bill.

Clause 78 provides that persons engaged in the administration of the Act must not divulge personal information regarding persons subject to proceedings under this Act, unless required or authorised to do so by law or his or her employer.

Clause 79 prohibits the publication of reports of proceedings before the board or any court under this Act, unless the board or court authorises otherwise. If it does so, the report must not disclose the identity of the person to whom the proceedings relate.

Clause 80 provides for service of notices personally or by post or fax.

Clause 81 provides the usual immunity from liability for persons engaged in the administration of the Act (this does not include guardians or administrators).

Clause 82 provides for certain evidentiary matters relating to orders of the board.

Clause 83 provides for the making of regulations.

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

MENTAL HEALTH BILL

Second reading.

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

That this Bill be now read a second time.

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

Leave granted.

This Bill makes provision for the treatment and protection of persons suffering from a mental illness and repeals the current *Mental Health Act 1977.* It reflects the transfer of the guardianship and administration provisions to a separate Act, namely, the *Guardianship and Administration Bill 1993* and the licensing of psychiatric rehabilitation centres provisions to the *Supported Residential Facilities Bill 1992.* It is essentially a redrafting of the remaining provisions of the current Act, with some restructuring of the administration of the Act, general updating and clarification of powers and inclusion of several new provisions designed to assist the persons coming within its ambit.

In relation to detention orders, a new provision is included to enable a person to be detained for a second 21-day period if two psychiatrists have separately examined the patient and believe such an order to be justified. Under the current arrangements, only one 21-day detention may be ordered (unless the person is considered to be a danger to others in the community). The amendment recognises that some people require a longer period of assessment.

The Guardianship Board will continue to have a significant role in relation to persons coming within the ambit of the *Mental Health Act.* The concept of continuing detention orders is introduced (in lieu of the current custody orders). If the Board, on application, is satisfied that a person detained in an approved treatment centre is still suffering from a mental illness that requires treatment, and should be further detained in the interests of their own health and safety or for the protection of other persons, it may order detention for a further period not exceeding 12 months. An important feature of the new provision is its time-limited nature, as opposed to the current open-ended orders. Applications for such orders are to be made by persons in a position to provide the necessary service.

In relation to treatment orders, the Board continues to have an important role. Compulsory treatment orders for patients subject to long term detention will continue to be made by the Board. For people who still require treatment but not hospitalisation, the Board may make treatment orders requiring attendance at a medical clinic. This could only be done under the current Act by the making of a guardianship order. The authority of the Board to consent to psychosurgery has been removed. In line with the United Nations Convention, it is no longer acceptable for psychosurgery to be performed without the consent of the individual who is to undergo the surgery.

In relation to reviews and appeals, under the current Act provision is made for the Mental Health Review Tribunal to review detention orders made by psychiatrists and custody orders made by the Board. The Bill provides for these reviews to be conducted by the Board, although the latter order is to be known as a continuing detention order.

As provided in the *Guardianship and Administration Bill 1993,* appeals in relation to certain Board decisions will be to the Administrative Appeals Court. A right of appeal to the Board against detention decisions by a psychiatrist will be continued, but with appeals going to a specific division of the Board, in lieu of the Mental Health Review Tribunal. The members who constitute the Board for the purpose of considering such appeals will sit exclusively in that jurisdiction. Legal representation will continue to be available for the person with the mental illness at no charge to the person for appeals to the Board and Court. A number of other provisions are drawn to members' attention.

Consumers have argued strongly for mentally ill persons who are being transferred to hospital to be given the option to travel by ambulance in lieu of police vehicles. The Bill provides for this option.

Mental Health authorities in each State and Territory have agreed on the need for each State's legislation to assist the transfer of patients across State borders. The Bill makes provision for this to occur.

The Bill also establishes the position of Chief Adviser in Psychiatry. This position will provide independent oversight of clinical practice in the administration of this Act.

Transitional provisions have been included to ensure the smooth transition from the current arrangements to the new *Mental Health Act* and *Guardianship and Administration Act.* On enactment, all existing guardianship orders made under the previous legislation, including all ancillary mental health treatment orders, will continue to have effect as per the terms of the previous legislation. These orders will be reviewed by the Board within twelve months to arrange appropriate transition. All administration orders will, on commencement of the new Act, be considered to be administration orders under the *Guardianship and Administration Act.*

This Bill, which was first introduced into this House in May 1992, has since then been the subject of consultation with interested parties. No substantial amendment to the Bill has resulted from this process.

I commend the Bill to the House.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for commencement of the Act by proclamation.

Clause 3 provides necessary definitions.

Clause 4 charges the Health Commission with the administration of this Act. The Commission is subject to the control and direction of the Minister in discharging its functions under this Act.

Clause 5 sets out in subclause (1) the principles that are to guide all action taken under this Act in relation to a person who is mentally ill. Subclause (2) sets out various objectives that the Commission and the Minister are to endeavour to achieve. These principles and objectives are virtually identical to those set out in the current *Mental Health Act.*

Clause 6 creates the office of Chief Advisor in Psychiatry, to which the Governor may make an appointment, from time to time as necessary, on terms and conditions fixed by the Governor.

Clause 7 sets out the functions of this office, which is basically to be an advisor to the Government on matters relating to psychiatry.

Clause 8 allows for the Minister to declare any premises, or a particular part of any premises, to be an approved treatment centre where persons can be detained and treated pursuant to the Act. Such a declaration can only be made if the Health Commission so recommends.

Clause 9 obliges the director of an approved treatment centre to keep a register of patients within the centre.

Clause 10 obliges the Chief Executive Officer of the Health Commission to inform an inquirer who has a proper interest in the matter as to whether or not a person has been admitted to or

is being detained in a treatment centre. On a patient being discharged from a centre he or she may obtain a copy of all orders, etc., by virtue of which he or she was detained or treated.

Clause 11 makes it clear that a person admitted to an approved treatment centre of his or her own volition is free to leave the centre at any time. Detention orders can be made in respect of such a person.

Clause 12 provides for the detention of mentally ill persons in approved treatment centres for the purposes of being treated for their illness. The first order is effective for 3 days, the second for up to 21 days and the third for up to 21 days. Thus the patient can only be detained under this section (i.e., under orders of medical practitioners or psychiatrists) for a continuous period of no more than 45 days. Orders may be revoked at any time by the director of the centre. Psychiatric reports on which 21-day orders are founded must be forwarded to the Board, as such orders are appealable.

Clause 13 provides for the continuing detention of a mentally ill person beyond the initial 45-day period, by order of the Board. Such an order cannot exceed 12 months, but of course a further such order can be made on the expiry of a previous order. The Public Advocate and the directors of treatment centres (or their delegates) are the only persons who can apply to the Board for such an order. A wider range of persons can apply at any time for the revocation of the order, including, of course, the patient himself or herself.

Clause 14 requires directors of approved treatment centres to comply with detention orders except that they may, before admission, arrange the transfer of patients to other approved treatment centres where desirable in the interests of the patient.

Clause 15 requires the director of the approved treatment centre to give a patient who is admitted and detained in the centre a written statement of his or her legal rights. A relative of the patient must also be sent the same statement, unless it would not be in the patient's interests to do so.

Clause 16 deals with the transfer of patients to other approved treatment centres.

Clause 17 empowers the director of an approved treatment centre to grant a patient leave of absence from the centre, which may be cancelled at any time by the director.

Clause 18 deals with the giving of treatment to a patient during the initial 45-day period of detention. This treatment (if it is not prescribed psychiatric treatment) may be given to the patient notwithstanding the absence or refusal of consent to the treatment, and includes medical treatment (other than steralisation or termination of pregnancy) as well as treatment for the mental illness.

Clause 19 deals with the giving of treatment to a patient who is being detained pursuant to a continuing detention order of the Board. In this situation, treatment can only be given if it has been authorised by order of the Board. Again, this does not include prescribed psychiatric treatment. Applications for treatment orders can only be made by a medical practitioner or the director of the approved treatment centre in which the person is being detained. Again, consent to the treatment is not essential, nor is it to any other medical treatment of the patient (not being sterilisation or termination of pregnancy).

Clause 20 deals with the compulsory treatment of mentally ill persons who are not being detained in approved treatment centres. The Board can authorise the giving of treatment to such a person (not being prescribed psychiatric treatment). Applications for this kind of order can only be made by the Public Advocate or a medical practitioner.

Clause 21 provides that a wide range of persons can apply for revocation of any treatment order under this Part, including, of course, the patient himself or herself.

Clause 22 deals with the giving of prescribed psychiatric treatment. Category A treatment (essentially only psychosurgery falls into this category at the moment) requires the authorization of the person who will administer it and of two psychiatrists (one being a senior psychiatrist) and also the consent of the patient, who must have the mental capacity to give effective consent. Category B treatment (i.e. shock therapy) requires the authorisation of one psychiatrist and the consent of the patient or, if the patient is incapable of giving effective consent, the consent of a guardian or parent in the case of a child under 16, or a medical agent or, as a last resort, the Board, in the case of someone of or over 16. Consent can be dispensed with for any particular episode of treatment that is so urgently needed that it is not practicable to wait for the normally necessary consent. An offence of giving prescribed treatment in contravention of this section is an offence carrying division 4 penalties.

Clause 23 deals with the power of the police to apprehend a person who is believed to be mentally ill and to be a danger to himself or herself or others. If this occurs, the person must be taken to a medical practitioner for examination. Subclause (2) deals with the power to apprehend persons who have "escaped" from approved treatment centres in which they are being detained. This power can be exercised by the police and by directors of approved treatment centres and authorised staff of those centres. Subclause (4) empowers the police to apprehend persons for the purposes of enforcing compliance with a treatment order made by the Board. Ambulance officers are given the power to convey persons who have been apprehended and a power to assist medical practitioners in carrying out examinations or treatment, if requested to do so. An ambulance officer may also assist a police officer in the exercise of powers under this section. Police officers also have the power to assist medical practitioners on request, and may assist ambulance officers in transporting persons.

Clause 24 requires the Board to review detention orders made by medical practitioners or psychiatrists if such an order is made within 7 days of the patient being discharged from hospital after being detained under a similar order. The Board has a discretion as to the review of other detention orders under section 12.

Clause 25 requires the Board to revoke a detention order on completing a review unless the Board is satisfied that there are proper grounds for the order to continue in force.

Clause 26 gives a right of appeal to the patient, the Public Advocate, and any other person who the Board is satisfied has a proper interest in the matter, against a detention order made under section 12 by a medical practitioner or psychiatrist. The Board is the forum for determining such appeals.

Clause 27 provides that the Minister must establish a scheme of legal aid for patients who appeal to the Board against detention orders made under section 12. Private legal practitioners who act for a patient under this scheme will be paid by the Health Commission in accordance with a prescribed scale.

Clause 28 informs that the *Guardianship and Administration Act* gives certain rights of appeal against orders made by the Board under this Act.

Clause 29 requires the Board to give the person to whom an order relates a statement of his or her appeal rights.

Clause 30 creates an offence (identical to that in the current Act) of a carer neglecting or illtreating a person who has a mental illness.

Clause 31 creates offences (again identical to those in the current Act) relating to the giving of authorisations or making of orders by medical practitioners, or by persons who falsely pretend to be medical practitioners, etc. These offences are punishable by division 5 imprisonment or fines.

Clause 32 provides that a medical practitioner cannot sign any order, etc., under this Act in respect of a person who is a relative or putative spouse.

Clause 33 makes it an offence to remove a patient from an approved treatment centre in which he or she is being detained, or to assist the patient to leave.

Clause 34 provides the usual duty to maintain confidentiality relating to persons with respect to whom proceedings under this Act have been brought.

Clause 35 prohibits the publication of reports on proceedings under this Act unless the Board authorises publication. If a report is published, it must not identify the person concerned.

Clause 36 gives the usual immunity from liability for persons engaged in the administration of this Act.

Clause 37 provides for the making of regulations.

The *Schedule* contains various repealing and amending provisions. *Division 1* repeals the current *Mental Health Act. Division* 2 firstly amends the *Adoption Act 1988* by giving an appointed guardian under the *Guardianship and Administration Act* the power to give directions under section 27 of the *Adoption Act* on behalf of an adopted person or natural parent who is mentally incapacitated. Secondly, the *Aged and Infirm Persons' Property Act 1940* is amended by replacing the section that deals with the problem of "competing" orders under that Act and the *Guardianship and Administration Act.* Basically, orders under the latter Act prevail. Thirdly, the *Administration and Probate Act* is amended by striking out the Part that dealt with the powers of administrators appointed under the *Mental Health Act*—these provisions are now incorporated in the *Guardianship and Administration Act 1993*. *Division 3* contains necessary transitional provisions. The current Guardianship Board will of course continue to complete part-heard proceedings but any orders to be made must be made in accordance with the new Act. Existing guardianship orders must all be reviewed by the Board within the first year of the operation of the new Act and, if any such order is to remain in force, the board must vary its terms so that a guardian is appointed in accordance with the new Act. Similarly, all delegations of the Board's power to consent to medical and dental treatment under the current Act must be reviewed within three years of the commencement of the new Act and must be revoked. Where necessary, a delegation will be replaced with a limited guardianship order empowering the guardian to give such consent.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

[Sitting suspended from 5.49 to 7.45 p.m.]

DISABILITY SERVICES BILL

Adjourned debate on second reading.

(Continued from 10 March. Page 1546.)

The Hon. DIANA LAIDLAW: This is essentially enabling legislation, which incorporates the principles and objectives of the Commonwealth's Disability Services Act 1986 and provides funding for the delivery of services for people with disability, their carers and support organisations. Nevertheless, it is an important Bill which the Liberal Party supports wholeheartedly.

The Bill arises from the Special Premiers Conference in October 1990 which addressed overlap and duplication of services between different levels of government in a host of service delivery areas. Following this conference, the Commonwealth-State disability agreement was signed in July 1991. The agreement determined the following. First, that 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.

