LEGISLATIVE COUNCIL

Wednesday 31 March 1993

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

STATE BANK

The PRESIDENT laid on the table the report of the Auditor-General on an investigation into the State Bank of South Australia pursuant to section 25 of the State Bank of South Australia Act 1983, as amended.

Ordered that report be authorised and published.

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA: I bring up the fourth report and the minutes of evidence of the Legislative Review Committee on general regulations under the Optometrists Act concerning optometrists and optical dispensers.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. T.G. ROBERTS: I lay on the table a copy of the correspondence from the Environment, Resources and Development Committee to the Minister of Housing, Urban Development and Local Government Relations re City of Mitcham, City of Happy Valley, Sturt Gorge and Craigburn regional open space and residential supplementary development plan.

QUESTION TIME

TILSTONE REPORT

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General as Leader of the Government a question about the leaked Tilstone report.

Leave granted.

The Hon. K.T. GRIFFIN: Yesterday, the Minister of Consumer Affairs said that the Chief Executive Officer of the Department of Public and Consumer Affairs had called in the Anti-Corruption Branch to investigate the leaking of the Tilstone report. At the time the Minister mentioned that, I must say I was personally surprised, first, because the Tilstone report was fairly widely circulated within the department but, secondly, because the report did not seem to be an event of such moment as to require the calling in of police, let alone the Anti-Corruption Branch.

On 21 February 1989 the Attorney-General made a ministerial statement about the establishment of the Anti-Corruption Branch and the guidelines which had been given to the Commissioner of Police by way of directions under the Police Regulation Act. Those directions require the Investigation Unit of the Anti-Corruption Branch—and I think only the Investigation Unit is relevant to this particular matter—to undertake investigations into corruption or police misconduct or allegations of such corruption or misconduct. 'Corruption' is defined in the directions so that it focuses on a breach or neglect of duty or abuse of office in return for a bribe or threat or to gain any financial or other advantage or for any dishonest or improper purpose. It seems to me that the emphasis on corruption is much more than merely the leaking of a report. My questions to the Attorney-General are:

1. Does he agree that, in the light of the directions to the Police Commissioner, the reference to the Anti-Corruption Branch of the manner by which the Tilstone report came into the Liberal Party's hands is not within those directions?

2. Is the leaking of a report of any kind a matter of high priority for investigation by the Anti-Corruption Branch rather than investigating substantive activities more likely to fall within the definition of corruption?

3. Does he also agree that reference of the matter to the Anti-Corruption Branch is in any event heavy handed?

The Hon. C.J. SUMNER: I am not familiar with all the circumstances of this matter. I suppose that the leaking of a document could in some circumstances fall within the terms of reference of the Anti-Corruption Branch, and the definition of corruption as explained to the Council by the honourable member. However, that would depend on the circumstances. There are obviously some circumstances where the leaking of a report could be seen to be a matter of corruption but, again, it depends upon the circumstances and, to some extent, the nature of the report. Obviously if there was a leaking of budget documents with a view to someone obtaining a financial benefit by getting prior knowledge of budget decisions then I would think that was very much a leaking of a document that would fall within the purview of the activities of the Anti-Corruption Branch. Whether this particular case falls within that definition, I cannot say without knowing more about the matter, but it may well be that it is only a semantic argument in any event.

Whether it is the Anti-Corruption Branch or the police generally that are investigating the matter I suppose that Government departments are entitled to have these matters examined. It may be by the police, although more normally I think the investigation of leaking of documents is carried out by Government investigators within the Attorney-General's Department. However, I do not think there is one set means of doing it. In this case apparently it has been referred to the Anti-Corruption Branch. I do not know enough about the circumstances to say whether or not that was justified. It may or may not be. Certainly there were other avenues open but apparently not taken in this case by the Chief Executive Officer of the department.

The Hon. K.T. GRIFFIN: I have a supplementary question. In the light of the Attorney-General's response that he is not so familiar with the matter as to enable him to reply definitively to the questions I have raised, will he examine the issue and bring back a reply in due course?

The Hon. C.J. SUMNER: I am not sure that any reply I give will be able to add very much to what I have already said. However, I will examine the question further to see whether there is anything that I can add.

COURT PENALTIES

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Attorney-General a question on the subject of discrepancies in sentencing.

Leave granted.

The Hon. DIANA LAIDLAW: The uproar that followed Judge Bollen's view that it is acceptable for a man to use 'rougher than usual handling against his wife to induce her to have sex' has heightened public awareness about the inequitable treatment of women in the legal system. Therefore, I was not necessarily surprised this morning to receive two phone calls from women who are agitated about the sentence that was given yesterday by Judge Matheson to three men convicted of raping a male youth in November 1991. The reference to that matter is on page 3 of the *Advertiser* today and is headed 'Three "like animals" in raping youth, 18'.

Judge Matheson notes that the victim had suffered severe psychological problems after the attack. According to the *Advertiser,* he also reserved his harshest judgment for one of the men who had not physically raped the victim, but instead had used a knife to slit the youth's anus. The *Advertiser* reports that one of the men, aged 26 years, was gaoled for 15 years with a non-parole period of 13 years; a second offender, aged 19 years, was gaoled for 12½ years with a non-parole period of nine years; and a third man, 30, was sentenced to 12 years gaol with a non-parole period of eight years and six months. It is my understanding that such sentences equate to that of murder. These sentences may be appropriate for rape, but the people who have telephoned me noted that, because the person raped was a male, these sentences seem to be considerably harsher than sentences handed down to a person who has raped a woman.

As I note from past statements by the Attorney that he is particularly interested in this issue of law reform and equity before the law, I would be interested to know whether he has undertaken, or would be prepared to undertake, an assessment of sentences that have been handed down in recent times in the issue of rape to determine whether or not there is a bias in sentencing against women when they are the victims of rape compared to sentencing when men are the victims of rape.

The Hon. C.J. SUMNER: I am prepared to examine that matter. I assume that the Office of Crime Statistics would be able to get that information from the material that it holds, although I would have to check that. However, I can say that in my experience there have been sentences of 15 years, or indeed more than 15 years, for the rape of a woman. One would have to go through and conduct a comprehensive assessment of the various sentences to draw any conclusions, but I do not think the honourable member, nor the people who have contacted her, should naturally assume that there is never a sentence of more than 15 years for rape, because I do know—whether recently or not I am not sure but certainly I am aware—that there have been sentences of more than 15 years imposed by the courts for the rape of a woman.

To say that these sentences equate to murder now is also out of touch. That might have been the case 10 or 15 years ago but it is certainly not the case now. The very minimum sentence for murder these days would be 15 years, and I suspect that that would probably be the exception rather than the rule. Certainly, in some murder cases a sentence significantly in excess of 15 years can be expected. So, I would not assume that 15 years is the normal sentence for murder, as the honourable member has indicated in her question.

I do not know what the judge said in this particular case, but I am happy to have a look at the issue in general and see whether any conclusions can be drawn from the sentencing practices of the courts over recent years in this area, but I do not think the honourable member should assume, and neither should her constituents, that the sentence is a harsher sentence because the rape involved a male. I would be surprised if that were the case, and I would be very surprised if those were the thoughts of the judge. However, I can have the matter looked at on a statistical basis, and I will do that and bring back further information for the honourable member.

GRAND PRIX

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General, representing the Premier, a question about Australian Formula One Grand Prix Board consultancies.

Leave granted.

The Hon. R.I. LUCAS: In 1992 the Australian Formula One Grand Prix Board commissioned two separate consultancies to provide advice on the appropriate level of remuneration packages for senior executives of the Grand Prix. The consultancies that were hired were Cullen Egan Dell Ltd and Egan Zehnder International. Egan Zehnder operates from 35 offices throughout the world and is a recognised leader in the field of executive remuneration packages. In January of this year I sought copies of both reports under the Freedom of Information Act. This month I was provided with doctored copies of both consultancies which deleted important parts of the recommendations. For example, the 1992 Egon Zehnder report states:

> We understand that the current remuneration applicable to the position of Chief Executive for the Australian Formula One Grand Prix organisation is defined as follows:

However, the details of the Chief Executive's package are blacked out. This deletion is curious, because six months ago the complete details of the Chief Executive's package were allegedly provided to the Parliament's Economic and Finance Committee. In quoting from their report of six months ago, I can say that the information provided to that committee indicated that the Chief Executive Officer's package comprised a salary component of $109 000, a superannuation contribution of about $18 000, various allowances of $166 000, a CPI indexed annual fee, which originally was $90 000 in

1989-90, and finally a director's fee for a related company of $5 000 per annum, totalling almost $400 000.

If the full details of the package were released six months ago to the Parliament's Economic and Finance Committee and then released publicly, one wonders why this section of the report in relation to the package of the Chief Executive Officer, released in March this year by the Formula One Grand Prix Board, has been deleted. Certainly, one has to ask whether the information revealed in this previously confidential report is different from what the Parliament's Economic and Finance Committee was told.

The Egon Zehnder report on pages 4 and 5 outlines a recommended appropriate remuneration package for the Chief Executive Officer of the Grand Prix organisation, and I presume that it gives a range of salaries for that position. Again, that information as to the recommendations of the internationally based consultancy has been deleted and, again on page 5, further details of its recommendations as to what would be an appropriate level of remuneration for the Chief Executive are also deleted.

The Cullen Egan Dell report which looks at the appropriate packages for the other chief executives of the board indicates the current total employment conditions of the senior executives and then indicates a recommended payment range, both minimum and maximum, for each of the six senior executives. When the report was released under freedom of information, the recommended minimum payments were left in the report but the recommended maximum payments were deleted. The reason given for the deletion was commercial confidentiality.

Irepeat: the recommendations made by this consultancy were for a salary range and they did not relate at all to the current packages of the senior executives of the board or what the final decisions by the board might have been about their packages. What was left in the report was the minimum range and the maximum range was deleted. Obviously, some questions immediately spring to mind about why the maximum level is deemed to be commercially confidential in a salary range and why the minimum level is not deemed to be commercially confidential and, therefore, can be released. Will the Premier now ensure that the complete and uncensored report by Cullen Egan Dell and Egon Zehnder International is now released to me under the Freedom of Information Act?

The Hon. C.J. SUMNER: I assume that the Grand Prix Board was responding to the request in accordance with the Act and therefore felt that the deletions it made were justified in terms of the Act. I must say that, on the face of it, I cannot see what particular purpose is served from the deletions, but then again I am not privy to all the reasoning of the Grand Prix Board and obviously am not aware of the issue—and I doubt whether the Premier is aware of it, either. I would think that in all probability it has been handled at a bureaucratic level. However, I will take up the matter with the Premier to see whether the additional information requested by the honourable member can be provided.

BICYCLES, INSURANCE

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister of Transport Development a question about insurance cover for cyclists.

Leave granted.

The Hon. I. GILFILLAN: I have been approached by several cyclists who do considerable commuting to work—and also this is a matter that concerns me as a recreational cyclist—concerning the sort of circumstance in which a cyclist has quite clearly contravened road regulation and is at fault and causes an accident resulting in death or serious personal injury and, quite likely, costly property damage as well. It is unclear what the insurance situation would be. Certainly, the cyclists believe that without specific cover they could be sued and, if unable to pay the compensation which may be determined, declared bankrupt. This is a substantial deterrent to people who seriously consider this risk. To date, the cycling public has been sweetly oblivious of it, because by and large it has not been taken as an issue—certainly not in latter years.

Of course, the matter is compounded with many cyclists being younger than 10 years, and certainly many who can be qualified as youths, under the age of 18 years, and the same circumstances could apply if they were involved and declared to be substantially responsible for causing an accident. I have discovered that there is no requirement for bicycles to be insured—and I imagine that most members understand that—but I have been informed by the Insurance Council of Australia that normal household insurance policies cover cyclists for third party property damage and third party injuries up to the level of about $6 million.

So, for those people who by chance are covered in that respect, it appears as though there is adequate cover. But the question then is asked: how many people involved with cyclists at that property would be covered? Do the cycles themselves individually have to be acknowledged? The council advised me that where a person does not have a house or contents policy separate insurance cover for cyclists is not normally available from insurance companies in South Australia, although a policy could be provided that would cover this contingency but I have no idea at what cost. Some Australian cyclists' organisations have made arrangements with insurance companies to get cover for third property damage and personal injury with their membership.

The Bicycle Institute of SA has just approved a scheme whereby members are covered for third party property damage and personal injury. However, the cover was provided by a Melbourne insurance company that already provides insurance to its Victorian counterpart, as the South Australian Institute was unable to make satisfactory arrangements with any insurer in South Australia. From that, it is clear that the vast majority of cyclists in South Australia would have no insurance cover. Accordingly, I ask the Minister:

1. If a cyclist is responsible for causing an accident and is unable to pay, is any insurance cover available or would the cyclist be declared bankrupt?

2. If an accident results in physical damage to another vehicle which is not insured, is the cyclist liable or is insurance available?

3. How many cyclists are currently insured in South Australia covering third party property damage?

4. Does the Minister intend to make third party personal injury insurance compulsory for cyclists in this State, or will she set up a public insurer to cover the situation of uninsured cyclists found responsible for having caused an accident and unable to pay damages?

The Hon. BARBARA WIESE: From what the honourable member indicates, the issues involved in this matter are obviously quite complex although, as he indicates, at least some cyclists would be covered through household insurance policies and also, through the scheme that the Bicycle Institute has instituted, coverage would be available to others. I am not aware of any study that has been undertaken in this area thus far. Some work may have been done of which I am not aware, but certainly it is an issue that is worthy of consideration. I shall certainly seek to have some investigations made about it and a report produced on it, about which I will be happy to provide further information at an appropriate time.

NEEDLE EXCHANGE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health, Family and Community Services a question on the subject of needle exchange.

Leave granted.

The Hon. BERNICE PFITZNER: A month ago I raised the issue of the needle exchange pamphlet used by the Lyell McEwin Health Service. Since then, that pamphlet has been completely withdrawn. This same service is involved in a needle exchange service. I understand that anyone, adult or child, drug user or non drug user, can obtain a needle exchange kit on request. There is no check on whether the person is a self confessed IV drug user nor whether the person attends the needle exchange program. The kit includes 10 needles, also appropriate for insulin injection, swabs, sterile water and a container for needle disposal. Also included is another pamphlet which, although it is a vast improvement on the other withdrawn pamphlet, still does not identify and warn that the injected drug is dangerous and could kill. We understand that clean needles are necessary for the prevention of the spread of AIDS and hepatitis B, but in the enthusiasm of promoting this aspect we are not only forgetting that the drug injected is dangerous but also that the whole procedure could be looked upon as encouraging a young person to try the drug.

The other issue of concern is that it is illogical and unjust that diabetics have to purchase their needles for essential medical treatment, whilst IV drug users get their needles completely free. Diabetics can purchase their needles from a pharmacy at a cost of approximately $500 a year, or obtain the needles from the Diabetic Association for approximately $50 a year. At the Diabetic Association, the diabetic patients are required to register themselves with a letter from their doctor. My questions to the Minister are:

1. What are the guidelines for the exchange of needles by the health service?

2. As one of the guidelines (requiring needles to be given only to self confessed IV drug users who attend the needle exchange program) is not adhered to, are the other guidelines similarly disregarded?

3. Why are people suffering from diabetes disadvantaged with regard to the purchase of their needles?

4. What is to stop diabetics obtaining needles at a needle exchange centre, knowing that the needles for drug and insulin are the same?

5. Will the Minister look into the whole service of needle exchange with regard to location, type of client service, adherence to guidelines, etc?

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

SCHOOL BUSES

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about all-weather roads for school buses.

Leave granted.

The Hon. PETER DUNN: Seeing that winter is approaching and that roads will deteriorate, I have been contacted regarding school bus runs. Last year a school bus in central Eyre Peninsula was unable to travel its preferred track because the road was not considered by the council to be an all-weather road. In fact, a school bus is not supposed to travel on a road unless it is an all-weather road. As a result, the minimum number of children on that school bus were not able to be carried, so the school bus was withdrawn altogether. This meant that about eight or 10 children could not travel to school by the school bus and were brought in privately, which was at very great cost to the people involved.

What has occurred is that local government is unable to afford the upgrading of those roads because they are not used a lot and, as far as its criteria goes, it deems that those roads do not warrant the expense to bring them up to the grade of an all-weather road. The result of this is that people are shifting out of the area to go to areas where their children can legitimately go to school on a school bus or go to school in a town, and this is causing the demise of some of the small towns that are serviced by those schools and school buses. It not only causes that problem but also it causes heartache to the school councils which have to deal with these problems.

Having been on school councils, I must say that a great deal of time is taken up trying to get school bus routes correct; but it makes it ever so much more difficult when the road does not meet the standard that is required. Under this scenario, will the Minister assist in having these roads upgraded to all-weather roads when school buses need to traverse them?

The Hon. BARBARA WIESE: It is not possible for me to make an informed comment about the matters that the honourable member has raised. I am not familiar

with the roads to which he has referred and I have no information about the designation of these roads. From what he said, it would appear that the roads concerned have been designated as local roads and therefore are under the control of local councils. It is therefore their responsibility to make decisions relating to the maintenance and upgrading of such roads. I suggest that in these circumstances it is more appropriate to make representations to the relevant councils about these matters.

A great deal of time and effort over the years has been put into making decisions about the designation of roads and which level of government would be responsible for which roads around the State. I think that it is important that we stick with the criteria that has been established, otherwise the situation is likely to be rather unworkable. I am not sure what additional avenues of assistance may be open to the councils to which the honourable member referred, but I am sure that they are very well aware of whatever avenues are open to them and will be pursuing whatever sources of funding they can possibly have access to.

I would be very surprised if any assistance could be provided to the councils concerned through State Government programs. However, I will inquire about that, if I can have more detailed information about the roads to which the Hon. Mr Dunn is referring, and, if there is anything that can be done at a State level, that matter will be considered.

DEREGULATION

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Public Sector Reform a question about Government deregulation policy.

Leave granted.

The Hon. L.H. DAVIS: In February 1993, the Government Adviser on Deregulation, Mr Peter Day, presented his 1991-92 annual report detailing the progress that had been made on the deregulation policy. One of the points he makes in his overview in the introduction to the report is that:

> The office will be working towards developing the necessary regular reforms for the creation of a public sector that facilitates economic development by providing an attractive South Australian business climate. Efforts will be strengthened by a close working relationship with the business community as well as with the Government sector.

He states further:

> Government initiatives can only be realised if there is a commitment towards developing a flexible opportunistic State economy by all parties, including the Government, the business sector and the trade union movement.

As the Minister would be well aware, the Arthur D. Little report is very critical of the Government's lack of business culture, as it is described in the report. The Government is trailing all other States in the important matter of a one-stop shop for small business, a policy that has been talked about for seven years but never acted upon. Whereas all the other five States of Australia and, indeed, the two Territories have small business licences, South Australia, having talked about it for seven years, still does not have one. It has been promised again this year, and hopefully it is just months away. My question to the Attorney-General is: in view of some of the important statements made by Mr Peter Day, the Government Adviser on Deregulation, and wearing his new hat as Minister of Public Sector Reform, can he advise the Council whether anything apart from words has happened in South Australia in recent months under his new leadership?

The Hon. C.J. SUMNER: A considerable amount has happened in the development of policies relating to public sector reform. The one-stop shop business licensing proposal will be in place shortly, as I understand it, although I am not directly responsible for it. The general questions arising out of the A.D. Little report and the sorts of comments made by the Deregulation Adviser will, in part, be addressed by the Premier in the forthcoming economic statement.

The honourable member would be well advised to await that statement, which will contain details of other initiatives in the area of public sector reform. Following that statement I intend to make a statement on behalf of the Government on public sector reform issues, outlining a program of policies for the next 12 months or so.

The honourable member may or may not be aware of a draft document setting out the principles of public sector reform, although he should be if he reads his mail, because he would have received a copy. Ms Sue Vardon, the Chief Executive Officer of the Public Sector Reform Unit, presented this document to a conference which was organised by the Royal Institute of Public Administration in December and which was addressed, by the way, by the Hon. Leader of the Opposition in another place (Mr Brown) and me. If the honourable member would like a copy of my speech, or Mr Brown's or Ms Vardon's speech, I am sure they could be made available to him.

The draft policy document was prepared by Ms Vardon. It has been the subject of wide distribution and will be confirmed possibly in a slightly modified form when I give my statement on public sector reform policies for the future. So the honourable member will have to be a little patient for a while. The one-stop shop proposal is a goer and will be introduced shortly. The Premier intends to give a major economic statement shortly and I intend to give a statement following that on public sector reform issues. So, we certainly have not been inactive since this portfolio was created. Indeed, the honourable member has seen legislation introduced in Parliament (the Public Corporations Bill and the Whistleblowers Bill) which comprise aspects of public sector reform.

So, in answer to the honourable member's question, if he has some patience—not very much—he will see comprehensive statements on these issues presented within the next three or four weeks.

TEA TREE GULLY LAND FILL

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 regarding Tea Tree Gully land fills.

Leave granted.

The Hon. M.J. ELLIOTT: I have received submissions from several residents of Tea Tree Gully regarding land fills on the site of old mines that are being used as dumps in the city of Tea Tree Gully. As I understand it, in the middle of 1986 the South Australian Waste Management Commission instructed the local council to rehabilitate some of the land fill by December 1989 for public recreational use. Since that time little has been done. The major concern of residents, apart from the fact that the rehabilitation has not occurred, is that the dump is generating significant quantities of gas, methane in particular, some of which is being drawn away by the Falzon Brickworks but much of which apparently is progressively leaking out of the dump.

My constituents are concerned about the danger of the gas both within the dump and as it escapes and have asked me to refer this concern to the Minister and ask whether any monitoring of gas both within and escaping from the dump is being made, whether the Minister will produce a report on this matter and whether or not the Government will insist on the rehabilitation work being completed as should have been done four years ago.

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

STREETSCAPE

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Environment and Land Management a question about Streetscape.

Leave granted.

The Hon. J.C. IRWIN: I am not sure whether my question is directed to the correct Minister; it is not about the present public debate about Streetscape in the Adelaide City Council area but rather about the potential for future Streetscape arguments and debates. I refer to the recently refurbished historic hotel, the Newmarket, which is situated on the corner of North Terrace and West Terrace. To the south of this recently restored hotel has been constructed a diabolically ugly building housing two what I will call function areas that I believe are popular with young people: one known as Josephine's and the other nicely known as Heaven. I hasten to add that I have not been into either, but that might be the closest I will ever get to heaven. My questions are:

1. How is it possible that, despite the City of Adelaide plan, the integrity of an aesthetically attractive building, which I imagine is of historic significance to Adelaide, can be downgraded by allowing a building directly abutting that old hotel, with no visual compatibility in substance or in line, to be developed?

2. Does the Minister acknowledge that in the future the sort of development we now see on West Terrace will be defended and retained because of the streetscape philosophy?

The Hon. ANNE LEVY: I will refer those two questions to my colleague in another place. I add the comment that the examples the honourable member has referred to are not the only architectural disasters in our city. I am sure any one of us could think of numerous examples.

SPEED CAMERAS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Emergency Services, a question about the operation of speed cameras.

Leave granted.

The Hon. J.F. STEFANI: Following the issue and subsequent withdrawals of two infringement notices for separate vehicles which registered 118 kilometres an hour on speed camera equipment being operated at Somerton Park on 16 September 1992, an investigation and review of all aspects of the operation of speed cameras was initiated. As a result, on 29 October 1992 the Police Commissioner presented a report to the Minister of Emergency Services. That report indicated that in future speed camera operators would be located in a position so that they could monitor traffic flows and speed readings registered by the radar unit fitted on the speed cameras.

On Saturday 27 March 1993 at approximately 2.5 p.m. a speed camera unit was in operation at Robe Terrace, Medindie. The unit was fitted with a plastic cover because it was raining, and the police officer was in the vehicle which was parked on the side of the road behind the speed camera. It is possible that because it was raining the officer left the speed camera and sought refuge from the rain in his vehicle. The point I wish to make is that the camera was not monitored whilst the police officer was in his vehicle. My questions are:

1. Will the Minister seek information from the Police Department regarding the monitoring policy adopted by police officers during periods of inclement weather?

2. Will the Minister seek clarification from the Police Department regarding the issuing of infringement notices whilst the speed cameras are unattended?

3. Will the Minister advise whether any infringement notices were in fact registered and issued from approximately 2.5 p.m. to approximately 2.20 p.m. by the speed camera which was in use on Robe Terrace, Medindie on Saturday 27 March 1993?

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

STATE LIBRARY

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage a question about State Library opening hours.

Leave granted.

The Hon. DIANA LAIDLAW: The State Library has the most limited operating hours of any major Australian library. In the mid 1970s the State Library was open 75.5 hours per week. Today the opening hours have been reduced to 54.5, a cut of 27 per cent over that period. Since last September the State Library has been open only one night of the week, the Friday of each week, until 9.30 p.m. On other days it closes at 6 p.m. Last month further cuts were made to opening hours, so we now have a situation where the opening hours for rare books, special collections and the children's literature

research collection has been cut by 12 hours. These sections are now open only from 1.30 p.m. to 5 p.m. Monday, Wednesday and Friday of each week. They remain open on Tuesday and Thursday from 9.30 a.m. to 5 p.m., but of course they used to be open all five days of the week from 9.30 a.m. to 5 p.m.

I have been contacted by people working within the State Library and they have told me that the repeated cuts in operating hours are having a bad effect on the morale of library staff. Other staff have also told me that they have grown weary of being abused by the public because the library is not accessible, and because people generally have been denied access to information when they were seeking such information after ordinary working week hours. As access and equity is meant to be a key plank of the Government's so-called social justice agenda, I ask the following questions:

1. Can the Minister confirm that no further cuts are to be made in the operating hours of the State Library?

2. Can she advise what initiatives are being canvassed by the Government and the State Library to reopen the State Library on Tuesday, Wednesday and Thursday after 6 p.m., so that the opening hours once again reflect operating practices in all other States? As the Minister will note from my questions, I am not asking that the opening hours be returned to 75.5 hours as was the case in the mid 1970s, but simply that they be reopened to reflect operating practices in all other States.

The Hon. ANNE LEVY: I share the concern of certain members of the public that the library opening hours are not those which used to apply. It is not only South Australia which has cut the opening hours of its State Library. There have been cuts occurring in other libraries around the country. I understand that the Victorian State Library has recently cut or is about to cut the hours of opening because of financial constraints. However, I would point out again to the honourable member that the particular hours of opening are determined by the Libraries Board.