Secondly, accommodation and support services for people with disabilities will be administered by the States and Territories, recognising their traditional responsibility in this area and the existing infrastructure to continue that responsibility. Thirdly, research, development and advocacy will be carried out by both levels of government. Fourthly, the Commonwealth, States and Territories will be involved in cooperative planning. Fifthly, 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's Disability Services Act 1986. The States and Territories are to introduce their own legislation to complement this Act.

This Bill enables South Australia to comply with the terms and conditions of the Commonwealth-State disability agreement to which I have just referred. Most importantly, it ensures that funds are available to help the State endorse and protect the rights of people with disabilities to dignity, autonomy and self-determination. This is a most welcome initiative, although I add that it is a most unusual one in such legislation. In my experience one hears a great amount of rhetoric from Governments at all levels, but generally those governments are short on action, particularly action in terms of funding. Often one hears the Federal Government, for instance, voice sentiments of dignity, autonomy and self-determination with respect to the issues for people with disabilities, women, Aborigines, young people, older people and families but then it fails to provide the funds necessary to deliver the services that are so vital to ensure that such objectives are met.

This Bill is different in that very basic sense. Payments arising from the passage of this Bill are to be made in three categories: first, in terms of transfer of existing services, this area covers grant moneys and an additional amount to be determined regarding administrative overhead costs. In South Australia this transfer is approximately $25 million recurrent at 1991-92 levels from the Commonwealth to the State.

Secondly, in terms of funding for growth, the Commonwealth is committed to additional funding over each year of the agreement. In 1992-93, the South Australian growth money is to be $499 000, increasing to $987 000 in 1995-96. Thirdly, transition payments will be made available to the State to increase the overall quality of existing services. This will be $1.7 million in 1992-93, increasing to $4.25 million in 1995-96.

The major concern that my Liberal Party colleagues and I have with respect to this Bill is that there is nothing binding the Commonwealth to continue to provide the same range of funding initiatives beyond the conclusion of the current agreement in 1995-96. This concern is particularly grave in terms of the funding for growth. We can anticipate that, because of the aged profile of our community, in this State we will have an increasing demand on services for people with disabilities. It will be difficult for the State, with our small tax base and the parlous state of our finances generally, to meet the increasing demands of our ageing population—although I would not want to suggest for a minute that the only demands on such services will come from that sector of our community.

I note that the Minister himself in another place was unable to ease the concerns of Liberal members in this regard. He said:

> It is true that the Commonwealth Government has an unfortunate track record of establishing commitments in these areas and then abandoning the States to pick up the tab in the future. That is something which is difficult to avoid. While we have a commitment to the growth funds in this agreement, once that agreement has expired, we have no guarantee of future growth funding. However, there is certainly a general commitment to maintain the level of effort between the States and the Commonwealth, and I would hope that future growth funding is available, but it is certainly not something to which there is immediate commitment at this stage.

South Australia has a proud record of service to people with disabilities, and it is a record that is far superior to that which applies interstate. I am familiar with such services because of the experiences of a friend who was living in Queensland and who had a child with disabilities, intellectual and physical. The child had been at school in Queensland but, beyond the age of 18 years, there was a paucity of services—let alone quality services—for accommodation, work experience and independent living generally. At my persuasion, my friend decided to come and live in South Australia principally because of the services that we provide in this State for children and adults who have physical and intellectual disabilities. The individual concerned, Michael, is now resident of Balyana at Clapham, which is part of the Bedford Industries group. It has served Michael and his mother well. Michael now lives in an independent unit with three other boys He does his own shopping, gets himself to work and has made outstanding progress since he has been associated with that program run by Bedford Industries. I applaud Bedford Industries for its work in that regard and for the commitment of those who are working there who care, support and encourage young people with disabilities to reach their full potential. In this instance, Michael's achievements have been well beyond the expectations of his family. So much of the effort that is made in South Australia for people with disabilities has started with self-help family initiative and has developed into community help programs, which increasingly require encouragement and support in terms of funding from Government.

My colleague, the Hon. Bernice Pfitzner, in particular, has been highlighting in recent months the increasing crisis that so many of these self-help and community-based volunteer groups have been facing in our community because of a crisis in funding. She highlighted the Schizophrenia Fellowship as the latest in crisis and will most likely have to close because of this threat to resources. That would be a tragedy for the people with schizophrenia, their family and friends but particularly for the State as a whole, because we have been able to say with pride that we have services, essentially of a self-help nature, encouraged by Government funding. Such services do provide us in South Australia with the opportunity to say with pride that we do care about and seek to serve those who are less able in our community.

Recently, I also met a person in a wheelchair who had other physical disabilities in the upper part of her body. She was a very independent girl who wanted to see me about transport matters generally. She tried to get into Parliament House through the side door, which is meant to be the entrance for people with disabilities, but the button that one must press three times to draw the attention of the caretaker was just too high for her to reach; it was raining, and she was out there for 20 minutes seeking to gain the attention of somebody to get into this place. I suppose if more of us thought—and I would hope that none of us would have such an experience—about what it would be like to have a physical or intellectual disability, we would be more considerate in our planning for their services, and we would certainly be more considerate with regard to this place.

If one has a physical disability, the way in which they must enter this place to see members is almost undignified. I would like to see the Joint Parliamentary Service Committee pay more attention to this matter, and one of the first things that it could address is this issue of the button at the side entrance of Parliament House which draws the attention of the caretaker to the fact that someone wishes to enter the building.

Also through other friends who are in wheelchairs, I am aware how frustrated they have been when seeking to do business with lawyers and others in the city of Adelaide. They have had to do such business on the footpath, because it is impossible for them to enter these older buildings. So often provision has just not been made for them to be able to conduct their business with the same dignity and privacy that we would expect with legal, share broking and other business.

The Liberal Party will not move further amendments to this Bill. Eight amendments were moved in the other place and, in terms of bipartisan support for this Bill, I was interested to note that the Minister accepted all such amendments. One amendment that is of particular interest to me was to clause 3 relating to the interpretation of a disability service which outlines a number of services provided, whether wholly or partially, to persons with a disability or their carers. We moved and the Government accepted that transport services be added to the range of 12 other services that the Government had proposed. Transport services are vitally important to people with disabilities, because they are so often solely dependent on either public services or the support of family to gain access anywhere within our community.

Certainly, I am continuing to get representations from Disabled Persons International and others about the

problems of people who are wheelchair bound and who have other mobility problems in trying to get access to public transport in this State. They have been complaining bitterly since the removal of guards from trains some years ago, and this issue has yet to be addressed satisfactorily. The issue of level crossings is also a problem for wheelchair bound people trying to get across railway tracks, and that is constantly highlighted to me. The provision of access cabs is a fantastic initiative in this State, but the demand is just enormous—I think some 17 000 members are currently enrolled in the access cab scheme. There is a real call for investigation of the extent of subsidy and the number of services that are provided to people on a monthly basis if they are eligible for access cabs, and I understand the Government has a review of access cabs programs at the present time. I know that that does involve the issue of the operating subsidy, and it is important that that issue be addressed, but I am not sure if that same review includes the issue of eligibility to the scheme, and I would be pleased to hear the Minister's response to such questions.

I have also received representations from Disabled Persons International and other groups representing people with physical disabilities. They are particularly impressed with schemes operating in Vancouver in Canada, where hydraulic bus ramps have been incorporated in 21 per cent of the bus fleet in that city. Those buses operate along fixed routes and at specific times, and people with physical disabilities or who are wheelchair bound are well aware of when they can catch such services, and I understand that they work most efficiently. Pioneer bus services in this State have informed me that on a pilot basis they are also looking at providing access to one bus with a ramp facility for interstate travel for people who are wheelchair bound. I commend it for this initiative.

One issue that is most important that we look at in the future is the services and amenities for people who are wheelchair bound, who have other forms of disabilities and who live in the country areas of this State. Over time I have had a number of representations from the Eyre Peninsula area. I am conscious that, with the ageing population in country towns, this issue of access will be increasingly important.

In summing up, I would indicate that this Bill is enabling legislation, but it provides no guarantee for future growth funds. It is also essentially goal-setting legislation, with no guarantee that the objectives can be met or that they can be enforced. Nevertheless, the objectives are noble and are supported by the Liberal Party. We are conscious that, in the short term at least, there is a need for clause 9 of the Bill, which provides that nothing in this Act gives rise to or can be taken into account in any civil cause of action. It is hoped that, by the year 2000 or not long after that, a provision such as is in clause 9 need no longer be in the Bill and that we can state that in South Australia we are able to provide with quality and assurance the range of services that are outlined within the definition of 'disability services' in this Bill.

Finally, the Liberal Party will be asking questions from time to time about the allocation of the funds proposed for South Australia, arising from the passage of this Bill, and we will certainly be looking in the longer term at the funds South Australia is to receive under the renegotiated agreement after 1995-96, because we fear at this time that the noble objectives in this Bill will never be met unless adequate funds are provided for such purposes.

The Hon. BARBARA WIESE (Minister of Transport Development): I thank the honourable member for her contribution to the debate and for expressing the support of the Liberal Party for this legislation. In the Hon. Ms Laidlaw's second reading contribution, she raised a question about the access cab review that is currently under way. This review was established quite some time ago, in fact, before I took over my current position as Minister of Transport Development and, although the terms of reference of that review were drawn to my attention very early in the piece, I must say I cannot recall at this stage whether or not the question of extending eligibility was one of the issues to be covered by the review. What I can say, from recent questions I asked about the transport subsidy scheme that currently operates, is that I understand that currently among those people who do fit eligibility criteria, there has been about a two-thirds uptake in seeking the transport subsidies. I am also informed that the vast majority of people who have qualified as eligible for this scheme use fewer vouchers per six month period than they are entitled to use, which would lead one to conclude that generally the vouchers that are currently part of the scheme are probably satisfactory to cover the requirements of most people who are currently eligible for the scheme.

As to whether extending eligibility is part of the current review, I cannot recall now, but I can provide that information at a later date if the honourable member would particularly like to have it. I hope that the review will soon be complete. I have been advised by the Access Cabs board that it should be completed soon and that, when it is, it would like to discuss the report and its recommendations with me before any decision is taken. I shall be happy to do that. I am awaiting word from the board about when it would like to set up such appointment. I cannot recall any other issues on which information was sought. I thank the honourable member for her contribution.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

The Hon. DIANA LAIDLAW: As to transport services, I appreciate that the Minister will bring back a detailed reply to my earlier question about Access Cabs or the transport subsidy scheme. As to social justice access and equity, which are planks of this Government, a number of people in employment find the current limitations on the Access Cabs scheme in terms of monthly use of vouchers to be quite iniquitous when able-bodied people such as myself and others can readily use taxis, their own cars or public transport to get to and from work. Although these people may be a minority amongst those eligible to use the Access Cabs scheme, will the Minister inquire whether this issue is being addressed by the review and whether there could be any

accommodation for people in employment who find that a great deal of the income they earn is spent on taxi fares because of the restrictions that apply to the Access Cabs scheme in terms of subsidised travel?

The Hon. BARBARA WIESE: I shall be happy to inquire of the review group whether it is considering that matter. I am certainly aware of the concerns of people with disabilities in this category. Recently, I had a meeting with representatives of various disabled people's organisations and the question of greater accessibility for people in employment was one of the concerns raised with me. Ultimately and unfortunately, as with most things, although we would like to provide access to every person who wants access to such schemes and others, at the end of the day it depends very much on the availability of financial resources as to how far these schemes can be extended and when. I would like to be able to include all of those groups who have approached me with good cases as to why the transport subsidy scheme should be extended to cover their circumstances but, whether or not such an extension is possible, will depend greatly on the availability of resources. As I indicated, I will inquire from the review about whether it is taking that matter into consideration.

The Hon. DIANA LAIDLAW: Is the Minister prepared to ask the review to consider the matter if it is not currently doing so?

The Hon. BARBARA WIESE: As I indicated earlier, it is some time since I looked at the terms of reference of the Access Cabs review and I am not sure whether this sort of issue is relevant in the context of its terms of reference. I would be reluctant to extend into areas where it was not intended it should go if the terms of reference are more limited than that. However, if the terms of reference are broader and cover questions of eligibility, then I am sure that the issue raised by the honourable member would be among a number of eligibility issues now under review. If the review is discussing eligibility of any kind, this would be one of the issues it will be looking at, because I know that the review would have received the same sort of representations that I have received. The only reason it would not be considering eligibility is, I suggest, because the terms of reference might have been more limited. As I indicated, I cannot recall exactly what the terms of reference were.

Clause passed.

Remaining clauses (4 to 11), schedules and title passed.

Bill read a third time and passed.

ABORIGINAL LANDS TRUST (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 March. Page 1583.)

The Hon. PETER DUNN: It is only correct that, in this Year of Indigenous Peoples, we amend an Act which deals with the first Australians of which we have much record, that is, the Aborigines. As to the term 'indigenous', I refer to the dictionary because 'indigenous' originally related to plants and vegetation. It defines 'indigenous' as 'produced naturally in a region' and 'belonging naturally', and it refers to the soil, and so on. I could claim to be indigenous too because I have tilled the soil for a long time and I was born here, but I do not think that definition is generally accepted in relation to an Aborigine. We believe that Aborigines are indigenous persons because they were here before us, but nearly all members in this Chamber were born here and we would consider ourselves as much a part of this land as anyone else.

It is important that we keep upgrading legislation so that Acts work in the proper fashion. This Act has an active part to it: a group of members of Parliament travel to the remote areas of South Australia two or three times a year and talk to the people who are affected by this Act—that is, the Aborigines and the administrators—and then come back and report. The amendments to this Bill endeavour to make the Act as it presently stands work better and more smoothly. I applaud that—it is something that we do not do enough in this Parliament. For instance, if the committee system works it can provide good advice to the rest of the Parliament regarding interpretation and the provision of good counsel on legislation before it. This is a perfect example of a mechanism which was set up in the House of Assembly, I think as the result of a select committee, to visit those remote areas and report back to the Parliament—and I think it is a great idea.

The Aboriginal Lands Trust meets in various parts of the State but mostly in Adelaide. That presents a real problem to many Aborigines because, although the largest number of Aborigines in this State live in Adelaide, a large number live a long way from Adelaide in remote areas such as the Pitjantjatjara lands, Yalata and beyond. Our State boundaries are not necessarily the boundaries of Aboriginal clans. For instance, the Pitjantjatjara lands encompass large areas of Western Australia; so Western Australian Aborigines come into this State. Likewise, although not many Aborigines live along the river now, their areas extend well into New South Wales and Victoria. Aborigines from Innamincka and like areas travel great distances up and down the Cooper and its tributaries that flow into Lake Eyre. Those Aborigines and their representatives need to come to Adelaide for meetings. In the past that has proved to be a problem because some Aborigines find it difficult to travel long distances.

This Act allows for a change in representation—I think that is good and I see no problem with it. It allows the use of deputies, it allows the Minister's representative not to attend all meetings—and I will refer to that later—and it allows the delegation of power, which I think is right and proper. If the people in the Pitjantjatjara lands, particularly at places such as Pipalyatjara, Amata or anywhere in the State, find difficulty in attending a meeting, they can be represented at that meeting. I know from experience that getting Aborigines together is always a problem. I travel to the Pitjantjatjara lands on a reasonably regular basis (three or four times a year) and, if we say that we will have a meeting at two o'clock, by that time very few are present. I can recount one way of getting them there. A former Leader of the Liberal Party in this Council (Hon Martin Cameron) played a very bad bagpipe, but it was

very attractive to the Aborigines. I distinctly recall at Fregon not being able to get a meeting together to talk about something important. At two o'clock out came the bagpipes, and within a matter of moments we had a huge crowd.

The Hon. Anne Levy: Wanting him to stop.

The Hon. PETER DUNN: To be quite honest, that was not the case—they enjoyed the music intensely, but the next time we went there we were told by the headmaster not to bring out the instrument because it emptied the school. We were only allowed to use it at recess or lunchtime. It was one way of attracting a group of people to a meeting.

So, if we had trouble getting a meeting together up there, members will understand the problem that can occur when the Aborigines have to travel 1 000 kilometres to attend the meeting here. The trust does not get any publicity; therefore, in my opinion it has been run fairly well in the past—it is those organisations that are not run well that attract publicity. So, this Bill is not controversial in any way. It allows for a deputy to be appointed in place of a member and, as I said before, I think that is reasonable. However, I do not believe it should happen all the time. The person who has been appointed should attend as often as possible, because as members would know it is very easy to become lazy and not attend meetings allowing someone else to do the work, but often that does not get the desired result. Generally, a person has been appointed for a specific reason.

As I have pointed out, there are difficulties, but I think this legislation fixes those. I do not see anything wrong with the Minister's representative being required to be present at every meeting of the trust—that is reasonable. If I were a Minister I would like my representative to attend every meeting. However, this Bill alters that requirement and merely provides that the Minister's representative has an entitlement to be present at every meeting. I think that loosens it up a little, and I suppose there is a good reason for it. However, the second reading speeches in the other House do not indicate why it is a good idea, and if I were Minister I would like my representative to attend the meetings to report back to me what was going on.

The Hon. Anne Levy: You would make sure that you picked someone who did.

The Hon. PETER DUNN: That is a good point. The Bill also seeks to allow the trust to delegate functions and powers. That could become a bit difficult. The delegation of power is used a lot in this Parliament, and in most cases that is reasonable. One cannot always be there to give instructions on how to do the job, so the delegation of power is reasonable. However, I worry about whether we should delegate to a single person. The Bill does both things: it delegates to an individual and it delegates to a group of people, to members of the trust. I do not see anything wrong with that; however, in his wisdom the Minister has decided that delegation to one person may be an advantage. I suppose there is a good reason for that, but once again I have a problem with it.

This Bill deals with small areas of land within the State. I suppose that is the main reason for having an Aboriginal Lands Trust: it tries to cobble together into one common group all the lands owned by Aborigines in this State—and they own a lot of land.

The Pitjantjatjara lands and the Maralinga lands have an Act to deal with them individually but lots of smaller areas throughout the State do not necessarily have an Act to look after them. So, the Lands Trust is put in charge of this group of lands—areas around the River Murray, some areas in the mid north, and areas in the Adelaide Hills and Port Lincoln. I might say that, of all the areas in which I have travelled, I think the Aborigines in Port Lincoln have taken it upon themselves to manage their area as well as anywhere in the State. You hear very little of the problems over there with them, and I think two or three people there have shown a lot of initiative. I would like to place on record my appreciation of the fact that they have tried very hard.

The Bill talks about financial viability or responsibility and, if ever a group has shown that, it is the people in Port Lincoln. They run their own Mallee Park Football Club, which has been most successful in the league down there. They seem rarely to get into financial trouble. They had some grants originally to get started. Since then they have had trading tables and all sorts of systems for raising money, and I think they have done an extremely good job.

The Bill is not very big. It is very simple and straightforward. It ought to be supported, and certainly the Liberal Party supports it, particularly for the reason, as I said earlier, that there is a mechanism proposed that will facilitate better, smoother and quicker solutions than have been possible in the past.

The Hon. M.J. ELLIOTT: The Democrats support this Bill which basically streamlines some administrative issues for the trust. We have always been supportive of mechanisms which formally recognise Aboriginal claims to land which had been, prior to European settlement, their home for generations. Without exploring it in any great length, I think the Mabo case has certainly opened up some debates once again about Aboriginal land ownership. I have little doubt that in South Australia, should land rights be tested in the courts, the Aboriginal community would have a much stronger claim than they do in the other States. One need only go back to the letters patent given to the South Australia Company when it first established settlements in South Australia; those letters patent made it quite plain that the settlers were not to take land which was in the use and enjoyment of the native people. Quite clearly, the letters patent were breached and from that moment on I believe we have had a much stronger case than even in the Mabo which could be established in the courts in relation to Aboriginal land rights in South Australia.

Nevertheless, compared to other States South Australia has led the way both in terms of lands directly administered by communities such as the Pitjantjatjara lands and Maralinga lands and also the large number of smaller parcels of land which are under the Aboriginal Lands Trust, a trust established to acquire and hold land on behalf of Aboriginal communities and the Ministers responsible for Aboriginal affairs.

The particular issues that are addressed in this legislation are ones that we support. First, it is important when you have the trust meeting only on a quarterly

basis that deputies can be used; otherwise, the current representatives only have to miss a couple of meetings and the community has been unrepresented for a large number of the meetings. Deputies make sense. That is not unusual on many boards and we support it.

The previous requirement that the Minister's representative needed to be present for a meeting to be held smacked of paternalism. The Minister's representative should try to get there, but the fact of whether the meeting could be held or not depending on the Minister's representative was an absurdity and the change proposed is a sensible one.

The setting up of an executive committee is, I think, a significant move when one recognises that the trust is only meeting every three months. Matters do need to be handled on occasions between. In any other organisation they would have some form of management committee, executive committee, to help with that sort of decision-making between meetings. Again, it is a sensible move. It is important that the community derives some benefit from the lands held by the trust on their behalf. I believe this Bill seeks to facilitate that and therefore it has our support.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I thank members for their support for the Bill. As indicated, it is a very simple Bill, mainly dealing with administrative matters and matters that will allow the trust to function more efficiently. I would point out that its provisions arise at the request of the trust that wishes these streamlining amendments to be made to the Act by which the trust operates. I look forward to the legislation becoming law very shortly.

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

SUPPLY BILL (No. 1)

Adjourned debate on second reading.

(Continued from 25 March. Page 1689.)

The Hon. L.H. DAVIS: In resuming this debate, I cannot stress too much what a critical position South Australia finds itself in. Even though we have a record, 30-year low in rates of interest, our debt levels and interest payments on debt borrowed are extraordinarily high. The Government in its 1991-92 State budget admitted to $7.25 billion of debt, and that figure has doubled in the past few years. Access Economics in fact claims that the debt level now has reached $8.5 billion.

This public debt interest is a critical figure because the size—the dimension—of this debt, which South Australia now finds itself with is such that a large portion of the revenues raised by the State Government are directed to paying interest on this debt. What is particularly worrying is that we should remember that the interest rates Governments pay on the money that they borrow on our behalf, both in Australia and overseas, have reduced dramatically. Interest rates in fact are now less than half what they were at the record levels of 1988-89. That means that if there is any increase in interest rates over the next two or three years, which is quite feasible, the interest burden will increase even further.

The Keating Government, which has recently been returned at the Federal election, is forecasting higher economic growth—and higher economic growth, whilst it will raise more revenue from individual and company taxation, will put pressure on our balance of payments: it will send the import bill skyrocketing; and it will increase, arguably, the trade deficit, and a likely corollary of that is that interest rates will rise and that will exacerbate the public debt interest payments that the South Australian Government will have to meet.

Last week in discussing this matter I raised something which I have not seen in print—that is, that if we assume that the South Australian economy represents about 8 per cent of the total domestic product of Australia, which is about $400 billion, we can say that the gross domestic product of this State is of the order of $32 billion to $35 billion. That means that the State Bank debt of $3.1 billion is about 10 per cent of South Australia's gross domestic product. That measures the extent of the debt.

It is an horrendous debt which, as I argued last week in my introductory remarks, is perhaps as large as any debt that has been incurred by any State or country in the world on a per capita basis. Whilst South Australians not surprisingly have been mesmerised by the size of this debt—$3.15 billion to be precise—they should not forget the magnitude of the debt that we have suffered with respect to other Government commercial enterprises.

Only last week in the Parliament I raised the spectre of just one investment which was undertaken by SGIC and which, in a period of little more than 18 months, has seen over $300 million written off—and that is the investment in 333 Collins Street, Melbourne. It is a magnificent building, arguably deserving of heritage listing, but beyond doubt an investment lemon—with over 60 per cent of the building unlet, with a diminution in the value of that building from $520 million when it was first built to $465 million as the compulsory buy-out price for SGIC when it was forced to exercise that put option, to a current value, estimated by three leading real estate experts in Melbourne (to whom I spoke only last week), of the order of $200 million to $225 million. So we have had a write-down in the value of that building of between $240 million to $265 million, plus the annualised interest bill of about $50 million, the maintenance of that building and the ongoing problems of renting it, given that Melbourne's vacancy rate in the central business district is now of the order of 25 per cent to 30per cent. It is a scandal about which the people of Melbourne, who are aware of the deal, are appalled about, amused and bemused. It is one of the great fiascos of property deals in Australia this century.

The Hon. T.G. Roberts: Did the *Age* pick up the press release?

The Hon. L.H. DAVIS: The Hon. Terry Roberts unwisely interjects, 'Did the *Age* pick up the press release?' Certainly it did: there was a major article in the *Age* only last week. I thank the Hon. Terry Roberts for his interjection because the *Age* recognised the importance of the story and wrote it up, together with a picture of 333 Collins Street. All I can suggest is that the Hon. Terry Roberts go to 333 Collins Street and wonder at the magnitude, the magnificence of the building but also at the stupidity of the SGIC for entering into

arguably what was seen by property observers as one of the worst property deals this century—and this century, as the Hon. Terry Roberts knows full well, is now 92 years old.

The other aspect I want to talk about in this Supply Bill debate is that we are now three-quarters of the way through this financial year, and the monthly revenue and expenditure statements on the consolidated budget cannot be looked at with any certainty to predict the likely outcome of the budget for fiscal 1992-93. Given the way in which economic indicators in South Australia are lagging all other States, given our share of employment of the monthly series run by the ANZ banking group on advertisements in daily newspapers (where our share of those advertisements is only 6 per cent, although we have 8.3 per cent of the national population, and our share of national employment advertisements has been steadily shrinking over the last three years), given our shrinking share of so many other market indicators—housing, motor vehicle registrations, and building materials in use—and given the high level of State taxation and charging measures—the highest FID and BAD taxes, stamp duty and workers compensation in the land—it is little wonder that the South Australian economy is lagging.

What I predict is that when the 1992-93 budget is presented in late August by the outgoing Arnold Government we will see a dramatic shortfall on the revenue side of the budget and we will probably see very little movement on the expenditure side because this Government, in its 10 years of tired administration, of inappropriate, inept administration and of financial mismanagement, has shown little ability to cut back on expenditure, to save on big ticket items. Its expenditure constraints have been noticeable by their absence.

The Hon. T.G. Roberts: Cautious growth!

The Hon. L.H. DAVIS: The Hon. Terry Roberts says, 'Cautious growth'; I would spell 'cautious' with the smallest 'C' you could find, and 'growth', I would say, would be spelt in red, because it has been negative growth. The sadness about South Australia is that it is geographically placed in such a way that it is brought into discussions on national economic matters as part of the rust bucket. If we look at the economic growth in Victoria, Tasmania and South Australia, we see that that economic growth lags by a large margin the growth in Queensland, New South Wales and Western Australia. Queensland has a population of roughly double that of South Australia. It has a population of 3 million people which is expanding by 100 people a day—largely because people are coming from other States in search of employment opportunities and a lifestyle with which they feel comfortable.

South Australia's population growth in the past 12 months was .7 per cent; it was one of the lowest growth rates in the nation. For a while in the late 1980s and the early 1990s, it seemed that South Australia's quality of life, its cultural ambience, ease of transport, good environment and excellent housing stock would attract people from the larger, claustrophobic cities of Sydney and Melbourne. But the State Bank debacle of just over two years ago has reversed that. People's expectations of what they will find in South Australia are now negative. People recognise that our unemployment rate is now one of the highest in the nation. To bring a family from New South Wales, Victoria or Western Australia to South Australia to start a new life is fraught with risk. There is a great uncertainty in the financial and business community of South Australia. It is reflected in the way in which houses simply do not sell. You will now see houses on the market for six or seven months. We are talking not about houses worth $500 000 but about houses worth only $150 000 to $200 000. It is a desperate situation.

Most sad of all, of course, is that this Government, with a new Premier, leadership team and a new structure in Government, over the past six months that it has been in power, has shown no more vitality, commitment, awareness or vision than that of the previous Government that gave us State Bank, SGIC and Scrimber—that remarkable triella—

The Hon. T.G. Roberts: Trifecta.