The Hon. Diana Laidlaw: Based on the funding—

The Hon. ANNE LEVY: It determined the best policy to follow within available resources. About 12 months ago (I cannot remember exactly but it was a period of time like that), the Libraries Board made a decision which I endorsed and support that, given restriction in resources, it was important to maintain the resources devoted to collections and, if necessary, make cuts in hours of opening. It seems to me that, if the library does not choose to purchase new books as they come onto the market, it is a false economy in that once these books are gone they are gone forever.

It is important that a library maintain effort in adding to its collection and that reduction in resources should, if possible, be made in operations rather than collections. As I have indicated previously, before cutting the hours to those that apply at the moment, the library did undertake surveys, both head counts of people in the library at various times of the day, days of the week and months of the year. It also undertook a survey of users of the library as to what were their preferred evenings and times that the library should be open should cuts to opening hours be necessary. The hours that now apply were determined by the Libraries Board as being those that reflected best the surveys of head counts in the library and the results as obtained from reader surveys.

I am aware that this is caused inconvenience to some people and that numbers of people have made representations to the Libraries Board. It may well be that the Libraries Board will reconsider the opening hours and may be able to make adjustments. For instance, instead of remaining open to 9.30 on a Friday, it may stay open until 8 p.m. and would then be able to open until 8 p.m. on another night in addition to Friday. There are, of course, various permutations and combinations which can be used within available resources.

The Libraries Board is well aware of the various parameters which need to be considered. It is also concerned not to keep chopping and changing the hours of opening at frequent intervals, as this would be extremely confusing for members of the public and, having fixed on a particular set of opening hours, the board does not want to change them lightly, and certainly not unless it can guarantee that the hours would not change again in the near future, because constant chopping and changing would obviously be very confusing to users of the library. I know that the Libraries Board does keep the matter under constant review. It is aware that, if it responds to comments by and pleas from certain individuals to change the opening hours, they may well disadvantage other users who can accommodate to the current hours but who would then be disadvantaged if the hours were changed.

However, I will ensure that the Libraries Board is aware of the honourable member's comments, and I am sure that it will take them into account as indeed it does the comments from many different sources as it constantly reviews and considers the question of the hours of opening of the State Library.

The Hon. DIANA LAIDLAW: I asked whether the Minister would confirm that there would be no further cuts to the opening hours of the library. Am I to assume that that is a further possibility?

The Hon. ANNE LEVY: I did indicate as part of my answer that the hours of opening of the library are determined by the Libraries Board.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: I cannot confirm or deny because, the Libraries Board makes this decision, and I stated this quite clearly. I did not leave—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: Perhaps the honourable member was interjecting or talking, and so not listening to what I was saying. However, I certainly made very clear that the hours of opening are determined by the Libraries Board and that it took—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY:—the decision, in a time of restricted resources, not to cut collections but to cut hours, and I indicated that I supported the board in that decision. I have not heard the honourable member contradict or indicate that she does not support that decision by the Libraries Board that, in a time of restricted resources, it is more important to maintain

collection resources than it is to maintain operations resources. If the honourable member wishes to indicate that she disagrees with that policy, I am sure the Libraries Board would be very interested in such a comment from her.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: As I have indicated, the hours of opening of the library are determined by the Libraries Board on the basis of the allocations which they make between operation resources and collection resources—

The Hon. L.H. Davis interjecting:

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

The Hon. ANNE LEVY: —and the current hours have been determined by the Libraries Board. If there are any changes to be made, they will be made by the board. I have not had any changes indicated to me, as I have already said, but I have also said that I know that the Libraries Board is discussing this matter and considering various alternatives.

Members interjecting:

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

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: That is the question you want to ask.

The PRESIDENT: Order! Time having expired for questions, I call on the Business of the Day.

CRAIGBURN FARM

Adjourned debate on motion of Hon. M.J. Elliott:

That the President's ruling be disagreed to.

(Continued from 30 March. Page 1743.)

The Hon. M.J. ELLIOTT: The issue that we are exploring today is the legal issue of whether or not the motion that I wish to move in this Council can be handled by the Council and is not the substantive issue contained within the motion itself. I will not spend an enormous amount of time on the debate. Having already spoken to other members of the Council, I am aware where the numbers will fall, but the issue is an important one and, on that basis, I will persist with the motion. The motion that I was attempting to have debated in this place related to section 43(3)(b) of the Planning Act. I was seeking to have a supplementary development plan, which had interim effect, disallowed. There appear to be two alternative constructions as to the interpretation of this section, which decide whether or not Parliament can do what I wish it to do. I have taken advice outside this place, as I am sure other members have as well, and the advice I received was in support of the position I had taken. What was nice is that it was advice that I did not have to pay for. One can always buy legal advice, but getting it for free and having it agree with you is nicer. Section 43(3)(c) is significant because it simply states:

> if either House of Parliament passes a resolution disallowing the plan;

The plan to which it is referring is a plan that has been given interim effect under section 43(1). I believe that section 43 is an internally consistent clause that does not rely on other events happening beyond it, except in section 43(3)(c), where it states:

> if the plan is superseded by a supplementary development plan that comes into operation under section 41;

It seems that if the motion were to be passed to disallow the plan, it had to be a resolution under section 41 and then section 43(3)(b) should have read:

> if either House of Parliament passes a resolution under section 41 disallowing the plan;

But that is not what it says. It simply provides:

> if either House of Parliament passes a resolution disallowing the plan;

That is simple and straightforward. Some people make the assumption that the resolution has to be a resolution under section 41, but there is nothing in section 43 to say that that is the case, and it simply provides:

> if either House of Parliament passes a resolution disallowing the plan.

The effect of that would be to simply disallow the development plan that has interim effect. It does not in any way interfere with the processes happening under section 41. As such, those processes would continue in relation to the particular development plan that I was attempting to knock out. In the fullness of time, and it could be in as little as another 24 hours, the Minister may have been giving the plan effect under section 41.

What this does here bears no direct relationship to section 41 and need not do so. There is nothing in this section requiring it to do so. Mr President, I believe that your ruling is wrong. As I said, it is advice that I have been given elsewhere. This section is an internally consistent section. If it were necessary that the particular resolution had to be passed subject to section 41, I would have expected it to have done so, as it does in section 43(3)(c), which refers plainly to section 41.

The section is internally consistent: the resolution can be moved and I do not see any reason for relating it back to section 41. As I said, I was not going to drag it out. I have already had an indication of where the numbers are likely to rest. The debate has really been decided before it begins. I ask the Council to support the motion, noting that it is an issue not whether the development plan should be knocked out but whether the Council has the power under this section to knock out the interim effect of the plan. It is the plan that has interim effect and not the plan which, under section 41, will come into effect eventually.

The PRESIDENT: I have ruled this notice of motion out of order as it contravenes the Planning Act. In accordance with section 43(1), the Craigburn Supplementary Development Plan has been given interim effect by the Governor in the *Gazette.* In the meantime, the SDP has proceeded through the normal processes in accordance with section 41 of the Planning Act. Section 43(3) of the Act provides:

> A supplementary development plan which comes into operation under this section ceases to operate—

(a) if the Governor, by notice published in the *Gazette,* terminates the operation of the plan;

(b) if either House of Parliament passes a resolution disallowing the plan;

(c) if the plan is superseded by a supplementary development plan that comes into operation under section 41;

or

(d) ...[in certain circumstances] at the expiration of 12 months from the day on which it came into operation.

The SDP was referred to the Environment, Resources and Development Committee which, in accordance with section 41(13), approved the plan apparently with certain recommendations. If the committee had proceeded in accordance with section 41(16) and resolved not to approve the plan, then copies of the plan would have been laid before both Houses of Parliament. It would then have been up to either House of Parliament, within six sitting days, to disallow the plan. I have ruled the honourable member's notice of motion out of order as the Council does not have before it the particular SDP to disallow, which was the purpose of the honourable member's notice.

It is maintained that section 43(3)(b) does not confer an independent power on either House to disallow a supplementary development plan, but rather prescribes an event on which the interim operation of such a plan ceases. Section 43(3)(b) provides for the situation where the Minister has referred the SDP to the committee under section 41 before the expiration of 12 months and the committee has resolved not to approve the plan and thereby it has been tabled in both Houses and a motion has been passed to disallow the plan. Subsection (3)(b) envisages the actual plan coming into operation by interim development control, the operation of which ceases should either House of Parliament pass such a resolution disallowing the plan. In the present case, the plan is not in the possession of the Council and, therefore, it cannot be disallowed.

I draw attention to the instance of regulations which are no longer before the Council and for which no motion of disallowance has been given within 14 sitting days of their tabling. The Council is not entitled to resolve to disallow such regulations. This example can be expanded to proclamations, Government administrative instructions, etc., which are not in possession of the Council. It would be a quite dangerous process if the Council or the Parliament could disallow such instruments when they are not within its preserve. I am also in possession of other advice which confirms my opinion on which my ruling is based.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): Mr President, I support your remarks and do not support the motion of dissent moved by the Hon. Mr Elliott. I am not a lawyer but nor is the Hon. Mr Elliott. I have before me advice from the Crown Solicitor who, on learned legal grounds, has decided that the interpretation put on sections 43 and 41 by the Hon. Mr Elliott is not the correct legal interpretation that can be placed on it. As I understand it, the Crown Solicitor claims that section 43 deals with how an interim plan ceases to be operative. Certainly, it does cease to be operative if the plan has been disallowed—

The Hon. M.J. Elliott: It ceases to operate, not ceases to be operative—that's the main point.

The Hon. ANNE LEVY: I beg your pardon, I was not aware that this was a lesson in English literature or expression. As I understand it, the Crown Solicitor is making very clear that section 43 deals with the ways in which an interim plan ceases to operate. But it is not self-contained to the extent that an interim plan will cease to operate if the plan has been disallowed by the Parliament. How the Parliament can disallow a plan is determined not by section 43 but by section 41. Section 43 provides that, if the procedures have been followed in section 41 and as a result of those procedures either House of Parliament has disallowed a plan, an interim plan will cease to operate, which is fairly logical. How a plan can be disallowed by the Parliament is governed not by section 43 but by section 41. I am sure the Hon. Mr Elliott would agree that the process set down in section 41 has not been followed in this case, although the SDP was certainly referred to the Environment, Resources and Development Committee.

The matter is brought to Parliament for either House to reject only if that committee does not approve of the plan. That has not occurred, and in consequence the matter is not before the House; in fact, the Environment, Resources and Development Committee has approved the Craigburn supplementary development plan with certain recommendations. It is probably not necessary to go into that matter at the moment; it would certainly be relevant if we were discussing whether the plan should be disallowed. The plan has been approved by the appropriate committee, unanimously, with certain recommendations which have been made public and which have been commented on by the appropriate Minister, as a result of which the process for disallowing a plan under section 43 is not operative at the moment. I certainly support and appreciate the advice from the Crown solicitor that your ruling, Mr President, was perfectly correct in the circumstances.

The Hon. J.C. BURDETT: I oppose the motion and I support your ruling, Mr President. As the Minister has said, the whole procedure for supplementary development plans is set out in section 41 of the Act. It is in great detail; it goes into some length about the whole procedure. It starts off with how SDPs are made, and how they are dealt with after that. Section 43, the one on which the Hon. Mr Elliott has relied, is about a different matter altogether. It is headed 'Interim development control' and that is what it deals with. It deals with situations where it is considered that a supplementary development plan should come into operation without delay. If the procedures of section 43(1) are followed and a notice is published in the *Gazette* accordingly, the plan will come into operation on an interim basis. I can understand the Hon. Mr Elliott being seduced by section 43(3)(b), which provides:

A supplementary development plan that has come into operation under this section—

and that is come into operation, not been made—

that ceases to operate if—

and there are four things set out, one of which is:

If either House of Parliament passes a resolution disallowing the plan.

But section 43(3)(b) disallows the plan. Section 43(1) sets out how either House of Parliament may disallow the plan. It does not give any power to disallow the plan. I will briefly give some history as to how these sections came about. In the Planning Act of 1982, which was passed during the period of the Tonkin Government, the Bill for the Act was introduced in another place and it came in due course to this Council. The Minister and the Government at that time had been concerned at the fact that there was uncertainty and delay in the then procedure for planning controls. That involved not supplementary development plans but planning regulations. Those regulations were dealt with in the same way as other regulations, so that a disallowance notice could be moved early in the Parliamentary session and not voted on until the end of it, maybe nine months later, and in the meantime the developer did not know where to go. There was complete uncertainty; he did not know what would happen.

So, the Bill in 1982 provided for a very strong procedure of public display and consultation before the supplementary development plan was made. In its initial form in which it was presented to Parliament and came to this House, the Bill provided that once the SDP was made by the Governor and published in the *Government Gazette* that was the end of it. It did not ever come to Parliament at all. The purpose of this, certainly well intentioned, was to try to prevent the delay and uncertainty which had applied before with the planning regulations.

When the Bill came into this Chamber (and I had the passage of the Bill in the Chamber) the Hon. Mr DeGaris raised the matter that the supplementary development plan effected what could be quite an important change in the law that was not at all subject to Parliamentary scrutiny. He was quite right in raising that matter. He moved an amendment which had the support of the Democrat in the Chamber at the time, the Hon. Lance Milne. That was passed, and it eventually went to a conference of managers between the Houses.

The compromise that was eventually arrived at was what was in the present Act, namely, that the supplementary development plan was not laid before Parliament as regulations are but had to be referred to what was then the Subordinate Legislation Committee, now the Environment, Resources and Development Committee of Parliament, which had 28 days to deal with the matter. If that committee (by whichever name) did not specifically approve the plan (not by lapse of time, because that is dealt with), it was laid before the Houses of Parliament. That was the only situation in which it ever came before the Houses of Parliament, and it has never happened. That was the only situation in which it could come before the Houses of Parliament, and the Houses of Parliament had six sitting days in which to deal with it. In section 41, if either House did disallow in that situation, it was disallowed.

Section 43 deals with an entirely different matter. It deals with interim development control and a plan that will come into operation on an interim basis. It provides that a supplementary development plan that has come into operation under this section ceases to operate (as the Hon. Mr Elliott said, it is the correct terminology), if various things happen. One of them is if either House of Parliament passes a resolution disallowing the plan. That is a contingency. It does not give the power to either House of Parliament to disallow the plan and it does not place it before the House of Parliament. That is the important matter. It is only through the elaborate procedure of section 41 that the plan can ever get before a House of Parliament.

The Hon. C.J. Sumner: Are you saying that was what was intended in 1982?

The Hon. J.C. BURDETT: Yes, and is still intended; that is what the Act provides. However, it is what was intended in 1982, because I had intimate knowledge of it at the time. Section 41(17) gives the power, at least by implication, and lays the plan before Parliament because, if it is not laid before Parliament, Parliament cannot deal with it. As you said, Mr President, when you made your remarks, a proclamation, for example, cannot be disallowed, because it is not before Parliament, and the only reason why regulations can be disallowed is by virtue of section 10 of the Subordinate Legislation Act. Section 10 (3) expressly provides that a regulation shall be laid before both Houses of Parliament. So, it is before the Parliament, and within 14 sitting days, as we all know, notice of motion can be given. It is only by reason of that there is a power to disallow regulations.

Outside that period, as you said, Mr President, regulations cannot be disallowed, a proclamation cannot be disallowed and a supplementary development plan cannot be disallowed unless it is laid before the Houses of Parliament, so the Houses of Parliament can deal with it. That is provided in section 41. For these reasons I oppose the motion, and I support your ruling, Sir.

The Hon. M.J. ELLIOTT: As I said before, I think that we can look at sections 41 and 43 as processes which, while they overlap in some places, are also distinct. Section 41 relates to the normal procedures we expect to be followed for the production of supplementary development plans, how they come into being and how they may be disallowed. Section 43 relates to interim development control and a plan which is given interim effect—and it must be noted that it is interim effect; it still has to complete the section 41 processes before it finally becomes accepted as part of the development plan. So, section 43 relates only to interim development control.

I place the challenge, which nobody picked up during the debate, which was that if section 43(3b) were to relate to section 41—if the motion of disallowance had to be as a consequence of section 41—why was that not made explicitly clear in the drafting, in exactly the same way as in section 43(3c)? It refers back to section 41 in relation to a plan being superseded by another supplementary development plan. As I said, I believe that the clause is internally consistent and that there is no reason why one should have to assume that the motion for disallowance is one which has come from section 41. If the effect was as I interpreted it, it is only to stop the plan which has interim effect and not to stop the final plan which would be emerging from the section 41 process.

I think these arguments about things being laid before the House are something of a furphy. We have spelt out processes which relate to regulations, and it is quite plain that they are laid before the House and that there are particular procedures to follow. There is nothing in any other Act which offers any other way they can be knocked out. What I am saying here is that section 43 does allow the knocking out of an interim effect supplementary development plan. In fact, there are other things that this Chamber votes on where things are not necessarily laid before the Council in the procedures that are followed by regulations, such as happens under regulations.

As I said from the beginning, it was not my intention to protract the debate, because before it began I had been given a clear indication where the numbers lay. I thought it was a very important issue that needed to be resolved, although it will be resolved in a much simpler way, possibly in a few weeks, if the Development Bill supersedes this Act. I might note that part of the problem may have come about because section 43 was introduced as an amendment to the principal Act and perhaps at that time some of the consistencies were not necessarily properly examined and left the possibility of interpretation. In any event, I urge members to support the motion, but I understand I do not have the numbers.

Motion negatived.

CRAIGBURN FARM

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

That this Council—

1. strongly urges the Minister of Housing, Urban Development and Local Government Relations to amend the supplementary development plan in relation to Craigburn Farm;

2. strongly urges the Minister of Housing, Urban Development and Local Government Relations to accede to the advice of the Environment, Resources and Development Committee that there be a 90 day consultation period to explore alternative development options; and

3. notes the inappropriate handling of the Craigburn supplementary development plan by the Government until this time.

I believe that this motion is reinforced by the work that has been done by the Environment, Resources and Development Committee and that it is justified on the basis of the inquiries of that committee. I think it is worth looking at the chronology of events in relation to the Craigburn supplementary development plan to understand what has happened, where things went wrong and why they appeared to go wrong.

Perhaps where things first went wrong was back in 1972 when a development plan was introduced for the area which is now Craigburn Farm. Within that development plan a rural A zone was created. At the time a number of residents appeared before the relevant parliamentary standing committee to express concern about the long-term implications of such zoning, but the committee in its wisdom felt that those concerns were unjustified and so the development plan remained as it was. The concern that people had was that the rural A zoning was to be interpreted as deferred urban, and that at some later time that meant that what was being called rural land possibly could become housing.

Successive Governments throughout the 1970s and 1980s made it plain that the Craigburn land was to become part of a metropolitan open space system. I am not sure the term 'MOSS' was being used right at the very beginning but nevertheless consistently, Minister after Minister, Labor and I think Liberal during that period, said that the Craigburn Farm land would remain open space. That was the understanding that local residents had of the likely fate of that land, although as I said before they had expressed some concern about the rural A zoning and what the long-term implications of that might be. With hindsight, it is a great pity that the parliamentary committee at the time did not take more note of the warnings that were being given back then. It perhaps looked at it then as a minor problem. There was not much development in the area then and the committee probably thought at that stage that there was not likely to be a whole lot of development in the future: I do not know. Nevertheless it decided to ignore it.

The difficulties became a little greater for the Government when it did try to be consistent about its pledges and keep the land as metropolitan open space. As I recollect, it introduced a ministerial SDP in 1985, which was introduced in response to a proposal by Minda at that time to subdivide the land for housing development. The Minister interceded with I think section 50 of the Act to try to guarantee that the land remained open space. Legal action was commenced by Minda at that stage to preserve what it saw as its obvious financial interest in the land.

The case did not end up in court at that stage: although the legal action commenced there were never any hearings. For many years, as far as the public was concerned, nothing was happening. But, while nothing was happening at the public level, some things did begin to happen behind closed doors. It is evident that one or perhaps more public servants in their wisdom had come up with a solution to the problem, but their solution to the problem was to negotiate with Minda such that some of the land would be open space and some would be housing. They eventually negotiated what this new carve-up of land would look like—where the open space and housing would be.

Such was the confidence of these public servants that they had a pretty good idea that they said to Minda, 'We will put out an SDP on this.' I am not sure at whose suggestion it was, but there was actually the signing of a legal document between the Government and Minda. Under that legal document the Government would pay $4 000 a day to Minda for every day the development plan was late in coming into effect. The original date, as I recall it—I do not have all the dates in front of me—was 30 September 1992.

The development plan itself emerged earlier in 1992 and it is fair to say—and I lived in the hills area—that it was a bolt out of the blue for the local residents and local government. They had been given no indication whatsoever that there was to be a new supplementary development plan for the area; they were given no opportunity to make any contribution to that first development plan. One has to ask why the council and the residents were not given a say. Certainly it was a

ministerial SDP introduced under section 41, which allows the Minister to introduce a supplementary development plan where the development plan covers more than one council area.

That is highly unsatisfactory. It was, first, another abuse of section 41. The reality was that the only land being affected by the SDP was the land north of Sturt River, and that was entirely in one council area. But, by putting the SDP across two council areas, the Minister then had the excuse to use section 41 which meant the Minister could bring it out not necessarily having gone through any consultation. There has never been any justification given for not telling the council that an SDP was to come out; there has never been any justification given as to why the council should not have had input early. It is quite apparent that the senior bureaucrats in urban planning development (or, as it was previously, the Environment and Planning Department) had been talking with Minda for some years working this out, coming up with what they thought was the perfect solution.

I have no criticism of Minda, and I want to make that plain because I have not done so thus far: I have no criticism of Minda up to this point. It owns land and has an expectation as to the value of that land and wants to protect the value of it. However, who do these people in the department think they are to think that they can come up with a perfect plan and that the local planning authorities—the people who will have to administer the plan from that time on—should have no say? I am actually being a bit hard on the council when I say, 'No say'; after the plan had been produced under section 41 the council was given 19 days to respond. In fact, that was the time given to the local residents as well.

When the bureaucrats started working on this plan years before—three, four, five perhaps more years before—the council might have been in a position to negotiate other alternatives and to produce a better plan. But, as council members and residents have said to me, as section 41 was used and as they moved through the process they held none of the cards: they were essentially outsiders in the process.

There is no doubt that the end result desired by council and local residents was that the whole of the land remain as open space. Whether or not that is possible, I cannot comment, but with several years to work on it I believe they could have come up with something far better than we have now. For instance, land that is not used for housing purposes does not become immediately valueless. It could, for instance, be used for open space recreational purposes such as a golf course—there is no doubt that there is a shortage of golf facilities in the Adelaide metropolitan area. A premium dollar would be paid for the use of open space for that purpose—certainly not up to the value of land used for housing, but a lot more than its previous use, which was simply for the farming of animals or perhaps the growing of crops.

The plan that eventuated provides for high urban density with block sizes as small as 200 square metres. The ERD committee has made it plain that it strongly supports urban consolidation and that it does not in general have problems with small block sizes, but all things must be equal. If we look at the site that has been chosen we see that some difficulties are created if one supports the use of small block sizes. For example, in a high rainfall area with land that slopes significantly there is much greater difficulty with run off.

It was recognising those sorts of difficulties that under the Mount Lofty Ranges review a recommendation emanated from the same department that block sizes should be large in townships through the Adelaide Hills. It is an illogical inconsistency to insist upon large block sizes in Stirling and Crafers, etc., and then to allow small block sizes in areas with rainfall which is not much lower and which has similar slopes to those in the area of Craigburn Farm.

While it is true to say that the Adelaide Hills (Stirling and Crafers) are within water catchment, the Craigburn Farm area is not. This catchment is not used for drinking water, and eventually it finds it way to the Patawalonga. I should have thought that the Government would notice that there were significant difficulties with the quality of water collected in the Sturt Creek and the Patawalonga and that those difficulties related to urban run off.

The Craigburn Farm area is capable of producing significant run off if the development is very dense. Small block sizes do not make sense from that point of view. They also create difficulty because many more people come into the area. Anyone who supports urban consolidation would say that that is the idea, but in the area of Craigburn Farm there will be significant infrastructure problems that will be greatly exacerbated by a significantly higher population.

With the exception of Shepherds Hill Road which comes out of the Blackwood area and heads west towards the sea, none of the other roads coming into the Blackwood area from any other direction could be considered to be good roads. They are narrow and winding and in most cases incapable of being widened or straightened. At peak times they are already choc-a-block. They simply do not have the capacity to absorb additional traffic without causing significant problems on top of what are already serious problems with traffic flow.

Traffic flow in those areas is much slower than on roads such as South Road, which has been an area of complaint for a long time. If one takes into consideration the sort of expense to which the State Government had to go to upgrade Flagstaff Hill Road in order to solve traffic problems, one hates to consider what sort of money would have to be spent to fix the problems in the Blackwood area if there is a significant increase in population.

In fact, reports from the Department of Road Transport make it quite plain that any significant upgrade is not a viable alternative for a host of reasons, not just because of the expense but also because of the immense ecological damage effect that would be wreaked by attempting to do so.

We have been told that schools in the area have the capacity to cope with additional students. I telephoned the schools in the area, and I was told that Blackwood Primary School has the capacity to take a number of additional students. However, schools such as the Coromandel Valley school do not. To quote one person to whom I spoke at that school, it is choc-a-block. An extra four classrooms have been placed in the school

grounds this year and the school lost carparking space to try to crowd in the number of students that it has. It does not have the capacity to take any more.

While Minda will be realising its profit from the land, costs will be incurred by local and State Government in respect of the control of stormwater, road infrastructure and schools. In fact, I think it will be found that there will be significant costs. Local government suggested that it might have to increase rates between 10 and 20 per cent to cope with increased costs that might be caused by full development of the area.

I raise these matters not only to illustrate that the supplementary development plan is wrong but also, more importantly, to show that there are good financial reasons for exploring other alternatives. I have not entered into significant debate about what else the land can contribute, about its being the lungs of Adelaide or about any ecological values that may relate to the area. It is not that I think they are not important; I think they are important, but they are also self evident.

The most important point is that with awareness of these problems we should have been looking for alternatives rather than relying upon what appears to have been the bright boys in the Government department who thought they had all the answers and then had the arrogance—I am blaming them and not the Minister, although the Minister is ultimately responsible—to use section 41 to lay the blame on the people of the Blackwood area and to lay the costs elsewhere. They had the arrogance to sign an indenture agreement which tied up the Government so that it had to produce the SDP, or it would cost $4 000 a day.

As it turned out, the public hearings in relation to the SDP under section 41 took much longer than anticipated, because there was so much community reaction with many people wishing to be heard and because so many issues were involved. Minda generously agreed not to enforce the $4 000 a day in the short term. My recollection is that a new date was set for late March, but I think that has been further extended to the end of April, during which time Minda said that it would not enforce the $4 000 a day as long as the SDP was in place. So, what do the bright boys do next?