The Hon. L.H. DAVIS: —trifecta, I'm sorry—which lost $3.5 million, a loss which will see South Australian taxpayers being deep-pocketed through until the twenty-first century. Whilst the Supply Bill is a formality which goes through the Legislative Council without debate, demur and opposition because that is the form and convention, it provides the Liberal Party with an opportunity to put on record its dismay and disappointment at the ineptitude of this Arnold Labor Administration, and with the prediction that, when the 1992-93 financial figures are made public for the first time in August this year, the South Australian financial position will be worse, not better; that the taxpayers of South Australia will have to shell out more, not less; that the 55 000 small businesses in South Australia will be worse, not better, off; that the future of South Australia is more uncertain than certain; and, most importantly of all, that we will be much closer to that State election which will result in a change of Government which will, of course, be welcome by a majority of South Australians.

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

BARLEY MARKETING BILL

Adjourned debate on second reading.

(Continued from 25 March. Page 1694.)

The Hon. J.C. IRWIN: I support the second reading of this Bill. As a barley grower, I declare a general interest in this legislation. I know that I do not have to declare such an interest, but I will do so on this occasion so that people know my position. I support the general remarks made by my colleagues the Hon. Peter Dunn and, indeed, by the Hon. Trevor Crothers, who have strengthened my view and that of the barley growers and the end users in general the present Barley Board and those going before it have been exceptionally successful. There is no evidence whatsoever to suggest otherwise.

The remarks of the Hon. Trevor Crothers were interesting because they have come from a personal experience in observing more of the value adding of

barley grain than the growing of it, and the Hon. Peter Dunn, others on this side of the House and I have had similar experiences. I did say that the Hon. Trevor Crothers' experience was in observing the product: I in no way made any reflection of his sampling one of the products.

The Australian barley growers have one great advantage in the world grain scene other than their natural climate, that is, that they can present to the world an environmentally clean product. We do not have the potential problems of Europe or America of nuclear fallout or contamination. However, our grain, in common with most other countries, would have some chemical contamination, and we must work hard to keep that under control. Keeping our level under world standards will be a challenge, whilst at the same time we try to maximise dollar returns per hectare and per farm.

The Australian Barley Board received 2.3 million tonnes from the 1991-92 harvest. I do not have the published figures yet for the 1992-93 harvest, but we all know the problems and difficulties that were associated with that harvest, with the rain and damaged grain, which included barley. I will use the 1991-92 annual report to reflect on some of the figures that are no doubt more or less consistent with an average year. According to that report of the General Manager of the board, about 500 000 tonnes of the barley from the 1991-92 season was destined for export as malt, and that means it was value added, a point made by the Hon. Mr Crothers. The domestic demand for feed barley reached a record level of about 289 000 tonnes in that year, because of the drought conditions in much of Queensland and north-west New South Wales. The board exported a lot of feed barley as well. While the world grain markets are price sensitive, it is a tribute to the board's ability to identify its product and to grade it so effectively that demand for our local product remains very strong.

I have already said that the board has spent a lot of time and money on finding new markets. Once those markets are uncovered, all our competitors have to do, it seems, is to move in and make an offer that beats our price, and we then have increasingly to try to match that. These sorts of things have to be a worry to the board, and to the Australian economy generally. We exported a total of 1.127 million tonnes of feed barley. One of our biggest customers continues to be the Japanese market, which uses 300 000 tonnes of feed in controlled environmental animal protein production.

These statistics are interesting not only because they illustrate what the board has been doing but also because they indicate that the board is alert to its task and to the threat of competition to itself. Notwithstanding all those facts, the board was able to pay a first advance to growers of about 85 per cent of the ultimate price, and that too is a very commendable position. Not many other coarse grains or cereal marketing boards that compete in open market contexts with the same products offered by other merchants can manage that level of competence in determining price relevant demand and in returning to growers an early and high advance for sales, given that the board has in-house costs that must spread across the total tonnage of the pooled result in any given year.

I could go on to talk about total consistent values in Australian dollars of between $A200 million to $A250 million for the barley crop over the past 10 years as an average. In 1990 we had a record high of $400 000 and, although world barley exports total only between 16 million tonnes and 19 million tonnes, total world production is about 10 times that level. For the record, and in response to the Hon. Trevor Crothers' comments about South Australian and Victorian production of barley, I shall provide some statistics.

Using a 10-year average ending in the 1991-92 year, the area assigned to barley in Australia is 2.708 million hectares, and with three big years between 1983-84 and 1985-86 with an average in excess of 3.3 million hectares this is some 20 per cent above the 10-year average. Queensland planted 8 per cent; New South Wales, 18 per cent; Victoria, 14 per cent; South Australia, 37 per cent; Western Australia, 22 per cent; and Tasmania, .5 per cent. Of interest, because of the legislation we have now, which covers South Australia and Victoria, South Australia and Victoria planted 51 per cent of the barley grown in Australia, and that is over that 10-year average. South Australia had 72 per cent of the two-State planting and therefore Victoria had 28 per cent, amounting to a 10-year average planting of 1.388 million hectares.

The yields are interesting: as alluded to by the Hon. Peter Dunn, on the 10-year average, Victoria's average yield was 1.44 tonnes per hectare, South Australia's average yield was 1.51 tonnes per hectare and Australia's average was 1.47 tonnes per hectare. Of interest, Queensland stood at 1.74 tonnes per hectare and Tasmania at 2.54 tonnes per hectare, which are both above the average of 1.47 tonnes per hectare that I mentioned before. This suggests to me the advantage of rainfall. I have not been into that in any great depth, but usually Queensland and Tasmania—even though it has a very small planting—I assume have the climate and rainfall advantage that gives them above Australian average yields in tonnes per hectare.

The production figures show an Australian 10-year average of 4.036 million tonnes with a high point of 5.554 million tonnes in 1984-85. The State's production breakdown runs much the same in percentage terms as the per hectare figure given previously. Of particular interest in this debate is the South Australian/Victorian component of 52 per cent of the Australian tonnage, 27 per cent being Victoria's share and 72 per cent South Australia's. I suppose these figures throw up a couple of questions and observations, not new to the industry: 48 per cent of the barley planting and yields are attributed to States other than Victoria and South Australia. One has to ask why there is not a national barley board and what damage is being done by barley and oats organisations in those other States by choosing to go it alone, that is, damage to the so-called Australian Barley Board, the subject of this legislation.

What advantage do the other States or individual organisations have by going it alone? If the argument for single desk selling is so strong for wheat, why is it not being applied to barley across this nation? I do not know the answer, but I would be interested in the record of what the other States are able to produce, that is, Queensland, Western Australia and New South Wales, on the records they have been able to produce, and I have not been able to obtain those statistics.

Philosophically, I do not support single desk selling or all-embracing compulsory acquisition commodity boards. That is not new to debate in this Chamber, but I do acknowledge that there are strong arguments, both for and against, that need to be canvassed in this debate. I put it simply to honourable members, and indeed the broad family of commodity producers: they would be much better off away from reliance on Governments, both State and Federal, in both cash terms and legislation put through Parliament. They would thus be in a better position to determine their own direction and their destination. This Parliament, and indeed the Victorian Parliament, would not have needed to be involved in the divisive debate, over some two years, prior to the formation of this legislation.

I note that since 1900 there have been around 20 varieties of barley developed which have taken a major place in barley production figures up to 1992, over that 92 year period. I take the Hon. Peter Dunn's point about yields. On the barley board's ten-year average, yields are about 1.66 tonnes average, with South Australia and Victoria at about 1.5 tonnes per hectare. Even in the biggest planting year of 1984-85, with 3.518 million hectares planted, the average Australian yield was only 1.6 tonnes per hectare, with South Australia virtually the same. The South Australian estimated yield for 1991-92, with a slightly smaller planting than 1984-85 was 1.9 tonnes per hectare. That figure will be upgraded in the report to which I have referred. It is only an estimated yield for that year and when the next report comes out that will become an actual figure, while the figure for the current year will again be estimated.

There are too many variances both in location and climate to draw any conclusion, except that if Mr Dunn's figures of overseas yields are correct (and I certainly do not question them) we are well behind average yields, and those yields that are being experienced in other countries. I have no doubt that many experts have pondered and analysed the sort of problem that is involved. It is certainly way beyond my capabilities to suggest a solution, except to say that it has always been in my belief that, despite the 20 varieties I mentioned earlier, we may well need a much improved research and development effort in Australia which someone—and that is the grower—has to pay for.

I must also say that the location and climate may well prove to be the major stumbling block—a matter we can do nothing about. I am very thankful that Governments, Oppositions and parliamentarians cannot do anything at all about the climate: that is about the only thing. There may well be isolated examples of some areas of cultivation on Yorke Peninsula or barley under irrigation, and some other small pockets, where the yields are much the same as those in Europe.

As I have said previously, the bottom line for us as producers is the net income we can bank, so we have to balance that average yield over the whole South Australian and Victorian climate and consider where we are in the world, the amount of phosphate and other additives needed to boost production, and also consider rainfall and climate. We have to look at what we can get net at the end of the day.

As to the research and development effort, I can relate my observation in my home area with lucerne growing, following the advent of the blue green aphid, which decimated large areas of the famous Hunter River lucerne. My area around Keith has the distinction of growing the largest amount of Hunter River and now other lucerne varieties anywhere in Australia, particularly for seed.

A number of my friends were quick to go to the United States in search of new resistant varieties of lucerne and they were mind boggled by the extent of the research effort they found there, with much of it with its roots in plant variety rights, which is another matter we have talked about here and about which we will need to talk again and doubtless it will be discussed at other times. It is my thinking since that time that we should move to lift our effort or else be stuck in South Australia with producing between one and two tonnes per hectare of production as now delivered by barley growers.

I certainly cast no reflection on our excellent and dedicated plant researchers, but I am sure that they would agree that the industry does not give them enough resources with which to develop new high yielding quality plants. I certainly acknowledge research and development goes further than just the breeding of new varieties of barley. It must include fertiliser, soil condition and other factors such as crop rotation and the like.

I know it is difficult in the present climate of Governments—both Federal and State—ripping taxes and charges out of the productive people, particularly rural producers, and for producers to get back to square one, let alone dedicate more dollars to research. But I put it to growers that it is of paramount importance to devote increasing funds to research and development in the good years. When we look back over the years and have experience on the land, we know that there are good and bad years, that there is a cycle that is difficult or almost impossible to predict.

There is a cycle of good and bad years, and I am saying that, if we do not put the funds aside when we have good years, which may be our insurance against the inevitable low yielding years, with the reasonably long lead time required in developing new varieties, with luck the yield cycle will coincide with new high producing plants. In other words, money set aside in the good years may provide a new variety at the end of the lead time that will coincide with the seasonal down cycle and provide a cushion to some extent.

Although I am a grower of grain and barley, I am not nor have I been close to the decision making or the agro politics of growing. I have done the easy thing and left that to others to take on the task, which they have done well. As in many other debates on legislation that we have on matters where I do not have that intimate knowledge, I usually try to analyse and distil out the principles, and there are a few principles in this debate.

Others have addressed them and I will briefly do so myself. I started by agreeing with the Hon. Trevor Crothers and the Hon. Peter Dunn and others who have talked in the debate in this Council and in another place about how well performed the present board is and as it has certainly been for many years past. When we refer to the board, I am sure that we all agree that a board is only as good as its advisers, and advisers include not only those close to the Barley Board but those growers

per se as a group who would be quick to give their advice on how their grain should be dealt with.

The present board is comprised of a chair, five growers—I want members to keep that in mind—a brewer maltster representative and one Victorian Government appointee, but I am unsure of that appointee's direct expertise. The board is backed by nine senior advisers with direct links to areas of research and finance. Their skills cover finance, accounting, technical, marketing, transport and information systems. The general and specific experience range of those 17 people is sufficient to do all of the things expected of a board and, without any question, they have done that.

I contend that their runs are on the board because they have not been risk takers in the entrepreneurial sense, as I have observed them, and they have instead followed what I would call a traditional conservative course. If they have been a victim of the lack of research and development funds, it is not their fault. That must come from the collective will of growers. I say that because the method of selecting the new board in this legislation has been and is a bone of contention with barley growers. Those who are pumping for all selection seem to have the notion that the selective members will bring with them somehow some magical ingredient to make a dramatic difference to the working of the Australian Barley Board. If that is not their expectation then, other than some hidden agenda, which I cannot distil—and that hidden agenda could be power and control—I do not know what all the fuss is about.

I entered the public debate on the election/selection issue in April last year when I was shadow Minister of Agriculture. I publicly reiterated the Liberal Party's position at that time on election, about one year after my predecessor, the member for Goyder, Mr John Meier, had put down exactly the same position for the Liberal Party one year before. Put simply, because it was not and is not the position of the Liberal Party to sort out the differences of opinion on the election/selection of the South Australian portion of the Australian Barley Board, we advocated a poll and said that we would abide by the results of that poll.

The whole argument started with the published review of the Barley Board recommending that the grower element of the board be totally selected. In the absence of evidence that the board was not performing, the principle is that the barley is owned by the growers and that they alone should decide how to have their board representation determined. There are about 7,400 barley growers in South Australia, but not all are members of the South Australian Farmers' Federation. The series of well attended public meetings voted overwhelmingly for election and the stance taken at the time, and still taken by the federation, signalled to me at least that the issue for selection/election was not cut and dried.

I get more than a little annoyed when I am told that this legislation must be in place by 1 July this year, ready for the coming harvest, when exactly the same message was given to me two years ago and again last year. We talk about democracy and then disregard it at will. Notwithstanding that the Act did not have a specific direction for conducting a poll, sufficient money was promised two years ago to have a poll of growers. Why was that not held? One can only speculate that those holding the power to act—the then Minister and now Premier, and the now South Australian Farmers' Federation—were reluctant to have their directions tested.

The Council will know that the present Bill has in it a compromise position of two elected growers from South Australia. How was that position achieved? Not one reason has been advanced why a poll with the result binding was not conducted, because everyone I have spoken to, both growers and Opposition members, have agreed that they would abide by the result of a poll. One grower member is selected from Victoria, making certain of only three growers on a board of eight. Notwithstanding that, other growers may appear on the joint board, and I doubt that there will be a grower majority. I am appalled about that prospect and the prospect that growers, however they are put on the board, have lost control of their product.

We do not seem to have the wit in this place to rectify that incredible position. I am disappointed that this Bill does not include provision for a poll prior to the South Australian board members being determined. Instead, we find that the principle of a poll is finally accepted but prior to the review of the Act, which is in about five years time. Again, I am appalled that another principle is overturned. In the absence of evidence that the present board is not performing, when this Bill is passed the present three South Australian grower members—I do not need to name them, because who they are does not matter, but I note that individually and collectively they have done the job—will immediately lose the advantage on behalf of all growers in the State of having their elected representatives on the board. In other words, the growers have the advantage now, but if it is the eventual wish of the majority of growers to elect their board representatives, they cannot regain the initiative until, at the earliest, at the end of the first three-year term under this Bill. For a start, that has the potential to be disruptive for the next three years and there is absolutely no guarantee at all that the Minister will call for a poll, anyway. This is all very well for power games, but certainly not for individual growers who are comparatively powerless.

Under the present Act, the elected growers comprise five of the board of eight members which, according to anyone's arithmetic, is a pretty good majority. Despite verbal assurances given to the barley growers, this will be changed considerably to just three out of a proposed board of eight members, which is nowhere near a majority according to my arithmetic. The two Ministers—that is, one from Victoria and one from South Australia—could nominate growers, but that is unlikely. Anyway, what better expert advice could one have than that of the growers themselves? The remaining three members of the board are to be selected by the selection committee and will not necessarily be growers, but they will have to have knowledge of the barley industry. None of the members of the selection committee will be growers.

For the sake of the record and for those few people who might read it without having the Bill in front of them, clause 11 provides:

> The board consists of eight members appointed jointly by the Minister [South Australia] and the Victorian Minister of whom—

(a) one will be a person nominated by the Minister (South Australia];
(b) one will be a person nominated by the Victorian Minister;
(c) two will be growers by whom or on whose behalf barley is grown in South Australia (who are entered on the roll of growers in accordance with section 58)...

Clause 58(4)(a) provides:

The growers entitled to vote in accordance with the regulations at a poll are the growers who have delivered to the board 15 tonnes of barley in one of the three years ending on 31 March last preceding the poll and who have such other qualifications as may be prescribed.

They are elected in accordance with the regulations. Clause 11 provides further:

(d) one will be a person by whom or on whose behalf barley is grown in Victoria nominated by the selection committee—

so, there is a difference between the two elected members in South Australia and one member elected by a selection committee in Victoria—

(e) two will be persons with knowledge of the barley industry—

just knowledge of the barley industry; that could be significant, it does not mean that they must be growers—

one of whom is resident in Victoria, nominated by the selection committee;

(f) one will be a person nominated by the selection committee with expertise in one or more of the following:
(i) business management;
(ii) finance;
(iii) exporting;
(iv) product promotion;
(v) any other area of expertise which the selection committee considers relevant.

The selection committee will consist of:

(a) two will be persons appointed from a panel of not less than four persons nominated by the South Australian Farmers Federation Incorporated;
(b) two will be persons appointed from a panel of not less than four persons nominated by the Victorian Farmers Federation;
(c) one (the Chairperson) will be jointly nominated by the chief executive officer of the South Australian department and the chief executive officer of the Victorian department.

By anyone's objective measurement the growers have been taken to the cleaners. I say again and again that it is their product.

I will take up a number of other matters in Committee. Last Friday we still did not have the barley Bill in our Bill file, and that makes it difficult to go through what the other place has passed. I note also from the debate in the other place that the Minister intends to contact his Victorian counterpart on a number of matters in order to determine the Victorian Government's stance on matters emanating from the amendments attempted to be made by the Opposition: some were included and some were taken out, but the Minister assured us that he would contact his Victorian counterpart. That matter can be taken up in Committee when perhaps the Minister will explain what has happened with those consultations and whether they were successful. At this stage, there is no indication of an outcome of the Minister's consultation.

I have spoken my mind on a number of issues which have been a feature of the formulation of this Bill. Obviously, I am uncomfortable with some of the aspects of the legislation, and I hope we will be able to amend some of it. My Party has made a collective determination on the Bill including the election/selection component and the poll provisions. I do not intend to deviate from the collective decision of my Party at this stage because I am now struck, if you like, by another principle: that is, the collective wisdom of my colleagues is more powerful than mine alone. I try to stick to that principle on a number of issues whether or not I am in the ascendancy of the debate. Even if one or two members are right and can say later, 'I told you so,' that is something I do not want to have to say. When I am in the minority, I know that, but I fully support some of my colleagues in the House of Assembly who had the courage to represent the views of their electors by trying to change some of the major parts of this Bill.

In closing, I pay tribute to the board set up under the present Act, some of the members of which may or may not be members of the newly constructed board. As I have said, five out of eight were democratically elected to their position. I hope that the new board with its diminished grower representation (three out of eight) will perform well for all sections of the barley industry, because it is vitally important that it does. It cannot afford to have any hiccups at all. I hope that the barley growers of South Australia will be given an opportunity to vote at a poll called by the Minister, and I hope that it will be a Liberal Party Minister who will call that poll to determine once and for all the election/selection of growers' positions prior—and I underline the word 'prior'—to the second board being constituted under the new legislation. With those words, I reiterate that, although I support the second reading to enable us to go into Committee to try to make some improvements, I am somewhat uncomfortable with going any further. However, I support the second reading so that in the end we can find a compromise that will allow the Barley Board to perform its functions to the best of its ability for the people who grow the barley for the benefit of this State.

The Hon. BERNICE PFITZNER: I have found the debate on this Bill fascinating as I know little about barley. I am curious to understand the controversy underlying the issue of election versus selection of board members. First, I wish to look at the history of the Australian Barley Board which is now 50 years old. The board was constituted in 1939 under the National Security Act during the second world war for the purpose of acquiring all barley produced in Australia for a period of eight years.

In 1942, after the expiration of the three-year period, the board continued to operate under regulation to acquire barley produced in South Australia and Victoria. In 1948 the board was reconstituted by parliamentary Acts for the States of South Australia and Victoria. Thus, the board grew out of a national emergency but still continued with the strong support of the growers. With the new legislation in 1948 supported by a poll of

growers the board comprised five members, including a chairman, two South Australian grower representatives, a Victorian grower representative and a representative of the brewers and maltsters.

In the Act it required the barley growers to deliver their barley to the board. The board was charged with marketing barley. The powers of the board were further widened in 1952 and additional functions included to fund, research and to charter ships. Thus, even as long as 40 years ago this board was functioning in a comprehensive manner. In 1962, the size of the board was increased from two South Australian growers to three South Australian growers and, in 1971, the number of Victorian growers was increased from one to two Victorian growers. Thus, since 20 years ago we note that the growers were the majority on the board.

This present Bill seeks to change the composition of the board, which change will be further discussed. Australian barley is reported to be clean and of low moisture, very acceptable overseas, especially in the UK. Barley also fitted into a rotation which included sheep production. Barley has an advantage over wheat in that it is a hardy and quick-growing crop and is adaptable to a wide range of climatic conditions. Areas cleared and farmed were in Eyre Peninsula, the southern Yorke Peninsula and the Murray-Mallee. South Australia and Victoria represent one of the world's cleanest grain producing environments. The unique geography of South Australia especially favours barley growth with the State's extensive coastline which produces moist conditions and cool, dry weather during the ripening period. Thus, the small and unique temperate region of the south coast and its characteristics of long, hot, dry summer and warm, moist winters is especially favourable for barley growth.

The variety of Australian barley is measured on its protein and starch levels, grain size, its yield, its straw strength, drought tolerance and resistance to disease and pests. There are eight modern varieties, each capable of producing its own mix of performance and content standards. The quality of Australian barley is acknowledged overseas as well as locally. Australian barley is growing in importance as a versatile cereal commodity. It is the primary source of malt, based on premium quality barley characterised by a low protein content. The high grade malt is a key ingredient in the brewing of beer and distillation of spirits such as whisky. Higher protein barley is graded for stock feed. With the protein, starch and fibre content this barley is particularly suited to the manufacture of compound feeds for cattle, sheep, pigs and other livestock. Barley is also growing in popularity in breakfast cereal, snack foods and baked products. Its nutritional value is recognised in its content of starch and fibre. I seek leave to insert in *Hansard* a table showing the shipment of barley from South Australia for the year 1991-92.

Leave granted.

1991/92	**SOUTH AUSTRALIA**							**VICTORIA**			
Month 1991	Ardrossan	Port Adelaide	Port Giles	Port Lincoln	Port Pirie	Thevenard	Wallaroo	Geelong	Portland	Total	No. of Ships
July	20 852	25 426	15 898	41 935	13 360		40 500	11 550		169 521	6
August		17 915	21 696	31 500	17 668		25 700	11 347		125 826	5
September		6 109			10 149		18 890		9 805	44 953	3
October		43 246		43 201			13 303		5 000	104 750	5
November				24 999	12 815			8 235		46 049	3
December		24 436	24 300	82 405		11 107	50 743			192 991	10
1992											
January	30 839	34 157	7 511	31 500	12 500	3 174	25 200			144 881	6
February		40 544		23 771	29 489				11 825	105 629	8
March	39 096		17 950	35 675	72 540				22 000	187 261	8
April	53 100	6 433	11 681	33 930	13 566				36 450	155 160	6
May	33 784	9 113	11 030	8 210	29 291	17 180	19 600			128 208	5
June		10 898	8 450	7 715	22 325		23 102		37 700	110 190	6
Total Shipped Each Port	177 671	218 277	118 516	364 841	233 703	31 461	217 038	31 132	122 780	1 515 419	71

The Hon. BERNICE PFITZNER: In these statistics you will note of the seven ports in South Australia the three ports that shipped the largest amount of bulk barley were: Port Lincoln at 364 841 tonnes; Port Pirie at 233 703 tonnes; and Wallaroo at 217 038 tonnes. I seek leave to insert a second table into *Hansard* which shows the shipment of bulk barley from 1985 to 1991.

Leave granted.

Port	Year ended 30.6.85	Year ended 30.6.86	Year ended 30.6.87	Year ended 30.6.88	Year ended 30.6.89	Year ended 30.6.90	Year ended 30.6.91	Year ended 30.6.92
South Australia								
Ardrossan	256 134	276 890	252 236	118 451	138 586	217 231	204 675	177 671
Port Adelaide	177 206	502 842	221 188	169 760	172 470	251 708	291 375	218 277
Port Giles	217 802	219 495	191 494	63 992	189 506	163 296	192 258	118 516

Port	Year ended 30.6.85	Year ended 30.6.86	Year ended 30.6.87	Year ended 30.6.88	Year ended 30.6.89	Year ended 30.6.90	Year ended 30.6.91	Year ended 30.6.92
Port Lincoln	263 946	354 040	294 587	156 550	163 789	210 022	298 512	364 841
Port Pirie	206 491	212 575	167 294	103 618	66 346	94 725	216 312	233 703
Thevenard	45 719	22 673	86 933	22 658	14 203	30 873	77 671	31 461
Wallaroo	178 601	203 566	140 654	126 939	78 589	77 443	195 112	217 038
Total	1 345 899	1 792 081	1 354 386	761 968	823 489	1 045 298	1 475 915	1 361 507
Victoria								
Geelong	250 697	145 525	52 318	49 557	7 431	127 595	148 732	31 132
Portland	256 164	63 032	37 546	73 230	57 568	150 500	126 473	122 780
Total	506 861	209 557	89 864	122 787	64 999	278 095	275 205	153 912
Grand Total	1 852 760	2 001 638	1 444 250	884 755	888 488	1 323 393	1 751 120	1 515 419

The Hon. BERNICE PFITZNER: Of interest I note that the year 1986 was the year of highest yield—1.8 million tonnes—followed by 1992, 1.4 million tonnes. Australian barley has the reputation, as I mentioned, of high quality standard which is recognised internationally. Sales exports of 1.5 million tonnes of feed barley and 0.45 million tonnes of malt barley were exported and local sales amounted to 0.5 million tonnes of malt and 0.2 million tonnes of feed barley. China was the largest off-shore buyer of malting barley for the fourth year in succession with sales of 227 000 tonnes. Recently, when I was in China it was mentioned to me that of all the barley that they had bought the Australian barley was the finest. Other Asian countries were 46 000 tonnes to Taiwan, and 20 000 tonnes to Korea. Additional sales were to South America—Peru, 48 000 tonnes; Brazil, 15 500 tonnes; and Uruguay, 11 700 tonnes. South Africa bought 49 000 tonnes and Zimbabwe 10 000 tonnes.

Export sales to the Middle East were merely feed barley with a total of nearly half a million tonnes sent to that region, which included the countries of Saudi Arabia, Kuwait, Omar, etc. Japan was also an important importer of Australian barley at nearly 300 000 tonnes. Internationally barley is a major export commodity generating sales of more than 19 million tonnes. This amounted to sales of more than $AUS600 million and Australia is among the top four exporting regions. Therefore, with such high quality barley produced by the growers it is with some dismay that I observe that the composition of the board is in dispute. The functions of the board have been recorded in more modern jargon in our Bill but are fairly similar to what the board has been doing all along. The 'functions' are described well and I will read them from the Bill:

The functions of the Board are—

(a) to control the marketing—
  (i) of barley and oats grown in this State; and
  (ii) of barley grown in Victoria;
(b) to market and promote, efficiently and effectively, grain in domestic and overseas markets;
(c) to cooperate, consult and enter into agreements with—
  (i) authorised receivers relating to the handling and storage of grain;
  (ii) carriers relating to the transport of grain;
(d) to determine standards for the classes and categories of grain delivered to the board;
(e) to determine standards for the condition and quality of grain delivered by authorised receivers to purchasers;
(f) to provide advice, as requested, to the Minister and the Victorian Minister about the marketing of grain.

These functions are comprehensive and encompassing, so we need to have a skilful, efficient and effective board to undertake them.