An honourable member interjecting:

The Hon. M.J. ELLIOTT: I am afraid it is boys, I am not being sexist. I will not use parliamentary privilege to reveal their names, although they deserve to be revealed, because I think their behaviour has been abhorrent, to put it mildly.

So, what do they do? They then use a ministerial interim development control under section 43. At this stage the process had moved along so that there were probably four weeks to go. All the hearings had taken place and ACOP had looked at the plan. The only thing that had to be done at the time they brought in the interim development control was put the plan before the Standing Committee on Environment, Resources and Development. That committee is only allowed to look at the issue for 28 days, and then has to report to Parliament if it wishes it to be knocked out; otherwise, it writes to the Minister informing the Minister that the plan is either accepted or needs minor variation.

However, it seems that the bright boys, being absolutely confident that their plan was better than anything else that was possible, were not going to risk the possibility that the Environment, Resources and Development Committee might have recommended that the plan not be accepted. So, they whack out a section 43 which gives interim effect, and the most important thing about that section 43 was that within 24 hours of interim development control coming into force Minda had lodged an application to develop. So, even if subsequent to that the committee had recommended, and Parliament had followed the recommendation, that the development plan be knocked out, Minda's rights had been further enforced in relation to the interim effect of that SDP. That is an absolute outrage. It is nothing more nor less than that. It was a contrivance. It was schemed up and planned beforehand, and the fact that senior public servants should play that sort of game is beyond contempt.

The ERD Committee had already been looking at questions of interim control before this SDP had cropped up. We had already started to prepare a report in relation to interim control. One of our officers had spoken with the department, which had assured our officer that contentious SDPs are not given interim effect. Before we had finished our report, which was coming to Parliament in relation to the interim effect, and even after having received that sort of assurance, here was a highly contentious supplementary development plan given interim effect and the developers, in the know, within 24 hours having a development plan which fitted in nicely with the SDP lodged. It was all but done, sealed, signed and delivered.

That is nothing short of a disgrace, and people who treat the public with that sort of contempt do not deserve to call themselves public servants. Perhaps we should stop that charade of calling them public servants. They do not serve the public one bit. They kept the public in the dark.

While I have used the word 'Government', I think my greatest amount of contempt so far has been heaped upon the public servants who have behaved in that way. However, ultimately the Minister and the Government must accept some responsibility, because they have allowed themselves to be snowed by these characters. What is worse is that the ERD Committee, having made its report to the Minister and having decided—I was in a minority in relation to this matter—that the SDP should not be knocked out but that there should be some changes and 90 days public consultation, the Minister said, 'You can go jump.' That is not quite the words he used in his letter, but the effect was the same.

He has approved the supplementary development plan for Craigburn, and I presume that its gazettal is probably happening tomorrow. That is the end of process. It gives me a great deal of faith in the planning process and the Planning Act to see it being used in that way. When I say 'a great deal of faith', I should not speak with tongue in cheek because it does not show up in *Hansard.*

The only thing I can say is, 'Thank God the Planning Act is about to be superseded by the Development Bill.' However, the Development Bill will need a lot of amendments because it in fact increases, not decreases, ministerial discretion over the current Act. What will happen under the Development Bill with increased ministerial discretion is that these guys, who sit at their

desks in 'comfy land' with all the right answers, will continue to play their games. It is not the ministerial discretion that has been increased; rather, it is their discretion that has been increased.

I hope that this Council looks very carefully at what is in the Development Bill, because the problems South Australia has had in the past decade or more with developments will get worse, not better, when we have those sorts of characters playing their games. The situation will become far worse.

The first part of the motion urges the Minister to amend the supplementary development plan in relation to Craigburn Farm. That is not just an opinion of mine: it is the opinion of the all-Party Standing Committee on Environment, Resources and Development. There were three Labor members, two Liberal members and one Democrat on the committee. Three members of each House, having sat down and looked at the issues, believe that the SDP should be changed. I think it is a great pity that the committee did not recommend that the other one be thrown out, but I guess it had some faith that the Minister would react. We thought the Minister would pick up some of those recommendations without a need to knock out the SDP. But, no, not at all. He has now approved it. The final stage is complete—all but the gazettal.

I believe that this Council should be supporting what the Environment, Resources and Development Committee has already recommended. That committee has also recommended that there should be a 90-day consultation period. That period is very short, but we believe there should be an honest attempt by the State Government, local government, local residents through their action group and Minda to see if there are not other alternative plans that cannot be negotiated.

Ninety days is a terribly short time for consultation, but that is the time that has been recommended by the committee. I know that the Council has already recommended that, if block sizes increased, the difference in value of the land to Minda would not be great. I think that that deserves exploration. That might mean that Mitcham council itself will have to be willing to dip into its own pocket, and I, as one of the ratepayers in Mitcham, may have to dip into my own pocket to help that happen. I also understand that if it does not happen I will have to dip into my own pocket to pay for the roads and roundabouts to be fixed up and for various other things that will be necessary.

So, it looks like no matter what happens I am going to be dipping into my pocket. Mitcham may just have to dip into its pocket now to save dipping into it later on. Residents have already made some pledges to preserve some areas of open space and they may wish to buy out some of the land. The State Government is going to cop some bills further along the line as some road bridges need to be rebuilt over the railway lines for instance, and it will save money if we have a less dense development. It deserves consideration. The possibility of open space recreation taking some of that land, for golf courses or whatever, needs and deserves some exploration in, admittedly, a rather short period of time and I hope that the Minister does this and shows goodwill. I think the public will find out if there is goodwill because the public will always be represented at such meetings and local government will be represented and they will report back if there is not goodwill. They will know if there is not good will, if there are not honest attempts to solve the problem. As I said, at no stage have I cast aspersions on Minda which, I understand, is protecting its own investment. It is a value that it will put to good use, but I do hope that it enters the negotiations with the best of will as well.

The last point of the motion noting inappropriate handling of the Craigburn supplementary development plan is most important. It is time that the public servants, in particular, who behave like this—and this is not the first occasion and I could give many other examples—are brought to heel and brought to account for their behaviour. They should be told that they are public servants and they shall behave as public servants and not mini Gods, all knowing and with the right to do things and the right to abuse the powers granted to the Minister, to get what they think is right. The third part of the motion is noting their inappropriate behaviour and I hope that it ceases, because I give my pledge now that if these characters keep playing these games I will keep chasing them. It is not acceptable. We saw similar games in relation to the development plan for the Mount Lofty Ranges. We have seen similar games elsewhere and enough is enough. I have had enough and I urge other members of the Council to support the motion.

The Hon. T.G. ROBERTS: It does not give me much pleasure to have to rise to oppose this motion, but unfortunately I have to. I realise that it must seem strange to be supporting the findings of the committee, though, which are similar to the words in the motion. My position is that I stand by the support that as an individual member of the committee I gave to those findings but I did not expect to find myself on my feet in this Council soon after the tabling of that report and speaking to a motion. I understand the circumstances; the Hon. Mr Elliott explained his position, but I did not expect to be debating a motion so soon after making a recommendation in a report that gives a 90 day moratorium, if you like, for all parties to be discussing an equitable outcome that could possibly deliver a compromise position that perhaps everyone can live with. I know that compromises tend not to please anybody in some cases. In some cases the parties come away partly satisfied while in other cases they come away totally dissatisfied.

In this case the parties involved—and this includes the local residents and I guess all South Australians, perhaps all Australians for that matter, who have an interest in a balance between urban development and metropolitan open space—would be interested in this issue on the basis that it is a particularly fine example of land that could be used as metropolitan open space in anticipation of further development in that area. It is an area of land in relation to which expectations have been held by local residents that it would remain open space or, as zoned in 1972, rural A zone. The Craigburn Farm area lends itself to the amenity of the metropolitan area catchment. As the Hon. Mr Elliott has indicated, the intention to keep that area as metropolitan open space or recreational open space would fall into line with the recommendations that the Environment, Resources and Development

Committee made in the Mount Lofty Ranges Review report.

Unfortunately, with this case it has fallen into a situation where the expectations of the parties, that is Minda, which wants the proposed development to go ahead, the Government, which has a role in facilitating that development and the residents themselves, have separate interests which, on the surface, are not compatible. The compromise position would be, and it was noted in our report, that perhaps the block sizes as indicated in a consolidated development within the Craigburn Farm could be opened up so that the block sizes are much larger, the homes and the recreational space could be made more amenable to recreational use and fringe urban dwelling, and the whole area of Craigburn Farm could be a model, if you like, for future fringe urban dwellings to be put in place. That would allow the developer or Minda to be able to carry out its responsibilities to its aged patients. It is the intention of Minda to sell the land and build homes for the aged in another area. Unfortunately, we now have a position of no compromise being developed by those people involved in the development stages under the Act. They see that they have rights under the Act and they are determined to pursue those rights.

The development proposed may have been appropriate in 1984 or thereabouts when people were starting to examine the area for the proposal ultimately put forward, but it was felt by the committee in 1992-93 when recommendations were being made about what developments were appropriate for the Mount Lofty Ranges area that areas with block sizes of 200 metres and the like were not appropriate in the case of the development proposed. It was disappointing to the committee that, if the rights under the Act were to be proceeded with, the residents of the area and the people of South Australia would end up with a development project that they could not live with. I have much sympathy with the residents about that.

The Hon. Mr Elliott has outlined the pressures not just on the housing project itself but the other pressures that would be placed on the infrastructure around the Blackwood and Coromandel area which would be unacceptable. There would be pressure on roads, transport, schools, infrastructure generally and stormwater problems. All those problems have to be dealt with. The councils in the area would have to deal with a project that they were not happy with. The councils involved were complaining that when section 41 was used there were not the consultation processes that they thought would occur. The residents still held on to the long-term view, from assurances given from 1972, that the land would be zoned rural A and not developed. They were in a state of shock, if you like, when section 41 was used to bring in a supplementary development plan with the proposal being put forward.

By the time the Environment, Resources and Development Committee got the proposal before it, it was in a no win position. We were a new committee struggling with our charter. We had the Development Bill in the drafting and we had a Mount Lofty Ranges review, which was being put forward. We did a lot of work to put together recommendations for that and we had a Planning Act being superseded by the Development Bill. In the middle of this came Craigburn Farm. I do not think there could have been a worse mess of circumstances, legislatively. We had to work out a package that would be acceptable to the residents and the people of South Australia generally who, as I said, are looking to the Government to protect metropolitan open space and the water catchment. These are quality of life issues as opposed to development and the needs and requirements of Minda, which has to raise funds to carry out its responsibilities in relation to aged persons under its care.

Basically, the responsibility fell on the committee to either approve the plan, which was being seen as totally unacceptable by local people, or to put forward a compromise position on larger block development and a mix of recreation and sporting facilities, to recommend that as much open space be provided as possible and to allow Minda the development funds it required from the changed expectation on the funds it was going to raise from the sale of land for a particular project. The amount to be returned to Minda was to depend on the type and style of the project that it could put forward in the SDP.

The proposals being floated by the group of residents in close proximity to Craigburn Farm about raising money for Minda as an alternative to selling the farm as a development were being explored but it appeared to the committee that they did not have the time or revenue base to provide Minda with the alternative funding programs that were required. I believe that the committee drew the parties a bit closer together. Through the course of taking evidence it was apparent that there had been a three-way struggle involving the development. There was the planning department, ACOP and other interested parties drawing up the development plans and the residents. When the committee drew together the principal witnesses to give evidence to the committee, out of that process we were able to draw together management from Minda, residents and bureaucrats to examine each other's position and to have a little more understanding of those positions during the process. One thing the committee did do was bell the cat publicly so that those people could at least examine evidence in an open way as it was presented by all parties and not play the conspiratorial roles that seemed to be adopted by individuals and groups within the process as was explained by some witnesses.

The role of the council was made much more difficult in its assessment of proposals, on the basis that there appeared to have been some principal officers within Mitcham council aware of what was going on and other people within the council struggling for information on which to base their assessments. Whether that is accurate across the board as it applies to Mitcham council or whether it is unfair criticism, only the council can say. I do not think Happy Valley council was involved a great deal in the process, but the proposal advanced by residents as to raising alternative funding, as the Hon. Mr Elliott would have to agree, included all the people in that area. It is my view that one cannot put the responsibility back on individuals to maintain metropolitan open space, particularly with the values that are being placed on land in that area. At today's value

such land is out of reach of most residents in South Australia, and that would be most unfair.

If an open space trust, if you like, could be set up to buy land that is not in use, local councils and local residents ought to start looking around their local council areas to see what land can be allocated for open space and start planning for the allocation of that to maintain and guard their quality of life, and they should be doing that now. The Craigburn Farm argument is one of those issues that developed over time and it has got caught between the stools of all the developments that are occurring at the moment within the Government's ambit of jettisoning the Planning Act and bringing in the Development Bill, taking stock of all those quality of life issues associated with clean water, clean air, open transport corridors and, I suppose, urban metropolitan living.

I suspect that the frustration the Hon. Mr Elliott has shown in his contribution has motivated him to put forward the notice of motion. But I was rather more hopeful that, with the parties involved coming a little bit closer towards the end of the last contribution they were making to the committee, there may have been further exploration of the alternatives of setting up a trust for purchase or a compromise position on the types and styles of developments that may be put in place on Craigburn Farm. I suspect that paragraph 3 of the motion, which provides that this Council should note the inappropriate handling of the Craigburn supplementary development plan by the Government until this time, falls into the category of a difficult circumstance in which planners found themselves, and they tried, probably using the Act, to protect the position. Minda was using its rights under the law to protect its position. The residents were left with only the resources that can be mustered within community groups to protect their position.

The residents felt that they were being out-manoeuvred by tactics that were being developed by the Government, the bureaucrats and Minda. Hopefully, the parties can get together and work out a proposal that meets the Government's and the residents' expectations and allows for the raising of the funds that Minda requires to carry out its responsibilities as an organisation looking after the people it is constitutionally required to look after. I oppose the motion.

The Hon. PETER DUNN: I just wish to say a few words about this matter, because it has been a case of misunderstanding and mismanagement right from the word 'go', and it has finished up with the Environment, Resources and Development Committee having to step in to try to work out some method by which we can appease the parties. That has been difficult. Unfortunately, the Minister has refused to accept our good counsel on that, and I must say that the Environment, Resources and Development Committee is working extremely well. In my opinion, it has not come down with a report that has been contentious, because we have been able to come to a conclusion in all cases. I am disappointed that the Minister did not accept our recommendation, that is, to hold up the interim effect of the SDP for about 90 days so that there was a chance that local government, the citizens and perhaps the Government itself could get together and find some small compromise. The heavy hand of the law has come down on this matter and left it as it is.

Let me go back in history just a little bit because we must be clear as to what happened. Minda sold property in the area in which it operates, that is, Brighton, and purchased Craigburn in the 1960s with the intention of developing it. There was no doubt that it bought it with that intention. It was later that the plan for Adelaide included that as open space, and the residents there thought that was a good idea and, as one who lives out in the open space, I believe it is a good idea. But the fact is that Minda has a right to develop that land, just the same as I have rights if I buy something which later has its zoning changed. In this case the zoning was changed in 1972 to rural A, which does have a housing development component to it. Quite rightly, Minda expected to be able to develop that area, and it had that right, and I will defend that right. However, in defending that right, I point out that, if the Government wanted it as open space, it had to buy it, and that is quite correct. The Government has purchased a large portion of it.

There is 600 hectares, about 1500 acres, in the total development, of which about 100 acres will be developed, and that 100 acres will be totally in the Mitcham council area. In my opinion, the Government made the mistake when it said, 'Because the farm covers two council boundaries, we are entitled to put in a supplementary development plan of our own,' when the development portion of that farm was entirely in the Mitcham area and that did not occur to us until late in the investigations of the committee.

As has been explained (and the Hon. Mike Elliott has gone through this matter in some detail), in 1985 an SDP was put up and court action was taken by Minda to protect its development rights. The Government fiddled with the thing, and eventually the department of planning put in a plan with interim effect allowing that very short period of 19 days for comment by council and by the public. The ERD Committee said, 'We will give you 90 days, in effect, to comment on it to see whether you can come to come conclusion.' We took a lot of evidence in which locals said, 'We will raise the money and purchase the area so that we can keep it open space.' I think that is pie in the sky; there are commitments of about $20 000, perhaps, but it is very small: it certainly does not run into the millions of dollars that are required to purchase the property. So, that will not happen.

The council said that it wanted to have the area with larger blocks on it. I agree there are blocks in this development of 200 square metres. Just a while ago I stepped out this Chamber, which is about 30 metres by 15 metres, or 450 square metres, which means there would be two houses in this Chamber. That gives some idea of the intensity of the development that was being expected in the area. That is not saying that the whole area would be covered by houses that close together, but there was provision for that in it. A series of two houses in an area the size of this Chamber would be pretty small. I see the Attorney looking skyward, but let me assure him that at seven or eight feet high, if he put his hand up—

The Hon. C.J. Sumner: They would be double-storey.

The Hon. PETER DUNN: I know. I am talking about the square area and the Attorney is talking about the cubic area. The square area of two houses on an area this size is very small. If it was a cubic area, as the Attorney indicates, it would be a large house, but that is not the case.

An honourable member interjecting:

The Hon. PETER DUNN: No, that's 200 square feet; there's a lot of difference. An honourable member interjected that 20 squares is a large house. It is a large house, but that is 200 square feet, because each square is 100 square feet, whereas we are looking at 200 square metres, so it is roughly nine feet, not 100 feet square. So, the interjection is out of order by about 90 per cent. All I can say is that there were anomalies within this plan. There were originally plans for a buffer zone around the outside; there are plans for shopping development and, let us face it, there is shopping not far away. Certainly, queries about the movement of traffic out of the area were brought up by the residents, and I do think that will create a problem. We have had difficulty determining just what traffic would travel up and down that Blackwood area. I do not think any of the problems were insurmountable, but it needed a little more time to investigate.

That is what our committee tried to do. In its wisdom, the committee declared a period of 90 days during which the parties should get together but, unfortunately, the Minister, as he has the right to do, said that he did not want to take any notice of our collective wisdom, and has declared the SDP a fact. So, I say at this time that in essence I support what the Hon. Mike Elliott has done. I think it should have been raised. The problem in this Parliament is that we agreed with the SDP with some amendments, and it went back to the Minister. Had we not agreed to that SDP, it would have come into this Chamber and we would have either agreed or disagreed with the SDP, but as a committee we agreed that the SDP could go ahead. In the back of our mind was the fact that Minda has the right to develop it and can cause a reasonable amount of mischief in pursuit of its ideals and the money it is entitled to have, except that I think the Government has run out of money and that has been pretty obvious for the past couple of years. After today's report, it seems it has $8 million less than it had before. In that light I do not think it has money.

The Hon. L.H. Davis: It should take up a collection amongst its backbenchers.

The Hon. PETER DUNN: That is a possibility. I had the idea that, if it wanted to purchase the area, it could not. So, with all that background in mind, in principle I support what is being said by the Hon. Mike Elliott. We have used this motion as an opportunity to air the problems that have occurred, and I think that in future the Minister should look carefully before he rapidly rejects any suggestions that are made by the Environment, Resources and Development Committee.

The Hon. R.J. RITSON secured the adjournment of the debate.

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

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

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

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

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

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

SELECT COMMITTEE ON THE PENAL SYSTEM IN SOUTH AUSTRALIA

The Hon. R.R. ROBERTS: I move:

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

SELECT COMMITTEE ON THE COUNTRY RAIL SERVICES IN SOUTH AUSTRALIA

The Hon. G. WEATHERILL: I move:

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

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

The Hon. CAROLYN PICKLES: I move:

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

SELECT COMMITTEE ON REVIEW OF CERTAIN STATUTORY AUTHORITIES

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

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

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

The Hon. T. CROTHERS: I move:

That the committee have leave to sit during the recess and to report on the first day of the next session.

Motion carried.

TEACHERS

Adjourned debate on motion of Hon. R.I. Lucas:

That this Council:

1. condemns the Labor Government for its school staffing policies which have caused major problems for teachers, students and schools at the start of the 1993 school year.

2. deplores the waste of teacher experience and expertise as a result of these policies.

3. calls for an independent review of the current staffing policies of the Education Department.

to which the Hon. M.J. Elliott had moved the following amendment:

After paragraph 3 insert new paragraph 4 as follows:

4. condemns the Liberal Opposition for its constant undermining of public confidence in the public schools system.

(Continued from 3 March. Page 1389.)

The Hon. R.R. ROBERTS: I rise naturally to oppose this motion. I would have thought that over the past few weeks this motion would be viewed as a motion for another time. It is a motion that was moved with the anticipation, in fact, almost euphoria, of members of the Opposition at the prospect, along with their colleagues in the Federal Parliament, of substantially changing the way education and the systems therein are delivered. However, I see that the Hon. Mr Lucas has not availed himself of the opportunity to have this motion discharged, so we will go on with it. During the contribution by the Hon. Mr Lucas in respect of these matters, as is becoming his usual style, he was very flamboyant and he talked about the problems with respect to teacher placements in particular. It seemed to me that he blamed all that on the 10-year rule.

In that colourful language he talked about floods of telephone calls and said that dozens of people were complaining. On scrutinising his contribution, I noted the number of instances that were specifically mentioned and found that there were about four or five—and one of them was in fact not by a schoolteacher but by his mother who had called on his behalf.

This motion, moved, one assumes, by the Hon. Mr Lucas on behalf of his Party, obviously is something that the Labor Party cannot go along with. What it seeks to do is condemn the Labor Government for its school staffing policies. If one looks at the history of school staffing policies in South Australia, one realises that this policy has come about as a result of a long process of consultation between the South Australian Institute of Teachers (SAIT) and members of the Education Department acting on behalf of the Minister.

I think it is true to say that any fair assessment of teachers' conditions of work in South Australia would have to show—and I think it can be shown quite clearly—that we have the highest paid teachers and the smallest class sizes, and that a number of mechanisms have been changed to accommodate the changing needs of schoolteachers over the years; in particular, accommodations have had to be made because of changes sought with respect to country teachers.

I think events have shown that there have been minor problems with the 10-year placement. However, I think that five examples out of the thousands of schoolteachers in South Australia is hardly conclusive proof that the problem is insurmountable. I am certain that what will occur in this area of activity is that the consultation process that has applied in the past will continue to apply, and later in my contribution I intend to put on the record what the Minister of Education has done.

The 10-year rule is obviously not the only problem we have in the teaching area or in education. I think it is also fair to say that the assertions made by the Hon. Rob Lucas with respect to the 10-year rule are certainly overstated. I draw support from the *SAIT Journal* of 24 February 1993 in which a contribution was made on behalf of at least a practising schoolteacher. I think that that is probably where we are getting into trouble with the Opposition on education. The problem members opposite have is that they have never been schoolteachers and really do not know what teaching and education is all about. Some will say, obviously, that they attended university and actually went to school.

I was a member of the Mothers and Babies Association many years ago but, because I was a baby, that does not qualify me to be a paediatrician later. The South Australian Institute of Teachers was warned as follows:

> Members should also reject the opportunistic, mischievous and dishonest posturing of the shadow Minister of Education, Mr Rob Lucas, on this issue and see it as the cheap political stunt that it is. Even if limited placement was abolished, as Rob Lucas now says he would do, there would still have been hundreds of teachers unplaced at the beginning of year.

Hundreds of teachers, Mr President. I continue:

> Of far more concern, however, is the likely impact of the removal of limited placements on a number of groups of our members. The adoption of limited placements hinged on a number of trade-offs that included:

So we are talking about negotiated circumstances. I point out that it is a process of consultation and not confrontation or edict from above. I continue:

> The maintenance, and enhancement, of the guaranteed right of return to the city for country teachers.

This is an area that I have some concern about, Mr President. It continues:

> The limiting of PAT service to a maximum of four years; and a ceiling on required transfer that includes displacement, to the upper limit of 15 per cent of all staff.
>
> If limited placement was withdrawn, there would be a number of implications that Mr Lucas is clearly not interested in even acknowledging, let alone confronting. Country teachers would be the big losers, as the four year guarantee would have to go, or at the very least return to the previous situation where country teachers gained placements only on the far reaches of the metropolitan area or in the unpopular, hard to staff schools. When Rob Lucas was asked about this on the *7.30 Report,* his response was a blank and bemused stare. He obviously had no idea of the link between the four year guarantee and the limited placement. PATs, too, would be another group of big losers.

It goes on in similar vein. What we are really talking about here is a political stunt, as outlined by the *SAIT Journal*. This is all about a stunt. As I said in my preceding remarks, this was made at a time when the Hon. Mr Lucas was feeling extremely buoyed-up and was very keen to embrace the policies of his Liberal colleague in another place and try to impose the sorts of conditions on South Australian schoolteachers that were being proposed as part of the Fightback package.

Those proposals have been clearly rejected by the people of Australia, especially the people of South Australia, and clearly rejected by professionals within the teaching arena in South Australia. I am pleased to be able to explain to the Council, as is the usual practice of the Minister of Education in South Australia, that reviews take place from time to time. In fact, the Minister has set up a teacher placement review committee.

Paragraph three of this motion calls for such a committee to be set up. Obviously the friends of the Hon. Mr Lucas in the Education Department, whom he brags leak information to him from time to time, have got hold of the fact that the Minister was to set up a committee. So, Mr Lucas, trying to appear as though he has had this inspirational burst of knowledge and planning, has put into his motion that we ought to have a committee, knowing all the time that it was to happen, anyhow.

I do not have a problem with that paragraph of the motion because the Minister has indeed set up the committee. The teacher placement review committee, which was the reference group convened to support the consultant Ernst and Young, comprises one deputy principal from the southern metropolitan area, a teacher from the northern metropolitan area, a principal from the country area, a teacher from the metropolitan junior primary area, and a representative of SAIT.

I am confident, and I am sure the Minister is confident, that these people will conduct a comprehensive review of the systems and come back to the Minister with a report. I am also confident that the Minister will then consult with representatives of the education community and that any deficiencies or problems that have been identified in the 10-year placement system will be capable of being overcome.

I refer to the contribution of the Hon. Mr Lucas who was doing his Bib and Bub exercise with the Hon. Legh Davis. He suggested to me that he would like to debate the Government's record of the number of school teachers in South Australia, as compared with Liberal Party policy. Over the years, the number of teachers in South Australia has reduced, that is true, but in that process at all times there has been extensive consultation and discussion, and a proper look has been taken at the industrial conditions of teachers and the effect they have on schools across the State. The crucial ingredient in any assessment of this kind is the number of students who present for education in South Australia.