Coming to the composition of the board, we now have eight members: one person nominated by the Minister; one person nominated by the Victorian Minister; two will be growers on whose behalf barley is grown in South Australia and who are entered on the roll of growers in accordance with section 58 and elected in accordance with the regulation; one will be a person by whom or on whose behalf barley is grown in Victoria and who is nominated by the selection committee; two will be persons with knowledge of the barley industry, one of whom is resident in Victoria and who is nominated by the selection committee; and one will be a person nominated by the selection committee who has expertise in one of the following—business management, finance, exporting, product promotion, or any other area of expertise which the selection committee considers relevant.

We now have only two South Australian growers who are elected and one Victorian grower who is selected. The contention is that the growers will be in a minority on the board—three out of eight people—and also there is the difficulty of two elected members and one selected member, instead of three elected members. As I do not know the barley growers' community well, I am not sure whether or not they should all be elected. My natural inclination would be to have them all elected, as that would seem the most democratic method. However, the majority of my colleagues have deemed that the mixture of two elected members and one selected member is the correct one.

I hope that this controversy will and can be settled in the near future. If the mix is incorrect, by taking a poll of the growers we might address the situation. At this stage I support the second reading but know that perhaps this board, which has such a long and fine history, may not be well served. This board's primary objective is 'to receive and market the barley, oats and other

commodities produced in South Australia and Victoria in such a manner as to provide the maximum long-term benefits to the growers in those States'. This is a fine statement. I support the second reading at this stage with severe reservations.

The Hon. M.S. FELEPPA secured the adjournment of the debate.

SOUTH AUSTRALIAN TOURISM COMMISSION BILL

Adjourned debate on second reading.
(Continued from 24 March. Page 1688.)

The Hon. DIANA LAIDLAW: The Liberal Party supports this Bill, which provides for a tourism commission in South Australia. The commission is to be established by 1 July this year. I admit that I address this Bill with mixed feelings, with feelings of frustration and relief, frustration that it has taken so long for this Government to recognise that tourism is a very competitive business, that it is an entrepreneurial business and that it has to be driven by the industry taking account of market forces and not driven by a Government bureaucracy bound up with processes.

I also have a sense of relief in debating this Bill because after so long the Government is finally implementing a structure that is appropriate to the importance of tourism in South Australia both in terms of generating jobs and in restoring the economic prosperity of South Australia. It is a sense of relief also to know that finally South Australia is catching up with circumstances in other States in terms of tourism.

At the national level we have had for many years a tourism commission in charge of tourism promotion and marketing for this country, and I understand that in every other State and Territory, with the possible exception of Tasmania, it is a commission comprising members from the private tourism sector. So we in South Australia are finally catching up to what is happening in other States—and there is a lot of catching up to do not only in terms of the structure that is to be in charge of tourism marketing promotion but also in terms of visitor numbers and visitor nights in this State.

For a long time I have been an advocate of a tourism commission in South Australia. I recall asking the former Minister of Tourism (Hon. Barbara Wiese) a question about the Government's intentions in terms of a commission back on 20 March 1991—essentially two years and one week ago. At the time the Minister said that a review had been undertaken in 1987 and that that review had determined that a commission was not desirable in this State at that time. She went on to say:

> I must say that little has changed to influence me that the establishment of a commission would be desirable.

She said that changes to the Government Management and Employment Act which enabled chief executive officers of Government agencies to have greater autonomy over their own budgets and staffing arrangements was one reason why she thought there was no reason for change, because the General Manager of Tourism South Australia had more flexibility and autonomy as a result of those changes. She went on to say:

> The other much more important point is that any organisation is only as good as the people working within it. I truly believe that tourism commissions in Australia have staff that are no better or worse than the staff employed within our own State Government tourism authority. For that reason there is little to be gained from moving from one current structure to a tourism commission. There is also no doubt that to move from this structure to another would set back by at least two years the progress of the excellent improvements that are taking place in South Australia.

She predicted that 'considerable disruption' would result in South Australia from the establishment of a tourism commission, as has happened with the establishment of such organisations in other States and Territories. Reflecting on that quotation, it is interesting to see that a new Minister has grasped the nettle of a tourism commission, and it would suggest that the new Minister does not have the same faith in the staff of Tourism South Australia to undertake the challenging responsibilities that are demanded if South Australia is to compete successfully in the tourism stakes. The new Minister's enthusiasm for a tourism commission would seem to reflect the fact that South Australia has not been making progress with our tourism strategies as the earlier Minister considered to be the case some two years ago.

I held the shadow portfolio of tourism between January 1990 and May 1993, and it was a period of considerable unrest in the tourism industry in this State. It was a period when the industry was agitating on many fronts. It was agitated about Government forecasts, growth in visitor numbers and nights that were not being realised, the Government's incompetent handling of major tourism projects, as well as the Government's failure to match rhetoric with funds—and this is particularly so compared to counterparts interstate—the spate of strategic and strategy documents, a failure to develop an implement a marketing plan and a lack of professionalism and industry experience within Tourism South Australia.

I spoke on all those matters in some detail one year ago, in March 1992, during a long and detailed speech on the Supply Bill. At the time, I outlined the alarm and frustration being experienced by people within the tourism industry (and I would add also many within Tourism South Australia) because of the Government's failure to come to grips with key issues in tourism—indeed, small issues such as signage policy. T o that time, operators had placed great faith and a great deal of money and time in Government statements that the industry was deemed to be a Government priority for future growth and, indeed, that it was one in five key areas for development in this State. But the truth is that the Government never matched its tourism rhetoric with tourism dollars, and the State has never realised the growth targets necessary to increase our historically low market share in the highly competitive tourism stakes.

It is interesting to note that between the years 1984-85 and 1990-91 the Bureau of Tourism research records that South Australia was the only State in the nation to experience a negative annual growth rate of minus 1 per cent in the number of domestic trips to this State. The Northern Territory, by contrast, recorded a phenomenal 10.5 per cent growth, and I would note that during those

years 1984-85 to 1990-91 the Northern Territory was operating with the benefit of a tourism commission.

I also add that the Northern Territory has always been a natural partner for South Australia in terms of cooperative advertising and packages marketing South Australia and the Territory as gateways to the Outback. However, I recall when the Hon. Roger Vale, as Minister of Tourism in the Northern Territory Government, visited South Australia some years ago he expressed despair to me that his overtures to Tourism South Australia—and I believe also to the Minister—for cooperative advertising between the Territory and South Australia had fallen on deaf ears. I believe the only agency that has undertaken such initiatives was Australian Airlines, which marketed trips by train and plane between Darwin and Adelaide, stopping off at Alice Springs, Uluru, Coober Pedy and through the Flinders Ranges to Adelaide.

In terms of tourism statistics—and they are important when one discusses this Bill—it is interesting to note that also between 1984-85 and 1990-91 South Australia's average annual growth in domestic visitor nights as compared to just visitor numbers fell, and the figure for that period was minus .3 per cent.

When one looks at international visitor nights, one sees that the situation has been even worse. In 1990-91, Adelaide recorded only 5.21 per cent, which was well below our *per capita* population, as was the figure of 6 per cent for South Australia as a whole. In 1991-92, the past financial year, the figure was almost the same, at 5.2 per cent.

But what is pretty disastrous is that over the period of 1985-86 to 1991-92 the percentage of international visitor nights fell from 8 per cent to 5.2 per cent. Certainly, numbers increased over that time but, as a proportion of Australia's whole, we have fallen markedly in our share of visitor nights spent in this State over the past six to seven years. So, as I indicated earlier, an enormous amount of work must be done in this State to catch up in the categories of visitor numbers and nights with respect to domestic and international visitors to this State and to catch up on market share with regard to what is happening on the national scene.

The Arthur D. Little Report spent considerable time debating this issue of tourism. The Little report highlighted that tourism, with vocational education advisory services, agricultural advisory services and health care services, was one of four means of maintaining the employment and income levels of the economy in the future in this State as we focused on the needs of the Asia Pacific region. The same report in terms of tourism states the following:

South Australia's strengths, inaccessible nature, cultural heritage and food and wine experiences confer the potential to earn more tourism income for the State. Opportunities for increased tourism are created by the increasing affluence of the Asian markets and the emergence in Europe and North America of strong interest in different cultures and comfortable learning experiences.

If tourism is to grow, however, improvements need to be made to the destination appeal of South Australia's attractions and tourism infrastructure. South Australia has only a limited number of internationally attractive destinations (but none with 'must see' potential) and sustained tourism growth will require a focus on the opportunities available. Particular effort will be required to upgrade access and visitor activities, to establish quality accommodation adjacent to strategic attractions and to improve tourism management, particularly in key non-metropolitan locations.

The Little report goes on to state:

The study found that tourism in South Australia could grow at Australian market rates for each segment, provided that programs for tourism development are implemented. Growth rates in visitor nights in the more mature intrastate and interstate markets are established at 2 per cent per annum, while an annual growth rate of 8 per cent is achievable in the international holiday market.

The State's tourism industry, while enjoying good growth in the international segment, has fallen behind other States in terms of market share: both the international and interstate visitor segments have recorded good growth in the number of room-nights and visitors since the mid 1980s; the intrastate market is flat, with performance at the level of the mid 1980s; market shares for all segments have declined, an indication that the State is not acting as aggressively as other parts of Australia and is not attracting comparable levels of investment; the relatively slow growth may be a function of the State's heavy reliance on the non-holiday market...which for Australia has not grown as fast as the holiday market; and in the international market this slow growth in the holiday market may be attributable to South Australia's inability to penetrate the Asian markets, especially Japan.

The report believes that there is room for much greater focus on destination development and room for coordinated development of a small number of destination areas, which is expected to subsequently attract private investment in accommodation.

Overall, perhaps the most telling remark in the Arthur D. Little report is that the marketing of South Australian tourism is complicated by the fact that there is a lack of a single clear image of the State. Therefore, it has recommended to the Government a number of approaches. One was to develop and put into action a tourism infrastructure program especially for natural attractions; secondly, to attract investment into major developments in the Barossa Valley, Kangaroo Island, the Flinders Ranges and Adelaide, which have the capability to transform South Australia's destination appeal; and thirdly, to provide appropriate incentives for strategic destination tourism development and to investigate an accommodation levy as a means of substantially increasing resources for South Australian tourism promotion.

The subject of an accommodation tax is one that I suspect will be debated by the proposed Tourism Commission, but it has certainly been one that has been rejected to date by the tourism industry in this State. It has been singularly unimpressed by the way the Government has been marketing and promoting the State and considers that until the Government lifts its game in the administration, marketing and promotion of the State in tourism terms it will not be prepared to contribute toward tourism promotion. It has also argued, and I think with good reason, that the accommodation industry alone should not be levied for tourism promotion purposes when there are so many other businesses in the State that equally benefit from the tourism industry.

I want to speak a little more about some issues within the tourism portfolio based on my current portfolios of transport, marine and the arts. It is true that transport has a key role to play in the future of tourism in this State, not only in air travel to and from other States and overseas but also in terms of air travel within this State and in terms of road and rail travel modes. It is critically important that we improve our road network, particularly the sealed road network in this State. I know that the Minister of Transport Development—who is handling this Bill—earlier held the post of Minister of Tourism, and I hope that we see a more aggressive approach and more sympathetic approach from the Department of Road Transport in relation to the key needs of the tourism industry in this State and that we see increasing allocations of funds to country areas in particular for road construction purposes.

This will depend a great deal on what road funds are available to the State, and we are all aware that this Government has frozen fuel franchise fees to the Highways Fund at 1981-82 levels, and therefore at about $27 million, for the past ten years. Certainly, the State contribution to road funds is limited now but I would nevertheless plead with the Minister that whatever funds are available not only from the tourism portfolio but also through the Department of Road Transport must be made available for roads that qualify for increased tourism travel. Such roads would include not only the roads on Kangaroo Island but I would argue also the road through the Flinders Ranges, probably north from Orroroo. The road to Arkaroola is in dire need of upgrading and sealing. The road from Burra to Morgan is also in need of attention. There are roads on Eyre Peninsula that would also qualify under the tourism category, but the specific roads that I have named certainly demand priority attention.

It is interesting to see that in terms of transport and tourism the Federal Government has agreed to provide $17.1 million for the upgrading of the Indian Pacific railway, and that is a very important initiative for this State in terms of tourism. Certainly, the Ghan as operated by Australian National in recent years has been a great tourism asset to this State and has regenerated interest in rail travel that is comparable to experiences that one can enjoy in the great rail journeys overseas, whether it be the Blue Train in South Africa, the Trans Siberian or train journeys in Canada between Vancouver and Banff.

There are a number of other issues that can be addressed in the transport folio. One is cycling within the metropolitan area and beyond. There is also the perpetual issue of signage, an issue that is a passion of my colleague, the Hon. Legh Davis. So much more can and must be done between tourism and the Department of Road Transport in getting its act together to provide clear signage in the metropolitan, outer metropolitan and country areas to help tourists enjoy their travels when in this State. Work can also been done between tourism and the Department of Marine and Harbors in terms of enjoyment of various water based water activities on the River Murray, in Spencer Gulf and in Gulf St Vincent, as well as along our foreshore. We have tremendous coastlines and some relatively sheltered waters, but we lack marinas and safe havens for boating. Much more must be done in this area if we are truly to be serious about tourism.

My other shadow portfolio of arts and cultural heritage is equally important to the tourism portfolio. The Arthur D. Little report referred to this at some length, although my own response to this report is that it is a pity that the arts were not seen as an immediate benefit but only as a spin-off benefit through tourism. That is a matter on which I will elaborate on another occasion.

In terms of development requirements of selected South Australian destinations, the Arthur D. Little report recommended that in Adelaide we should be conducting festivals annually, versus biannually, and that would no doubt include the Adelaide Festival of Arts. It recommended that we should be making Adelaide the centre for cultural tourism in Australia, with such initiatives as an Aboriginal museum, a history of early settlement and a centre for the arts and artisans. Certainly, with the South Australian Museum and now with Tandanya, we have a fantastic focus on Aboriginal art in South Australia and the best focus in the nation on Aboriginal art and cultural heritage. However, it is an indictment that this fine collection, one that would no doubt attract enormous tourism interest if we marketed it properly, has not been shown to its full benefit because 10 years ago the Government deferred the redevelopment of the South Australian Museum. The redevelopment program has since been followed by the Government's decision to defer the extensions to the Art Gallery, again on North Terrace, and its decision to not set a date for any work to the State Library.

If we are truly serious about tourism in South Australia, we must be doing a great deal more to focus on North Terrace as a cultural centre for the State, yet so little has been done to provide the facilities that would be suitable to make any promotions credible. The Government has to be condemned for those decisions to defer such important heritage and tourism initiatives. Work is also recommended by the Arthur D. Little report concerning the Barossa Valley, to make current festivals annual. I note that the Barossa Music Festival is now to be conducted annually. The Arthur D. Little report also recommends developing a wine museum and adding more shopping opportunities. All of these are matters related to cultural tourism. Equally, on Kangaroo Island there is a range of environmental initiatives suggested to be undertaken. All of those are in the cultural field.

In general, the report recommended promoting the expansion and nationwide and international marketing of an artisan industry. I would applaud that recommendation. However, the report talked not only about cultural tourism as a focus for the State in generating business but it also talked about building Asia-Pacific alliances. At page 31, the report states:

> As the domestic market is redefined, firms must export to survive and their competitiveness will be measured by their ability to do this. The State Government can facilitate this process by itself working to establish some overseas alliances which will help smooth the path for the State's exporters by enhancing South Australia's imagine in Asia-Pacific markets. Building alliances can also aid the investment marketing process, a higher priority now that the State itself is short of funds for investment in major development projects. Such alliances should

be seen as a supplement to, not a replacement for, traditional marketing to export markets or sources of investment funds. First candidates for alliances are Indonesia and Taiwan.

I would argue strongly that in building those alliances in the Asia-Pacific region we should be using the arts as a strong focus for such endeavours. The arts can create in a non-threatening manner tremendous goodwill between people of various backgrounds and can also stimulate interest in a non-confrontationist way in the cultures of other countries. We should unashamedly be using the arts for our endeavours on the business and export front with our near neighbours in Indonesia, Taiwan and elsewhere in the Asia-Pacific region. I believe that all my shadow portfolio areas that I now hold in transport, marine and harbors and the arts are heavily linked with the tourism arena.

Briefly, I want to mention some of the provisions of the Bill. I note that it is proposed that the board comprise not less than seven and not more than 10 directors. I have reviewed the Acts that apply in Queensland, New South Wales, Victoria and the Northern Territory, and it is interesting to note that all of them have had various memberships over the past 10 years, ranging initially from three in the Northern Territory and now 11, while currently New South Wales has not fewer than seven and not more than nine, while Queensland has eight and Victoria seven members. Essentially, we are in line with what applies in other States in that regard.

I have checked the composition of boards in other States and Territories to determine what they are looking for in terms of representation. None of them come anywhere near the brief terms referred to in clause 9(3) of this Bill, which provides:

> The board's membership must include persons who have, in the Minister's opinion, appropriate expertise in the operation of tourism businesses, regional tourism, business and financial management, marketing and industrial relations.

I am particularly pleased to see the specific reference to regional tourism, and I note that the Northern Territory has specifically designated under its Act that every important region—Darwin, Tennant Creek, Alice Springs, Katherine and Arnhem Land—must be represented on the commission. It is important in the Northern Territory; it is equally important in this State that there be strong emphasis and representation from regional tourism if we are to be successful in gaining the cooperation of the large number of people who are involved in tourism throughout the State and in marketing our State in national and international terms.

I am particularly interested in how the position of the Chief Executive Officer is to be advertised, and who we will gain for that position. Clause 8(3) of the Bill provides:

> The CEO is to be appointed by the Governor, on the recommendation of the Minister and the board, on terms and conditions determined by the Governor.

Clearly, the CEO is to be approved by both the Minister and the board and must sit on the board of the commission. I find that somewhat difficult, certainly in terms of the State Bank and other Government authorities where the CEO is essentially a managing director. My view is that that is not appropriate and that it does not assure the accountability that we should be requiring from these positions. In general terms, my Party was not keen to see an amendment to that provision, but I remain uncomfortable about that aspect of the board and the position of the CEO.

Following a recent review of its Act, New South Wales advocates a position that applies in Queensland: that is, that the organisation should be removed from the Public Service. The New South Wales review and the Queensland practice provide that the only way in which a tourism commission can fully achieve its commercial objectives is to remove the commission from the constraints of the Public Service. If we want to learn from interstate experience we can do no better than to learn from the example of the Queensland Tourist and Travel Corporation, which is regarded as the model organisation and which is separate from the Queensland Public Service. I would be interested to question the Minister on what valid reasons apply why the commission in this State should not be operating within the terms of the Government budget simply on a one line basis. I note also in terms of the commission that the Bill contains some novel initiatives to help the proceedings of the commission. There is provision for telephone and video-conferencing between directors and in terms of the quorum where it can be determined that a majority of the directors express their concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.

I have some concerns about the disclosure of interest provisions, and I question clause 14(1) which provides that a director who has a direct or indirect pecuniary or personal interest in a matter under consideration by the board must disclose that interest and must not take part in any deliberations. I suspect that there will be no person on the board, if they are truly to have expertise in the operation of tourism businesses and the like as set out under clause 9 of this Bill, who will not almost at all times if not only on rare occasions have a direct or indirect personal or pecuniary interest in a matter under consideration by the board. I would be interested to learn from the Minister how this disclosure of interest provision will operate when one looks at the requirements for the composition of the board.

I will ask some general questions later in terms of the functions of the commission and its relationship under the new structure with the Convention Centre. Finally, I welcome this new Bill and the reference to performance targets, because one of my chief criticisms of tourism in this State for some time has been that no targets have been set for visitor numbers and visitor nights, an absolutely extraordinary ethic when one considers that the whole focus of tourism should be sales. It is hard to believe that no targets have been established. At least the Government now realises that that has been a flaw in past operations, and it is looking to establishing performance targets for the commission in the future.

I wish the commission well. I hope that it realises the expectations of all who are involved in the tourism industry in this State because they deserve better than they have received to date as they have put countless hours and resources into the industry. They are wonderfully positive, entrepreneurial people with tremendous faith in this State and what it has to offer. They work tirelessly, not only to give first-time visitors

to this State tremendous pleasure but to ensure that they generate repeat business for themselves and for the State, something so critical for future jobs and future prosperity in this State. I welcome this Bill and look forward to asking further questions in Committee.

The Hon. L.H. DAVIS: I join my colleague, the Hon Diana Laidlaw, in supporting this Bill. It gives me some pleasure to see that a new Minister has taken a new and refreshing approach to tourism. I should immediately make public the well known fact that I do have an interest in tourism ventures through my wife who runs two bed and breakfast cottages, a tea room and a craft shop. I put that interest on the table. I have a passion for tourism in South Australia. There is no doubt that tourism is one of the most rapidly growing industries in the nation and the potential to create employment in South Australia is evident from the statistics one can see from other States that have had successful and far more effective marketing of tourism than has South Australia.

I must put on record the fact that for many years we had a Minister of Tourism who I do not think did the portfolio justice. Certainly she received some kudos on the cocktail circuit. I refer, of course, to the previous Minister of Tourism, Barbara Wiese. I must say the new Minister of Tourism, Mike Rann, has had a much more hands on, enlightened and intelligent approach to tourism than his predecessor. I think it has been disappointing that tourism in South Australia, in a critical period during the late 1980s and early 1990s, particularly given the rising unemployment through the shredding of jobs in so many sectors of the community, has fallen well behind other States in terms of market share.

That is demonstrated no more than by looking at the market share in interstate, intrastate and international visitors nights in South Australia as a share of Australia's total over the last few years. Certainly international visitors to South Australia account for no more than 10 to 15 per cent of the total visitor pool in the State on an annual basis. However, it is significant that international visitors should not be underrated because they create 10 times more employment than an Australian visitor. They spend more money, they are more likely to stay at a hotel, they are more likely to go to a restaurant—

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: —they are more likely to go to a craft shop, they are more likely to go to a theatre; and it is quite clear that if one looks at the data, which the Hon. Trevor Crothers clearly has not, South Australia has fallen well behind. Let me demonstrate that to the honourable member—

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: —so that I can finally silence him. In 1985 South Australia had an 8 per cent share of international visitor nights to Australia, a reasonable figure given that we have about 8.5 per cent of the nation's population, but by 1991-92 that figure had shrunk to 5.2 per cent. In other words, there had been a 35 per cent decline in our share of international visitor nights over a period of seven years. That is an appalling figure.

Let me look at interstate visitor nights, and that is also a very significant figure. In 1985-86 we had 9.3 per cent of interstate visitor nights as our share of Australia's total. That figure had decreased to 8.7 per cent in 1991-92.

The Hon. T. Crothers interjecting:

The Hon. L.H. DAVIS: I think you should just find a nice bed and breakfast and experience the joys of intrastate visiting. Then, of course, the most shameful statistic of all, that South Australians are travelling less within their own State than any other State. The Government itself has put on public record that there has been a one per cent decline on average over the last six years in intrastate travel. In other words, the number of people travelling within their own State has declined over a six year period. Those are dramatic figures; they are facts; they are saddening statistics. The Hon. Trevor Crothers may well remember that following a visit to Queensland, where I saw key executives with the QTTC, I came back with disturbing information that confirmed the reason, certainly in part, for the alarming trends that I have just discussed, and that was that in a survey of a significant section of people from Queensland, New South Wales and Victoria who had travelled in the preceding 12 months, those people—

The Hon. T. Crothers: When was that?

The Hon. L.H. DAVIS: We are talking about October 1992, only five months ago, in data which were made public a few weeks before my visit and which are very recent, very quotable and very damning in their impact on South Australia. That survey of holiday makers from Queensland, New South Wales and Victoria asked a series of questions on attitudes of holiday makers towards the various States. These holiday makers were asked to rate States in terms of those which offered the most attraction for eating out, outdoor lifestyle, culture, heritage, day trips and young people. In the category of the affluent mature visitors, those over 50 with no children, double incomes, in the top 50 per cent of income earners, and those in the young bracket, who are also affluent, surely the groups that everyone in tourism is after, rated South Australia as the most boring State. In fact, amongst the young people South Australia was the only State or territory that did not rate a mention in any of the categories. It barely rated a mention amongst mature visitors. What was disappointing and worrying to me was the fact that in areas would expect to do well, in heritage, food, outdoor lifestyle and so on, we just did not rate.

Of course, what happened was that the Government went into overdrive and attempted to shoot the messenger, attempted to attack me for daring to raise this survey. I was not misrepresenting the survey; I was just repeating the facts. We had this extraordinary experience of the media going into Rundle Mall and asking South Australians whether South Australia was a boring State. That was not the point of the survey. It was how others saw, us and how others saw us reflected very much the marketing, or rather the lack of it, by Tourism South Australia under the shoddy and second rate leadership of the previous Minister of Tourism, Barbara Wiese.

Tourism has been seen in the past as a pretty soft portfolio. It is the sort of portfolio that everyone would like to have because it gives you the kudos of the cocktail circuit, the entree to travel, quite legitimately, anywhere in the world or the nation under the guise of being on the job. But, of course, tourism these days is

big business. It is said to be the most rapidly growing industry in the tertiary sector in Australia over the next decade. When one looks at the statistics of Queensland, when one sees that tourism in Cairns alone has gone up tenfold in the last decade, then one can realise the magnitude of it all. When one sees that there are about 12 international flights into South Australia a week and Cairns has 200 international flights a week, then one can see why I am entitled to stand up here and be concerned.

The do-nothing former Minister of Tourism, Ms Wiese, refused to embrace the tourism commission, which had been talked about publicly by the Hon. Diana Laidlaw and me on more than one occasion. So I am pleased that the new Minister, within months of taking on this portfolio, has grabbed the concept and run with it. It is a professional approach, which will have an emphasis on marketing, notwithstanding the fact that a marketing budget will obviously be savaged and circumscribed by the tragedy called State Bank. But at least it is on the right track.

One must, in what I believe is very much a bipartisan area of politics, acknowledge the fact that the Minister of Tourism (Hon. Mike Rann) has, with his hands-on approach, recognised that South Australian tourism has been run in a second-rate way by a second-rate Minister and arguably with a lack of leadership, and that will now be addressed in what I think is a promising way.

The Bill describes it as an Act to promote tourism and the tourism industry in this State to establish the South Australian tourism commission. It is simple legislation. I am pleased to see in clause 7 that, whilst the board is subject to control and direction by the Minister, no ministerial direction can be given to suppress information or recommendations from a report by the commission under the Act. I think that is a very positive measure. I also note with interest that this new Minister (Michael Rann) has had a very bipartisan approach in the administration of his portfolio; that he has shared information with the Opposition shadow Minister of Tourism; and that he has advised him of developments in the plans that he has for tourism.

That again is in sharp contrast to his predecessor, the Hon. Barbara Wiese, who would not even acknowledge that the Liberal Party had a shadow Minister and who would actively scrub out the name of the shadow Minister of Tourism (Hon. Diana Laidlaw) from invitation lists. Let me put that on the record. That is the sort of cant and hypocrisy and second rate behaviour that we had from the previous Minister. I can say that with some feeling because that is exactly the way in which she operated the portfolio of small business; when I was the shadow Minister of Small Business I certainly was never allowed to be briefed by the Small Business Corporation.

There was no spirit of cooperation and there certainly was no open Government but simply a closed mind. The smallness of that mind and the smallness and mediocrity of that approach has been reflected in the performance of tourism in South Australia.

At least the Opposition can say, 'We told you so.' At least the Opposition can point to the damning data of the shrinkage of the market share in tourism internationally, nationally and intrastate as a clear indictment of the previous Minister who presided, without distinction, over that portfolio for I think about five years—although it seemed much longer than that.