If we look at the policy of the Hon. Mr Lucas's colleagues in another State, we see that it is completely opposite. The best place to look is Victoria since the Kennett Government came to power. In less than 100 days of the Kennett Government 4 000 school teachers were axed from the system. There was no consultation. There was an edict from on high that 4 000 teachers would go. Not only were 4 000 teachers axed but 3 000 school cleaners were also axed. So, not only did the standard of education drop but the conditions under which people attend school also dropped. That is the type of record we have seen from the Liberal Party. We should compare that with the consultation and cooperation which takes place in South Australia and which has provided us with a high standard of well paid schoolteachers and reasonable class sizes. I am happy for this situation to continue, because the people of Australia and, particularly of South Australia, quite clearly said at the last Federal poll that that is the sort of policy they want. They want a policy of consultation and cooperation not an autocratic decision from on high, the sort of decision which the Hon. Mr Lucas obviously finds dear to his heart but which has been rejected by the people together with the remainder of the Fightback proposals. On behalf of the Government I oppose this motion, and I urge all members to vote against it.

The Hon. T. CROTHERS secured the adjournment of the debate.

LIMITATION OF ACTIONS (MISTAKE OF LAW OR FACT) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Limitation of Actions Act 1936. Read a first time.

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

That this Bill be now read a second time.

This Bill amends the Limitations of Actions Act 1936 to provide a 12 month limitation period for actions for the recovery of money. At present actions for the recover of moneys can be instituted up to six years from the date of payment.

The law relating to recovery of moneys has been the subject of two recent judicial decisions, one dealing with moneys paid under a mistake of law, the other dealing with the recovery of payments made pursuant to an invalid tax. The decisions have the potential to have a significant impact on business in this State and on State finances. The common law rule was that money paid under a mistake of fact was recoverable but money paid under a mistake of law was not recoverable.

In 1992, the High Court overturned this doctrine in the case of *David Securities v. Commonwealth Bank* (1992) 109 ALR 57. The court examined the issue of recovery of moneys paid under a mistake of law and rejected the generally held view that money paid under a mistake of law is irrecoverable. The court held that the basis of a claim for recovery of money paid under a mistake was that the recipient had been unjustly enriched at the expense of the payer. It considered that there was no justification for drawing a distinction on the basis of how the enrichment is gained, except in so far as the manner of gaining the enrichment bears upon the justice of the case.

The case has the effect of removing the distinction between mistakes of fact and mistakes of law in relation to recovery of moneys. Therefore, the position in Australia is now that money paid under a mistake of law

is *prima facie* recoverable. The abolition of the distinction between mistake of law and mistake of fact is not of itself a major problem as the distinction is often not clear and many jurisdictions have already removed it by legislation. The Law Reform Committee of South Australia also recommended the abolition of the distinction in its Twelfth Report. However, it is necessary to ensure that such a significant and sudden change does not have adverse implications on business.

Under the new principles set out in David Securities a payer will be able to seek recovery of moneys paid under a mistake of law up to six years ago., This is a windfall for the payer, and may have significant undesirable consequences for the recipient. It also results in uncertainty in the business community as it will be difficult for businesses to assess their possible liability.

The second case deals specifically with the recovery of invalid taxes. In *Woolwich Building Society v. IRC* (No 2) (1992] 3 All ER 737, the House of Lords adopted a new test so that tax payments are *prima facie* recoverable whether or not they are voluntary. It is not certain that the High Court will adopt the line taken by the House of Lords but if it does it would have serious implications for the State as payments made pursuant to an invalid tax would then be recoverable even if they were voluntary.

The law in Australia at the moment in relation to the recovery of money paid to a public authority in the form of taxes or other levies, pursuant to an *ultra vires* demand by the authority, is dependent upon whether or not the payment was voluntary. Payments of money made under compulsion. are recoverable where the demand is *ultra vires (Mason v. New South Wales).*

However, this issue may be reconsidered by the High Court. Given the recent cases of David Securities and Woolwich, there are a number of possible approaches which the court could take, for example:

(a) restate the existing test;

(b) modify the existing test with the added qualification that the possible defences respecting mistake of fact will also be applicable (this would be consistent with the court's approach in David Securities);

(c) adopt the approach of the House of Lords in Woolwich so that such payments are *prima facie* recoverable;

or

(d) adopt the approach of the Canadian Supreme Court in *Air Canada v. British Columbia* (1989) 59 DLR 161 where the majority suggested that there should be no recovery in respect of invalid taxes, at least in the absence of impropriety.

The approach to be adopted by the High Court may have significant implications for the State.

In order to minimise the impact of these two decisions, the Government proposes to limit the period within which claims for recovery of moneys can be made. The limitation period will apply to an action for the recovery of money paid under a mistake (either of fact or law) or for repayment of money paid under a tax or a purported tax. The general period of limitation will be 12 months. The amendment is retrospective and a special provision has been made for payments made more than six months before the commencement of this amendment. The limitation period in those cases will be the limitation period that would have applied if this section had not been enacted or six months after the commencement of the Act (whichever expires first).

The new section 38(2) provides that if an action is not brought within the period allowed by subsection (1) the right to recover the money is extinguished. Subsection (4) provides that the section is to be regarded as part of the substantive law of the State. This will avoid the problem of parties forum shopping, i.e., taking action in another State to avoid the limitation period.

Subsection (3) makes it clear that the period of limitation cannot be extended. This protects against a situation whereby a subsequent event, such as a court decision could be considered as a 'material fact' capable of allowing an extension of time.

Victoria, New South Wales and Western Australia all have enacted legislation which limit the time for bringing actions to recover taxes, fees etc., to 12 months. The Bill also repeals section 38 of the Act as this section is considered to be obsolete.

I commend this Bill to honourable members and seek leave to have the explanation of individual clauses inserted in *Hansard* without my reading it.

Leave granted.

Clauses 1 and 2 are formal.

Clause 3: Substitution of s. 38

Clause 3 repeals s. 38 of the Act which provided for the extension of limitation periods under Acts in force on 14 January 1867.

A new section 38 is substituted which provides that an action for the recovery of money paid under a mistake of law or fact, or an action for the repayment of money paid (either voluntarily or under compulsion) by way of a tax or a purported tax, must be commenced within 12 months of the date of the payment. However, if the payment were made more than six months before the commencement of this Act, the action would need to be commenced within the time limitation that would have applied but for this Act or within six months after the commencement of this Act (whichever expires first). The proposed section also provides that the period of limitation cannot be extended and that this section is to be regarded as part of the substantive law of the State and is to operate retrospectively and prospectively.

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

STATUTES AMENDMENT (COURTS) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Supreme Court Act 1935, the District Court Act 1991, the Magistrates Court Act 1991, the Bail Act 1985, the Criminal Law Consolidation Act 1935, the Enforcement of Judgments Act 1991, the Oaths Act 1936, the Summary Procedure Act 1921, the Unclaimed Goods Act 1987 and the Wrongs Act 1936. Read a first time.

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

That this Bill be now read a second time.

This Bill contains various amendments to the legislation which was enacted in 1991 to restructure the courts

system and improve efficiencies in the courts. This legislation came into operation in July 1992 and experience has shown that minor adjustments need to be made to the legislation. The opportunity has been taken to include some other amendments which do not directly arise out of the operation of the 1991 legislation. This Bill also contains some minor amendments to the recently enacted provisions of the Summary Procedure Act relating to summary protection orders.

The first Act to be amended is the Supreme Court Act. For some time the judges have been concerned about section 35a(1)(*l*) of the Wrongs Act, which provides that in personal injury claims arising out of motor vehicle accidents any interest awarded must not be calculated from a date antecedent to the date of commencement of the proceedings. This provision was designed to limit interest payments which were often awarded from the time the cause of action arose. The judges' concerns are that the provision encourages the early institution of proceedings which might otherwise have proved unnecessary and makes proper case flow management difficult.

SGIC has for some years been concerned by the huge increase in legal costs in litigating compulsory third party claims. Of a total of $201.1 million paid out for third party claims in the 1991-92 year—and everyone should listen to this—legal costs comprised $40.5 million or 20.1 per cent of claims.

These concerns led SGIC to examine possible alternative systems for the resolution of compulsory third party claims, or improvements to the existing system. SGIC concluded that although pre-trial conference procedures had the effect of virtually eliminating settlements on the court steps on the day of the trial and saving fee on brief and trial preparation costs there was little incentive (particularly for the plaintiff and plaintiff's solicitors) to settle before the pre-trial conference. SGIC's statistics show that only 5 per cent of all actions settled between the issue of proceedings and the pre-trial conference. Pre-trial conferences have, however, been remarkably successful. Approximately 77 per cent of all actions in both the Supreme and District Courts settle at the pre-trial conference and a further 15 per cent settle between the pre-trial conference and the trial. These considerations led SGIC to conclude that savings could be made if, before legal proceedings are instituted, genuine attempts are made by the parties to settle their claims.

The amendment to section 30c of the Supreme Court Act is the first step in developing procedures to eliminate the premature commencement of proceedings. Similar amendments are to be made to the District Court Act and the Magistrates Court Act and section 35a(l)(*l*) of the Wrongs Act is to be repealed.

The judges have agreed to amend their rules, in consultation with the profession, to the effect that a party would bear the risk of costs if the party institutes proceedings without giving the defendant adequate notice of the proceedings together with a reasonable opportunity to settle the claim. Also a party would bear the risk of costs if the party instituted proceedings before the matter was ready to proceed.

The second amendment to the Supreme Court Act is also common to the District and Magistrates Court Acts. Doubts have arisen whether section 131 extends to allowing the public access to, for example, the judge's direction to the jury in a criminal trial. It is made clear that the public is entitled to have access to this and to the other listed items.

The District Court Act is amended to include a new provision as to service. (A similar provision is also added to the Magistrates Court Act.) Difficulties have been encountered in the Magistrates Court in effecting personal service on people who live in high security premises. The High Court decision in *Dillon v Plenty* also has the potential to create problems with the service of summonses in the Magistrates Court criminal jurisdiction. In that case the High Court held that police were unable to enter private property to serve a summons when the owner had made it clear that they were not to enter the property. This provision will enable the courts to make appropriate provision for some other form of service when personal service has proved impracticable. In *Dillon v Plenty* if personal service could not be effected the only alternative was arrest. This is not always a desirable course and if it can be avoided it should be. The Supreme Court Rules cover the situation in that court.

The amendment to section 51 of the District Court Act follows as a result of the decision of the Supreme Court in *Taylor v Guttilla* (Judgement No. S3701, delivered on the 10 December 1992). In this case the Supreme Court ruled invalid rule 38 of the Rules made under the Local and District Criminal Court Act. This rule, which is similar to a rule now made under the District Court Act, provided that all reports of persons who might be able to be called as expert witnesses should be exchanged well in advance of trial. Reports produced by experts in contemplation of litigation or for the purposes of litigation would attract legal professional privilege in the absence of some provision to the contrary.

The essence of the Supreme Court decision is that the rule making power contained in the former Local and District Criminal Courts Act (and it would appear the present District Court Act) is not sufficient to found a rule that has the effect of depriving a party to a claim for legal professional privilege. In recent times the philosophy of the District Court has been that, in the conduct of litigation, all cards should be laid on the table. Trial by ambush is, hopefully, a thing of the past. The amendment is designed to enable the District Court to revert to the *status quo*. A similar amendment is made to the Magistrates Court Act.

As well as the amendments already mentioned, several what might be termed 'housekeeping' amendments are made to the Magistrates Court Act. Difficulties have been experienced by reason of the fact that not all the functions of a Registrar can be delegated to a Deputy Registrar because some of them are of a judicial nature. When the Registrar is absent there is nobody else who can perform these tasks. The definition of Registrar is amended to include the Deputy Registrar.

Section 14(2) is struck out. This subsection was not brought into operation while the Chief Magistrate and Sheriff further considered their roles in relation to court orderlies. They have now agreed that the provision should be deleted.

The amendment to section 15 clarifies when the court may be constituted by a Special Justice or 2 Justices of the Peace. The section was amended during debate and is not as felicitous as it could be. Present section 15(2)*(b)* appears to require the court to invite objections to justices hearing a matter. This has the potential to cause disruption particularly in places magistrates do not visit. Cases are scheduled so that justices do not deal with complicated matters, and the matters justices can deal with are in any event limited by the Criminal Law (Sentencing) Act provisions which restrict the penalties justices can impose.

Section 40 is amended to provide that no appeal lies against an interlocutory judgment given in summary proceedings. There was no appeal in such matters until this legislation was enacted and this amendment restores the *status quo.* It is undesirable that summary proceedings should lose their summary nature.

The Bail Act is amended to provide that persons who do not obey a witness summons and who have been arrested as a consequence can be bailed. It is not always desirable that such persons be kept in custody until they can be dealt with by the court that ordered their arrest. A further amendment is made to section 19 of the Bail Act to provide for an amount estreated to be paid in instalments. At present a court may reduce the amount to be paid or rescind the order for the payment of the amount but it may not order the amount to be paid in instalments. It seems sensible that the court can make an order for the payment of the whole amount by instalments in appropriate cases rather than reducing the liability or cancelling it altogether.

Sections 46 and 47 of the Criminal Law Consolidation Act are repealed. Their repeal was overlooked when assault was made a summary offence.

Section 86b is also repealed. This section should have been deleted from the Statutes Amendment (Illegal Use of Motor Vehicles) Bill 1992 as a result of the agreement reached at a conference. The section has not been proclaimed to come into operation.

The amendment to section 278 makes it clear that summary offences can be included in an information. It is probable that they can now. The amendment will put the matter beyond argument.

The amendment to the definition of 'judgment debt' in section 3 of the Enforcement of Judgments Act is designed to overcome the difficulty that the definition of judgment debt does not include the costs of enforcing the judgment and, if these are not paid, must be pursued separately from the judgment debt. This is an inefficient and wasteful way to go about things.

Section 7 is amended to make it clear that where the Sheriff has authority to sell real property he can eject from the land any person who is not lawfully entitled to be on the land. It is implicit that the Sheriff can do this but the amendment makes it clear, particularly as section 11 provides that the Sheriff can eject persons from land. The amendment to the *Oaths Act* is a drafting amendment—the alteration of the reference to the *Justices Act* was overlooked.

Several amendments are made to the *Summary Procedure Act.* New section 8 provides that industrial offences must be set down for hearing by an industrial magistrate. This restores the *status quo.* Since the 1991 amendments came into operation administrative arrangements have ensured that industrial offences are set down before industrial magistrates. The provision in the Act will ensure that the administrative arrangements are not overlooked in the future. The amendment to section 29 brings the wording of this provision into line with the amendment made to section 288 of the *Criminal Law Consolidation Act* towards the end of last year.

Section 49 refers to complaints being "made" and to complaints being "laid". The amendment to section 49 clarifies that complaints are "made". The amendment to section 107 removes some superfluous words.

Section 189 presently allows a court to award costs against a legal practitioner, prosecutor or witness who unreasonably delays proceedings. The amendment to section 189 will allow the court to award costs against a party who unreasonably delays proceedings.

The Chief Magistrate and the police have raised technical questions about whether an in-house amendment to the provisions allowing application for protection orders by telephone achieved its objective. The amendment requires that cases in which interim or telephone orders are made must be referred to a Court within 7 days of the making of the order. The provision has been re-drafted and is contained in sections 99f and 99g.

The status of firearms orders which the Court must make when making a summary protection order is unclear in the principal Act. The definition section (section 4) and section 99a are being amended to clarify that firearms orders are an intrinsic part of a summary protection order.

The Chief Magistrate has requested that section 100(3) be amended to give the Court additional ability to give directions concerning registration of interstate orders.

The Crown Solicitor has pointed out that an anomaly exists between the need for personal service of a protection order and the commission of an offence against a protection order. The position is being clarified to ensure that the offence is only committed if the defendant has been served with the summary protection order.

The amendment to the *Unclaimed Goods Act 1987* brings the jurisdictional limits in the Act in line with the jurisdictional limits of the new courts legislation.

I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

This clause provides for commencement on proclamation.

Clause 3: Interpretation

This clause is a standard interpretation provision for Statutes Amendment Bills.

PART 2
AMENDMENT OF SUPREME COURT ACT 1935

Clause 4: Amendment of s. 30c—Power to award interest

The provision regulating interest on damages, compensation or other pecuniary awards is amended by removing the

requirement that where a judgment is given on an unliquidated claim interest is to be calculated from the date of the commencement of the proceedings to the date of judgment. It will, instead, be calculated from a period fixed by the court.

Clause 5: Amendment of s. 131—Accessibility of evidence, etc.

The amendment requires the court to give the public access not only to transcripts of evidence, documentary material admitted into evidence and any judgment or order but also to transcripts of submissions by counsel, transcripts of the judge's summing up or directions to the jury and transcripts of reasons for judgment.

PART 3
AMENDMENT OF DISTRICT COURT ACT 1991

Clause 6: Amendment of s. 39—Pre-judgment interest

This amendment is equivalent to the amendment to section 30c of the *Supreme Court Act* 1935. See clause 4.

Clause 7: Insertion of s. 50A Service

The new section enables the District Court to order service by post or to make other orders related to service where it is not practicable to serve as prescribed or contemplated by law.

Clause 8: Amendment of s. 51—Rules of Court

This amendment enables rules of court to be made imposing obligations for disclosure on parties prior to trial.

Clause 9: Amendment of s. 54—Accessibility of evidence, etc.

This amendment is equivalent to the amendment to section 131 of the *Supreme Court Act 1935.* See clause 5.

PART 4
AMENDMENT OF MAGISTRATES COURT ACT 1991

Clause 10: Amendment of s. 3—Interpretation

This amendment enables Deputy Registrars, Registrars and the Principal Registrar to perform the same functions.

Clause 11: Amendment of s. 14—Responsibilities of non-judicial staff

This amendment removes the provision that court orderlies are subject to direction by the Chief Magistrate. The responsibilities of court orderlies are set out in the *Law Courts (Maintenance of Order) Act 1928.*

Clause 12: Amendment of s. 15—The Court, how constituted

This amendment removes the ability of a party to object to proceedings being heard by the Court constituted of a Special Justice or 2 Justices.

Clause 13: Amendment of s. 19—Transfer of proceedings between courts

This amendment provides for transfer of proceedings from the Supreme Court to the Magistrates Court.

Clause 14: Amendment of s. 34—Pre-judgment interest

This amendment is equivalent to the amendment to section 30c of the *Supreme Court Act 1935.* See clause 4.

Clause 15: Amendment of s. 40—Right of appeal

This amendment provides that there is no appeal against an interlocutory judgment in summary proceedings.

Clause 16: Insertion of s. 48A—Service

This amendment is equivalent to the insertion of section 50A in the *District Court Act 1991.* See clause 7.

Clause 17: Amendment of s. 49—Rules of Court

This amendment is equivalent to the amendment of section 51 of the *District Court Act 1991.* See clause 8.

Clause 18: Amendment of s. 51—Accessibility of evidence, etc.

This amendment is equivalent to the amendment of section 131 of the *Supreme Court Act 1935.* See clause 5.

PART 5
AMENDMENT OF BAIL ACT 1985

Clause 19: Amendment of s. 4—Eligibility for bail

This amendment provides that witnesses appearing on summons or arrested on warrant are eligible for bail.

Clause 20: Amendment of s. 5—Bail authorities

This amendment provides that the court before which a witness is to appear is a bail authority for the purposes of the Act.

Clause 21: Amendment of s. 6—Nature of bail agreement

This amendment provides for the nature of a bail agreement with a witness. The agreement is an undertaking to be present and to comply with conditions as to conduct while on bail. The agreement may provide for forfeiture of a specified sum on breach of the agreement.

Clause 22: Amendment of s. 10—Discretion exercisable by bail authority

This amendment requires the bail authority to release a witness on bail unless there is a likelihood that the witness would abscond.

Clause 23: Amendment of s. 19—Estreatment

This amendment enables a court or justice to allow a person to pay an amount forfeited because of a breach of a bail agreement in instalments.

PART 6
AMENDMENT OF CRIMINAL LAW CONSOLIDATION ACT 1935

Clause 24: Repeal of ss. 46 and 47

Sections 46 and 47 relate to the manner in which assault and battery offences are dealt with. These offences are now summary offences and the sections have become obsolete.

Clause 25: Repeal of s. 86b

Section 86b, inserted by the *Statutes Amendment (Illegal Use of Motor Vehicles) Act* 1992, is repealed. The matter is dealt with under section 17 of the *Summary Offences Act* 1953.

Clause 26: Amendment of s. 278—Joinder of charges

This amendment makes it clear that offences may be joined where appropriate no matter their classification.

PART 7
AMENDMENT OF ENFORCEMENT OF JUDGMENTS ACT 1991

Clause 27: Amendment of s. 3—Interpretation

This amendment inserts a definition of judgment debt to include in that term the costs of enforcing the judgment.

Clause 28: Amendment of s. 7—Sale of property

This amendment gives the sheriff clear power to eject from land any person who is not lawfully entitled to be on the land where a warrant authorises the sale of the land.

PART 8
AMENDMENT OF OATHS ACT 1936

Clause 29: Amendment of s. 7—Oaths to be taken by judicial officers

This amendment corrects a reference to the Act under which Justices take their oaths.

PART 9
AMENDMENT OF SUMMARY PROCEDURE ACT 1926

Clause 30: Amendment of s. 4—Interpretation

This amendment substitutes the definition of "summary protection order" to include an order comprised of a restraining order and a firearms order dealing with any firearms possessed by a defendant subject to a restraining order. Currently these types of orders are separate orders. The amendment is one of a series of miscellaneous amendments to the summary protection order provisions in the Act (see clauses 34 to 37).

Clause 31: Insertion of s. 8—Industrial offences

The new section provides that a charge of an industrial offence must be heard by an industrial magistrate.

Clause 32: Amendment of s. 29—Assistance of counsel

This amendment equates the provision to section 288 of the *Criminal Law Consolidation Act 1935 by* providing that parties are entitled to be represented by counsel rather than to the assistance of counsel in the presentation of cases.

Clause 33: Amendment of s. 49—Complaint

The amendment is of a technical nature to make consistent references to a complaint being made rather than laid.

Clause 34: Amendment of s. 99—Summary protection orders

These amendments make it clear that where a summary protection order is made in the absence of the defendant, the date set for the defendant to appear before the court when it considers whether to confirm the order must not be later than 7 days after the date of the order. The amendment allows the court to adjourn to a later date (usually no more than a further 7 days later) if the defendant has not been served with a summons or for other good reason.

The other amendments in this clause are consequential to the amendment in clause 35.

Clause 35: Amendment of s. 99a—Firearms orders

Section 99a requires the Court to make orders relating to firearms that may be held by the defendant when making a summary protection order. The amendment brings such orders within the summary protection order itself.

Clause 36: Insertion of ss. 99b—99d

These amendments are consequential to the amendments in clause 35.

Clause 37: Amendment of s. 100—Registration of interstate summary protection orders

This amendment gives the Court power, when registering an interstate summary protection order, to issue directions for the effective operation of the order in this State in addition to its current power to adapt or modify the order.

Clause 38: *Amendment of s. 104—Preliminary examination of charges of indictable offences*

The amendment makes it an offence to file a false statement in Court.

Clause 39: Amendment of s. 107—Evaluation of evidence at preliminary examination

This amendment removes an anomaly in the section.

Clause 40: Amendment of s. 189—Costs

This amendment provides for the award of costs against parties who unreasonably obstruct proceedings.

PART 10
AMENDMENT OF UNCLAIMED GOODS ACT 1987

Clause 41: Amendment of s. 3—Interpretation

This amendment brings the Court before which proceedings may be taken under the Act into line with current jurisdictional limits. It provides that the Magistrates Court is the appropriate court if the unclaimed goods do not exceed $60 000 in value and if they do exceed that value then the District Court or the Supreme Court is the appropriate court.

PART 11
AMENDMENT OF WRONGS ACT 1936

Clause 42: Amendment of s. 35a—Motor accidents

This amendment is related to the amendment to section 30c of the *Supreme Court Act 1935.* See clause 4. It removes the limitation that in personal injury claims arising out of motor vehicle accidents any interest awarded must not be calculated from a date antecedent to the date of commencement of the proceedings.

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

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Director of Public Prosecutions Act 1992, the Jurisdiction of Courts (Cross-Vesting) Act 1987 and the Wrongs Act 1936. Read a first time.

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

That this Bill be now read a second time.

This Bill makes a number of amendments to Acts within, or relevant to, the Attorney-General's portfolio.

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

The *Director of Public Prosecutions Act* came into operation on 6 July, 1992. The Director has pointed out a deficiency in the Act.

For some years there has been an agreement of mutual sharing between the States and the Commonwealth of powers to lay charges and powers incidental thereto, e.g. amendment, termination etc. These powers were formerly delegated by the Attorney-General to the Commonwealth Director of Public Prosecutions, the Deputy Director and his two senior officers in South Australia. The Director of Public Prosecutions is anxious for the arrangement to continue.

The *Director of Public Prosecutions Act* as currently worded only permits delegations to staff of the office of the Director of Public Prosecutions. There is no provision for the powers of the Director of Public Prosecutions to be delegated to those outside the office. Therefore the Director cannot delegate his powers to lay charges etc to the Commonwealth Director of Public Prosecutions. There is provision for the Director of Public Prosecutions to instruct counsel and these provisions have been utilised in the interim to enable him to instruct officers of the Commonwealth Director of Public Prosecutions to prosecute State matters but such an arrangement is not a satisfactory long term solution. Therefore, Part 2 of the Bill amends the Act to enable a delegation to "any suitable person". The Bill provides that delegation must be in writing.

JURISDICTION OF COURTS (CROSS-VESTING) ACT 1987

The *Jurisdiction of Courts (Cross-vesting) Act 1987* establishes a system of cross-vesting of jurisdiction between Federal, State and Territory courts. The Act is based on uniform legislation agreed to by the Standing Committee of Attorneys-General.

The Special Committee of Solicitors-General has recommended two amendments to the Act. Firstly that proceedings under Section 60 AA of the *Family Law Act, 1975* be included under the definition of "special federal matter". Secondly, that the rules concerning the transfer of special federal matters from State Supreme Courts to the Federal Court of Australia be varied.

Section 60 AA of the *Family Law Act, 1975* was enacted in 1990. Under this Section, the Family Court, the Family Court of Western Australia or the Supreme Court of the Northern Territory (which both exercise family law jurisdiction), may grant leave for proceedings to be commenced in the appropriate State Court for the adoption of a child by a step-parent.

The Solicitors General recommended that proceedings under Section 60AA should be included under the definition of "special federal matter". The Commonwealth amended its legislation in 1992. The definition of "special federal matter" in the Commonwealth Act is automatically picked up by the South Australian legislation.

The amendment made by the new Section 6(2) is consequential on the Commonwealth's amendment to the definition of "special federal matter". It provides that where proceedings are to be transferred, those involving existing special federal matters are to be transferred to the Federal Court, and those involving the seeking of leave for step-parent adoptions are to be transferred to the Family Court, the Family Court of Western Australia or the Supreme Court of the Northern Territory, as appropriate.

The second issue raised by the Solicitors-General also relates to Section 6. Section 6 of the *Cross-vesting Act* currently provides that a State Supreme Court shall transfer a proceeding in which a special federal matter arises to the Federal Court, unless the State Supreme Court orders that it should continue to hear the matter. Before making such an order the State Supreme Court must be satisfied that it is not appropriate that the proceedings be transferred to the Federal Court and that it is appropriate that the proceedings be heard by the Supreme Court.

In addition, the Supreme Court is required to notify the Commonwealth Attorney-General of the proceedings in order that the Commonwealth may consider whether to request that the proceedings be transferred to the Federal Court. The Supreme Court must transfer a proceeding to the Federal Court if a request is made.

In the few cases in which an order under Section 6(1) has been made the Commonwealth has been concerned that Supreme Courts have not given appropriate consideration to the policy considerations favouring transfer to the Federal Court. Also, the Commonwealth considers that a request by the Commonwealth Attorney-General to request the transfer of proceedings can be misconstrued as interference by the Attorney-General in the judicial process.

The Special Committee of Solicitors-General has recommended that Section 6 of the *Cross-vesting Act* be amended to provide, first, that reasonable notice of a matter involving a special federal matter be given to the Commonwealth Attorney-General, and the Attorney-General of a particular State or Territory, to allow them to consider whether to put submissions on the question of whether a State or Territory court should transfer a matter. Secondly, that the Acts should require State and Territory courts to have regard to the general policy that special federal matters be heard by a federal court, and that a proceeding should not be transferred only if the State or Territory court is satisfied that there are special, or exceptional, circumstances for the proceeding remaining in the State or Territory Court.

Thirdly, that the Commonwealth Attorney-General's power to request the transfer of a matter to the Federal Court (Section 6(7) of the Act) should be repealed. The amendment will avoid the present unsatisfactory situation that State or Territory Judges' orders are, in effect, subject to appeal to the Attorney-General for the Commonwealth.

The Standing Committee of Attorneys-General has accepted the recommendations made by the Special Committee of Solicitors-General. The amendments to Section 6 contained in Part 3 of the Bill are consistent with these recommendations and conform to the uniform scheme.

MOTOR VEHICLES ACT 1959

Part 4 of the Bill amends Section 93 of the *Motor Vehicles Act* to require courts to notify the Registrar of Motor Vehicles of offences which have been committed contrary to the *Motor Vehicles Act* or the *Road Traffic Act.*

This amendment arose out of a Question on Notice regarding a juvenile who appeared in the Children's Court charged with a total of 9 breaches of the *Road Traffic Act* and the *Motor Vehicles Act.*

Section 81b(2) of the Act provides that:

Where a person who holds a learner's permit or probationary licence—

(a) commits an offence of contravening a probationary condition:...

the Registrar must, upon becoming aware of that fact, give notice—

...

(c) that the person is disqualified from holding or obtaining a permit or licence for a period of six months... and

(d) that if the person holds any permit or licence at the commencement of the period of disqualification, the permit or licence is cancelled.

Section 93 of the *Motor Vehicles Act* provides that whenever a court...convicts a person of the offence of contravening or failing to comply with a condition of a permit or licence under this Act or makes an order affecting demerit points or disqualifying a person from holding or obtaining a driver's licence,...the proper officer of the court... must send to the Registrar a notice in writing stating the date of the conviction, order or suspension, the nature of the order, or the period of any disqualification or suspension, and short particulars of the grounds on which it was made.

The Court is not required to notify the Registrar of matters in which no conviction is recorded. It is

therefore feasible that a Children's Court could find a charge of breaching a condition of a probationary licence proved against a child and, by not convicting the child, avoid disqualification. There is no problem with adults. The Supreme Court has held that the power conferred by the Criminal Law (Sentencing) Act cannot be used to avoid mandatory licence disqualification. However, the same reasoning does not apply to minors. The Children's Protection and Young Offenders Act sets out a special code which regulates the way in which juvenile offenders are prosecuted and sentenced.

The Registrar has made arrangements to obtain records from the Courts Services Department to enable him to perform his obligations under Section 81b. The amendment will give legislative backing to this arrangement and to require a Court to notify the Registrar of Motor Vehicles on every occasion that it finds that an offence which contravenes a condition of a permit or licence has occurred. This will result in minors facing the same consequences as adults for breaches of the Motor Vehicle Act and the Road Traffic Act, that is, mandatory licence disqualification for breach of probationary conditions.

REAL PROPERTY ACT 1886

An amendment is proposed to Section 143 of the Real Property Act to eliminate the need for a duplicate instrument to be produced to the Lands Titles Office for the purpose of registering a discharge. Production of a duplicate instrument is now considered by the Lands Titles Office and the relevant lending institution to be unnecessary, time consuming and an unnecessary expense to the public. I commend the Bill to members and seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

This clause provides for commencement on proclamation.

Clause 3: Interpretation

This is a standard clause for Statutes Amendment Bills.

PART 2
AMENDMENT OF DIRECTOR OF PUBLIC PROSECUTIONS ACT 1992

Clause 4: Amendment of s. 6—Office of the Director

This amendment is consequential to clause 5.

Clause 5: Insertion of s. 6A

A new section dealing with delegation by the DPP is inserted. It allows the DPP to delegate powers or functions to any suitable person. The delegation must be in writing.

PART 3
AMENDMENT OF JURISDICTION OF COURTS (CROSS-VESTING) ACT 1987

Clause 6: Substitution of s. 6

This clause alters the provisions that govern the transfer of *special federal matters* from the Supreme Court to the Federal Court.

Currently under the Act the Supreme Court is required to transfer a proceeding that is a special federal matter to the Federal Court unless satisfied that it is not appropriate that the proceeding be transferred and that it is appropriate that the Supreme Court determine the proceeding. The Commonwealth Attorney-General is empowered to request that a proceeding be transferred to the Federal Court and the Supreme Court must comply with such a request.

Under the proposed amendment, the Supreme Court will be required to transfer the proceeding unless satisfied that there are special reasons (other than the convenience of the parties) in the particular circumstances of the case that justify the Supreme Court determining the proceeding. In deciding whether there are special reasons, the court will be required to have regard to the general rule that special federal matters should be transferred to the appropriate federal court. The power of the Commonwealth Attorney-General to request the transfer of proceedings is removed. Ancillary provisions are also inserted that require notice to be given to the State and Commonwealth Attorneys-General before the court orders that the proceeding not be transferred (so as to allow either Attorney to make submissions on the matter).

A consequential amendment is also made as a result of an amendment of the parallel Commonwealth Act whereby certain adoption of children proceedings will be made special federal matters for transfer to the Family Court.

Clause 7: Application

This clause provides that the Act (as in force before the proposed amendments) continues to apply in respect of proceedings pending at the commencement of those amendments.

PART 4
AMENDMENT OF MOTOR VEHICLES ACT 1959

Clause 8: Amendment of s. 93—Notice to be given to Registrar

The amendment requires a court to give notice to the Registrar each time that it finds a person guilty of contravention of a condition of a permit or licence, whether or not a conviction is recorded against the person. At present courts only have to give notice if a conviction is recorded.

PART 5
AMENDMENT OF REAL PROPERTY ACT 1886

Clause 9: Amendment of s. 143—Discharge of mortgages and encumbrances

Currently, a discharge of a mortgage or encumbrance must not be registered without production of the duplicate mortgage or encumbrance. The amendment makes production of the duplicate a matter for the discretion of the Registrar-General in relation to both a full or partial discharge.

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

SUPPLY BILL (No. 1)

Adjourned debate on second reading.

Continued from 30 March. Page 1778.)

The Hon. DIANA LAIDLAW: I wish to address two matters under this Supply Bill, the first dealing with fare

evasion in the STA and the second dealing with the future of the non-metropolitan rail services in South Australia. It would be fair to say that, other than graffiti and vandalism on STA vehicles, fare evasion is the issue that is raised most regularly in my office as a problem perceived by users of STA services, in particular rail services, and also by those who work on those services. From evidence provided by STA employees, by concerned but disgruntled passengers and by my own observation it is apparent that fare evasion is alive and well on the STA system. It is a problem that has flourished since the State Government got rid of guards on trains. Members will recall that one of the functions of guards was to sell tickets on trains.

We now have a system where the Government has encouraged people to purchase tickets off STA vehicles, and retail outlets have been established across the metropolitan area for this purpose. One can still purchase a ticket on a bus, but it is much dearer than a ticket purchased from other retail outlets. A ticket could not be bought on a train until the Government belatedly introduced on a trial basis a number of ticket vending machines. There are three main outlets for the purchase of a rail ticket, namely, Gawler, Noarlunga and the Adelaide station.

On 11 November 1991, just after the month-long rail strike we had in this State, I issued a statement based on advice from within the STA that fare evasion could possibly amount to one in 10 passengers on STA rail services. The Minister at the time dismissed this claim and considered that the percentage was 1, possibly 1.5, and his advice was based on random inspections by field supervisors. Even at that figure of 1 per cent, the Minister was acknowledging that the STA was losing $500 000 a year in traffic receipts. Of course, that $500 000 in revenue lost was $500 000 that taxpayers had to find to help subsidise the STA's operating deficit. A year later, I raised the issue again, because I had received advice from rail unions that the problem was totally out of hand.

At that time, the Secretary of the Australian Railway Workers Union, Mr John Crossing, said that the STA would lose $1.6 million a year because about 930 000 train travellers on an annual basis were not paying for their transport. At that time, I was keen for the Government to investigate the whole STA Crouzet ticketing system, and there has been no response to that call at that time or since, although I do note that the STA has now employed Mr Tom Morgan, a former secretary of the ATMOEA, as a ticketing supervisor to look at the general functioning of the Crouzet system, but that function now performed by Mr Morgan does not involve a complete review of the headaches that STA workers and passengers generally are experiencing with the Crouzet ticketing system.

I appreciate that the Australian Railway Workers Union has been accused by the Government of inflating the figures of people who are evading paying their fare. I do not believe the Government when it denies the claims made by the ARU. The Government has an ulterior motive and certainly an ulterior agenda at present to run down rail services in the metropolitan area. Certainly, it is keen to claim that it is uneconomical compared to other STA services in the metropolitan area. It is true today that every passenger journey on rail costs taxpayers $8.10 while every passenger journey on STA buses and trams costs $2.48 and $3.30 respectively. It could well be argued that this high cost of passenger transport on trains arises from the fact that so many passengers are not being recorded as travelling on a train because they have not validated their Crouzet ticket or, indeed, have not purchased a ticket. I believe that the worst fears of the unions involved in the newly formed public transport union are well founded when they question the objectives of the STA and in terms of the future of rail and particularly when they question the lack of interest by the STA in addressing this problem of fare evasion. So, I suggest that the STA has other motives in trying to play down the issue of fare evasion and play up the issue of the cost of rail travel. .

On the basis of the current advice that is coming to my office and my own observations, it would seem that at least $1 million has been lost in the STA system to date through fare evasion. I have been travelling on train services in the evening on a regular basis to find out what is going on and to observe the behaviour of passengers and the conduct and role of the Transit Squad. It is interesting to note that on some trains Transit Squad members will approach those passengers who are clearly not paying for a ticket and who defiantly get on a train and sit down without even attempting to validate their ticket. Some Transit Squad officers approach those people, but it is not their role to do so, and they certainly have no capacity to issue a person a ticket or to tell that person to pay.

In fact, one can generally not purchase a ticket on a train of one's own volition. Other Transit Squad officers are not even as conscientious as that and they just shrug their shoulders as people pass them and do not even attempt to insert their Crouzet ticket into the validating machine.

It is very demoralising for other passengers who are paying to see this lax attitude by STA employees and particularly to see the defiant attitude taken by those who have no intention to pay for the service that they are receiving. I know that there are instances where people have deliberately vandalised their tickets, because I have been told of such experiences by those concerned. There are others who have genuinely experienced frustrations with the quality of the tickets produced for the STA.

This issue was again raised in the Estimates Committees last year, at which time the then Minister, Mr Blevins, indicated that there had been a great deal of trouble with one batch of tickets that had been produced in Australia, and it had been necessary to call for additional tickets from France.

I would be interested to know from the Minister of Transport Development what has happened in this matter of the purchase of Crouzet tickets from the Australian manufacturer and to know whether she can identify whether the STA is now pleased with the quality of the tickets and the rate of damaged tickets that the STA is now receiving from customers when they are seeking reimbursement for the value of that ticket because it simply will not validate.

I would also be interested to know how many people the STA is now employing as field supervisors to check on passengers to determine whether they have their

tickets and if those tickets have been validated. It is fascinating. I saw one occasion when a field inspector entered a train that people hopped up from seats all over the carriage and quickly validated their tickets, and on some occasions there have definitely been more—

The Hon. T.G. Roberts: Do you validate yours?

The Hon. DIANA LAIDLAW: Yes; although I am entitled to a free ticket, I always buy a multi-trip ticket on the train, because I do not believe I can stand up in this place and elsewhere and be critical of fare evasion when I have not paid for my own ticket. As my colleagues know, I am always lecturing them about the same matter. It is interesting to see the number of people who leap up and validate their ticket when a field inspector gets on, so I would be interested to know, in terms of these random inspections by field inspectors, whether they are judging the number of people who do not pay their ticket by those from whom the field inspectors are unable to gain money on the train and to whom they must issue a traffic infringement notice, or are they making their assessment on the basis of the number of people who are the first to hop up to validate their ticket. Then, their having validated their ticket, do the STA field officers not take those people into account when making their assessments of fare evaders within that rail carriage?

I believe very strongly that this issue of fare evasion must be addressed diligently by the STA, because it is undermining the morale of passengers who are paying full and concession fares and are doing so diligently. I do not believe that the STA can afford such disillusionment amongst any of the travelling public at a time when it claims that it is interested in lifting its patronage and when it knows that it must restore some pride within the STA system and build the image of the system because of Government cuts in the STA's operating subsidy over the next few years—cuts which I repeat amount to some $24 million to 30 June 1994.

The other issue I want to address this afternoon is that of the future of rail jobs within the State. I have spoken with Mr Rex Phillips from the Public Transport Union in recent days. He has sent a letter to the Minister and the Premier of this State, arguing that there must be a concerted effort by this Government to pressure the Federal Government for additional funding in terms of the grain lines that adjoin or are adjacent to the Adelaide-Melbourne railway line. I commend him for his diligence and his work on behalf of rail workers within Australian National.

As Mr Phillips knows, I have been concerned about this subject ever since the standardisation deal was announced by the Prime Minister in the One Nation package in February 1992. It was apparent at that time that the $115 million offered by the Federal Government was well short of the money that Australian National was seeking for this major and long overdue project. Incidentally, South Australia's share of that $115 million was some $20 million. So, that reduced sum of money that the Federal Government so 'generously' offered for this standardisation project comes at an enormous cost to South Australia in terms of the future of our grain lines in the Murray-Mallee and the South-East. Those lines are broad gauge lines, and there is no money to standardise them.

Specifically, those lines are the Cambrai line, the Loxton via Karoonda line, the Pinnaroo line into Tailem Bend and the Wolseley-Mount Gambier line in the South-East, but there is an additional problem which Mr Phillips has identified to the Premier, the Minister and me and of which I had not earlier been aware, and that is what are called 'breaker gauge lines', which are on the Melbourne-Adelaide line.

Breaker gauge lines are currently at Tailem Bend, Wolseley, Monarto South, Murray Bridge, Coomandook, Coonalpyn, Tintinara, Keith and Wirrega. All those towns have silos on a broad gauge line 50 metres or less from the main Adelaide-Melbourne line. The Federal Government has offered no money at all to standardise those short tracks of line to the silos. So, the line from Adelaide to Melbourne will be standardised but these small sidings to the silos will not. Until they are standardised it will mean that the trucks that bring in grain from the South-East and the Murray-Mallee to the towns I have identified will find no value in taking the grain further by train to the port of Adelaide. The grain will be freighted either to silos for storage and then by road to the port of Adelaide or by road from the farmer's gate to the port of Adelaide.

This is potentially an enormous problem for South Australia, because we are talking about 300 000 tonnes of grain. Taken over a year, this means that an extra 100 semi-trailers each day will be on our roads if this grain is not carried by train in the future. On average, an extra 100 semi-trailers will come down the South-Eastern Freeway, the Mount Barker Road, around Devil's Elbow and down Portrush Road or along Greenhill Road through the western suburbs to the port of Adelaide. This is a potential nightmare because of the condition of our roads and for other road users and people living along those routes and in adjacent areas.

When one realises that these trucks could be travelling through the centre of Port Adelaide (Commercial Road and the shopping area), along Anzac Highway or Regency Road, it is a nightmare, and something must be done about it. I regret very much that something could have been done about it in February last year when the Prime Minister offered the One Nation standardisation funding for the Adelaide-Melbourne line.

At that time, the South Australian Government agreed to the standardisation money but in exchange it gave up all claims it had under Arbitrator Newton's ruling that the Federal Government reopen the passenger rail service from Adelaide through Wolseley to Mount Gambier. It is my strong view that at that time the State Government should and could have waged a much better bargain with the Federal Government, rather than simply capitulating to the Federal Government by saying, 'Yes, we will take the standardisation money, but we will give up all our rights under Arbitrator Newton's ruling in respect of the reopening of the Blue Lake passenger service from Adelaide to Mount Gambier.'

We could and should have waged a better bargain, because now we find that we do not have a passenger rail service from Adelaide to Mount Gambier, and potentially 300 000 tonnes of grain from the Murray-Mallee and the South-East will be carried on South Australian roads rather than on rail trucks because we do not have any extra money under the standardisation

package to standardise the gauge of sidings along the main route or the rail lines within the Murray-Mallee area. I support the second reading of this Bill.

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

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

PUBLIC CORPORATIONS BILL

In Committee.

(Continued from 30 March. Page 1762.)

Schedule as suggested to be amended passed.

Title passed.

Bill recommitted.

Clause 5—'Application of Act'—reconsidered.

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

Page 5, after line 11—Insert subclause as follows:

(4) A declaration may not be made by regulation for the purposes of this section in a form such that a provision of this Act is declared to apply to more than one statutory corporation by the same regulation.'

This clause declares the public corporations to which this Bill applies and the provisions which will apply to that corporation. I expressed concern at the second reading stage and then in Committee that it would be possible to lump all corporations in the one regulation. I proposed to the Attorney-General that we should have some provision which would ensure that each corporation to which this Bill was applied was dealt with by a separate and distinct regulation. The form of words which I now move, to insert subclause (4), at least reflects the spirit of what I was proposing. It may still be possible to get around it, but I think we have it on the record from both sides that the intention would be, if used, that there should be one regulation for each corporation so that they could be dealt with separately in the event that there needed to be a disallowance motion moved.

The Hon. C.J. SUMNER: It is accepted.

Amendment carried; clause as further amended passed.

Clause 6 postponed until after consideration of the schedule.

Clause 15—'Transactions with directors or associates of directors'—reconsidered.

The Hon. C.J. SUMNER: I do not have any amendments to move to this clause but will answer a query that was raised by the Hon. Mr Griffin earlier in our debate. The clause deals with transactions with directors or associates of directors. The question arose as to the breadth of the definition given to the term 'relative' in the context of duties of directors and dealings between them and their associates and a corporation. I indicated then that the definition of 'relative' had followed that in the corporations legislation but said that I would check it and report back.

Two points should be made on this. First, the definition of 'relative' was drawn from section 234 of the Corporations Act which deals with loans to directors. To that extent it is consistent although it is acknowledged that this clause goes broader than proscribing loans as it imposes controls on a wider variety of transactions. Secondly, whilst it may be argued that the definition is quite wide, transactions which would be in the ordinary course of the corporation's business and on ordinary commercial terms are exempt from the clause. Furthermore, no offence is committed and no civil liability is incurred unless a director is knowingly concerned in or party to a contravention.

The Hon. K.T. GRIFFIN: I appreciate the response that the Attorney-General has given. I do not want to move an amendment. I wanted the breadth of the definition of 'relative' to be at least considered further and that is being done, although I have some concerns about the breadth of it. I recognise that the Attorney-General has said that no offence is committed and no civil liability is incurred unless a director is 'knowingly concerned in, or a party to,' a transaction, but it seems to me that that basically applies where a director is counselling, procuring, inducing or in any way knowingly concerned in or party to a contravention of subsection (1), and maybe that is the safeguard. The difficulty will be keeping track of all those relatives who do engage in business with a corporation and it may be that there will be some inadvertent breach. If there is a problem, I think at least we ought to acknowledge that it may be necessary to cause some amendments to be made at some time in the future.

Clause 22—'Formation of subsidiary by regulation'—reconsidered.

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

Page 19, after line 9—Insert subclause as follows:

(5) If a regulation establishing a subsidiary of a public corporation under this section is disallowed by either House of Parliament, the assets and liabilities of the subsidiary become assets and liabilities of the public corporation.

The Hon. Mr Griffin raised the issue of how assets or liabilities of a subsidiary should be dealt with in the event that the regulation establishing the subsidiary is disallowed. This amendment makes a provision similar to an amendment earlier moved in relation to the dissolution of the subsidiary whereby the assets and liabilities become those of the parent corporation.

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

Amendment carried; clause as amended passed.

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

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

Page 19, line 20—After 'liabilities of a' insert 'company that is a'.

The major reason for this attempts to cope with a query that the Hon. Mr Griffin raised. The major reason for the insertion of the clause was that, whilst it is intended that in future subsidiaries will in general be created by regulation there are still statutory authorities that hold an interest in companies. Conceivably, in the future, public corporations may also acquire interests in companies and hold them as subsidiaries. There is a general concern that public corporations not extend the Government's liability as ultimate guarantor without the Government being aware of this in advance. The provision was written with this primarily in mind. The amendment I now propose clarifies that this is primarily a risk with subsidiaries companies rather than those created by regulation and I

think clarifies what was intended and thereby answers the question that is raised by the honourable member.

The Hon. K.T. GRIFFIN: I think it does address the issue that I raised. Again, I think we will just have to see how it works out in practice but at least it is a direction to public corporations and I think it does provide a measure of protection against an extension of the Government's ultimate liability. I therefore support it.

Amendment carried; clause as amended passed.

Clause 28—'Dividends'—reconsidered.

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

Page 21—

Lines 11 to 13—Leave out 'an amount or amounts be paid by the corporation on account of the dividend that may become payable by the corporation for that financial year, or that no such amount or amounts' and insert 'a specified interim dividend or specified interim dividends be paid by the corporation for that financial year, or that no such dividend or dividends'.

Lines 18 and 19—Leave out paragraph (b) and insert:

(b) determine that an interim dividend or interim dividends specified by the Treasurer be paid, or that no interim dividend be paid,'

Line 22—Leave out 'amount or amounts on account of a dividend' and insert 'interim dividend or dividends'.

Line 23—Leave out 'amount or amounts' and insert 'interim dividend or dividends'.

Again, here the Hon. Mr Griffin queried an apparent conflict between clause 28, which allowed payment of an interim dividend, in effect, and the interpretation section which specified that dividends be paid out of profits earned unless it was a return of capital. This series of amendments clarifies the intention by removing reference to payment on account of a dividend and uses the term interim dividend which is more commercially acceptable and understood.

The Hon. K.T. GRIFFIN: I think it does clarify the problem that I saw and I think it overcomes the difficulty in relation to the dividend also being a return of capital. It focuses on the definition of 'dividend' to ensure that it is a payment out of profit so that it cannot be in anticipation of what the profits might be, and that was always my concern, that it did open up an area for manipulation that was inappropriate in the way in which public corporations were dealt with by Government. So, I am happy to support the amendments.

The Hon. I. GILFILLAN: I supported the position of the Hon. Trevor Griffin earlier in Committee. I indicate that to an extent this amendment has diminished my concern about the original potential for demand of money from the corporation before the actual, so-called profit had been achieved and indicate that I am prepared to accept the amendment.

Amendments carried; clause as amended passed.

Clause 31—'Annual reports'—reconsidered.

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

Page 23, line 24—After 'financial statements' insert 'of the corporation and each subsidiary (if any) of the corporation'.

The issue was raised earlier of the need for annual reports to contain the financial statements of subsidiaries of each corporation. This amendment picks up that suggestion.

The Hon. K.T. GRIFFIN: I am happy to support it because it does now mean that in addition to consolidated accounts there will always be the accounts of subsidiaries published and I think that is important to enable those who are interested in the operation of particular corporations to have access to all the relevant information as to how subsidiaries of corporations might be performing. With consolidated accounts it would not be possible to do that but, with both consolidated and separate accounts for subsidiaries, it means that all the necessary information then becomes available.

The Hon. I. GILFILLAN: I support the amendment and reflect appreciation for what has been a sensible way of going through the matters raised in the early Committee stage. I commend the Attorney, his able assistants and Parliamentary Counsel for moving along so satisfactorily, at least along this track anyway.

Amendment carried; clause as amended passed.

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

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

Page 27, line 9—Leave out 'A person' and insert 'An executive of a public corporation'.

It is essentially a drafting amendment. The term 'person' in the clause originally introduced seems too all embracing, given that it is the conduct of executives that is of concern. The amendment corrects that.

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

Amendment carried; clause as amended passed.

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

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

Page 28, line 13—Leave out 'A person' and insert 'An executive of a public corporation'.

This is a consequential amendment.

The Hon. K.T. GRIFFIN: The amendment is supported.

Amendment carried; clause as amended passed.

Clause 41—'Proceedings for offences'—reconsidered.

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

Page 33, line 23—Leave out 'Attorney-General' and insert 'Director of Public Prosecutions.'

Page 34—

Line 3—Leave out 'Attorney-General' and insert 'Director of Public Prosecutions'.

Line 4—Leave out 'Attorney-General' and insert 'Director of Public Prosecutions.'

I do not wish to proceed with the first amendment on file under my name to this clause, but I do wish to proceed with the three amendments that I have just moved. This clause deals with the authority to prosecute under the Act. Since the passage of the Director of Public Prosecutions Act, as a matter of policy the Attorney-General has been removed from most Acts as the direct authority for approval of prosecution, although he still has general responsibility for prosecution policy and can, in some circumstances, direct the Director of Public Prosecutions. Because of that policy whereby the Attorney-General has been removed from that direct authority to conduct prosecutions, if approval is needed, it should be the approval of the Director of Public Prosecutions.