There are examples of her arrogance and her inappropriate behaviour. My colleague the Hon. Diana Laidlaw referred to signposting. I can remember full well saying, 'What is going on with Cleland?'—one of the great treasures surely of tourism in South Australia, within a few kilometres of Adelaide, a 20 or 25 minute car trip to the Adelaide foothills, where one can see the flora and fauna of Australia. It is a unique experience for international visitors—potentially an international class park for visitors. That was called—and we are talking only about a few years ago—the Cleland Fauna Zone, the Cleland Conservation Park, the Cleland Wildlife Zone and a few other names as well.

There were signs on the up-track of the main freeway out of Adelaide through Mount Lofty with an arrow saying 'Cleland', but with no explanation of what Cleland was. It could have been a suburb or it could have been a brandy; who knows?

I raised this question in the Council and said, 'Why don't we call it what it is: it is a wildlife park. Why don't we tighten up and be professional and call it what it is—Cleland Wildlife Park. Why don't we standardise the signs?' At the Portrush-Greenhill Roads intersection there was a sign, a brown and white arrow, pointing to the Cleland faunal zone, as I remember it. What was a faunal zone? I actually went into Rundle Mall and did a survey of people, and only two out of 10 people knew what a faunal zone was. It sounded slightly incestuous, but the Minister just dismissed it; she never wanted to take the point.

However, I had the satisfaction, about two years later, of suddenly finding that it had all changed to Cleland Wildlife Park. I might be said, by some of the Government members, to have a fetish for signs, but I have done enough travelling to know how important signposts are to people in strange cities. The parochialism and amateurism of this Government with regard to signposting is one of the great jokes of this Administration.

I can remember the battle that raged for a year and a half about the signposting to Bungaree, the property of George and Sally Hawker. Again the former Minister of Tourism dismissed that with contempt. We had Australian Tourism Commission officers, with journalists from overseas, getting lost trying to find Bungaree—and these people from overseas were on a trip to write about this wonderful piece of Australian heritage. There was the RAA man who got lost trying to find Bungaree because of inadequate signposting.

The best of all, the closest to home to all of us here in Parliament House, North Terrace, is the signpost on the intersection opposite which points to the Constitutional Museum, which has been called Old Parliament House since 1986. Seven years later it is still called the Constitutional Museum. This tired, fading brown and white signpost points down to the Constitutional Museum when it is called Old Parliament House.

I have stood up in this Council every year arguably for the past six or seven years and raised this matter and had the sneers and snarls of the Minister saying, 'Of course it is nothing to do with us; it is the Adelaide City Council.' If this Government had any leadership or

commitment it would have made it happen; it would have done it itself. If I had been the Minister of the day I certainly would have.

I defy any Government member opposite to tell me one capital city of a million people in this universe of ours, where you could go to the main intersection and find a sign that has been wrong for seven years. That is *Guinness Book of Records* stuff. There is no signpost to the Mortlock Library, which is one of the great undiscovered treasures of North Terrace. You have disgraceful signposts all down North Terrace. You have rusting, rotting electricity poles all down North Terrace.

Certainly the Adelaide City Council is threatening to get closer to actually signposting and streetscaping North Terrace, but between them the Adelaide City Council and the State Government have fumbled this ball called tourism in the Adelaide city. Disgraceful stuff! Absolutely disgraceful stuff! It was reflected, of course, a few years ago when two young tourism students out of TAFE did a survey at bus stops and railway stations in South Australia of people who worked in the city going home at night. They asked, 'If you had an interstate or international visitor coming to Adelaide, which three tourist attractions would you show them in Adelaide?'

The sad fact was that this survey showed that not too many people could actually name three tourist attractions. I raised this matter with the Minister as yet another example of how badly tourism was being promoted to the people of South Australia; they did not even know the treasures on their own back doorstep. What happened? I got slammed in the Council, and I can tell you now that the students concerned got a rap over the knuckles. The Minister did not like the survey being released to a member of the Opposition. That was her approach to open government. It says a lot for the style of the Hon. Barbara Wiese.

The Hon. Diana Laidlaw: It's a wonder she didn't bring in the police, like Levy has.

The Hon. L.H. DAVIS: Well, it says a lot for the style of the Minister: her actions said more than my words on that occasion. How many people who have graduated out of the wonderful tourism course at TAFE have been employed by Tourism South Australia? That is a straight question: I would like an answer to that in Committee. One of the sadnesses is that the quality of employment in Tourism South Australia has been very uneven, and that is because of the lack of leadership by the Minister. It has percolated down through the organisation, so it is an organisation where there has been uncertainty, a lack of direction, cohesion, strategy, style and proper marketing, and a waste of many dollars on many occasions.

I have a tremendous regard for the professionalism and the complete commitment of many people in Tourism South Australia, but the overall effectiveness of the operation has been marred by the mediocrity that has permeated from the Minister's office until at least her replacement in recent months.

Certainly, there is no question that the product in South Australia is superb. One of the very few pluses in tourism in South Australia over recent years, it has to be said—and it may represent a biased point of view—has been the growth of the bed and breakfast industry. One can look at the township of Burra, where my wife runs a modest bed and breakfast operation, and see that in the past seven years the number of bed and breakfast cottages has increased from one to 10. An enormous growth has occurred in the South-East through that lovely hamlet of Penola, which has refurbished so many of its heritage buildings. Obviously, with the possible sainthood of Mother Mary McKillop, Penola will become one of the great tourism attractions not only of South Australia but of Australia.

The Coonawarra wine country, which arguably boasts the finest red wines in Australia, allied to the very attractive heritage of Penola, Robe, Mount Gambier and the Blue Lake, represents a wonderful stopover point for interstate visitors travelling by road, as well as for people from overseas and from within South Australia.

Of course, Kangaroo Island is also another extraordinary example of what South Australia has to offer to tourists, whether they be local, interstate or overseas. One of my enduring memories of Kangaroo Island is meeting a Canadian who said that, in his view, Kangaroo Island was the best place in the world to observe bird life. Certainly, the Flinders Chase is a unique opportunity to experience Australian wildlife and flora.

One of the sadnesses is that this Government has fumbled the ball in terms of development, and Kangaroo Island's development, marred by controversy, which I think has been well justified, is yet another example of this Government's ineptness in tourism. The Flinders Ranges is another instance of ineptness.

There are so many examples where schemes have been half-baked, inappropriate in their scale, perhaps not properly costed or properly sympathetic to environmental considerations. But the Government ultimately must bear responsibility for that. I hesitate to keep harping on Queensland, because there are people in Tourism South Australia who still believe that Queensland is a hick place. However, let me tell the Council of my experience in Queensland 18 months ago, prior to travelling on to New Zealand to look at the State Bank fiasco. I did some investigation of the United Bank purchase over there, although I will not talk too much about that, because that is still a subject of the royal commission. However, I thought I needed to prepare myself at least by having a rest before I went.

My wife and I travelled to Cairns, and we spent a day in the Atherton Tablelands, stayed in a bed and breakfast, and travelled to a tea plantation, a rain forest and waterfalls, and we saw platypus in the wild. It was a very homely occasion with a wonderful fifth generation Atherton Tablelands couple. Then we travelled to Mosman, where we stayed in a wonderful facility called Silky Oaks, which subsequently won the top specialist accommodation tourism award in the nation. It was a very sensitive, professional development which was world class.

We then travelled to the Daintree, where we had a tour of that magnificent natural attraction. Our guide was one of the most outstanding guides I had ever experienced. He turned out to be the ex-National Marketing Manager of David Jones in Sydney. So, one can imagine the standard of guiding on that trip. We then went back to Port Douglas to see Christopher Skase's enduring contribution to Australian tourism, despite what

one might think of his financial abilities. We saw the butterfly house at Port Douglas and the way in which a massive area under cover incorporated birds, ferns, plants, trees, wallabies, kangaroos and bats in a natural habitat—

The Hon. Peter Dunn: And butterflies.

The Hon. L.H. DAVIS: —and butterflies. This was used to stunning effect. That is professional tourism in Queensland. I should finally add—just to bring Government members back to reality—that unwittingly we stayed at the Cairns Raddison Hotel on the pier, which I later discovered was 50 per cent owned by Beneficial Finance. So, we could never get far away from our problems, even though we were thousands of kilometres from home.

The professionalism that existed in Queensland with tourism is, in many ways, in sharp contrast to the lack of direction and professionalism which exists in some areas of the industry. Of course, whilst tourism is primarily driven by the private sector, it is Government leadership, commitment and strategy that give the lead.

I must say that a tourism commission is more likely than Tourism South Australia to give Government an opportunity to get the settings right for the future. The big challenge to this Government in its dying months, given that the tourism commission comes into operation on 1 July 1993, is to ensure that the board is truly representative of the industry and has the range of skills and experience which is set down in clause 9, under which it must include people with expertise in tourism businesses, regional tourism, business and financial management, marketing and industrial relations. I accept that unhesitatingly as a broad and reasonable guide to the people who should be on this tourism board, which should consist of not fewer than seven and not more than 10 directors.

Also, most importantly, it gives the Minister, the board and ultimately the CEO the power to appoint the right people in the right places. That is very critical; if we are going to run a tourism commission along private sector lines, as I would like to think it would be run, and industry driven, as is described in the second reading, it is most important that we have the right people in the right jobs. On previous occasions my colleague the Hon. Diana Laidlaw has reflected on the lack of capacity in certain key positions in Tourism South Australia, and certainly that has been shown. There has been a bunch of bad examples; for instance, the fox that popped up in the Tourism South Australia calendar for the month of September, masquerading as a dingo. Goodness knows what it was meant to be, but it was a fox—as I described it in my press release, a twentieth century fox—on the Tourism South Australia calendar. What sort of professionalism allows that to get into print?

However, I have to accept that there have been some areas where Tourism South Australia has demonstrated professionalism and has made some significant advances. I refer to the Shorts program in particular which has been very effective in selling South Australia to South Australians. If there is one point I want to make—and I hold this view very passionately—it is that South Australians are not good travellers within their own State. Colonel William Light has a lot to answer for, because the plan of Adelaide is so well laid out, the roads are so broad and travel is so easy that people are spoilt. They do not like travelling long distances, whereas in Sydney and Melbourne, even Brisbane and Perth, people think nothing of travelling an hour or an hour and a half to work. Here, people consider that if they are on the road for more than 30 minutes it is a bit of a worry.

I can always remember when some of my colleagues were organising a function to raise money for Indo-Chinese refugees at the Outer Harbor terminal, which had been built in the 1970s by the Dunstan Labor Government for the large ocean liners of the day. Sadly, the oil crisis put fuel costs up so much that the big ocean liners no longer visited Outer Harbor and we have had just a handful of large passenger vessels coming in to Outer Harbor over the past 20 years.

But there we have this large white elephant—the Outer Harbor terminal—like a ghost building, with the A to Z signs for the customs clearance of hundreds and thousands of passengers from the glory days when the *Queen Elizabeth II,* an 83 000 tonne vessel, and those other ocean-going vessels might have been expected occasionally to call into Adelaide. This huge space, unloved and unwanted, was seen as an opportunity for a fun fundraiser, and we called it, appropriately, the White Elephant Ball. But when I started ringing up friends (and I know other committee members experienced this as well), people said, 'To go to Outer Harbor? That is a long way, I don't think I could do that, it's a bit far.' Outer Harbor, in fact, is only 30 minutes from the city.

Similarly, that has also been my experience with Burra. When people discover that my wife and I own a charming miner's cottage at Burra, they say 'Burra? What on earth possessed you to buy a cottage at Burra?' It is as though they think it is adjacent to Broken Hill, that it is a route march away. However, observing the legal speed limit, one can arrive in Burra in 105 or 110 minutes; it is 160 kilometres from Adelaide, and a quick and easy trip, as the Hon. Ron Roberts would know. In fact, it is not all that much farther than travelling to the Barossa or to Goolwa on a very busy day. Yet there is that perception, which I think has been encouraged by Tourism South Australia—and certainly not broken down by Tourism South Australia—that it is just too hard and too far to travel to some of these places. That is a bit of a worry. Also, there is the perception that in summer one should not go inland, that one should go to the beach, which again is a very odd perception. Tourism South Australia I think has a lot to answer for, in allowing these perceptions to creep in to our culture. This is a matter that really does need to be addressed.

Finally, I want to say that I am pleased to see that clause 19, in setting out what I think is a fairly satisfactory set of functions for the commission, recognises the importance of regional tourism and cultural tourism. It is particularly important for us to recognise the need to build up our festivals, to build on the fact that we are the festival State, that we have such wonderful festivals centred around the wine industry, such as the Clare Gourmet weekend or the Barossa vintage festivals, and to build up attractions which are unique in their own right and which can be packaged for interstate and overseas visitors. These are things that we have to work harder on. There have been some

magnificent examples in Perth, for example, where some of the vineyards have had a symphony orchestra in the middle of the vineyard and attracted thousands of people, many from overseas—the sort of function that my colleague the Hon. Peter Dunn would kill to go and see.

I am particularly pleased to see the intention to increase the marketing budget to 75 per cent of the total of Tourism South Australia's budget. Marketing is more than advertising, of course. We really do have to compete hard on the international market. Again reflecting on the lethargy and mediocrity of this Government over the past decade, I have previously reported to the Council how at the World Expos of 1984 in Vancouver, of 1986 in New Orleans and of 1988 in Brisbane the Australian Tourism Commission had a stand packaging and selling Australia and South Australia was nowhere to be seen. I went to each of those Expos and reported on each occasion about the mediocrity. It did not make any difference; the next one was just as bad and, of course, the highlight was Brisbane where they were still putting it together on opening day. It was a joke, an embarrassment, and I think most members in the Chamber would well remember the mediocrity of that.

However, we have a new Minister, we have new hope and we have a new structure, the commission, and I want to say that I believe this deserves bipartisan support, because tourism is one of the few obvious areas of employment creation that this State can confidently embrace in the next decade. It is something that will only occur, though, if we have more professionalism in tourism, through the Government commission, which is about to be created with bipartisan support, and only if the industry is properly consulted and marketing strategies put in place. I support the second reading.

The Hon. R.J. RITSON secured the adjournment of the debate.

ADJOURNMENT

At 11.9 p.m. the Council adjourned until Wednesday 31 March at 2.15 p.m.