The Bill as originally introduced referred to the Minister, which would be to the Minister to whom the Public Corporations Act is committed as the Minister who would approve the prosecutions. I do not see a problem with that myself, in some special circumstances

the Minister responsible for the Act being the approving Minister for the purposes of prosecution. There are some such instances in the consumer affairs area where it was considered that there should not be a prosecution without ministerial approval. However, the Hon. Mr Griffin has taken a different view and I will not argue about it, but I do not think it should be the Attorney-General because the Attorney-General's direct authority in the area of prosecutions is now only applicable in a few instances, one of which is prosecutions under section 33 of the Summary Offences Act dealing with indecency. The Attorney-General is still required to approve prosecutions for criminal libel under the Public Offences Act, but they are matters of broad policy where it was considered appropriate to keep the direct involvement of the Attorney-General.

In this case I do not think those broad policy questions arise and, given that we have taken the Attorney-General out of the direct line of authority to conduct prosecutions, he should be taken out here as well and it should be the Director of Public Prosecutions, which is what the amendments provide for.

The Hon. K.T. GRIFFIN: I support the amendments. The concern I expressed yesterday was that there was, first, a confusion whether this Minister was the Minister responsible for the Act, once this Bill became an enactment, or the Minister responsible for the public corporation. The Attorney-General said it was meant to be the Minister to whom the administration of the Act was for the time being committed, as I understand it, and that would have given some consistency.

That is really what I was after, some consistency of approach in dealing with prosecutions under this Bill, and it seemed to me that, if it had meant the Minister responsible for each corporation, there would be a real potential for inconsistency of approach to the issue. It was during the course of the discussion on this provision that the Director of Public Prosecutions was injected into the debate. It may be that it should still be the Attorney-General, but I accept that in many instances we have removed the direct authority of the Attorney-General and placed it with the Director of Public Prosecutions. I am happy to go along with that. It may be that once this sort of responsibility is exercised a few times and we see how it operates, there may be a need for review of it to determine whether it should be the Attorney-General who exercises the authority because of the potentially serious nature of the offences, but for the moment I will certainly go along with the Director of Public Prosecutions.

The Hon. I. GILFILLAN: I caused the Director of Public Prosecutions to get injected into the debate; therefore, I am quite pleased to see it come forward as an amendment which will have the support of all Parties. Certainly, if there is strong argument that it should revert to the Attorney-General, I will be prepared to listen to the argument, but I am not persuaded at this stage that there is any reason why we should not have provision for the Director of Public Prosecutions. I do not believe that the Director will be so detached from the Minister or the Attorney that he or she is not aware of matters which are of concern to those eminent people. I do believe that it is detached from Government, and that was the reason why we established the Director of Public Prosecutions originally, and it seems to me to be the most appropriate person to have in this role. I support the amendments.

Amendments carried; clause as amended passed.

Schedule—reconsidered.

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

Page 43—Leave out from clause 15(5) 'A person' and insert 'An executive of a subsidiary'.

Page 44—Leave out from clause 16(2) 'A person' and insert 'An executive of a subsidiary'.

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

Suggested amendments carried; schedule as suggested to be further amended carried.

Clause 6—'Control and direction of public corporations'—reconsidered.

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

Page 6—

Leave out from paragraph (a)(ii) of the new subclause (4) 'it was given' and insert 'its publication in the *Gazette'.*

Leave out the new subclause (6) and insert—

(6) Where the Minister is satisfied that a direction should not be published for a reason referred to in subsection (5), the direction need not be published by the Minister or the corporation as required by subsection (4) but the Minister must instead cause a copy of the direction to be presented to the Economic and Finance Committee of the Parliament within 14 days after the direction was given.

Clause 6 deals with a number of matters, but in particular the question of the corporation being directed by the Minister, and that has been agreed to in principle. The debate that then arose was as to how much and by what means that direction should be made public. The Hon. Mr Griffin moved an amendment, which I accepted on the basis that I would consider the issue. I have done that, and I am now adding this additional material to the amendment that was previously agreed to by the Committee. If this amendment is agreed to, the scheme will be that if the Minister pursuant to clause 6 gives a direction to a public corporation then that direction must be published by notice in the *Gazette* within 14 days after the direction was given. The tabling of the direction in both Houses of Parliament must occur within six sitting days after its appearance in the *Gazette.* The corporation must cause the direction to be published in its next annual report. However, there is one exception, which picked up the Government's concerns, and that is outlined in my amendment, namely, where the Minister is satisfied that a direction should not be published for certain reasons relating to commercial interests or duties of confidence, etc., then the direction need not be published in the manner I have described previously, but the Minister must instead cause a copy of the direction to be presented to the Economic and Finance Committee of the Parliament within 14 days after the direction was given.

The further point is that, if it was a direction that was reported to the Economic and Finance Committee, the fact that that direction was given is to be published in its next annual report. So, for directions that do not detrimentally affect the corporation's commercial interest, do not constitute breach of a duty of confidence or would not prejudice an investigation of possible misconduct, there is provision for the direction to be made public via the *Gazette* and its tabling within Parliament. However, where the Minister believes that

the publication of a direction might have the effects I have described, the report will be to the Economic and Finance Committee, and the fact that that report is made to the Economic and Finance Committee would also be included in the next annual report of the corporation.

So, although the amendment I am moving now picks up only one aspect of that scheme, if you add the amendment I am moving now to the amendments that were passed on this clause on the previous occasion, the combined effect is as I have just outlined.

The Hon. K.T. GRIFFIN: I support the amendments. Two of them put in place the scheme the Attorney-General outlined. That is now a proper scheme for disclosure of ministerial directions and preserves the confidentiality where such confidentiality is not essential to the scheme which might be the subject of a ministerial direction. But confidentiality is not to be left unreported: it goes to the Economic and Finance Committee, and there is a statement of the fact in the annual report—not the detail—that the direction was given. That, together with the other propositions for reporting and disclosure to the Parliament and publication in the *Gazette,* does mean that a Minister does have to disclose at least the fact of a direction, and the corporation will disclose it in its annual report. So, the scheme is an appropriate one. It may in practice require some fine tuning; I personally doubt it, but at least we have the option of that if some unforeseen difficulty might arise from the way in which that scheme is applied. I indicate support for the amendments.

Amendments carried.

The Hon. C.J. SUMNER: This is the last clause of this Bill, and I would like to thank members opposite for their constructive approach to what is an important Bill before the Council in light of the events of which we were reminded again today by the presentation of the Auditor-General's report which this Bill and other procedures for accountability are designed to overcome.

I appreciate the amendments that have been moved by the Hon. Mr Griffin and the contribution of the Hon. Mr Gilfillan, and I think we now have the position where the Bill is leaving this place virtually agreed. I do not want to make that as an absolute statement, because if we do when it gets into the Lower House they may find something that perhaps needs tidying up. As far as I am concerned, if this passes its third reading, the Bill is in a form which is now acceptable to all Parties in the Parliament. In supporting the Hon. Mr Gilfillan's comments about the process, I would like to thank him and the Hon. Mr Griffin for the work done on the Bill.

Clause as further amended passed.

Bill read a third time and passed.

ECONOMIC DEVELOPMENT BILL

Consideration in Committee of the House of Assembly's message—that it had disagreed to the Legislative Council's amendments.

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

That the Legislative Council no longer insist on its amendments to which the House of Assembly has disagreed but that it make the following alternative amendments:

Clause 16—Substitute the following subclause for subclause (3B):

(3B) An authorisation under subsection (3) is to be given, and may be varied or revoked, by proclamation, and within 6 sitting days after such a proclamation is made, the Minister must have a report, setting out the terms of the proclamation, laid before both Houses of Parliament.

Instead of the proposed subclause (6) to which the House of Assembly has disagreed, insert subclauses as follow:

(6) Subject to subsection (7), a ratification under subsection (2), or an approval under subsection (5)*(a)* or *(b)*—

(a) must be published by the Minister—

(i) by notice in the *Gazette* within 14 days after the ratification or approval was given;

and

(ii) by tabling the ratification or approval in both Houses of Parliament within 6 sitting days after its publication in the *Gazette;*

and

(b) must be published by the Board in its next annual report.

(7) If the Minister is of the opinion that publication of a ratification or approval under subsection (6) might detrimentally affect the commercial interests of any interested party, or might breach a duty of confidence, the ratification or approval need not be published by the Minister or the Board as required by that subsection, but instead—

(a) the Minister must cause the ratification or approval to be reported to the Economic and Finance Committee of the Parliament within 14 days after the ratification or approval was given;

and

(b) the Board must cause a statement of the fact that the ratification or approval was given to be published in its next annual report.

If the Committee agrees to this, we will have a scheme for reporting the various events that are provided for in subclauses (2), (3) and (5) of clause 16. Subclause (3) was the subclause to which the Hon. Mr Gilfillan objected and which provides that the board, if authorised by the Governor, can exercise, in relation to a specified proposal for expansion or development of industry, a specified statutory power to grant an approval, consent, licence or exemption. Despite the Hon. Mr Gilfillan's objections, that clause was agreed to by the Council.

The Government has no objection to the virtual immediate notification. Accordingly, the first part of my amendment provides that any authorisation under clause 16(3) is to be done by proclamation and, within six sitting days after the proclamation is made, the Minister must have a report setting out the terms of the proclamation laid before both Houses of Parliament. We have no problems with that.

Subclause (2), however, deals with agreements that might be negotiated by the board, and subclause (5) with the acquisition of shares or the entering into of contracts. The Government was of the view that immediate notification in those cases might compromise the board in going about its duties and that, in particular, the immediate reporting of such matters might detrimentally affect the commercial interests of an interested party or might constitute a breach of a duty of confidence. Accordingly, the proposal I put forward is similar to that to which we have just agreed in the Public Corporations

Bill for notification, namely, that in the ordinary course the actions in clauses 16(2) and 16(5) should be published by notice in the *Gazette* within 14 days and by tabling within six sitting days after its publication in the *Gazette.*

However, if the Minister is of the opinion that there might be that detrimental effect to commercial interests, etc., the Minister can cause the approval or ratification, which is provided for in clauses 16(2) and 16(5), to be reported to the Economic and Finance Committee within 14 days of the approval or ratification being given. Furthermore, the board must then cause a statement of that ratification, but not the details of it, to be published in its next annual report.

As previously indicated, this enables the Parliament to be informed, albeit through a more limited forum but through the Economic and Finance Committee of any action that might be taken by the Economic Development Board under clauses 16(2) and 16(5), but it does so in a forum which can be confidential, namely, the Economic and Finance Committee. Of course, if the Economic and Finance Committee decided to make it public, it could do so, and it might then be in dispute with the Minister about the matter. If that were so and if it was a detriment to the commercial interests of anyone, that matter would then have to be debated and fought in the forums of the Parliament and the public.

I think this scheme is a reasonable one. It certainly ensures that some responsible organ within the Parliament is informed at an early time, and I think the concerns about the possibility of detrimental effect to commercial interests are catered for in this way.

The Hon. K.T. GRIFFIN: I support the motion. I agree that these proposals will bring the Economic Development Bill into line with the provisions which we have just enacted in the Public Corporations Bill, and I think it is important to have consistency of procedure as well as in time limits. There may be occasions when time limits or procedure should be varied to accommodate special circumstances in legislation, but I think it makes it easier for those who have to administer legislation as well as for members of Parliament who frequently have to work with the legislation if there can be consistency of approach to a particular issue and consistency in time limits.

As the Attorney-General says, the scheme as already laid down in the Bill together with these amendments will mean that, in respect of authorisations, ratifications and approvals of matters which are of importance to the community and which are important issues relating to the administration of Government, public notice in one form or another is important, and this satisfactorily achieves that objective. So, I indicate support for the proposition because of the consistency it achieves and because it provides adequate information either to the public, to the Parliament or to its Economic and Finance Committee.

The Hon. I. GILFILLAN: I wish to make some remarks in general terms later. I think it is more appropriate that I speak at a little more length at the third reading stage because, although I support the amendment, in no way have I moved from my implacable opposition to clause 16(3). The Democrats feel that that is a reckless distribution of power to a board which does not need it, but I will speak more specifically to that at the third reading stage.

The amendment that embraces the publication and notification to the Parliament and to the Economic and Finance Committee is a satisfactory procedure. I recognise the significance of the Economic and Finance Committee as a standing committee of this Parliament. Unfortunately, at this stage it does not represent both Houses. However, it is autonomous and, if it believes that it has received information which should be made public in the best interests of South Australia, I believe it would do so. Even if that was in conflict with the Minister, as the Attorney said, the history of the Economic and Finance Committee to date under its two separate Chairs is that is has not been daunted from going public just by the fear of upsetting a Minister. So, I feel relaxed that this is a reasonable way to deal with the notification of directions given by the Minister to the board. On that basis, I indicate support for the amendment.

Motion carried.

The Hon. I. GILFILLAN: I somewhat inappropriately indicated that I wanted to make some remarks at the third reading stage, and my friendly colleagues in this place did not remind me that that would not occur. So, with the indulgence of the Council I would like to make a comment on this motion that the whole attitude of this legislation hinges upon the sincerity of the Government and succeeding Governments in fully recognising the meaning of sustainable development. I think it is appropriate to mention in this place at the closing stage of what is arguably one of the major pieces of legislation that we will deal with in this Parliament some observations that were made this morning in the editorial opinion in the *Advertiser* that the Economic Development Board Bill and the yet to be seen Environmental Protection Agency legislation together with the planning and development Bill are the most important pieces of legislation Parliament has seen. The editorial continues:

> Many people who at first supported the vigorous approach in the EDB Bill of giving wide new powers in certain situations to the board, are growing alarmed at the bigger picture that emerges when looking at the overall approaches of development in SA. It might be appropriate to enable the EDB to override existing legislation to 'fast track' certain development proposals.

That relates to clause 16(3), to which I referred earlier. The article continues:

> But it is disconcerting to see that this gung-ho approach is emerging as a potential competitor to the preferred model of efficiency and predictability within a strong framework of principles about ecologically-sustainable development.

I stress the words 'ecologically-sustainable development'. The word 'ecologically' was one of the amendments I tried unsuccessfully to move into the Bill. The article continues:

> SA does not want a rejuvenated Premier's Special Projects Unit, this time with unfettered power, to pander to interstate or overseas developers, or to local developers for that matter. That was exactly the discredited structure that gave us a swag of inappropriate development projects based on a belief by proponents that they could get sweetheart treatment in SA by offering to spend huge amounts, notwithstanding obvious flaws such as major environmental problems, in their projects.

A commitment to development does not imply the abandonment of quality. The planning and development Bill, which gives sweeping powers of discretion to the Minister; the EDB Bill, which gives unprecedented powers to the board; the failure to establish an independent Environmental Protection Agency; the failure to change our procedures for environmental impact statements—all these combine to present a worrying picture of a Government which has not learnt the lessons of the '80s at all. Certainty will not come from enhanced ministerial discretion and the bypassing of proper procedures; it will come from efficiencies, proper priorities, clear and unassailable guidelines which are in touch with the environmentally sensitive '90s—and a legislative framework that does not pay lip service to the principles it pretends to enshrine.

I repeat that clause 16(3) becomes a vehicle for a Government of the day to bypass the normal and full procedures which should be in place for the adequate assessment of any project. It is the biggest trap that we have as a State because, as both my colleague Mike Elliott and I have said over and over again, it is not a question of pedantic, loosely-termed environmental incidentalia but it is the basic economics of long-term prosperity in South Australia. It is linked to preserving the ecology, and to ignore those essential criteria sentences succeeding generations in South Australia to pay the cost for our mistakes.

I repeat that I think it was unfortunate that this Council chose not to accept my amendment to have 'ecologically' linked to sustainable development, so that it was quite clear that we as a Parliament fully understood the implications of sustainable development and its essential ecological ingredients. I think it is most unfortunate that we have left in this Bill the option for the Government of the day not to fast track but to avoid the due process of assessment of developments. There is nothing wrong with thorough and efficient fast tracking, and clause 16(3) is totally unnecessary for a Government which just wishes to speed up, make it more efficient and bring up as a higher priority the proper assessments of a project.

We are not convinced about the argument that apparently persuaded both Labor and Liberal members that this was a quite reasonable measure to leave in the Bill. We also believe it was cynical, if not hypocritical, that neither Labor nor Liberal saw fit to add 'ecologically' to the sustainable development principle aim of this legislation. The Bill itself can be used effectively for proper and well thought out development in South Australia. I still have fears that the way in which this Parliament has dealt with those matters leaves the State at risk that inadvertent, improperly assessed, environmentally damaging and, in the long term, economically costly projects will be pushed through. With those cautions, it is my intention to vote in favour of the third reading.

BARLEY MARKETING BILL

Adjourned debate on second reading.

(Continued from 30 March. Page 1785.)

The Hon. M.J. ELLIOTT: I will not spend a great deal of time going through this Bill except in relation to one section of it. I understand that the second reading took something like five hours in the House of Assembly. I guess quite a few local members have a bit of barley growing in their electorate and that they all had a need to make sure they were on the record. This piece of legislation, generally speaking, has not caused a great deal of concern. The one big issue—and one that I do not believe was adequately resolved—was that in relation to the membership of the Barley Board. It must be my day for having a go at bureaucrats because I think that here we have another classic case of bureaucrats at work. In this instance there are two sets of bureaucrats: a set of bureaucrats in the old Department of Agriculture, now Department of Primary Industries and there are the South Australian Farmers' Federation bureaucrats. They seem to work out between them what would be a good idea in relation to membership of the board. They both come from the economic dry faction of thought, and the prevailing thought in that direction appears to be that boards are best if they are selected rather than elected. Quite obviously they do not know much about the State Bank board, which was an entirely selected board and did not seem to be terribly successful.

When the first draft of this legislation was circulated there was concern in some areas about the composition of the board. Many growers who contacted me expressed the belief that the board's grower representatives should be elected directly by the growers. That is the way it occurred under the old Barley Act, the one we are replacing. That is the way things were—that grower representatives were elected by growers. The proposal was that the grower representatives would be selected by a panel.

Of course, the panel that did the selection was not directly representative of growers but came via the South Australian Farmers' Federation at the time. To my way of thinking it probably increased the power of certain bureaucrats in certain places to manipulate who was going to represent the wider cross-section of growers. In any event, one cannot help but become involved when one realises that there is a split in the grower community over whether or not there should or should not be grower selection or election. I was invited to attend a meeting over on Yorke Peninsula that wanted to discuss the composition of the board, among other issues. I expected to confront a meeting of probably 20 or 30 growers and I must say I was surprised when, together with the Hon. Mr Roberts and the Hon. Mr Dunn, I saw a meeting of 300, 400 or 500.

The Hon. R.R. Roberts: 354!

The Hon. M.J. ELLIOTT: The Hon. Mr Roberts has the numbers: 354, he says. It was a huge meeting and they voted on the issue of whether there should be election or selection, and there may have been a dozen people who supported selection in preference to election. Admittedly, that was only in one area of the State. I headed off over the next couple of weeks to several more grower meetings and they were all huge meetings and they all overwhelmingly supported election over selection. Those meetings were all in Yorke Peninsula and the Mid North. I did not get an opportunity to go over and see meetings on Eyre Peninsula and perhaps the South-East where barley may be grown, and I have been told that in fact in those areas there is a much stronger support for selection.

What I told meetings that I attended was that while I might have my own preferences as to whether it be election or selection, at the end of the day I felt that the board was a growers' board. The purpose of setting up the board was to help the barley growers. It seemed to me that the vested interest of the growers was more important in this case than what I thought, because I had no vested interest either way in election or selection, even if I had a personal opinion. I told the growers back then that I would support a plebiscite of growers and let that make a decision as to whether or not we are going to have election or selection. I also said that in the absence of such a plebiscite, which is something that the growers themselves have been calling for, I would support the *status quo:* no change, which was, at that stage, the elected representatives.

The Minister, clearly on advice of his bureaucrats, and on advice of the Farmers' Federation, persisted with selection and kept on persisting. There was no way known that they were going to give in, except that they got the very clear message that they were not going to get away with getting something through Parliament which had selection in it and I understand the Liberal Party took the same viewpoint. But what they always avoided was ever having a vote to determine what the growers actually thought. They had plenty of opportunities to do so and actively avoided it.

So what we have here is called a compromise, a compromise between the two viewpoints. At least that is the way it has been presented. We now have a hybrid board with some elected and some selected. I have a feeling that this compromise is not to suit the growers; the compromise is to suit the bureaucrats. At least they get their way in part in that at least they get some selection, which is what they wanted. It is not a compromise that has been agreed to by growers. It is a compromise to suit other individuals and their own agendas. It is for that reason that when we get to the Committee stages I will do what I told the grower meetings I would do. I said I would defend the *status quo* until growers told me otherwise, and I do not mean by who can write me the most letters; I meant by democratic means. That has been avoided but I will stick to my word and I will be moving amendments that effectively put us back to the situation, at least in South Australia, where rather than having, as is proposed, two elected grower representatives and another person who will be selected, I will be amending it such that there will be three grower representatives elected in South Australia: the *status quo.* There will be one grower representative selected in Victoria and there will be one other selected person coming only from Victoria. Under that proposal there will be four growers on a board of eight.

As the Government had it, they only guaranteed that there would be three growers out of eight on the board. So, in fact, I have tackled a second issue as well. There is a board of eight members altogether; one nominated by the Minister in South Australia, one nominated by the Victorian Minister, I will be proposing that there will be three growers elected in South Australia, one grower in Victoria will be selected, one other person with knowledge of the barley industry in Victoria will be selected and there will be one person nominated by the selection committee with expertise in business management, finance and exports etc. That takes it up to eight.

Under my proposal not only will there be a return to the *status quo* in terms of election of members but also we will go to having four guaranteed grower representatives of the board of eight rather than the grower minority of the board whose primary interest would have been, I believe, that of the growers. So, I am in fact, setting out to achieve two goals with that amendment. I do not think that there is a great need for me to go through the rest of the Bill. As I said, I have not been lobbied for change in other areas of the Bill. It has been considered at great length in the other place and I do not think there is any great value in taking up the space in *Hansard* just so I can feel good about it later on.

The Hon. R.R. ROBERTS: I rise also to make a contribution on this matter. It is a matter that I have had considerable involvement in for some time. I, too, attended the meeting at Maitland on a cold Wednesday night. Maitland, you would be aware, is probably the heart of the barley bowl in South Australia and Yorke Peninsula. I was asked to represent the Premier at that meeting, and I was told, like Mr Elliott, to expect a few malcontents. When I walked through the door on that night and saw 352 people it became abundantly obvious that, in fact, this was not a small issue.

The history up until that time had been that a working committee had sat down and looked at the barley marketing system in South Australia and recommended changes and indeed that committee did recommend to the Minister of the Agriculture at the time (Hon. Lynn Arnold) that selection was the way to go. I am informed that there was a lot of negotiation and every opportunity was provided for consultation and a review of that particular decision to go to selection. There was a strong body of opposition by people from Yorke Peninsula in particular who called themselves the concerned barley growers.

I think it is interesting to note that at that meeting at Maitland on that night there were not only people from Yorke Peninsula but there were people from Pinnaroo, from the Mid North and indeed from the West Coast. So, I think it is fairly obvious that this issue was exercising the minds of barley growers all over South Australia—not, as has been alleged in a number of contributions from members in another place, just a small number of people.

I had the opportunity to address the meeting at Maitland that night and, having heard the speakers and felt the mood of the meeting, it was obvious to me that, although the then Minister of Agriculture had done what was often claimed by farmers that we should do as a Government (and the record shows that this Government deals with peak bodies, whether they be grower or industry groups or trade unions of any colour or flavour) and consulted with them and taken their advice, the view that was being expressed by the South Australian Farmers' Federation was not the view of the majority of barley growers, as distinct from farmers, throughout South Australia.

The other point that needs to be made clear is that on that night a resolution was passed recommending that a plebiscite, as explained by the Hon. Mike Elliott, ought to be held. There was a qualification which was important and which has not been emphasised during the course of the debate. The people who organised the meeting on that night called for a plebiscite but also gave an undertaking that, whatever the result of the plebiscite, whether it be election or selection, they were willing to go along with it. That assurance was never given from the other side of the argument, I might add.

The history of this event then moved to another meeting at Gladstone, because it was alleged that the Maitland meeting was attended only by the faithful and the organisers believed that they needed a wider cross-section. I also attended the Gladstone meeting. The position within the industry deteriorated, I am sad to say. The Hon. Mr Elliott also attended those meetings and the one at Balaklava. For the people following the issue the amount of vitriol that entered the argument and the personal attacks that were being made against people of high integrity were disturbing.

In contributions in another place references have been made to names. I do not like to do that, but on this occasion it is imperative that that be done. On looking at the people behind Concerned Barley Growers, I did not find a bunch of left wing radicals or right wing lunatics. I saw people of the calibre of Mr Anthony Horner, a long-term member of the Barley Board, a man with a distinguished career in business, farming and the tourism industry who has won innovation awards for his efforts in tourism. He is also a member of the South Australian Cooperative Bulk Handling board. John McFarlane, a Yorke Peninsula farmer, is a man for whom I have great respect for his commonsense—homespun in some instances—and great insight into what is needed in the industry.

David Mahar is another person associated with the Concerned Barley Growers. In my view he conducted the meetings in a fair and open way. He allowed everyone the right to have their point of view. Also there was Mr John Freebairn, who was a member of this Parliament in another place in times past and was also a member of the Cooperative Bulk Handling board. Most members with any idea of what goes on in things rural will have heard of Geoff Clift. He is one of the roughest and toughest primary industry people one is likely to meet. He is not made of the stuff others have been accused of, your typical Labor Party stooge. Geoff Clift is the type of man who would walk across hot coals in his bare feet to do what is best for farmers.

I am not talking about a group of junketers but about people with an intimate knowledge and record of involvement and service to rural industries in South Australia. They said to me and everyone else who wanted to listen to them, 'We have a problem here and it needs to be solved. We are prepared to be cooperative about this and we are prepared to take a decision.' Unfortunately, it took some time before we got to a position where I was able to assist with a delegation of some of the people I have known to see the then Minister of Agriculture, the Hon. Lynn Arnold, and the case was put by the Concerned Barley Growers.

The Hon. J.C. Burdett: Was a vote taken—

The Hon. R.R. ROBERTS: It was a meeting of the Minister's agriculture committee, because the barley growers expressed a desire to put their point of view. I need to point out that they have attended numerous meetings of the Liberal Party and I understand that at all times they have been willing to talk to the South Australian Farmers Federation.

The Hon. J.C. Burdett: Was a vote taken at that meeting on Yorke Peninsula?

The Hon. R.R. ROBERTS: Yes, a vote was taken at the meeting on three or four matters. I think the honourable member is talking about the principal matter of election/selection. Yes, there was an overwhelming vote in favour of a plebiscite. I emphasise the commitment of the people at that meeting to accept the result of the plebiscite, whatever it was.

Let me go back to the point I was making. This group made submissions to the Hon. Lynn Arnold and, as a result of those submissions and the submissions by the UF&S, it was agreed that the barley grower representatives on the board ought to be elected rather than selected. That leads to the next leg of the argument. It is in the area alluded to by the Hon. Mr Elliott tonight, where the people within the industry believe that, because they pay tolls and levies, they pay for the running of the Barley Board.

It is interesting to note that, of all the boards that have been operating in agricultural areas in Australia in the past few years, the shining beacon of them all has been the Barley Board. Given that that is a fact, the people in the barley growing industry were keen to maintain the *status quo*. What they were saying to me was that they believed as owners of the industry they had a right to have at least a majority on the board.

That can be achieved in a number of ways. One way has been suggested by the Hon. Mike Elliott tonight. I do not agree with his thesis. If we were to go down the track suggested by the Hon. Mike Elliott, we would need not one but two representatives, because the Victorians will feel mighty put out about the whole thing. I then attended a meeting of graingrowers at Jamestown and had the opportunity to confer with Geoff Clift and Anthony Honner. I suggested then that the only way we were going to resolve this was through negotiations between the South Australian Farmers Federation and themselves to try to reach a compromise so that we could get the Bill through so that the Bill's benefits, other than the issue of selection/election, could be put into place for the benefit of barley growers in South Australia.

As I understand it, from that time on a number of negotiations took place and the position that we now find ourselves in today was the agreed position between all parties. It has been my preferred view that in the best interests of barley growers they should have one extra member on the board so that they do hold the majority. We would have the benefit of having a grower majority with grower expertise, the owners would be represented in the majority, and there would be the added attraction of having the expertise that the UF&S has advocated that we need to have in the barley growing industry.

We have a cocktail, which has been agreed and, because it has been agreed, I am willing to support the Bill in the form that it comes before us. I note that the

Hon. Peter Dunn has an amendment on file to clause 35, and I may comment on that in Committee.

I will conclude this contribution by again referring to some of the people whom I talked about. Vitriolic attacks and character assassinations were attempted on these gentlemen, namely, Anthony Honner, John McFarlane, David Mahar, Geoff Clift, and John Freebairn. At one stage—I think this needs to be recorded—when the Cooperative Bulk Handling directors were up for an election this year, three of the people who did stand were the Shanahan/Honner/Freebairn ticket, and this was seen to be a test of strength. Some people within the South Australian Farmers Federation saw it as the time to teach these people a lesson and to show the people in this industry just who wanted what and who was right and wrong. It is now history in the annals of agri-politics that that ticket got up. Those opposed to the view of these people who insisted on attacking not the candidates themselves but their supporters had their allegations overwhelmingly rejected. These men have come out with their integrity intact and their resolve to serve the agriculture industry in South Australia undaunted. I am certain they will continue to make a valuable contribution to the handling and storage of grain in South Australia for many years to come. I commend the Bill to members and support it.

The Hon. BARBARA WIESE (Minister of Transport Development): I would like to thank all members for their interest in this debate and for the larger than usual number of contributions that were made to it. Obviously, a number of issues have been extremely controversial with respect to this legislation, and we will debate a few outstanding issues during the course of the Committee stage. I will not attempt to deal with any of those matters now because that would waste the time of the Council when we can have the debates that need to be had in the Committee stage. I would like to thank everyone for taking an interest in the Bill and for their contributions.

Bill read a second time.

In Committee.

Clauses 1 to 10 passed.

Clause 11—'Members.'

The Hon. J.C. IRWIN: With regard to paragraphs (c) and (d), which have similar wording, what is meant by , on whose behalf?

The Hon. BARBARA WIESE: I understand that the wording of these provisions essentially relates back to the definition of 'grower' which appears in clause 3 where the same terminology is used. Essentially, this is making provision for, for example, a city-based company that might be in the business of being a grower.

The Hon. J.C. IRWIN: In what order will the positions on the board be filled? Will the two Ministers choose their nominees first and then move onto the election and then the selection? Will it be somewhat haphazard or will the election or selection process take precedent?

The Hon. BARBARA WIESE: As I understand it, as far as it is possible to organise these things, it is the Minister's view and preference that the elected members would be chosen first, followed by the selected members and ministerial representatives. But, of course, it should be noted that it is quite possible that, in the course of future discussions that occur on this matter, some practical problems may emerge with it. But that is certainly the order of preference that the Minister would prefer to follow.

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

Page 4, line 21—Leave out 'two' and substitute 'three'.

I am seeking to address two matters by this amendment. The effect of this amendment is such that, instead of having two growers elected South Australian barley growers, there will be three growers. I will move a consequential amendment later to paragraph (e) which will reduce the number of people selected from two to one, with that one selected person simply being selected from Victoria. The effect of the amendment, first, is that all representation from South Australia will be growers elected by the barley growers themselves. That is maintaining the *status quo;* currently there are three elected growers on the board. At meetings, which must have represented 500 or 600 growers, I said that I would continue to support the *status quo* unless a plebiscite had been held. As the Hon. Mr Roberts said, 95 per cent of the people at those meetings were for a plebiscite to be held and that a plebiscite be agreed to should it be held. It is a great disgrace, as that happened some years ago, that it has not happened in the meantime. I am simply adhering to a promise I made to those people and I will not break a promise I have made.

The second effect of the amendment is that it increases grower representation on the board. Currently, there is only a guarantee of three growers on the board, two from South Australia and one from Victoria. This amendment will guarantee four growers on the board of eight, something for which I thought the Hon. Mr Roberts expressed some sympathy.

I note finally that, while this Bill has been called a compromise, it is a forced compromise. It did not really matter what was right or wrong; the fact is that a plebiscite of growers to find out what the growers themselves believed was consistently avoided. We can have many forms of compromise, such as a compromise whereby parties willingly sit down together and willingly agree or where people finally, after years and years of absolute frustration, accept something, not because it is right but because they are told they will not get anything else. That is what people will be voting for if they support the clause as it is. If people honestly believe in a democratic country, if they believe in people having a say in their own destiny, and if they believe in farmers being able to decide something that is truly theirs to decide, they should not be supporting the Government in the clause as it stands: they should be supporting my amendment. Not to do so will probably make them hypocrites when they get up and start complaining about other matters in this place, in other Bills at other times. I guarantee that they will be accused of being totally inconsistent if they take that line.

As I said, it should be the growers' decision, nobody else's. It has not been given to them; this is a forced decision—a forced compromise. I will not accept it, and I will do as I promised at the growers meetings several years ago.

The Hon. T. CROTHERS: I have some sympathy with the views expressed by the Hon. Mr Elliott and his

reasons for moving his amendment, and I guess that in an ideal world his amendment would find much favour with the barley growers in this State. However, I am constrained to point out that a lot of water has flowed under the bridge since the meetings to which Mr Elliot referred and at which he was in attendance—and he was, because I was there too. Those meetings were held some time ago.

As much as the Bill is the concern of individual members of this Parliament on both sides of the Chamber, because barley growing and the value adding of some of the crop into malt is one of the main stays of this State's export income, the saving grace is that, whilst it would not be fair to say that the barley growers are totally happy with the Bill, it would be fair to say that they are much less uneasy than they were when some considerable time ago they attended those meetings referred to in the last contribution made by Mr Elliott.

The sunset clause, as I have said (and it bears repeating) is the thing that sways me to support the Bill. I pay a tribute to the Hon. Peter Dunn, Hon. Jamie Irwin and my colleague the Hon. Ron Roberts on this side of the House (and modesty prevents my naming myself, of course) for the input they had into the Bill that is currently before us.

As I said, it would be very fair and more fitting to say that, whilst some of the barley farmers would still not be happy with the Bill in its present form, a majority of them are less uneasy now than they were, because of that sunset clause. The quality of the thinking wisdom that has been displayed over the years by the various representatives of barley farmers and the South Australian Barley Board continues on to this day. To my mind, that is evidenced by two or three main things. One is the capacity of the leadership of the barley farmers to get them to rally round, as evidenced by the massive attendances at the meetings at which I was present.

Secondly, they understood that sometimes, if we want to take three paces forward, for the greater good we may have to take one step back in order to try to ensure that the greater good is not lost because of some other matter which is contained in the Bill. The collective wisdom of those people over the years is still very much in evidence, and I pay tribute to the fact that they were able to bury their differences after quite heated meetings between the barley farmers, some of whom I believe had never addressed a meeting in their lives, who got up very nervously and addressed the meeting but who got their point over.

The Hon. Mr Elliott said there might have been 12 at that meeting in Maitland who supported it. I do not know whether or not there were, and I do not know whether any of those people who voted against it were entitled to vote: certainly a couple of them may not have been.

An honourable member interjecting:

The Hon. T. CROTHERS: Well, I am an old unionist, and I am suspicious of matters that revolve around voting. The collective wisdom displayed by the leaders of the barley growers in this State is again evidenced by the fact that they understood that some sort of compromise had to be reached without totally compromising themselves. To that end there is now a sunset clause in the amendments that we are now moving, and I think that it is beholden on all of us in this Parliament, because of the importance of the industry to the economy of this State, that, irrespective of the Party or philosophical affiliation, we watch this matter most closely and take soundings from the farmers and from the leadership as to how it is working. I do not want to see the Victorian tail wag the South Australian dog, and I know that all South Australians, irrespective of view point, would feel much the same about that.

As I said, I have some sympathy with what the Hon. Mr Elliott said but, to reflect the feeling today more accurately, there is a slightly different mood out there from when we attended those meetings, when the mood had to be experienced to be believed. If anyone walked away from that meeting with the view that it was a storm in a teacup, I can only say that it was some teacup.

Just to correct some straying from accuracy by the Hon. Mr Elliot, I must say that the mood has changed; it would probably be more accurate to say that, whilst there is still some unhappiness, certainly, the leaders of the barley growers have convinced their members to accept the Bill for its valuable contents and the sunset clause. Provided that we all discipline our minds to ensure that nothing untoward occurs that will disadvantage our people, I think the Bill is workable.

However, at this time I think it is fair to say that a more accurate description of the mood of the South Australian barley growers and their leadership is that they are somewhat less uneasy than they were. In my view, they had good reason for that original uneasiness. I, too, am somewhat less uneasy than I was when I confronted them; as an Irish born person, they almost seemed like a mob of banshees bent on blood at Maitland. However, when I listened to the debate, I understood their chagrin. They put their points of view very well, and I certainly walked away from that meeting a much wiser person.

So, I oppose the amendment moved by the Hon. Mr Elliott. I accept that he has given his word relative to those meetings some 12 or 18 months ago *(tempus fugit,* I guess). In the final analysis, whilst the barley farmers are not totally happy with the Bill, I believe they are much less uneasy than they were when the idea of the Bill was first being promulgated.

The Hon. R.R. ROBERTS: In his contribution, the Hon. Mr Elliott referred to my preferred point of view. My preferred point of view has not changed, but what we have here is a position arrived at following consultation between the leaders of the concerned barley growers and the South Australian Farmers Federation, whom the Government holds in great store. As I said in my contribution, we have to deal with peak bodies. This Bill has been struck between the SAFF, the concerned barley growers and representatives of the Minister. I have never ratted on a deal in my life that I know of, and I do not intend to do so now. Consequently, I will not support the amendment of the Hon. Mr Elliott; I will support the Bill as it is framed.

The Hon. BARBARA WIESE: The Government's position has been reasonably well put, but I want officially to place on the record that the Government will oppose this amendment and all other amendments that will be moved this evening with the exception of the revised amendments which I understand the Hon. Mr Dunn will move to clause 35. The main reason for doing

this, although some of the proposed amendments may have some merit or there may be some sympathy with the proposal, is the fact that this legislation is the result of a cooperative effort between the Victorian and South Australian Governments. This Bill has been three or four years in the making with extensive consultation taking place, particularly during the past 18 months.

The Bill as it stands has the support of both the Victorian and South Australian Governments, the South Australian Farmers Federation and the Victorian Farmers Federation. As recently as today the proposed amendments in the Council have been put to the relevant Minister in Victoria, and it has been confirmed that there would be opposition to breaking the terms of the agreement as reached. Therefore, so that we can expedite the passage of this legislation—and it is imperative that this legislation be passed as quickly as possible—the Government will, as I previously indicated, oppose all amendments with the exception of the amendments to clause 35.

The Hon. PETER DUNN: The Liberal Party supports the Bill as it stands; it does not support the proposed amendments for several reasons. As has been mentioned, a working party which was set up in 1990 recommended that all members from the farming community be selected. It was made clear, certainly by the Liberal Party in the early stages, that that was not acceptable; it was felt that there ought to be more of a hands-on approach by the farmers whose product was being sold by the board. That has been changed so that now two members are elected and one selected.

I defend the right of the selected member on the basis that I am a member of Parliament because of a very similar system, as is the Hon. Mike Elliott. A selection panel put him forward, after which some of the electors in this State—not very many—voted for him and he was able to become a member.

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: I admit that I was elected under the same system. So, the system of being selected is not uncommon, and the honourable member and I are members of this place because of that system. The argument that members must be chosen or elected by the growers is hard for me to accept, because growers as far out as Coorabie, 1 000 kilometres from here, want representation. They have an organisation in the form of the South Australian Farmers Federation, and those people are representative in selecting one person in conjunction with a group from the Victorian Farmers Federation.

All we are doing is having a group of farmers select another group of farmers. If they are silly enough to select someone who is not acceptable, the argument would go back to them and as a result they would be to blame—it would be farmers blaming farmers. Unfortunately, this argument has developed into the Yorke Peninsula and the Mid North versus the rest—and that is a bit sad—but history will show that this has happened time and time again.

There are about 8 000 barley growers in South Australia. Members talk about 300 or 400 attending a meeting, but there are still a few more who need to be represented. About 58 per cent of the State's barley is grown on Yorke Peninsula. I do not know what periphery members want put on the outlying areas of the Yorke Peninsula, but it is an excellent barley growing area. As I said in my second reading speech, it is a great area for growing good quality barley because of its coastline and sea breezes. Having grown that good quality barley, they want it sold for the best price.

As I pointed out before—and I am declaring my interest, because I am a barley grower—if I spend my money and put my best effort into growing the best product, when I put it on the market I expect to get the best price. I want to be represented by someone with some skills. The Bill asks for a person with background in business, finance, exporting, product promotion and any other expertise that the selection committee considers relevant. I am sure that a rural person with that sort of expertise could be found.

I have no criticism of the former Barley Board—it has done an excellent job—but we must not look backward. We are moving into areas where hard negotiations must be carried out. So, we need people with an overall and rounded knowledge of what we are selling and whom we are selling it to. After all, we will sell a lot of it to the Arabs who have been learning the art of bartering for 5 000 or 6 000 years, and we will get picked off every time if we do not put forward our best people.

The Bill provides an opportunity for a poll in three or five years time or whenever the growers decide to do that, and I support that provision to the end—I think it is right and proper. For all those reasons I think there is a good case for having two members elected and one selected—and I cannot back away from that. One person will not make much difference. The idea put forward by the. Hon. Ron Roberts of having two more members appeals to me, but if a board gets too big it becomes cumbersome and it does not work. I do not think the Victorian people would accept that. There has been a change of Government in Victoria since this Act was proposed, and it has not changed anything; it thinks it is all right—and I think we can draw some comfort from that.

The Committee divided on the amendment:

Ayes (4)—The Hons J.C. Burdett, M.J. Elliott (teller), I. Gilfillan, R.J. Ritson.

Noes (15)—The Hons T. Crothers, Peter Dunn, M.S. Feleppa, K.T. Griffin, J.C. Irwin, Diana Laidlaw, Anne Levy, R.I. Lucas, Bernice Pfitzner, Carolyn Pickles, R.R. Roberts, T.G. Roberts, J.F. Stefani, G. Weatherill, Barbara Wiese (teller).

Majority of 11 for the Noes.

Amendment thus negatived.

The Hon. M.J. ELLIOTT: My next amendment is consequential and I will not be proceeding with it.

Clause passed.

Clause 12—'Selection Committee.'

The Hon. PETER DUNN: I move:

Page 5, line 6—After 'four persons' insert '(who may—but need not be—members of the South Australian Farmers' Federation Incorporated)'.

The effect of the amendment is that the persons need not necessarily be members of the South Australian Farmers' Federation: it opens it up to all barley growers in the State. The fact is that not everybody is a member of the

South Australian Farmers' Federation and, in the interests of even-handedness, we wish to open it up.

The Hon. BARBARA WIESE: The Government opposes this amendment. I have already outlined the major reasons why the Government opposes all amendments, except that proposed to clause 35. However, I should indicate to members of the Committee that when this matter was debated in another place the Minister indicated that although it is true that this provision refers to four persons nominated by the South Australian Farmers' Federation it also allows the federation to nominate people who are or who are not members of the federation. Apparently it is the intention of the federation in this instance to nominate at least one person who is not a member of the federation in choosing the four people who it will put forward for this committee. The sum total of it is that there is nothing which precludes non-members from being members of the committee. The assurance can readily be given that there will be at least one non-member selected by the South Australian Farmers' Federation at the appropriate time.

The Hon. M.J. ELLIOTT: A little earlier in debate I tipped a few buckets on the South Australian Farmers' Federation; and I am sure it is not the first time and will not be the last time. However, I cannot support the amendment that has been moved by the Hon. Mr Dunn because I have consistently argued in this place that when you are setting up panels I prefer explicit ways of getting people on. It should not be at the whim of the Minister as to who goes on; you need some mechanism to get there. My preferred path of getting people on to panels is either by way of direct election, which is what I was trying to achieve with the board, or by way of nomination by a peak body. At this stage there is only one peak body that affects barley growers and that is the South Australian Farmers' Federation.

While I am not happy with some of its policies from time to time, what we are looking at here is how to get people on to a panel. If they are not nominated by the South Australian Farmers' Federation they surely must then be at ministerial discretion. That gives less guarantee of having representation which properly reflects growers; it gives less chance of achieving that rather than more. So, I will abide by a principle that I have supported in so many Acts up until now, and that is that where we have bodies where there is to be nomination the nominations should come from peak bodies.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: Well, it is. If they are not to be nominated by the South Australian Farmers' Federation, as proposed in the amendment that we are now considering—

The Hon. DIANA Laidlaw: They will still be nominated by the South Australian Farmers' Federation but they need not necessarily be members of that federation.

The Hon. M.J. ELLIOTT: I understand, yes.

The Hon. Peter Dunn: That is right. The South Australian Farmers' Federation will still nominate them but the persons being nominated are not necessarily members of SAFF.

The Hon. M.J. ELLIOTT: I am afraid I misread the amendment. I thought that all words after 'four persons' had been eliminated and in its place had been put those words.

The Hon. Diana Laidlaw: We support what you are saying, in principle.

The Hon. M.J. ELLIOTT: So we do not have disagreement on principle. What the Hon. Mr Dunn is in fact proposing seems to be no different from what the Minister says she believes will happen. It probably will not make a huge amount of difference, but at least the amendment is a little more explicit in making it clear that they need not be members of the South Australian Farmers' Federation. On that basis I will support it.

The Hon. Barbara Wiese interjecting:

The Hon. M.J. ELLIOTT: I changed my mind on the basis that I recognise that I misunderstood the amendment, which seems to be perfectly reasonable.

Amendment carried; clause as amended passed.

Clause 13—'Selection criteria.'

The Hon. J.C. IRWIN: Subclause (1) provides:

> The Minister [South Australian] and the Victorian Minister may determine selection criteria to be applied by the selection committee in selecting persons for nomination to the board.

Does that mean that the criteria will be put down jointly by the two Ministers or can the Victorian Minister have criteria and the South Australian Minister have criteria? We see that 11(d) provides:

> (d) One will be a person by whom or on whose behalf barley is grown in Victoria.

If we use that as an example, does the South Australian Minister get in on the criteria for how that Victorian grower is selected or is that one left purely to the Victorian Minister to put down the criteria or, in fact, are they all joint criteria to the selection?

The Hon. BARBARA WIESE: I am advised that at this stage it is envisaged that the criteria as set out in clause 11 will probably be sufficient to proceed with the selection of relevant people. Should this not happen then it would probably be the case that the two Ministers would work together in developing additional criteria should that be thought desirable. As to the second question relating to the selection of a person who is resident in Victoria, as to whether the South Australian Minister would have some say in the criteria for selection, the detail of that proposal has not as yet been decided on and I would expect there would be some discussion following the passage of this Bill as to whether there should be some joint decision on that or whether the Victorian Government working with the Victorian Farmers' Federation might develop whatever criteria was necessary for the selection of that individual.

The Hon. J.C. IRWIN: That is not very clear. In Government legislation that is going into quite a serious area, an area known to be difficult between the farmers and the appointed members of the board who are elected, a very prominent industry for South Australia. However, I shall move on to another question. I want some idea of what the criteria is likely to be—in ball park terms. If you look at paragraph (e) of clause 11, which refers to persons with knowledge of the barley industry and (f), which looks at expertise in one or more of the following businesses, management, finance, export, production, promotion, etc., is there likely to be criteria that is

specifically directed towards having a maltster on the board as opposed to actually setting out that there will be a maltster on the board or a prominent end user or exporter on the board? Is the criteria likely to go to those specifics?

The Hon. BARBARA WIESE: As I understand it these things have always been determined on a fairly cooperative sort of basis and it would be the intention that such cooperation and discussion would continue to be the basis upon which decisions would be made. It would be quite likely, as I understand it, that a maltster or some other end user might be the successful candidate in such a position, but those decisions will be taken on a cooperative basis and, as I understand it, there have not yet been any decisions made.

Clause passed.

Clauses 14 to 18 passed.

Clause 19—'Casual vacancy.'

The Hon. J.C. IRWIN: Subclause (1) provides:

If the office of a member of the board becomes vacant for some reason other than the expiry of the term of office of the member, a person nominated or elected for appointment to the office in accordance with section I 1 will be appointed to fill the vacancy and to hold office, subject to this Act, for the remainder of the term.

Subclause (2) goes on to say:

If the vacancy occurs within six months of the expiry of the term of office of the member, the office may be left vacant.

That is quite a normal procedure and I accept that. But, in relation to subclause (1) who will make the appointment? But, firstly, I am disappointed that if the vacancy happens to be a person who has been elected to the board there is not the opportunity for the growers to elect a replacement, albeit for one or two years, or anything up to less than six months out from the normal election anyway. But that is not going to be the case, that an elected member will be elected by the growers, and in clause 19(1) it will be an appointment. Is that appointment made by the selection committee or by the Ministers?

The Hon. BARBARA WIESE: The nomination for the appointment of a replacement representative would be made by the relevant organisation as indicated in clause 11 so that, if it was a representative who had been previously nominated by the selection committee, that committee would be responsible for nominating the replacement. If it was the person who had been nominated by the Victorian Minister, then the replacement person would also be nominated by the Victorian Minister, and so on.

The Hon. J.C. IRWIN: That is the crux of the question. Clause 11(1)(c) provides:

two will be growers by whom or on whose behalf barley is grown ...elected in accordance with the regulations.

Is the Minister saying that, if it happens to be a member who is elected and who has to retire for one reason or another or who dies, there will be an election to fill that vacancy? Is that what is called an appointment?

The Hon. BARBARA WIESE: Yes, that is what I am saying. If it was one of the elected people, there would be a new election in accordance with the provisions in clause 7 and also provided for in clause 19, which talks about a person nominated or elected for appointment.

Clause passed.

Clause 20 passed.

Clause 21'Ministerial direction.'

The Hon. J.C. IRWIN: Subclause (1) provides:

(a) the general direction and control of the Minister and the Victorian Minister;

and

(b) any specific written directions given by the Minister and the Victorian Minister or by either Minister with the written consent of the other Minister.

Do Ministers have to act in concert or can they act quite separately from each other? Paragraph (b) indicates that they have to have written consent of the other Minister, but paragraph (a) refers to the general direction and control of the Minister and the Victorian Minister.

The Hon. BARBARA WIESE: No Minister can act unilaterally. A Minister can act only with the concurrence of the other Minister. If we read the clause carefully, we see that paragraphs (a) and (b) must be read in conjunction.

Clause passed.

Clauses 22 to 34 passed.

Clause 35—'Authorised receivers.'

The Hon. PETER DUNN: I move:

Page 14, after line 21—Insert:

(5) An authorised receiver appointed to receive barley or oats in South Australia must not, except with the written approval of the board, have a direct or indirect interest in a business involving the buying or selling of barley or oats or in a body corporate carrying on such a business.

There is a good reason for my amendment. Under the Bulk Handling of Grains Act, under which CBH is controlled, it is precluded from trading in grains. In the definition of 'grain' in that Act, it refers to wheat, barley and oats. In this Bill the definition of 'grain' in the schedule is much wider and there is good reason for that. The board may wish to trade in those grains set out in the schedule.

We looked at reflecting section 9 of the Bulk Handling of Grains Act in this Bill, and I think it is right and proper that it be there, but we had the problem of 'other grains'. We have had to take out 'other grains' so that the board can approve the clean up in a silo of screenings, damp grain or a small parcel of grain in a distant silo, say, at Penong, and there is a poultry grower or pig producer willing to purchase it probably at a reduced rate in order to clean up the silo. It allows CBH to sell that grain with the approval of the board. The board needs to know where grain is going because it has to account for it. This clause precludes CBH and the silo system from becoming a marketer but the amendment allows them to sell with the approval of the board.

The Hon. BARBARA WIESE: The Government supports the amendment. Generally, the Government has supported the intention of the Hon Mr Dunn's original amendment but had drawn to its attention concerns expressed by SACBH. Certainly, the Government agreed with the sentiments expressed by SACBH and, therefore, it is pleased the Hon Mr Dunn also agreed that the words 'or other grains' should be removed from his amendment.

To be consistent with the comments that I made about other amendments, I indicate that the Government is able

to support this amendment because it agrees generally with the thrust of it and also because there is no objection that has been forthcoming from the Victorian Government. We are also keeping faith with the general agreement that has been reached between the Governments.

The Hon. Peter Dunn: It does not affect that.

The Hon. BARBARA WIESE: That is right.

Amendment carried; clause as amended passed.

Clauses 36 to 39 passed.

Clause 40—'Deductions for research.'

The Hon. J.C. IRWIN: I display some ignorance as a barley grower on this matter. I have not researched this point and I do not know it well. What has been the recent history of dollars deducted for research?

The Hon. BARBARA WIESE: I do not have the figures here about the overall deductions. The current rate is 10c in the tonne. I can provide the overall deduction figure at a later time if that would be helpful.

The Hon. J.C. IRWIN: I am happy with the 10c figure as I can work it out from there. Is there a differentiation between the deduction for malting and feed barley, or is it the same for each?

The Hon. BARBARA WIESE: They are the same.

The Hon. J.C. IRWIN: What is the industry consultation before a deduction is determined? Is it extensive with barley growers or just determined by the board and then imposed through the *Gazette?*

The Hon. BARBARA WIESE: The committee, which is described in clause 40(7) and which comprises three persons appointed by the Minister after consultation with the grain section of the South Australian Farmers Federation Incorporated, is established for the purposes of this section, and one of the purposes of this section is to provide such advice and information in helping to determine the figure.

Clause passed.

Clause 41 passed.

Clause 42—'Permit to purchase barley for stockfeed.'

The Hon. PETER DUNN: I move:

Page 18, line 4—Leave out ', in a form approved by the board,'.

I moved this amendment just to clean up the matter. I have heard what the Minister said about not accepting it, but this will not affect the Victorians very much. As the present clause stands, a person may apply to the board in a form approved by the board. My amendment takes that out so the legislation would provide:

A person may apply to a board for a permit for a specified season authorising that person to purchase barley harvested in that season directly from growers for stockfeed purposes in Australia.

That makes it fairly clear, but application must be in a form approved by the board. I might be a neighbour of a person who grows barley; I might have pigs and want some of that barley. If I do not have the relevant form with me, I might not understand exactly what is required, but at least I can ask the board 'Can I purchase it?' (I have a subsequent amendment which sets out the information that will be required.) By that time, I would have the information from the board, and I could put it in on the back of an envelope, stick it in my fax and send it off. However, it may not be in the form approved by the board. I expect the board will want to know the tonnage, type, area in which it is grown and the grower's and buyer's names, and there may be other factors. It seems to read to me that, if I do not have that in the prescribed form or in a form approved—

An honourable member interjecting:

The Hon. PETER DUNN: Well, it may be. Yes, but why can't it just apply to the board for a permit? Ring it up. This clause provides 'in a form approved by the bank'. Do I have to ring up the board and say the right words?

The Hon. R.R. Roberts interjecting:

The Hon. PETER DUNN: I believe that I am just clearing up the matter and making it simpler for farmers: they do not like things complicated.

The Hon. BARBARA WIESE: The Government opposes this amendment. I indicated earlier that we would oppose the majority of these amendments to keep faith with the agreement we had with the Victorian Government. The Hon. Mr Dunn felt that this would be something about which the Victorian Government would not worry too much: in fact, I am advised that it was more concerned about this amendment than any of the others, for some reason or other. However, I do not think in practice this will be a problem here in South Australia because, as the Minister for Primary Industries indicated in another place during the debate on this Bill, he has been advised by the General Manager of the Australian Barley Board that it does not intend to prescribe a form for stockfeed permits. So, all the examples that were given during the course of the discussion on this clause probably, therefore, would be permitted by the Australian Barley Board in practice. So a fax, telephone call, letter or whatever would be acceptable, if the information that has been provided to the Minister is correct—and there is no reason to assume that it would not be. So, as well as not wanting to support this amendment because it breaks the agreement, there is actually no need for this amendment in any case, based on the information that has been received by the Minister.

The Hon. M.J. ELLIOTT: I have suspected for some time that the Hon. Mr Dunn had some problems with his vowels, and now it is confirmed because he has failed to distinguish between an 'i' and an 'o'. He seems to have been reading 'in a form' as being 'on a form' and that has caused him great distress. But when he gets his vowels in order, he will realise that it is 'in a form', and that might mean by telephone, fax or whatever. I am not too persuaded by arguments about what the Victorians do and do not like if something is important enough, but quite plainly this is not a significant matter and is unnecessary. It may be necessary: the board may want to be prescriptive at some time, and if it needs to be prescriptive, then the power is there.

At this stage it appears that things will be reasonably *laissez faire.* I imagine that they will be less *laissez faire* if they become aware that some abuse is occurring in the system. Abuse could be stomped on fairly quickly with this clause in its current form. The Democrats will not support the amendment.

The Hon. PETER DUNN: I really think members are not looking at this matter carefully, and perhaps it involves a drafting problem. Surely, the Barley Board wants to know whether I am selling barley to somebody.

All that clause does is permit me to ask a barley grower, 'Can I buy some barley?' That is the first thing you do: you telephone the Barley Board and say, 'Look, I'd like to purchase some barley.' It will then tell you how much you must pay for research on the prescribed form. Here we are saying that, unless we put in the prescribed form in a form approved by the board as the Bill provides—and it does not spell out that form—then I am likely to be rejected before I even get to first base and ask, 'How much do I have to pay for the research?' With regard to the second amendment, all I am suggesting is that, having been told that I can purchase the grain, I am told the fee and such information as is required.

As I pointed out, information might involve the amount, type, area from which it came, the grower's and the buyer's name, and it might involve other things. That might change from area to area, I do not know. First, I need approval to purchase it, I really do. That is the whole reason. The Barley Board might say, 'We want that grain because we have to meet a commitment overseas or in some other area.' It might say, 'No.' It is just a matter of where you put it in. It is not a matter of huge moment: but the point is that it is a matter of commonsense. First, I get permission or rejection, and then I set out the detail, and that is all this does.

The Hon. BARBARA WIESE: It is very difficult to say it in clearer language. The legislation provides for the form in which information should be applied. I have indicated that the people who will be responsible for administering this part of the legislation have indicated that it is not their intention to prescribe a particular form. The sort of information that will be important to thetas will be, first, to know the tonnage involved, which will enable them to determine a handling fee or a commission, if that is what they want to charge and it will enable them to determine the barley research deduction.

So, that is the sort of information that will be most important to them, but what they are saying at this stage is that that can be provided in whatever form turns you on, essentially. It can be provided by telephone, fax or letter; they will not get hung up about its being in a particular format or on a particular coloured piece of paper. That is what they want to do—that is their intention—so the concerns that are being expressed by the Hon. Mr Dunn in practice simply should not exist.

Amended negatived; clause passed.

Clauses 43 to 57 passed.

Clause 58—'Provisions as to polls.'

The Hon. PETER DUNN: I move:

Page 27, lines 30 and 31—Leave out these lines and substitute:

'(6) Voting by those growers entitled to vote at a poll is voluntary.'.

This really changes compulsory voting, as is provided in this clause, to voluntary voting. I do that just on a practical basis, because the Bill makes no provision for a penalty if one does not vote. If there is no penalty, I guess it is voluntary voting, so why not say it is voluntary voting?

The Hon. BARBARA WIESE: The Government opposes this amendment.

The Hon. M.J. ELLIOTT: I will not support the amendment. In effect, this will work something like compulsory voting in South Australia. While we have to attend in South Australia, we are not actually forced to mark our ballot paper, and I suspect that people would be in a somewhat similar situation here: that the participation ultimately does not end up meaning they will actually mark the vote to start off with and, secondly, as the Hon. Mr Dunn himself has noted, there is no penalty for failure to participate. So, I do not see that at the end of the day it will create great difficulties.

While I am on my feet, I would like to ask whether or not the Minister of Primary Industries in another place has considered what form of counting the vote will be used to determine what representatives will be elected.

The Hon. BARBARA WIESE: As I understand it, the intention is that it would be first past the post type voting, so the first two past the post would be the winners.

The Hon. PETER DUNN: The Hon. Mr Elliott said that it was a bit like voting in an election where one just goes along and gets crossed off, but this clause does not provide that: it provides that the regulation may provide that it is compulsory for growers whose names appear on the roll to vote at the poll. They must vote. If they do not get that vote back, what will be done; what is the penalty; and how can they be forced to vote? We are saying that it is compulsory to vote and, if we use the word 'compulsory', we need some regulatory method by which we can cause them to vote. If they do not vote, I should have thought it would be simpler just to say that they get a voting slip and that it is up to them to register their vote. If they do not vote, they do not have their say; it is as simple as that. I wonder about providing in an Act that people must vote and then having no method of assuring that that happens.

The Hon. M.J. ELLIOTT: The Minister indicated that it was most likely that the election would use the first past the post system, which means essentially that those two with the most number of votes would win. That system is contrary to the electoral system we use currently in Australia, where we have a system of preferential voting.

The Hon. R.I. Lucas: They are going back to the Queen, in the UK.

The Hon. M.J. ELLIOTT: They are going back to the Queen; yes. I must say I am extremely surprised, because first past the post voting is a rarity in democratic systems these days. The UK and the United States are among the few countries in the world that currently use first past the post voting, and it is an extremely undemocratic form of voting. We could have the situation where one or two people were standing on a similar form of ticket. One might be marginally preferred to the other and get a lot of votes, and the other might get a relatively small number and be beaten by a third candidate who is generally disliked by a vast majority of those who are participating. If we believe in a genuinely democratic system, it really should be what is described as a 'bottoms up' situation, where people with the smallest number of votes are eliminated, their preferences are distributed and that is continued until two people are left.

It is a form of preferential voting which delivers the two most preferred candidates and which would satisfy the greatest number of growers, rather than using a

simple first past the post system, which simply relies upon the two who get the greatest number of votes in the first preferences. That is not always terribly representative; it is certainly contrary to the sorts of voting that we use in State and Federal elections for Upper and Lower Houses currently in Australia.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, Peter Dunn (teller), K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, IF. Stefani.

Noes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, G. Weatherill, Barbara Wiese (teller).

Pair—Aye—The Hon. L.H. Davis. No—The Hon. C.J. Sumner.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 59 to 61 passed.

Clause 62—'Members.'

The Hon. PETER DUNN: I move:

Page 28, line 13—After 'names' insert of persons (who may—but need not be—members of the South Australian Farmers' Federation Incorporated)'.

This amendment is consequential on my amendment to clause 12. It is similar in its effect; the argument has been put and won.

Amendment carried; clause as amended passed.

Remaining clauses (63 to 76), schedule and title passed.

Bill read a third time and passed.

GUARDIANSHIP AND ADMINISTRATION BILL

Adjourned debate on second reading.

Continued from 30 March. Page 1769.)

The Hon. M.J. ELLIOTT: I begin by indicating that generally I support the Bill and the changes that it proposes to the current system. This Bill is part of a parcel of three Bills: the Support of Residential Facilities Bill passed last year, the Mental Health Bill and the present Bill. This Bill will improve the functioning of the Guardianship Board. Currently, the functions of the Guardianship Board are separated into two distinct and somewhat conflicting categories: the board currently has responsibility as a guardian while it also has judicial powers to grant orders involving the restriction of rights or freedom. Under this Bill, the guardianship responsibility has been removed, and that leaves the board with more clearly defined judicial functions.

Under this Bill, the board will have the ability to appoint a third party as guardian and the added ability to make limited guardianship orders, something which currently does not occur. The board will also take on the functions of the Mental Health Tribunal hearing appeals under the proposed Mental Health Act. I support these changes entirely. The Bill clearly stresses that the Guardianship Board will be a place of last resort. This idea recognises the importance and legitimacy of the family as the decision-maker in respect of mentally incapacitated people.

I am also supportive of other internal changes to the Guardianship Board. Under the proposed legislation the composition of the board will be altered from five members to between one and three members. This reduction is to be applauded, as I have been contacted by many parents who have said how intimidating a board of five members is. Hearings of the board should be less formal and imposing, and parents, advocates and people who are the subject of orders should not feel that they are on trial.

While on the theme of hearings, I should say that it certainly seems desirable that hearings be closed rather than open, and that perhaps the people who are allowed to be present at the hearing should be set out in the legislation.

The most obvious change to the current legislative scheme is the establishment of the office of Public Advocate. Although I have been approached by individuals who have concerns about the obvious cost of this position, I believe that it is an extremely positive addition to the legislation. The Public Advocate will have the role of an investigator, advocate, guardian and reviewer of programs and services in the mental health area. The Minister himself in his second reading speech indicated that the position will serve as an important watchdog role on behalf of mentally incapacitated persons.

However, I must indicate that, just as some of the current roles of the Guardianship Board are considered to be in conflict, it seems possible that the various roles of the Public Advocate may also be in conflict—for example, the roles of investigator and guardian. It is essential if this position is to function at its best that certain provisions ensure that the position is entirely independent from the Health Commission. I must express my extreme concern about the possibility of the Public Advocate being in the same premises as the Health Commission and, indeed, sharing the same staff and facilities. I realise that during the second reading speeches the Minister said that it is intended, of course, that the Public Advocate should be located in a separate building. He said:

That will ensure that there is no immediate physical proximity, thereby providing a much stronger presumption of independence.

Despite this, I have been personally contacted by members of the Guardianship Board who have said that they have been informed that the board will be located, along with the office of the Public Advocate, on the eleventh floor of the ABC building, sharing the same facilities. This hardly seems to maintain a 'stronger presumption of independence', to use the Minister's words. It seems to me that it would be appropriate for the Public Advocate to be under the Attorney-General, as it is in Victoria, so that it remains totally independent from the Health Commission. I am currently examining an amendment which will allow that to occur. It also seems totally in conflict with what the Minister has said about the independence of the position, that the Public Advocate is able to delegate his or her powers or functions under this Act or any other Act to a Health Commission employee under section 22 of this Bill. Some of the foreseeable issues that the Public Advocate will be dealing with will concern the Health Commission

and/or the Guardianship Board, and thus it will be impossible to guarantee that such a delegation would not involve a conflict.

One of the further concerns that I see in this Bill is independence of the members of the board from the president. As I understand it, at present members of the board are sitting according to a roster-type system and the president has no real control over who sits on the board for a particular hearing. However, this Bill will see a change in this procedure, and this has raised some concern. Clause 6 of the proposed legislation details that the composition of the board will depend on the selection of panel members by the president. In my opinion there must be some way of ensuring that the members who constitute the board remain independent from the president so that a more diverse range of views is represented on the Guardianship Board. I would be interested to have a response on this point from the Minister.

With respect to guardianship orders, I note with approval the ability of persons over 18 years of age to appoint an enduring guardian under clause 24 of the Bill. This ensures an individual the right to choose his or her own guardian. This will reduce the anxiety that some people may feel if they think that the board will not appoint an appropriate person to be their guardian. I end by questioning the Minister about the restriction on appeal rights under the Bill. Currently any person who wishes to appeal may do so, yet under the proposed Bill leave of the Administrative Appeals Court must be obtained. I question whether this is a just restriction on the rights of people to appeal against the decisions of the board. Mr President, I have raised several concerns. Before making final decisions in relation to some clauses I will be seeking responses from the Minister, but I have indicated that it is likely that I will put up at least one set of amendments in relation to the Public Advocate, placing the Public Advocate under the Attorney-General, to make it perfectly clear that the role of Public Advocate is a separated role in a similar way to the way in which it has been done in Victoria. With some qualifications at this stage, the Democrats are supporting the legislation.

The Hon. J.C. BURDETT: I, too, support the second reading of the Bill. I share some of the concerns which the Hon. Mr Elliott has raised, particularly with regard to the Public Advocate. I think that is a very important new concept, but I would like to consider the suggestion that has been made by the Hon. Mr Elliott that the Public Advocate ought to be responsible to the Attorney-General, ought to be responsible somewhere else other than the area where he works. The Bill provides for the establishment of the Guardianship Board. This provision is substantially the same as the provision in the Mental Health Act 1977 which is repealed by the Mental Health Bill and which runs in tandem with this Bill, except that the provisions for appointment are more flexible. Flexibility is a feature of the Bill. In fact—and this was referred to by the Hon. Mr Elliott—in regard to the number and qualifications of the members of panels, I query whether the provisions are too flexible. It certainly would be possible for the board to be unbalanced in terms of the Bill, and one can only hope that the wide discretions as to appointment will be wisely exercised.

In the present Mental Health Act there are 10 members of the board, and the areas of expertise whence they come are spelt out. In the Bill they are not. There can be an almost unlimited number of panels. There are some who can come from areas of professional expertise which are not specified, and there are some who can come from outside that. I am worried about this, and I am worried about the possibility of the board being unbalanced. I think that if the Bill goes ahead in this form we may have to address this again later as it works out.

I agree that it is appropriate to remove the provisions relating to the board from the Mental Health Act and to place them in this Bill. I think that that is more appropriate, that you do not have it in the Mental Health Act and do have it somewhere else in a Bill of this kind relating to administration. Part 2, Division 3 of the Bill provides for the office of Public Advocate, to which the Hon. Mr Elliott has also referred. The functions of the office are set out in detail in clause 20, and I will not read it in full. They can, I think, be summarised as being to watch over the interests of mentally incapacitated persons, including a particular person. This is a new and important provision. I note that clause 22 provides that the Public Advocate must report to the Minister not later than 30 September each year, and that this report must be tabled in Parliament within a specified period after that. Because of the importance of this office I think that this is appropriate.

Because of the importance of the office, I agree with the Hon. Mr Elliott that taking this office out of the area of the Minister of Health, Family and Community Services and placing it with somebody else—and the appropriate place obviously is the Attorney-General—is something well worth thinking about. Part 4, Division 1 of the Bill provides for investigations by the Public Advocate. It is pleasing that the powers of entry can only be exercised on the authority of a warrant—because in so many Bills we do not get this—issued by the president or a deputy president of the board, and both those officers must, under the Bill, have legal qualifications. Division 2 provides for guardianship orders, and it is a fairly similar basis as at present but not entirely the same. I think we ought to look at the differences. Division 3 provides for administration orders, and this is a great improvement on the present procedure.

Under the Mental Health Act as it is at the present time where there was an order for the administration of a person who is incapable of administrating his own affairs, the only administrator was the Public Trustee except where the board considers there were special reasons for some other person to be appointed. This removes that and says that any appropriate person can be an administrator. Some couple of years ago, I suppose, when I was speaking to the Aged and Infirmed Persons' Property Act, I raised the point that Public Trustee administration was often inefficient and inconsiderate and did not consider the circumstances of the person concerned, and this was supported by a Government appointed review of the Guardianship Board and the Appeals Tribunal. I moved an amendment at that time in regard to the Aged and Infirmed Persons' Property Act to provide what is essentially in this present Bill.

The Attorney at that time expressed sympathy for what I was doing and the amendment was carried, with the support of the Australian Democrats, which I appreciated. When it came back from the Assembly the Democrats no longer supported it because the Attorney said that the measure ought not to be in that Bill—and I cannot disagree with that—and that it ought to be in this kind of legislation. It was on the basis of that that the Hon. Mr Elliot withdrew his support for my amendment. What he did undertake to do was to ask the Minister of Health at that time to expedite the inquiry into the Mental Health Act.

It has taken a long time to come but now it has come and I am very pleased that this particular situation has arisen and that we now have administrators who need not be the Public Trustee. In fact, Public Trustee is not referred to in the Bill. I think that is a great advantage and there are many cases where persons, say with Alzheimer's disease, or whatever, where there is not a large amount of property involved and the estate could well be administered by the spouse, and all sorts of other situations which, at the present time, under the present law, must be administered by the Public Trustee. I have had two parents-in-law who were under the Guardianship Board and the Public Trustee and the administration was terrible. They were given no sort of consideration at all. The only consideration was preserving the estate, which nobody particularly wanted to do. What everyone wanted was to help the people concerned and serve their interests, which did not happen. This part of the Bill, I think, is a great improvement.

The Hon. R.J. Ritson: Who needs a statutory monopoly?

The Hon. J.C. BURDETT: Sure. Clause 58 of the Bill, I think, is a great step forward in one regard and that relates to persons who are not able to consent to their own medical and dental treatment, and it does at last give the power to a relative of the person to consent, which does not apply at common law and which did not apply previously. Even a parent of a person over 16 or over 18, a person who is not a child, was not able to consent and now they are. That is one of the persons who are able to consent and I think this is a step forward. In the same sort of area I think there is also a step backwards and that is in regard to prescribed circumstances. That is to say, sterilisation and termination. The actual provisions are similar to the present day Act, that it is the board that consents and I do not object to that but in the present Mental Health Act, which is repealed under this or the other tandem Bill, the provisions are similar, but it is provided in section 28d of the Mental Health Act 1977:

> (1) Upon receiving an application for its consent to be carrying out of a sterilisation procedure or termination of pregnancy on a person and determining that the person is a person to whom this Part applies, the Board shall then determine whether or not to grant its consent.

It is then provided:

> (2) In making any determination under subsection (1) in respect of a person, the Board—
>
> (a) shall afford—
>
> (i) where it is practicable to do so, the person—

that is the person on whom the procedure is to be carried out—

> (ii) subject to subsection (3), any parent of the person;
>
> and
>
> (iii) any other person who the Board is satisfied has a proper interest in the matter;
>
> an opportunity to appear before, and make representations to, the Board;
>
> (b) shall give due consideration to the express wishes (if any) of the person;
>
> and
>
> (c) shall give due consideration to the object of minimising interference with the rights of the person so far as is consistent with the proper protection and other care of the person.
>
> (3) The Board is not obliged to afford a parent of a person to whom this Part applies (except where the parent is the applicant for consent) and opportunity to appear before, and make representations to, the Board—
>
> (a) if the whereabouts of the parent cannot, after reasonable inquiries, be ascertained;
>
> (b) if, in the particular circumstances, it is reasonably practicable to do so;
>
> or
>
> (c) if the Board is satisfied that it would not be in the best interests of the person the subject of the application to do so.
>
> (4) The Board shall determine any application relating to a proposed termination of pregnancy as expeditiously as is reasonably possible.

There are similar provisions in regard to sterilisation. I am concerned that this obligation to give the parents an opportunity to make representations where it is reasonably practicable is excluded in this Bill. Such provisions are not here. An amendment was moved in another place to try to write back these provisions but it was not accepted by the Minister. I intend to move a similar amendment to write back these provisions because I can see no harm in them whatsoever.

It is clear from what I have read that, if there is a problem in regard to the term of the pregnancy or anything else, the board has every opportunity to opt out and say, 'We cannot locate the parents' or 'Giving due consideration to the minimising of interference and so on, there is not time to consider the wishes of the parents.' As to the present provisions, I can see no harm in them whatever. I also note that there was an inquiry set up by the Government into the Mental Health Act and it did not refer to those provisions at all, so there seems to be no problem with them.

No-one has suggested that there was any problem, and I do not see why these provisions should not be written in. When the matter was debated in Committee in another place the Minister referred to clause 14, which I do not think was an adequate reference. Clause 14 refers to the powers and procedures of the board. It is not only about sterilisation or termination; it is across the board. Clause 14 provides:

> (4) Subject to subsection (5), the board must give the following persons reasonable notice of the time and place of the hearing of the proceedings:
>
> ...
>
> (d) such other persons as the board believes have a proper interest in the matter.

When this issue was raised in another place, the Minister said that that was sufficient. In my view it is not sufficient, because it is a matter of parental rights, particularly when we are dealing with persons who are mentally incapacitated. A parent is a parent, whether the person concerned is 18 or more than 18 and the parent ought to be notified where practicable and where there is no reason not to, as set out in the Mental Health Act at present.

I intend to move the amendment in Committee. As to part 5, which deals with appeals, they have been referred to by the Hon. Mr Elliott and, broadly, I think that the provisions of part 5 are appropriate, providing for appeals and cases stated, and that does not apply at the present time. That is an improvement on the present situation. I support the second reading and I will certainly move at least one amendment. I will consider other amendments that may be moved by the Hon. Mr Elliott or other members who may speak in the debate.

It is largely a Committee Bill and, as I said at the outset, in the second reading explanation it was said that it was flexible. In my view it is probably too flexible and I am prepared to consider amendments that may tie down some of the areas that ought to be tied down. I support the second reading.

The Hon. R.J. RITSON secured the adjournment of the debate.

STATUTES AMENDMENT (FISHERIES) BILL

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

No. 1. Page 1, Long Title—Leave out ', the Fisheries (Gulf St Vincent Prawn Fishery Rationalisation) Act 1987'.

No. 2. Page 9, lines 4 and 5 (clause 25)—Leave out this clause.

No. 3. Page 9, lines 6 and 7 (clause 26)—Leave out this clause.

No. 4. Page 9, lines 8 to 36 and page 10, lines I to 17—Leave out the clause.

The Hon. BARBARA WIESE: I move:

That the Legislative Council do not insist on its amendments.

In view of the lateness of the hour, I will not put the Government's position on this matter in any great detail. We had considerable debate about part 3 of the Bill when the matter was before us some days ago. There was a majority view in this Chamber that part 3 should be removed from the Bill. The Minister and the Government have had the opportunity to consider the arguments that were put by members of this Chamber, but maintained the view that part 3 is important for the legislation.

The Hon. M.J. ELLIOTT: Part 3 of the Bill has nothing to do with any other part of the Bill. It stands in its own right. The rest of the Bill can stand or fall on its own merits. Part 3 relates to the Gulf St Vincent prawn fishery. I thought powerful arguments were put here when we last debated the issue that, until we know the state of the prawn fishery (and all evidence to date suggests that it is not recovering), making further changes to the system of payments and having other impacts on the fishermen is an unreasonable thing to do. At the earliest, the fishery will not be opening until November, and that assumes that some of the trial runs find more prawns than they have found over the past 18 months when they have been testing out in the gulf. If the fishery does not open at all, then the clauses that the Minister is proposing would never be operable, regardless of whether or not they are fair. There are very strong arguments to say that they are not fair in any event, even if the fishery did recover.

The Hon. PETER DUNN: The Opposition insists on its amendments. It believes that part of the Bill dealing with the Gulf St Vincent stands alone and can quite reasonably be taken out without causing any harm to the Government and to the fishery, because it is in a state of limbo at the moment. As has been stated by the Hon. Mr Elliott, there is some indication that the fishery will recover; if it does, let us then deal with it. We may have something else to do if it is found that the fishery is not recovering; we may need some other legislation. So, why not let us do it all at once? I therefore insist that the amendments be agreed to.

The Council divided on the motion:

Ayes (7)—The Hons T. Crothers, M.S. Feleppa, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, Barbara Wiese (teller).

Noes (10)—The Hons J.C. Burdett, Peter Dunn, M.J. Elliott (teller), K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

Pairs—Ayes—The Hons L.H. Davis and I. Gilfillan. Noes—The Hons C.J. Sumner and G. Weatherill.

Majority of 3 for the Noes.

Motion thus negatived.

DEVELOPMENT BILL

Received from the House of Assembly and read a first time.

ADJOURNMENT

At 11.23 p.m. the Council adjourned until Thursday 1 April at 2.15 p.m.